

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

W.
v.
WHO

129th Session

Judgment No. 4242

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs R. W. against the World Health Organization (WHO) on 7 September 2018 and corrected on 15 October 2018, and WHO's reply of 18 January 2019, the complainant having chosen not to file a rejoinder;

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

Having examined the written submissions;

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

The complainant challenges the decision not to consider her claim for compensation for illness attributable to the performance of official duties.

At the material time the complainant held a P.4 position and was employed under a continuing appointment. As from 25 January 2012 she was placed on sick leave. By a letter dated 26 July 2013 she was informed that, as it had been determined that she was no longer capable of performing her duties, her appointment would be terminated for health reasons on 31 October 2013 and she would be awarded a United Nations Joint Staff Pension Fund (UNJSPF) disability benefit as from 1 November 2013.

On 26 June 2014 the complainant wrote to the Director-General, claiming that she was entitled to compensation for illness attributable to the performance of official duties under Staff Rule 730. By a letter dated 27 August 2014 she was informed that any claim for compensation pursuant to Staff Rule 730 should be made in writing to the Secretary of the Advisory Committee on Compensation Claims (ACCC). In the meantime, however, the complainant had submitted her claim to the Secretary of the ACCC on 13 August 2014.

The ACCC met on 29 November 2016. Referring to WHO e-Manual, Section III.20, Annex 7.E, Paragraph 26(b), which provides that a claim for compensation should be submitted within six months of the injury or the manifestation and diagnosis of illness, it noted that the manifestation or diagnosis of illness had occurred between 27 January 2009 and 4 April 2012 and found that the complainant should have submitted her claim by October 2012, but she had done so “at the earliest” on 26 June 2014. As the ACCC did not find any valid reason to accept the late submission of the complainant’s claim, it recommended that the claim should not be considered. On 10 February 2017 the complainant was informed that the Director-General concurred with the ACCC’s recommendation.

The complainant’s request for review of that decision was denied, and she then lodged an appeal before the Global Board of Appeal (GBA). She requested that the decision of 10 February 2017 be set aside, that her claim for compensation be considered and that she be awarded moral and exemplary damages. In its report of 11 April 2018, the GBA found that the decision not to consider the complainant’s claim was taken in accordance with WHO’s Staff Regulations and Staff Rules and was not arbitrary. It recommended that the appeal be dismissed. On 11 June 2018 the Director-General informed the complainant that he had decided to accept the GBA’s recommendation. That is the impugned decision.

The complainant requests the Tribunal to quash the impugned decision and to remit her compensation claim to the ACCC for consideration. She requests material, consequential, moral and exemplary damages, with interest on all sums awarded. She also claims

reimbursement of her legal fees and asks the Tribunal to order any other relief it deems necessary, just and fair.

WHO requests the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant requests an oral hearing under Article 12, paragraph 1, of the Tribunal's Rules. The request is rejected as the Tribunal considers that the issues raised in this case can fairly be resolved on the detailed submissions, materials and documents which the parties have provided.

2. The discrete question that this complaint raises for determination is whether the complainant's claim for compensation for illness attributable to the performance of official duties under Staff Rule 730, is irreceivable. WHO insists that it is irreceivable because it was submitted out of time and there are no valid reasons warranting an exception to the applicable time limit.

3. The facts disclose that the complainant, who was awarded a UNJSPF disability benefit as from 1 November 2013, had first written to the Director-General on 26 June 2014 stating that she was entitled to compensation for illness attributable to the performance of official duties under Staff Rule 730. She then submitted a claim for compensation under Staff Rule 730 to the Secretary of the ACCC on 13 August 2014. In its report, the ACCC recommended that the claim be denied on the ground that it was filed out of time, even accepting that it was filed on 26 June 2014. The Director-General accepted that recommendation and the complainant was so informed on 10 February 2017. Her request for review of that decision was denied and the appeal she filed before the GBA eventually culminated in the impugned decision of 11 June 2018 in which the Director-General, accepting the recommendation of the GBA, dismissed the appeal on the ground that the compensation claim was made outside of the time limit provided in WHO e-Manual, Section III.20, Annex 7.E, Paragraph 26(b).

4. The latter provision states as follows:

“(b) No claim for compensation under this Annex shall be considered unless it is submitted within six months of the injury, the manifestation and diagnosis of illness, or death: provided that where the Director-General is satisfied that a claim has been made at a later date for valid reasons it may be accepted for consideration.”

Accordingly, even if the claim was made out of time, it nevertheless lies within the discretion of the Director-General to have it accepted if valid reasons were provided to explain its late filing.

5. The complainant does not deny that the claim for compensation was in fact submitted outside of the required time limit. It is however noted that in her claim of 13 August 2014 to the Secretary of the ACCC she claimed compensation for illness attributable to the performance of official duties in relation to the inhuman workload and working conditions imposed on her since 2007 that eventually resulted in her work incapacity that was further aggravated by a security incident she suffered on 25 January 2012 resulting in her being immediately placed on sick leave. In effect, however, the complainant argues that the late filing of the claim should be excused and the Director-General should have accepted it notwithstanding that it was filed late as there are valid reasons for its late filing.

6. Regarding the reasons that impeded her ability to have submitted her claim under Staff Rule 730 on time, the complainant submits, in effect, that the Director-General should have accepted it for consideration out of WHO’s duty of care and good faith towards her. She states that she was not aware of the provisions which required her to submit the claim to the ACCC and that WHO did not provide her with any guidance for making it under Staff Rule 730. The Tribunal has consistently held that staff members are expected to know their rights and that ignorance of the law is no excuse, and it has reiterated that a staff member is deemed to know the regulations and rules governing her or his appointment (see, for example, Judgment 4032, under 6). It follows that this reason is not a valid reason.

7. The Director-General's decision under WHO e-Manual, Section III.20, Annex 7.E, Paragraph 26(b) was a discretionary decision. Aided by the ACCC's report, the Director-General took into account relevant considerations and there is no basis to conclude that the discretion miscarried.

8. In the foregoing premises, the complaint will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 25 October 2019, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 10 February 2020.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ