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

103rd Session **Judgment No. 2631**

The Administrative Tribunal,

Considering the second complaint filed by Mrs M. A. M. L. against the World Health Organization (WHO) on 10 June 2006, the Organization's reply of 20 September, the complainant's rejoinder of 12 October 2006 and the WHO's surrejoinder of 15 January 2007;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a French national born in 1934, joined the WHO in May 1980 as a reviser, translator and editor. She left the Organization on 31 May 1991 following an agreed termination but chose to continue participating in the WHO's Staff Health Insurance scheme.

The complainant began to complain from the beginning of 2005 about the terms of reimbursement of certain medical expenses. After an exchange of correspondence she asked the Staff Health Insurance Headquarters Surveillance Committee, by a letter dated 22 January 2006, to intercede with the Staff Health Insurance Officer with a view to obtaining reimbursement for a number of bills, including those for "physiotherapy treatment" received in January 2005 and for dental treatment that had begun in June of the same year. On 6 April the complainant wrote again to the Surveillance Committee to complain about the Administration's failure to respond to her requests and to demand payment of the sums she claimed to be owed. As she received no reply, she filed a complaint before the Tribunal on 10 June 2006 against the implicit decision to reject her request.

In a letter dated 17 July 2006, the "Insurance and Pensions" coordinator informed the complainant that she had "personally re-examined each of [her] claims [for reimbursement] and reviewed all the reimbursements concerned as well as the correspondence [that had been] addressed to [her] in order to request additional information about the claims [the complainant had] made or, in some cases, to explain why a reimbursement could not be made". She then provided a lengthy summary of the claims for reimbursement submitted to the Staff Health Insurance since the beginning of February 2005, explaining the reimbursement procedures in each case. She pointed out that the Staff Health Insurance had "systematically" made reimbursements in accordance with its Rules. She added that the complainant's file would be examined by the Surveillance Committee at its next meeting and, referring to the complaint filed with the Tribunal, drew the complainant's attention to the fact that she had not exhausted internal means of redress. The Committee met on 28 July 2006. The complainant was informed, by a letter dated 14 August 2006, that the Committee had "exceptionally approved the reimbursement of [her] course of spa treatment" up to a maximum of 500 United States dollars.

B. The complainant maintains that she repeatedly requested, to no avail, a statement of payments that had not been made. She asserts that several claims for reimbursement were rejected for vague and sometimes contradictory reasons. In some cases no reason was given. She notes that the amended Staff Health Insurance Rules, under which thermal cures (spa treatment) were no longer covered, were not published until 21 March 2005 so that they could not have entered into force on 1 January 2005. Hence, even if physiotherapy has to be considered as spa treatment, *quod non*, it should still have been reimbursed. She then lists the provisions which, in her view, justify the reimbursement of her medical expenses, particularly for physiotherapy and dental treatments.

She deplores the "cryptic nature" of the information received and the "lack of consistency and transparency in the analysis of the various calculations". The WHO, she claims, has treated her with lack of respect and consideration, harmed her legitimate interests and failed to discharge its obligations to its staff as defined in the Tribunal's case law, especially with regard to the principle of good faith.

The complainant requests “[the] payment of medical expenses that have not been reimbursed to date, having regard to the credits available on the date of the initial claim, or [an] award of material damages for non-reimbursement; [an] award of moral damages […] [and] costs”.

C. In its reply the WHO submits that the complaint is irreceivable for failure to exhaust internal means of redress. It points out that, pursuant to paragraph 550 of the Staff Health Insurance Rules, the complainant should have awaited the outcome of the detailed analysis of all her claims for reimbursement by the Staff Health Insurance in order to determine which aspects of her file she wished to refer to the Surveillance Committee, perhaps subsequently to the Director-General for a decision, and ultimately to the Tribunal if she was dissatisfied with the replies received. Since the complaint was filed prematurely, it is irreceivable. The Organization accuses the complainant of seeking through this approach to exert outside pressure on a case under examination.

The Organization replies subsidiarily on the merits. It asserts that the complainant’s claims were processed within a reasonable time and that she received a clear reply regarding reimbursement arrangements. It then comments in detail on the claims for reimbursement which, according to the complainant, had not been settled satisfactorily. It explains that they have either been settled in the meantime so that there is no cause of action (for instance, the expenses incurred for spa treatment involving sessions of physiotherapy in January 2005, the reimbursement of which was exceptionally authorised) or could not be settled because they were not covered by the Staff Health Insurance Rules (spa treatment expenses incurred in July 2005, treatment paid for in advance and not yet administered) or exceeded the authorised reimbursement ceilings. The defendant contends that the complainant’s claims for reimbursement have therefore been dealt with in conformity with the Staff Health Insurance Rules and that her demands are groundless. It follows that there are no grounds for making an award of moral damages.

D. In her rejoinder the complainant asserts that her complaint is receivable. She points out that, in accordance with Article VII(3) of the Statute of the Tribunal, she waited for more than sixty days from the date on which she reiterated her requests to the Surveillance Committee before filing her complaint.

On the merits, she considers that she has still not received satisfactory information and that she is unable to determine the exact amount of the expenses that were not reimbursed. She repeats that she did not claim reimbursement for spa treatment but for massages and physiotherapy and accuses the Staff Health Insurance Officer of having incorrectly described the bills submitted, thereby causing them not to be reimbursed. She also complains of the time taken to process her claims. With regard to the dental expenses, she states that she made enquiries about her entitlements before making any financial commitment to the practitioner. She further complains that the WHO’s decisions are arbitrary and asserts that her claims are still justified, since the WHO has placed her in “a catastrophic financial situation”.

E. In its surrejoinder the defendant reiterates its arguments.

CONSIDERATIONS

1. The complainant was employed by the WHO from May 1980 until May 1991. However, she has continued since then to participate in the WHO’s Staff Health Insurance scheme.

2. In the course of 2005 the complainant submitted a number of claims to the Staff Health Insurance for reimbursement of miscellaneous medical expenses. The Health Insurance settled part of the claims. The complainant contends in her brief that “the WHO owes [her] a minimum of 2,400 euros”.

On 22 January 2006 she sent the Headquarters Surveillance Committee a memorandum setting out her claims for reimbursement relating, inter alia, to spa treatment, including sessions of physiotherapy, and to dental care. She sent a reminder and reiterated these claims on22 February 2006.

On 6 April she complained to the Committee about the failure to respond to her claims for reimbursement and demanded payment of the sums involved. On 2 May she submitted two further claims for reimbursement to the Staff Health Insurance.

Having received neither the requested reimbursements nor a clear-cut refusal thereof, the complainant filed a complaint on 10 June 2006 against an implicit decision to reject her claims.

3. Under Article VII(3) of the Statute of the Tribunal, an official may have direct recourse to the Tribunal where the Administration fails to take a decision on any claim "within sixty days from the notification of the claim to it". Only a person who has done all that is legally possible to secure a final decision within a reasonable time, but to no avail, is entitled to file a complaint against an implicit rejection (see, inter alia, Judgments 1344, under 11, and 1718, under 3).

Article VII(3) of the Tribunal's Statute must be read in conjunction with Article VII(1), which establishes the obligation to exhaust internal means of redress before filing a complaint with the Tribunal. It follows that a complaint against an implicit decision to reject a claim is not receivable unless the complainant has exhausted all available internal remedies. The Tribunal cannot therefore hear such a complaint unless the implicit rejection may be inferred from the silence of the final authority competent to rule on the dispute between the official and the Administration (see Judgment 185).

4. It has been established that at the time of the filing of the complaint the Administration had been engaged for some time in a detailed analysis of the complainant's claims for reimbursement that it had received from her. It may be gathered, however, from the parties' written submissions that it did not duly inform the complainant that it was dealing with her claims, despite the fact that she complained on several occasions about the way in which she felt that her case was being handled. This lack of transparency was bound to give her the impression that her claims were not being considered with the requisite objectivity and seriousness and to convince her eventually that they had been implicitly rejected.

5. Nevertheless, there were internal means of redress available to the complainant to challenge what she took as a refusal to decide on her claims.

Paragraph 550 of the Staff Health Insurance Rules reads as follows:

"Complaints relating to decisions of the Headquarters Surveillance Committee, or of a regional surveillance committee, of an administrative nature on the settlement of any claim, may be referred to the Director-General within 60 days of the date of their notification. The Director-General's decision shall be final. However, a participant may refer the decision to the Administrative Tribunal of the International Labour Organization, in accordance with the provisions of the Statute of the Tribunal."

This provision does not refer explicitly to implicit decisions to reject a claim. It is, however, consistent with Article VII of the Tribunal's Statute, which – as noted above – establishes the condition of prior exhaustion of internal remedies, that an official who receives no reply to a request from the Surveillance Committee may complain to the Director-General in accordance with paragraph 550 of the Staff Health Insurance Rules.

Instead of following that procedure, the complainant had direct recourse to the Tribunal. Her complaint thus breaches the terms of Article VII(1) and (3) of the Tribunal's Statute. It is therefore irreceivable.

6. The defendant's "Insurance and Pensions" coordinator communicated to the complainant on 17 July 2006 the results of the detailed analysis that was being undertaken at the time of the filing of the complaint. She stated that the complainant's claims would be submitted to the Surveillance Committee. The latter subsequently decided "exceptionally" to approve reimbursement of the spa treatment up to a maximum of 500 United States dollars.

The Tribunal cannot ascertain from the parties' written submissions whether or not the Surveillance Committee has itself given a formally satisfactory response to each of the complainant's other claims for reimbursement. If it has not, it must do so without delay.

In the absence of such responses, the complainant would be entitled to file a complaint with the Director-General regarding the implicit decision to reject her claims, regardless of whether the defendant's lengthy explanations in its reply and surrejoinder are well founded from a substantive point of view.

7. As the complaint is not receivable under the terms of Article VII(3) of the Tribunal's Statute, all claims contained therein must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 April 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 19 July 2007.