

THIRTY-FOURTH ORDINARY SESSION

***In re* NOWAKOWSKI (No. 5)**

Judgment No. 249

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Meteorological Organization (WMO) drawn up by Miss Krystyna Nowakowski on 14 May 1974 and brought into conformity with the Rules of Court on 15 July 1974, the Organization's reply of 8 October 1974, the complainant's rejoinder of 13 December 1974 and the Organization's surrejoinder of 21 January 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Appendix D to the WMO Staff Rules, article 34 of the Regulations of the United Nations Joint Staff Pension Fund and section H of Annex I to the Regulations and Rules of that Fund;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. On the termination of her appointment at the WMO the complainant made two claims - one for a disability benefit and the other for compensation for illness attributable to the performance of her official duties. Her first claim, which she based on article 34 of the Regulations of the United Nations Joint Staff Pension Fund, was met. No effect was given, however, to her other claim, which she based on the provisions of Appendix D to the WMO Staff Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the WMO.

B. The history of the complainant's second claim is as follows. She was invited by the medical adviser to undergo a medical examination by an independent medical consultant. In the belief that that was not the prescribed procedure she declined. The Consultative Committee on Compensation Claims accordingly asked the medical adviser what stage had been reached in the medical investigation of the complainant's case. By minute of 12 July 1972 the medical adviser replied, among other things, that none of the complainant's ailments might be regarded as an occupational disease, an illness aggravated by the performance of her duties at the WMO or connected with any special hazard to her health at work. On 5 September 1972 the Consultative Committee unanimously recommended in the light of those findings that the complainant's claim for compensation should be dismissed.

C. The Consultative Committee's recommendation was notified to the complainant by letter of 22 November 1972. As was her right, she asked for reconsideration of her case and suggested that the medical board which had already examined her claim for a disability benefit should also consider her claim for compensation for her ailments, which she attributed to her unsatisfactory working conditions. The Organization agreed. The medical board consisted of Dr. Junod, the complainant's own physician and nominee, Dr. Dulac, the head of the medical service of the international organisations, and Professor Mach, of the University of Geneva, whom Dr. Junod and Dr. Dulac had co-opted. The board came to the unanimous conclusion that none of the complainant's ailments was directly attributable to the performance of her duties at the WMO. The Consultative Committee then met again and in the light of that conclusion for the second time recommended that the claim be dismissed. By letter of 5 February 1973 the Secretary-General confirmed his earlier decision to dismiss the claim.

D. By letter of 11 January 1974 the complainant asked to have her case reopened in accordance with article 9 of Appendix D to the WMO Staff Rules. In support of her request she produced a medical report made by the Institute of Industrial Medicine of the University of Tübingen and dated 24 September 1973 which found that her disability was attributable to the performance of her official duties at the WMO. She believed that that finding constituted a "new fact" which would justify reopening her case in accordance with article 9 of Appendix D to the Staff Rules. So as to ascertain whether there was indeed a new fact and whether the medical report was correct. the

Secretary-General referred the report to the medical adviser of the international organisations. After examining the case the medical adviser concluded that there was no new fact which warranted reconsideration of the claim or review of the decision taken on the unanimous recommendation of the medical appeals board. By letter of 14 February 1974 the Secretary-General therefore dismissed the complainant's request for reconsideration of her cases. It is that decision which the complainant is now impugning before the Tribunal.

E. In her claims for relief the complainant asks the Tribunal

1. to declare that the Secretary-General's decision of 14 February 1974 was arbitrary and to quash it;
2. to order that the case be reopened on the grounds that the complainant has produced new facts;
3. to declare that her disability is attributable to the performance of her official duties at the WMO;
4. accordingly, to award her the sums in compensation to which she is entitled under Appendix D to the WMO Staff Rules with retroactive effect from the effective date of her dismissal;
5. to pay interest thereon at 7 per cent a year, with due regard to the salary increases granted since her dismissal;
6. to award costs against the WMO.

In her rejoinder the complainant makes the following additions to her claim: to point 3 she adds the following: "inasmuch as her disability prevents her from holding gainful employment"; and to point 4 "i.e. two-thirds of her gross salary at the time of her dismissal, with due regard to the statutory increases". She also makes the following new claim: to order payment of her medical expenses since the effective date of her dismissal and of her future medical expenses, less the sums refunded by the United Nations mutual insurance fund.

F. The Organization believes that credit should be given to the views expressed by the official medical board, which included representatives of both parties and was chaired by an eminent academic. The board reached a unanimous decision "after fully studying the dossier, discussing the various aspects of the case and questioning and examining Miss K. Nowakowski". It was therefore in the light of clear and objective findings submitted in accordance with the rules in force by qualified physicians that the Secretary-General declined - and rightly so - to reopen the case. The Organization therefore prays that the Tribunal dismiss the complaint as unfounded.

CONSIDERATIONS:

By a decision notified on 22 November 1972 and upheld on informal appeal on 5 February 1973 the Secretary-General of the World Meteorological Organization dismissed the complainant's request to have her ailments recognised as due to the performance of her duties in the WMO.

She did not appeal to the Tribunal against either decision within the statutory time limits. The decisions have therefore become final and are no longer open to appeal unless there is a petition for review and unless the Secretary-General exercises his power to reopen the case.

First, the complainant does not put forward any argument to warrant a petition for review, which is an exceptional form of legal redress.

Secondly, article 9 of Appendix D to the Staff Rules provides: "The Secretary-General, on his own initiative or upon the request of a person entitled to or claiming to be entitled to compensation under these rules, may reopen any case under these rules, and may, where the circumstances so warrant, amend in accordance with these rules any previous award with respect to future payments."

According to the terms of that provision and the principle whereby final administrative decisions may not be interfered with, the exceptional power bestowed on the Secretary-General forms part of his purely discretionary authority; and the Tribunal may not review his exercise of that power unless, for example, there is an error of law or of fact or an obvious mistake of interpretation.

The complainant maintains that a medical report on her state of health which she obtained from the Institute of Industrial Medicine of the University of Tübingen, and which she produces, constitutes a new decisive fact which

the Secretary-General ought to take into account.

No account may be taken of that report however, since it was not the result of contentious proceedings and is based solely on the complainant's own statements. Besides, in so far as the facts on which it was based are correct they were known when the Secretary-General took his decisions and cannot therefore be regarded as new.

Since the impugned decision is lawful the complainant is not entitled to compensation.

It appears from the foregoing that the complaint should be dismissed.

DECISION:

For the above reasons,

The complaint is 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, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 5 May 1975.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet