Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. d. L.

v.

OIE

129th Session **Judgment No. 4232**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-P. M. C. d. L. against the International Office of Epizootics (OIE) – also known as the World Organisation for Animal Health – on 2 December 2015 and corrected on 29 December 2015, the Organisation's reply of 17 February 2016, the complainant's rejoinder of 13 April and the OIE's surrejoinder of 19 May 2016;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision to stop paying his salary while he was on sick leave.

The complainant joined the OIE in 1994 under a fixed-term appointment. On 1 February 2006 he was appointed Head of the Human Resources and Budget Management Unit. In June 2010, following internal restructuring, the unit was split into two and he was placed in charge of the Human Resources Unit under the supervision of the new Deputy Director General, Ms E. On 16 January and 31 July 2014 he was given two warnings under Article 9.2 of the Staff Regulations of the OIE, relating to the recurrence of numerous errors in his work,

amongst other things. On 5 August, in response to the complainant's comments regarding the disciplinary measures imposed on him, the Director General informed him that Ms E. and he planned to review the organisation of the Human Resources Unit with a view to reducing his workload and enabling him to make fewer mistakes. On 15 September, in the wake of an audit required by the European Commission which had revealed blatant shortcomings on the complainant's part that were liable to damage the OIE's credibility, the Director General sent him a call to order instructing him to rectify the situation without delay. The complainant submitted a report on the measures taken to Ms E. on 30 September.

On 17 October 2014 the complainant received an email from Ms E. concerning the recruitment of Mr d.S., who until then had been an OIE external consultant. The email contained the thread of exchanges between Mr d.S. and Ms E., in which there was a statement by Ms E. to the effect that she intended to have the complainant removed from his position as Head of the Human Resources Unit. The complainant had a discussion with the Director General on 21 October. The next day he submitted written allegations of moral harassment by Ms E. and asked the Director General to find a solution. On 28 October he was admitted to hospital with cardiac arrhythmia.

In November 2014, in the complainant's performance appraisal report for that year, Ms E. mentioned failings and a lack of organisation on his part which had led her to request the redefinition of his duties and responsibilities, and her loss of confidence in his capacity to discharge his responsibilities as Head of the Human Resources Unit. In his observations, the complainant denied the failings attributed to him but "in a spirit of appeasement"[*] stated that he did not object to the proposed redefinition.

On 6 January 2015 the complainant received an email from Ms E., who proposed to indicate, in her draft message introducing Mr d.S., that he would be responsible for "matters pertaining to human resources"[*]. On 13 January the Director General informed the complainant that a

[*] Registry's translation.

meeting would be organised with Ms E. with a view to updating his duties and responsibilities within the Organisation. Ultimately, however, the meeting did not take place.

On 19 January the complainant was placed on sick leave. Although it was initially expected that his absence would last a few days, it was extended several times. The medical certificates variously specified arterial hypertension, burnout, and depression and anxiety resulting from a workplace dispute. Mr d.S. was assigned to the complainant's post on a temporary basis from 28 January. On 5 February, when the complainant was still absent, he initiated criminal proceedings in the national courts alleging moral harassment by the Director General and Ms E.

On 1 July the complainant was advised of the decision taken by the Director General pursuant to Article 60.2(c) of the Staff Rules to stop paying his full salary from 19 July, the date on which he would have taken six months of sick leave, and not to grant him half pay after that date. On 3 August he requested that that decision be reconsidered and his entitlements restored under Article 60.4(a) of the Staff Rules, which provided that the salary would continue to be paid in the case of illness attributable to the performance of official duties. By a letter of 7 September 2015, which constitutes the impugned decision, his request was denied on the grounds that there was insufficient evidence to establish a causal link between his employment and his illness. He was dismissed with immediate effect on 1 October 2015.

The complainant requests the Tribunal to set aside the decisions of 1 July and 7 September 2015; to order the OIE to pay him a sum corresponding to the restoration of his pay entitlements, including social security contributions and contributions to the pension fund, for the period from 19 July 2015 to 11 September 2016, when his fixed-term appointment was due to expire, to pay interest of 5 per cent on that sum for late payment, and to pay compound interest; and, lastly, to award costs against the OIE.

The OIE requests the Tribunal to dismiss the complaint in its entirety and to award costs against the complainant.

CONSIDERATIONS

1. By his first complaint, the complainant, who was on sick leave at the material time, impugns the decision of 7 September 2015 confirming the decision of 1 July to stop paying his full salary from 19 July 2015.

2. The decision to stop paying the complainant his full salary from 19 July 2015 was based on Article 60.2(c) of the Staff Rules, which provides:

> "Any staff member on sick leave shall receive his full salary for a period which shall not exceed six months during the same year and shall not extend beyond the date of expiry of his contract.
>
> Beyond this period, leave on half pay may be granted for a further period of six months, but shall lapse on the date of expiry of his contract."

3. The complainant submits that that provision does not apply to him, as Article 60.4(a) of the Staff Rules should have been applied. He contends that the OIE has breached the letter provision, under which:

> "In the event of illness or injury attributable to the performance of official duties, all members of the Central Bureau [...], during any absence from service as a result of their incapacity, [...] shall receive the salary, allowances and indemnities to which they are normally entitled as well as the annual salary increments that they would normally be granted."

In support of his case, he submits a medical certificate dated 30 July 2015, issued by a medical specialist, which attests to "anxious symptoms" in connection with the work-related stress that he had suffered since January 2015.

Thus the question raised before the Tribunal is whether the complainant's illness was attributable to his employment.

4. The OIE considers that it was not. In its view, Article 60.4(a) does not apply for two reasons. In the first place, it considers that the complainant has not produced evidence proving that his illness was occupational. In the second place, it considers that the illness was attributable to the complainant's own failings. In this respect, it quotes, firstly, Article 60.4(c) [*recte* (d)] of the Staff Rules, under which no

salary is to be granted to a staff member who is suffering from an illness occasioned by her or his deliberate intention and, secondly, an old judgment of the Tribunal according to which when the complainant's illness is due to measures taken in his respect because of his own professional failings, it cannot be considered as occupational (see Judgment 112, consideration 8).

The Tribunal will consider each of these arguments below.

5. Although it is true that in an old judgment referred to by the OIE, Judgment 889, the Tribunal held that it was for the complainant to produce evidence proving that his illness resulted from his employment, that statement was made in circumstances where the medical advisers of the organisation in question and the insurance scheme, having examined the complainant's case, had concluded that the alleged illness was not service-incurred. The Tribunal therefore considered that it was for the complainant, who challenged the finding of the medical advisers, to provide evidence to invalidate it (see Judgment 889, consideration 1). The situation is fundamentally different in this case. The OIE did not arrange for the complainant to undergo a medical examination or request him to do so, but the complainant has submitted a medical certificate establishing a link between his illness and his employment.

Plainly, the findings of an official's doctor may be disputed by the employer organisation, but where the medical certificate is sufficiently precise as to the existence and nature of the illness and the link with the official's employment, the organisation may not reject it without carrying out its own medical examination. Since that was not done in this case, the OIE cannot challenge the occupational nature of the complainant's illness.

6. As regards Article 60.4(d) of the Staff Rules, which provides that a staff member is not entitled to pay when the illness is caused by "the deliberate intention of the relevant person", the OIE does not contend that the complainant deliberately caused his illness but only that it was attributable to him.

To support that view, the Organisation refers to a passage in another old judgment, which reads:

> "The illness would not be due to complainant's working conditions, i.e. to a state of affairs for which the Organization was responsible. On the contrary it would be the result of measures taken in respect of complainant as a consequence of his own work which the Director-General was justified in considering unsatisfactory. In other words, it would be attributable to the failings of the complainant himself, and he alone would therefore have to bear the consequences of the damage to his health."

(See Judgment 112, consideration 8.)

The OIE argues that since the measures taken in respect of the complainant were a consequence of his own shortcomings, he alone should bear the repercussions on his health.

However, for the reasons discussed in the previous consideration, the Organisation cannot challenge the occupational nature of the complainant's illness, and Article 60.4(a) of the Staff Rules is therefore applicable. The only exception to that rule that is envisaged is set out in paragraph (d) of the same article, which concerns the situation where the staff member deliberately caused his illness, which is not the case here. The argument that the measures taken in respect of the complainant were a consequence of his own shortcomings hence has no bearing on the complainant's entitlements.

It follows that the plea is well founded.

7. In conclusion, the decisions of the Director General of 1 July and 7 September 2015 must be set aside.

8. The Tribunal considers that the material injury suffered by the complainant shall be fairly redressed by ordering the OIE to pay him the equivalent of the salary and various indemnities which he would have received if he had been in service from 19 July 2015 until his dismissal on 1 October 2015, net of any substitute income received during that period. The Organisation will also be required to pay him the equivalent of the pension contributions that it would have had to pay for him during the same period. All these amounts shall bear interest at the rate of 5 per cent per annum as from the date on which they fell due

until the date of their payment, but an order for the payment of compound interest is not warranted.

9. Having succeeded in these proceedings, the complainant is entitled to costs, which the Tribunal sets at 5,000 euros.

10. The OIE has submitted a counterclaim that the complainant should be ordered to pay it costs. It is plain from the foregoing that this counterclaim must be dismissed.

11. The complainant's other claims must likewise be dismissed.

DECISION

For the above reasons,

1. The decisions of the Director General of 1 July and 7 September 2015 are set aside.
2. The OIE shall pay the complainant compensation for material injury and interest thereon, calculated as indicated in consideration 8, above.
3. It shall also pay him costs in the amount of 5,000 euros.
4. All the complainant's other claims are dismissed, as is the OIE's counterclaim.

In witness of this judgment, adopted on 12 November 2019, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ