

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

T. B. (No. 4)

v.

WHO

122nd Session

Judgment No. 3689

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr J. T. B. against the World Health Organization (WHO) on 10 April 2014 and corrected on 30 June, WHO's reply of 12 December 2014, the complainant's rejoinder of 8 January 2015 and WHO's surrejoinder of 24 April 2015;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case may be summed up as follows:

The complainant contends that he contracted onchocerciasis, a parasitic disease which may eventually lead to blindness, during the performance of his duties as a collector of blackflies (insects that are vectors of the disease) in Côte d'Ivoire between 1974 and 1978 under WHO's Onchocerciasis Control Programme.

Facts relevant to this dispute are provided in Judgments 2017, 2434 and 3012 concerning the complainant's first three complaints. Suffice it to recall that in 1994 the complainant submitted a claim for medical expenses which was rejected by the Director-General of WHO on a recommendation of the Advisory Committee on Compensation Claims (ACCC). The rejection of this claim formed the subject of his first complaint. A first medical board was set up pursuant to Judgment 2017,

rendered on that first complaint. The Board, which convened in December 2001, concluded that it could not “objectively establish a link between [the complainant’s] work as blackfly collector and [his] eye disorder”. By a letter of 9 September 2002, the complainant was informed that, in accordance with a recommendation of the ACCC, to which the Board’s report had been transmitted, his claim for compensation had been rejected. On 30 January 2004 the Director-General, in response to the complainant’s appeal against this decision and acting on a recommendation of the Headquarters Board of Appeal (HBA), ordered the constitution of a new medical board. In the report which it issued in February 2008 this medical board concluded, on the one hand, that “no objective element” could be invoked to link the complainant’s eye problems to a parasite infection and, on the other, that the complainant’s ocular disorder “might be attributable” to a medical treatment that he had received. This report was submitted to the ACCC, which concluded that the complainant’s ocular disorder could not be recognized as service-incurred and recommended the rejection of his claim. The complainant was informed by a letter dated 20 January 2009 that the Director-General had accepted this recommendation.

In Judgment 3012, delivered on 6 July 2011, the Tribunal found that the complaint which the complainant had filed against the decision of 20 January 2009 – his third – was irreceivable, because he had not exhausted the internal means of redress, but that the Organization had breached its duty of care in that, in its decision, it had failed to mention the means of redress and the relevant time limits. The Tribunal therefore granted the complainant a new time limit to appeal to the HBA.

On 5 August 2011 the complainant filed a statement of intention to appeal against the decision of 20 January 2009, followed by a full statement of his case on 4 January 2012. He complained of the precarious situation in which he had found himself for “more than fifteen [...] years”. The HBA, after obtaining some information from WHO on the measures it had taken to monitor the complainant’s health while he was working as blackfly collector – on which he commented on 15 February 2013 – forwarded its report to the Director-General on 12 July 2013. The HBA considered that the Medical Board and the ACCC had not

“considered all the facts of this case” and that the latter’s conclusions and recommendations were therefore “based on an incorrect analysis”. It found that WHO had breached its moral duty to protect the complainant insofar as it had exposed him, in the performance of his duties, to a “particularly high” risk of being infected with onchocerciasis. In addition, it noted that the complainant had undergone several tests, the results of which had shown “the probable existence of infection with onchocerciasis” and that he had received “various treatments”, one of which had been administered by WHO, to combat this disease. It concluded that it was therefore “more ‘probable’ than ‘improbable’” that the complainant had contracted onchocerciasis in the performance of his duties. It consequently recommended that WHO should pay the complainant the compensation due to him, “including that due retroactively”, under the “insurance policy” in force when he had submitted his medical expenses claim in 1994. It also recommended that he should be paid moral damages in the amount of 30,000 United States dollars, as well as 10,000 dollars in compensation for the inordinate length of the proceedings and costs.

By a letter of 2 September 2013, the complainant was notified that the Director-General would not take a final decision until she had held “various internal consultations”, but that he had been awarded compensation in the amount of 10,000 Swiss francs for the “exceptional length of time” taken to process his claim. This sum was paid to him in November 2013. By a letter of 21 February 2014, which constitutes the impugned decision, the Director-General informed the complainant that she did not agree with the HBA’s conclusions since she considered that it had based its findings on on “unfounded [...] indications”, which she listed. She contended that the complainant had never been placed in working conditions such as to endanger his health and she emphasised that it had never been clearly established that he was suffering from onchocerciasis. Moreover, she noted that, even if this had been the case, the complainant could have contracted this disease in a non-work environment since it was endemic in the region where he had lived between 1974 and 1978. The Director-General therefore concluded that there were no objective grounds for establishing a causal link between the complainant’s ocular disorder and the performance of his official duties. She nevertheless awarded him 5,000 Swiss francs in costs.

The complainant asks the Tribunal to order WHO to apply all the HBA's recommendations and to defray the costs he will incur in order to receive "regular check-ups" at the Geneva University Hospitals.

WHO submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. In this complaint to the Tribunal the complainant impugns the decision of 21 February 2014 of the Director-General of WHO to reject his medical expenses claim arising from an ocular disorder which, he says, he contracted while working as a blackfly collector for WHO's Onchocerciasis Control Programme. In his claims he requests the application of all the HBA's recommendations and asks that the defendant organization be ordered to defray the costs he will incur in order to receive "regular check-ups" at the Geneva University Hospitals. At the end of its deliberations the HBA had recommended that the Director-General of WHO should:

- "(a) Grant [...] the complainant [the] compensation due from the Organization, including that due retroactively, under the insurance policy in place at the date of his [medical] expenses claim [in 1994], and
- (b) Pay the complainant compensation in the amount of 30,000 [United States dollars] for the moral injury resulting from his physical and moral suffering and the Organization's breach of its duty of "protection" towards him, and
- (c) Pay the complainant 10,000 [dollars] in compensation for the unusual length of 19 years of this claim and the procedural delay since the decision taken by the Director-General on 30 January 2004 to set up a new Board, and lastly
- (d) If this has not already been done by the Organization, reimburse in full any legal expenses incurred by the complainant in respect of his first appeal to the HBA [...] and of this appeal [...] subject to the production of receipts for invoices paid by the complainant. In the event that the complainant represented himself (which seems to be the case), grant him a lump sum of 5,000 [dollars]."

2. WHO submits that the complaint is unfounded. It considers that the HBA's recommendations are essentially based on the additional,

factually incorrect information supplied by the complainant on 15 February 2013, which contained serious allegations regarding a lack of medical aftercare as well as unsafe and inadequate working conditions to which it was unable to respond, as the HBA did not afford it this possibility. It also points out that the complainant can obtain medical aftercare from the health and hospital services in Côte d'Ivoire.

3. The Organization denies that the complainant's illness can be attributed to the performance of his former duties as a blackfly collector.

As a rule, the Tribunal cannot substitute its own opinions for those of medical experts or determine whether or not the physical condition of an official stems from an occupational illness. This does not, however, preclude it from forming an opinion predicated on the diverging conclusion of the competent medical bodies.

In the instant case, the opinions of the experts who were consulted differ as to the existence of a causal link between the complainant's ocular disorder and his work as a blackfly collector. However, after a very thorough examination of these opinions, the HBA held that the existence of this link was probable. In addition, various medical tests and examinations yielded results corroborating this conclusion. Lastly, although the experts' views diverged as to the possible role played by the medical treatments undergone by the complainant, it is in any case established that these treatments were administered to him precisely because he was suffering from onchocerciasis.

In view of all these factors and having regard to the fact that, for four years, the complainant was exposed to a considerable risk of contracting this disease while performing his duties as a blackfly collector, the Tribunal is of the opinion that his ocular disorder must be regarded as attributable to the Organization.

4. The decision of the Director-General of 21 February 2014 shall therefore be set aside and the complainant shall be awarded all his entitlements under the WHO rules in force at the date of medical expenses claim, i.e. 5 August 1994, and he shall be paid the corresponding amounts within 90 days of the delivery of this judgment, failing which they will

bear interest at the rate of 5 per cent per annum from the date of the delivery of the judgment until the date of their payment.

5. Regarding the issue of whether WHO breached its duty to protect the complainant, the Tribunal recalls that international organizations have a duty to adopt appropriate measures to protect the health and ensure the safety of their staff members (see Judgments 3025, under 2, and 2403, under 16). An organization which disregards this duty is therefore liable to pay damages to the staff member concerned.

In the instant case, the complainant was instructed to collect blackflies, which are vectors of onchocerciasis, without being issued with adequate protective clothing which would have enabled him to avoid any direct contact with these insects. On the contrary, he was obliged to wait until they settled on him before catching them, a situation which created a high risk of infection. WHO thus committed a serious breach of its duty to protect the complainant. The complainant is entitled to compensation in the amount of 30,000 United States dollars for the moral injury resulting from this breach of the duty of protection and for the additional moral injury he has suffered on account of his state of health.

6. So far as concerns the unusual length of time taken to process his claim, the Tribunal notes that the defendant organization has paid him financial compensation of 10,000 Swiss francs. The claim that the HBA's recommendation in this respect should be implemented has therefore become moot.

7. The complainant has asked that WHO be ordered to defray the costs he will incur in order to receive "regular check-ups" at the Geneva University Hospitals. As the complainant does not prove the particular need for medical aftercare at the Geneva University Hospitals, there is no reason to grant this claim.

8. The complainant has not claimed costs in these proceedings before the Tribunal. However, it is noted that pursuant to the impugned decision he has already been awarded 5,000 Swiss francs in respect of the internal appeal proceedings.

DECISION

For the above reasons,

1. The impugned decision of 21 February 2014 is set aside.
2. WHO shall pay the complainant the sums due to him by virtue of his entitlements as indicated in consideration 4, above, together with interest as specified in that same consideration.
3. WHO shall also pay the complainant compensation in the amount of 30,000 United States dollars for moral injury under all heads.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ