

EIGHTY-FIFTH SESSION

***In re* Qin (Nos. 1 and 2)**

Judgment 1752

The Administrative Tribunal,

Considering the complaint filed by Mr. Hongya Qin against the International Labour Organization (ILO) on 10 September 1994 and corrected on 3 January 1995, the ILO's reply of 5 April 1995, the complainant's rejoinder of 18 June 1997 and the Organization's surrejoinder of 9 July 1997;

Considering his second complaint filed, also against the ILO, on 8 August 1997, its reply of 20 November 1997, the complainant's rejoinder of 3 March 1998 and the Organization's surrejoinder of 28 April 1998;

Considering Articles II, paragraphs 1 and 6, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant, a Chinese citizen, is the widower of Haji Li. At the time of her death Mrs. Li was a member of the staff of the International Labour Office in Geneva. She joined the staff of the ILO in 1988 as an audio-typist in the Chinese unit of the Typing and Text Processing Section (DACTYL).

By 1991, when the unit was in financial straits, Mrs. Li and the head of it were on poor terms. In 1993 the ILO announced that it would be abolishing one post in the unit but it did not say which. The staff were under strain. Mrs. Li's supervisor proposed dropping her post. The head of DACTYL agreed, and so did the head of the Printing and Typing Service (PROTEXT). But the Personnel Department decided in July 1993 to end instead the appointment of Mr. Zhisuo Li, another member of the unit, who was not related to Mrs. Li. On 7 September 1993 the supervisor and the other members of the unit signed a petition to the Director of the Personnel Department, for one, demanding her transfer. The defendant cites a letter of 29 September 1993 which the Department wrote the petitioners in rebuke, but which was never sent. In a letter of 3 October Mrs. Li told the petitioners that their text was libellous and had caused her deep distress; she demanded a hearing to explain things. The ILO says it never got her letter. It renewed her appointment for one year as from 1 October 1993.

Mrs. Li took annual leave. On 14 December 1993 she killed herself at home in Geneva. By a letter of 17 December the Director-General told the complainant that he had "asked that the utmost be done to shed light on any circumstances at the Office that might have contributed to her tragic death". He ordered an internal inquiry, and the findings of the inquiry were put to him on 11 March. At the complainant's insistence he answered in a letter of 13 June 1994 and in the light of the findings that, though there had been a "hostile working environment" and "a number of administrative errors", there was "no evidence that these factors were the cause of the suicide or that other factors outside of the Office or of a medical nature did not play a role. There is no evidence that any one person or group of persons can be blamed for this tragedy".

On 1 September 1994 the complainant asked for an explanation. The Legal Adviser confirmed by a fax dated 12 September that the letter of 13 June was not an administrative decision affecting his rights and duties. On 10 September he had filed his first complaint, against the "decision" of 13 June. By a letter of 10 October 1994 he sought from the Director-General a final administrative decision acknowledging a causal link between what his wife had gone through at work and her death at her own hand. In his own name and on behalf of his two-year-old son he claimed compensation for moral injury and payment of the benefits prescribed by the Staff Regulations in Annex II, headed "Compensation in the event of illness, injury or death attributable to the performance of official duties". The competent body, the Compensation Committee, reported on 31 July 1995. It was unable to regard Mrs.

Li's official duties as "the decisive or even likely cause" of her suicide and therefore could not recommend "treating her death as attributable to the performance of duty".

By a letter of 20 September 1995 the Director of the Personnel Department told the complainant's counsel that the Director-General had accepted the Committee's findings but would call a medical board if the complainant so wished and granted him *ex gratia* a sum of 63,000 Swiss francs "to contribute, among other things, to his son's material welfare".

The medical board met on 22 April 1997. It found that "factors connected with the official duties [of Mrs. Li] and factors external to her work" might have brought about "a serious emotional state akin to mental illness" but that "the extent of it attributable to work had not proved decisive". By a letter of 22 May 1997, the decision impugned in the second complaint, the Director of the Director-General's Office rejected the complainant's claims on the Director-General's behalf.

B. In his first complaint the complainant contends that "hostility at work was a daily psychological torture" for his wife and that it was "incorrect and unfair" of the Director-General to deny liability. By failing to punish the petitioners the Organization neglected its duty of defending her good name and acted in breach of Article 12.1 of the Staff Regulations, which is about standards of conduct in the international civil service. The defendant has not shown that factors other than work were to blame for his wife's death.

He seeks the quashing of the "decision" of 13 June 1994, awards of damages for the material and moral injury suffered by Mrs. Li and her family, the "rejection" of the petition, a "fair and just" decision on the strength of the findings of the inquiry, damages for injury to his good name, and costs.

In his second complaint he says that the Organization refused to let his wife go on holiday in September and October 1993 on the mistaken grounds that there was doubt about renewing her appointment, whereas it had already warned Mr. Zhisuo Li that he was to go. It thereby prevented her from going to China with her husband to see their son. It ignored her frequent grievances and even got her own first-level supervisor - the very cause of them - to translate from Chinese what she was saying. The ILO probably wrote no letter to the petitioners before she died and never sent it anyway. It ought to have looked properly into their allegations and defended her good name. Citing the findings of the inquiry, the complainant observes that nobody told his wife that the ILO disapproved of the very sending of the petition and of what it said and she got neither excuse nor solace.

To his mind the Compensation Committee's report is "prejudiced and perfunctory". The ILO hampered the medical board's work. The proceedings before the board were not adversarial. Annex II to the Staff Regulations applies because the state of mind in which his wife took her own life was due at least in part to work. He wants the Tribunal to hear witnesses.

He is acting both in his own name and for his infant son. He claims the quashing of the impugned decision, the payment of an annuity for himself and of a lump sum for his son, the joint payment to both of them of 25,000 Swiss francs for the moral injury to his wife, of 240,000 francs for the moral injury they have themselves suffered, and 25,000 francs in costs, plus interest on all sums due at the rate of 5 per cent a year.

C. The Organization replies that the first complaint is irreceivable because the Director-General's letter of 13 June 1994 was not a final administrative decision. It doubts whether Mrs. Li ever sent the letter of 3 October 1993 her husband has produced and it challenges his criticisms of the Compensation Committee's and medical board's proceedings. The board did not have to follow any adversarial procedure; the ILO in no way hampered the board's work; and the findings were unanimous.

The defendant's main plea is that "unless Mrs. Li can be shown to have lost her freedom of will or of action at the time no-one else may be held liable for her suicide" In its submission "many items of evidence go to show that it was a premeditated and deliberate exercise of free will".

In subsidiary argument the defendant submits that conditions at work were not a determinant factor and that others may be found. Only the petition "may be deemed to have seriously distressed" Mrs. Li, but it came over three months before she died. The ILO questions the complainant's explanations of the cancellation of his wife's trip to China but believes that it may have been much to blame for her death.

His claims to moral damages are not those he made in his letter of 10 October 1994 and are therefore irreceivable.

As his wife's successor he may claim redress only for any moral injury that she, not for any that he or his son, may have suffered. The defendant sees no point in hearing witnesses.

D. In his rejoinders the complainant maintains that his first complaint is receivable. He questions the ILO's good faith and contends that the medical board was misled by wrong information and a faulty summing-up of the facts. He objects to the ILO's unfounded "musings" about causes other than work that may have led his wife to do what she did. In his view the Tribunal must hear an expert witness to determine whether she committed a premeditated act of free will. There is nothing inconsistent about his explanations of the reasons for calling off her trip to China.

The Tribunal should not take the Compensation Committee's findings as gospel but order its own adversarial inquiry. As for his claims to moral damages, which he presses, his letter of 19 November 1996 said that he could not yet put a figure on them.

E. In its surrejoinders the Organization denies bad faith. It points out that the Compensation Committee's and the medical board's findings show no flaw and afforded proper grounds for the Director-General's decision. The complainant's allegations on that score are "clearly wrong".

There is simply no blaming Mrs. Li's death on conditions at work. Whether she acted of her own free will is not a "merely medical" question and cannot be left to an expert witness. The defendant presses its pleas on moral injury and reproves the complainant for "unscrupulous breach of secrecy": "he is entitled to no further payment because he took the matter into his own hands by bringing in the media".

CONSIDERATIONS

1. Mr. Qin has lodged these two complaints in his own name and on his son's behalf, and the Tribunal joins them. They are both about the consequences of the death of his wife, Mrs. Haji Li, whom the ILO employed as an audio-typist in its Chinese "pool". On 14 December 1993 she took her own life. In his first complaint, lodged on 10 September 1994, her widower seeks the quashing of a decision he discerns in a letter of 13 June 1994 from the Director-General. The letter set out the findings of an enquiry into her "tragic" death and concluded that -

"there was a hostile working environment [in the Chinese pool] and that a number of administrative errors had been made in the Office. However, there is no evidence that these factors were the cause of the suicide or that other factors outside the Office or of a medical nature did not play a role."

The Director-General said he was taking action within the Office over the administrative errors brought to light, but would not be dismissing any of those the complainant had seen as culprits. Besides the quashing of the "decision" of 13 June 1994 the complainant is claiming damages for the material and moral injury sustained by his wife and family and for harm to his good name, the "rejection" of a petition he regards as a libel against her and a "fair and just" decision on the strength of the findings of the inquiry.

2. His second complaint, lodged on 8 August 1997, impugns a decision of 22 May 1997 to reject a claim from him to an award of compensation under Annex II to the Staff Regulations. After completion of the procedure in the Annex and referral to the Compensation Committee and to a medical board the Director-General came to the view that Mrs. Li's suicide had not been attributable to the performance of duty and - since, for one thing, the ILO had already offered 63,000 Swiss francs towards her son's material welfare - the complainant was not entitled to moral damages. He claims the quashing of that decision; an avowal by the ILO that his wife's death was service-incurred; the payment of an annuity for himself and of a lump sum for his son; sums in damages for moral injury to his wife, his son and himself, and interest on all those amounts.

3. The ILO contends that his first complaint is premature and therefore irreceivable. The plea is upheld, even though the Tribunal must still rule on the merits in the context of his second complaint. The Director-General's letter of 13 June 1994, which summed up the findings of the inquiry, had no effect on his rights and so is not a challengeable decision. He must have known as much himself since his counsel had written to the ILO's Legal Adviser to seek confirmation that -

"the Director-General's letter of 13 June 1994 is not a decision but merely imparts information and findings not intended to alter the position in law."

The Legal Adviser answered counsel forthwith confirming that -

"the letter of 13 June 1994 ... is not an administrative decision that has any effect on your client's rights and obligations (see ILO Tribunal Judgment 1203 under 2) but, as you yourself put it, merely conveys to him the Office's position."

The only passage that might be read as final rejection of his claims is the one in which the Director-General said he would not be dismissing any of his wife's colleagues or supervisors. He may not, however, plead any rights but those arising from his wife's contract of employment with the Organization; so in any event that decision is not one he may challenge before the Tribunal.

4. Though his first complaint is not receivable, his second one undoubtedly is: it is about his and his son's entitlement to payments under Article 8.3 and Annex II of the Staff Regulations.

5. Article 8.3 reads:

"In the event of illness or injury attributable to the performance of official duties an official shall be entitled to compensation as prescribed in Annex II. In the event of the official's death in consequence of such illness or injury, his dependants shall be entitled to compensation as prescribed in Annex II."

On 10 October 1994 the complainant asked the Director-General in his own name and on behalf of his son -

"To find a natural and sufficient causal link between hostility at work and Mrs. Haji Li's death;

If need be, to convene a medical board under paragraph 25(a) or (b) of Annex II to the Staff Regulations ..."

The Annex II procedure thereupon began. From January until July 1995 the competent body, the Compensation Committee, met six times to look into his claims. It declared that -

"so far as it could tell from the evidence it could neither find that Mrs. Li's official duties had been the decisive or even likely cause of what she did and was therefore unable to recommend treating her death as attributable to the performance of duty."

The Director-General endorsed the Committee's findings. The complainant then applied for the setting up of a medical board under paragraph 25 of Annex II:

"(a) In the event of a conflict of opinion on the medical aspects of the relationship between an illness or injury and the performance of official duties, the Director-General may refer the case for advice to a medical board composed of three duly qualified medical practitioners, one of whom shall be chosen by the Director-General, one by the official, and the third by the two practitioners so chosen. ...

(b) A medical board composed as provided in subparagraph (a) shall also be consulted if the official concerned, or his surviving dependants, so request. ..."

The Director-General agreed, and the board met on 23 April 1997. It found: "Mrs. Li's suicide was the result of a serious emotional state akin to mental illness"; "factors connected with her official duties and factors external to her work ... may have brought it about, on account of her exceedingly sensitive and vulnerable temperament"; but "the extent of it attributable to work did not prove decisive". It was on the strength of the Compensation Committee's recommendations and the medical board's findings that the Director-General took the decision of 22 May 1997 impugned in the second complaint.

6. The complainant pleads breach of due process by the Compensation Committee in that it did not let him question the witnesses or get hold of the further evidence needed to lay bare the truth. The Compensation Committee is just an advisory body, not a court of law; and it is in any event obvious on the evidence that it did its work thoroughly. It heard many witnesses, including the complainant, and complied with all its rules of procedure. The complainant may of course disagree with its findings even though, as the Director of the Personnel Department said in writing and the complainant has not denied, they were unanimous. But his plea fails.

7. On the merits he blames his wife's death on a bout of despondency brought on by what she went through at work from 1991 until 1993. Though it raises more delicate issues, that plea fares no better.

8. There is no denying that conditions at work did cast Mrs. Li into a state of distress that grew worse as time went by. The confidential report that the Director-General ordered as early as January 1994 makes things quite plain: Mrs. Li was a sensitive and well-meaning woman, but she could get by in no language but Chinese, and occasions were legion when she might have felt slighted or repudiated by fellow staff. In 1988 she began her first contract, which was for a year; then she got in turn another year, 16 months, two extensions of just three months each, and then nine months from 1 April 1992 to 30 December 1992 and another nine to 30 September 1993. All that probably made her feel that her job was shaky, the more so in 1993, when she learned that a post in the Chinese unit was to go. In the end the ILO did grant her an extension of appointment by one year, as from 1 October 1993, and instead - by a decision declared unlawful in Judgment 1351 (*in re Li*) - refused to renew someone else's contract. But those two decisions were not at all what junior officers of the Organization had advocated, and it was probably the anticipation of those decisions that prompted a faction against her. The most flagrant evidence of that was the signing on 7 September 1993, by three other members of the Chinese typing pool, of a petition that made a grievous attack on her competence and character. She was patently smitten to the core by the display of animosity. She at once wrote to the ILO's social welfare officer to say that she would not herself be responding to the "petition" but asked her to do whatever she saw fit. The Personnel Department wrote the petitioners a letter of stern rebuke but for reasons that fail to emerge none of them got it. Mrs. Li's new contract, for one year from 1 October 1993, went to her for signature on 30 September. Being eager to go on holiday to see her son, who was being brought up in China, Mrs. Li applied for, and was granted, leave from 6 December 1993. Because of the Christmas and New Year holidays she was to be off work until 4 January 1994. Again for reasons which remain in the dark, she changed her mind about going to China. On 14 December 1993 she killed herself.

9. The Tribunal has reviewed the findings of fact in the many reports on this sorry affair. It sees no reason to quarrel with the medical board's findings. As it held in Judgment 1284 (*in re Fahmy No. 2*) and many other cases, it may not replace qualified medical opinion with its own, though it may review the procedure and say whether the doctors' findings show any factual mistake or inconsistency, or overlook an essential fact, or draw a plainly wrong conclusion from the evidence. In this case there is nothing to counter the findings that Mrs. Li's state of deep despondency was traceable to several factors and that conditions at work were not the clinching one. The complainant cannot succeed in his contention that her wilfully taking her own life was the consequence of an illness "attributable to the performance of official duties" within the meaning of Article 8.3 of the Staff Regulations.

10. The conclusion is that his claims to an annuity for himself and to a lump sum for his son must fail, and so must his claims to material and moral damages.

11. For one thing, as the Organization submits, he has access to the Tribunal under Article II(6) of its Statute only as the successor to any rights his wife may have had, since she alone was an official of the ILO. He may claim damages only for moral injury he says she suffered in its employ because of its failure to treat her with due care or for whatever other reason.

12. There is a second point. Her sad death did of course alert the ILO to things that had gone awry in the Chinese unit. But there is not a whit of evidence to suggest that, by act or omission, it denied her the sort of considerate protection any organisation owes its staff. Quite the contrary indeed: it extended her appointment in the teeth of attempts to get rid of her and the "petition" of 7 September. That, and the pains it took to get to the bottom of the whole wretched business, betoken the special heed it gave her case.

13. There being no need to hear the witnesses the complainant wishes to call, all his claims, including the one to costs, must fail.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 15 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

(Signed)

Michel Gentot
Julio Barberis
James K. Hugessen

A.B. Gardner

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