

TWENTY-THIRD ORDINARY SESSION

***In re* GODINACHE**

Judgment No. 148

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Jean Joseph Ghislain Godinache on 28 May 1966 and the Organization's reply of 12 July 1966;

Considering the memoranda exchanged by the parties after the resumption of proceedings following their suspension by the Tribunal in 1966 with the consent of the parties, namely: the memorandum submitted by the complainant on 25 February 1969 to resume proceedings, the Organization's reply of 23 June 1969, the complainant's rejoinder of 4 August 1969, the Organization's reply thereto of 8 October 1969 and the complainant's further memoranda of 4 and 22 January 1970;

Considering Article II, paragraph 5, and Article VII, paragraph 1, of the Statute of the Tribunal and the provisions of FAO Manual section 342;

Having examined the documents in the dossier;

The oral proceedings requested by the complainant having been disallowed;

Considering that the material facts of the case are as follows:

A. Mr. Godinache was appointed by the FAO on 8 January 1962 to direct an irrigation and drainage project in Peru. After starting work, on 7 May 1962 in the office of the United Nations Organisation in Lima he had a fall which caused serious injury to his head. While in hospital, he learnt that his only daughter had died in an air crash. He was repatriated and granted sick leave on full pay until 10 January 1963, when his appointment was terminated for health reasons and he was granted a disability pension by the United Nations Joint Staff Pension Fund. On 19 September 1963, on the recommendation of an FAO committee set up to consider requests for compensation on the grounds of service-incurred death or disability (the Advisory Committee on Compensation Claims), the Director-General decided that Mr. Godinache's disability was service-incurred and that he should be regarded as fully disabled for a period of one year from the date of the accident (7 May 1962 to 6 May 1963) and that during the period from 7 May 1963 to 31 December 1963 he should receive compensation corresponding to partial service-incurred disability. This decision was later altered and the complainant was awarded compensation corresponding to total service-incurred disability for the full year 1963 and for 1964, on the understanding that his case would be reviewed at the end of 1964. Following that review, on 18 March 1965 the complainant was informed that his continuing disability was regarded as being attributable to the extent of 30 per cent to his employment and that in future he would be compensated on that basis. The Director-General confirmed that decision on 14 March 1966 on the recommendation of the Advisory Committee. Mr. Godinache contested that decision in letters which he addressed to the Secretary of the Advisory Committee. The latter informed him that, although, from the point of view of the Pension Fund, disability benefits were payable whatever might be the cause of disability - whether a service-incurred or some other accident - for the purposes of the compensation payable by the FAO for a service-incurred accident compensation was assessed on the basis of the degree of disability which was service-incurred - i.e. 30 per cent in the present case.

B. Mr. Godinache then appealed directly to the Tribunal in a complaint dated 28 May 1965 in which he prayed the Tribunal to decide:

"1. That the FAO should pay him immediately:

(a) for the period from 1 January 1965 to 1 July 1966 the compensation provided for in FAO Manual section 342.513 (section 342 dated 14 February 1964);

(b) for the period from 7 May 1962 to 1 July 1966 a compensation annuity of US\$1,200 in accordance with FAO Manual section 342.532 (section 342 dated 14 February 1964).

2. That with effect from 1 July 1966 and to avoid future discussions with the FAO the compensation referred to above should be converted into a lump sum as provided for in Manual section 342.534 (section 342 dated 14 February 1964).

3. That to that lump sum there should be added:

(a) 30 per cent permanent disability compensation for partial loss of his intellectual faculties, partial loss of the use of his right arm and partial loss of hearing in his right ear;

(b) compensation for the physical ailments (including chronic headaches and very frequent spells of dizziness) and emotional sufferings (he considers himself permanently impaired as a human being) exclusively attributable to his accident of 7 May 1962.

4. Finally, that the disability benefit paid by the United Nations Joint Staff Pension Fund should continue to be paid monthly as at present and that his medical and pharmaceutical expenses should continue to be paid by the FAO as at present."

C. In its reply the Organization pointed out that, according to the provision in its Manual concerning internal appeals, any appeal against a decision relating to disability compensation must be communicated to the Director-General within fifteen days of his decision. Mr. Godinache did not follow that procedure, however, since he appealed directly to the Administrative Tribunal. The Organization therefore asked the Tribunal to declare the complaint irreceivable. It said, however, that in view of the complainant's state of health it was prepared to authorise him, although the time limit had expired, to appeal to the FAO Appeals Committee. It stated that if that proposal were accepted the complainant would be examined by a medical board consisting of three doctors, one appointed by the Organization, one by the complainant and the third by the first two. If the complainant were dissatisfied with the decision which the Director-General took on the advice of the medical board, he could appeal to the FAO Appeals Committee and then, if necessary, to the Administrative Tribunal. The Tribunal informed the parties that it approved the suspension of proceedings and they reached agreement on the procedure for carrying out the medical examination.

D. The complainant was examined at the Cantonal Hospital of Lausanne from 12 to 15 April 1967 by his own doctor, a member of the Faculty of Medicine of Liège, by the Head of the Health and Medical Services of the FAO and by Dr. Zander (who had been appointed by the two other doctors), Professor of Neurosurgery of the Faculty of Medicine and Head of the Department of Neurosurgery of the Cantonal Hospital of Lausanne. The medical board found unanimously that Mr. Godinache was suffering from permanent post-traumatic 30 per cent disability and that for the time being he was totally incapacitated for his profession as engineer. On the basis of this finding and after again consulting the Advisory Committee, the Director-General decided to confirm his contested decision. The complainant appealed to the FAO Appeals Committee on 19 July 1967. The Organization alleges (paragraphs 10 and 11 of its reply) that for the first time in this appeal the complainant made further requests for compensation, "for example ... for partial loss of the use of his right arm and of hearing (right ear); and for the expenses he incurred through having to engage an attendant". The Appeals Committee referred the case to the Advisory Committee for reconsideration with a request that it should take account not only of the medical findings but also of the complainant's work disability and his further claims. In its report the Appeals Committee recommended that the complainant should continue to receive the 30 per cent disability compensation and should be granted a lump sum compensation for partial loss of hearing in the right ear. It rejected his claims relating to the expense of daily attendance, his right arm, the impairment of his intellectual faculties and the sufferings he had undergone. The Director-General informed the complainant by letter of 25 February 1969 that he accepted the Appeals Committee's recommendations.

E. In his memorandum of 8 April 1969, in which he resumed proceedings before the Tribunal, the complainant impugns the Director-General's decision of 25 February 1969. He prays the Tribunal:

"1. To decide that the FAO should pay him immediately:

(a) for the period from 1 January 1965 to date the compensation provided for in Manual section 342.513 (section

342 dated 14 February 1964), that is to say, two-thirds of his final remuneration;

(b) for the period from 7 May 1962 (the date of the accident) to date a compensation annuity of US\$1,200 in accordance with Manual section 342.532 (section 342 dated 14 February 1964).

2. To require the FAO to pay him the compensation set out in paragraph 1(a) and (b) above until his death.
3. Possibly to convert the compensation referred to in paragraph 2 above into a lump sum as provided for in Manual section 342.534 (section 342 dated 14 February 1964), on condition that the sum should be calculated in accordance with Appendix C of section 342 of the FAO Manual dated 14 February 1964.
4. To decide further that to the above-mentioned compensation for total work disability there should be added:
 - (a) 30 per cent permanent disability compensation for partial loss of his intellectual faculties, partial loss of the use of his right arm and partial loss of hearing in his right ear;
 - (b) compensation for physical ailments (particularly chronic headaches and very frequent spells of dizziness) and emotional suffering exclusively attributable to his accident of 7 May 1962.
5. To confirm that the medical and pharmaceutical expenses arising out of his accident shall be paid to him until his death.
6. To recommend that the pension at present paid by the United Nations Joint Staff Pension Fund should be paid to him regularly until his death.
7. To decide that the FAO should reimburse the expenses of the consultation in Lausanne in April 1967 with which he was unfairly charged."

In support of these claims he maintains that his total work disability is the direct consequence of the 30 per cent incapacity attributable to his accident.

F. The Organization replies that the incapacity attributable to the accident is not the direct and sole cause of the complainant's total disability and prays that the complaint be dismissed.

CONSIDERATIONS:

1. As to the claim for compensation payments equivalent to two-thirds of the final remuneration:

Under FAO Manual section 342.511 the Organization pays all reasonable medical, hospital and directly related costs to a staff member who is incapacitated for work, provided that the incapacity is total and resulted from an injury or illness attributable to the performance of official duties. Further, from the date on which salary and allowances cease to be payable under the Staff Regulations and Rules, a staff member who is still totally incapacitated for work is entitled under Manual section 342.513 to a compensation annuity equivalent to two-thirds of his final remuneration, apart from any child allowances due. The effect of these provisions is that, apart from the cessation of payment of salary and allowances - a fact which is not in question in the present case - the award of annual compensation payments equivalent to two-thirds of the final remuneration is subject to two conditions: total incapacity for work, and a causal relation between the performance of official duties and the incapacity.

(a) Total incapacity for work must be taken to mean the inability of a staff member to perform duties corresponding to his training and qualifications. In the present case the medical board set up by the parties found that the complainant was wholly incapable of exercising the profession of engineer for which he had been trained and which he had carried on for a number of years; the Advisory Committee on Compensation Claims endorse this view, which the Organization has also accepted. Furthermore, neither party claims that the complainant would be able to engage even partially in any activities comparable to those of an engineer. In these circumstances the complainant must be regarded as totally incapacitated for work within the meaning of the applicable provisions.

(b) Whereas Mr. Godinache claims that his incapacity is entirely attributable to the accident he incurred on 7 May 1962 in the performance of his official duties, the Organization takes the view that the complainant's present condition is due to that accident only to the extent of 30 per cent. It bases this view primarily on the report of the

medical board which assessed the post-traumatic impairment at that figure. However, even if the service-incurred injury would normally result in incapacity of only 30 per cent, it does not follow that the complainant's claim for compensation for total incapacity is unfounded. On the contrary, he would be entitled to such compensation if no factor other than the accident appears to have caused the recognised incapacity.

The principal factor taken into account by the Organization in determining the rate of impairment at 30 per cent is that of the complainant's predisposition, i.e. neurotic tendencies dating back to his childhood. But in order that this predisposition may be regarded as a cause of the complainant's present condition and may thus justify a reduction in the compensation he claims, one of the following conditions must be fulfilled: either the predisposition must already have had the effect of impairing the complainant's capacity for work before 7 May 1962, or it must be reasonably predictable that in the normal course of events and irrespective of the accident it would have caused such impairment in the comparatively near future. Neither of these conditions can in fact be regarded as fulfilled. On the one hand there is no evidence that before 7 May 1962 the complainant had suffered from any disturbances affecting his performance as an engineer; rather does it appear from the evidence in the dossier that up to that date he was fully capable of work, as the Organization itself recognised in classifying him medically in class I. On the other hand, while noting the existence of neurotic symptoms dating from before the accident, the psychiatrists did not assert that in the absence of the accident of 7 May 1962 the latent symptoms would at some later date have impaired the complainant's capacity to work. The fact is that if the complainant had not suffered the accident of 7 May 1962 he would very probably have maintained his full professional capacities.

Although the psychiatrists found that the complainant had had difficulty in performing the duties required of him by the Organization, it has not been established that this resulted in any impairment of his capacity for work. Moreover, there is no evidence in the dossier that such difficulties actually existed, and the Organization has not relied on this argument.

According to one of the psychiatrists, the complainant, although keenly affected by the death of his daughter, "recovered satisfactorily" from his loss. Hence this factor too was not a cause of his incapacity.

Lastly the drug addiction suspected by the medical experts seems to be a consequence rather than a cause of the complainant's present condition. The fact that it is put forward only as a hypothesis by the medical board is a further reason for disregarding this factor.

© In conclusion, although the complainant's post-traumatic impairment was assessed at only 30 per cent by the medical board, his total incapacity for work is entirely attributable to the accident of 7 May 1962 and all other factors must be excluded. The complainant is accordingly entitled to the annual compensation payments laid down by Manual section 342.513, i.e. to two-thirds of his final remuneration calculated on the basis of that provision.

2. As to the claim for additional compensation for constant attendance: Under Manual section 342.532 the Director-General may award additional compensation to a staff member whose total incapacity is of a nature that obliges him to depend on another person for his essential personal needs and to incur expense on this account. The complainant has not proved that he is in this position, and specifically that he has incurred expenses in connection with the attendance of another person. The claim based on the aforementioned provision must therefore be dismissed.

3. As to the claim for compensation in perpetuity:

The medical board did not find that the complainant was permanently incapacitated for work and did not rule out the possibility that he might be able to resume some kind of work in the future. In these circumstances the Organization must retain the right to review the complainant's case from time to time and to adjust the compensation due to him in the light of any changes.

It is premature to determine whether, as the Organization claims, the compensation awarded to the complainant is payable only subject to any amendments of the Staff Rules.

4. As to the claim for conversion to a lump sum payment:

The conversion of annual compensation payments to a lump sum payment as provided under Manual section 342.534 is justified only in cases of permanent incapacity. As the medical board considers that the complainant's condition is capable of improvement his claim for conversion is not well founded.

5. As to the claim for compensation for partial loss of intellectual faculties, loss of the use of the right arm and loss of hearing in the right ear:

The compensation annuity awarded to the complainant for total incapacity for work covers all damage to his health. There can therefore be no question of awarding him additional compensation for the loss of any particular faculty or organ.

6. As to the claim for compensation for physical and emotional suffering:

The applicable provisions do not cover such suffering and the claim for compensation on their account cannot therefore be accepted.

7. As to the claim for reimbursement of medical and pharmaceutical expenses in perpetuity:

The complainant is entitled to reimbursement of such expenses only for as long as his condition so requires. As for the possible effects of any amendment of the applicable provisions on the benefits due to the complainant, there is no need to rule on this point at present.

8. As to the claim for a recommendation to be made to the United Nations Joint Staff Pension Fund:

The Tribunal is not competent to deal with the above claim, since the United Nations Administrative Tribunal is the competent body to hear disputes relating to benefits payable by the United Nations Joint Staff Pension Fund.

9. As to the claim for reimbursement of expenses arising out of the medical board:

By a letter of 9 December 1966 the Organization agreed to advance the expenses of the medical examination, reserving the right to recover the share of such expenses which the complainant was required to bear in accordance with Manual section 342.723 in the event of the Organization's original decision being sustained. On 20 December 1966 the complainant accepted this proposal. On 10 July 1967, after noting that the Director-General had confirmed his decision of 4 March 1965, the Organization withheld a sum of US\$575.20 from the benefits which it recognised as due to the complainant.

It appears from the Organization's statements, as reasonably interpreted, that the complainant is entirely exempted from the expenses of the medical board if the rate of incapacity originally fixed is changed, it being irrelevant whether such a change results from the independent decision of the Director-General or is ordered by the Tribunal. It follows that as the complainant's claims have been partly recognised by the Tribunal his claim for the reimbursement of the share of expenses attributed to him is well founded.

DECISION:

For the above reasons,

1. The complainant is entitled to a compensation annuity for total incapacity for work in accordance with Manual section 342.513.
2. The complainant is entitled to reimbursement of the sum of US\$575.20 withheld on account of expenses of the medical board.
3. The other claims submitted by the complainant are dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 26 May 1970.

(Signed)

M. Letourneur

André Grisel
Devlin
Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.