

**K.**

**v.**

**WHO**

**125th Session**

**Judgment No. 3919**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms Z. K. against the World Health Organization (WHO) on 6 November 2015 and corrected on 14 December 2015, WHO's reply of 24 March 2016, the complainant's rejoinder of 2 June and WHO's surrejoinder of 6 September 2016;

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 joined WHO in February 2003. From September 2010 until December 2011 she worked as Procurement Assistant at grade G-6 under a fixed-term appointment. On 15 September 2011 she was informed of the abolition of her post and the termination of her fixed-term appointment on 31 December 2011. She was subsequently offered two successive temporary appointments, the first running from 6 March to 16 September 2012 and the second from 17 September 2012 to 16 June 2013. As she was absent on sick leave on 16 June 2013, her separation was deferred and her appointment was extended. Finally, it was terminated on 31 August 2013, at which point the complainant separated from WHO.

On 1 February 2011 she moved to office L-256, which she occupied until the end of November 2011. In March 2011 she started suffering

from severe allergies and periodontal problems. On 20 February 2013 she submitted a claim under the “Rules governing compensation to staff members in the event of death, injury or illness attributable to the performance of official duties” (WHO e-Manual, III.20, Annex 7.E), seeking compensation for allergic urticarial and periodontal deterioration, which, according to her, had been caused by her working environment in office L-256.

The Advisory Committee on Compensation Claims (ACCC) reviewed the complainant’s claim at its meeting on 20 February 2014. It concluded that the claim had been submitted after the applicable six-month time limit and was thus time-barred, and that the complainant had not provided valid reasons for the delay. The ACCC also noted that the documentation was not sufficient to establish a causal link between the complainant’s office situation and her allergies and periodontal problems. It asked the Director-General to consider whether the reasons provided by the complainant for the late submission of her claim were valid, in which case the claim would be sent back to the ACCC for consideration on its merits; failing that, it recommended that the claim be rejected as time-barred. The ACCC’s recommendation was submitted to the Director-General on 12 March 2014. On 13 March 2014 the Director-General decided to reject the complainant’s compensation claim as time-barred and the complainant was relevantly informed by a letter of 14 March 2014.

On 13 May 2014 she filed a Notice of Intention to appeal the Director-General’s decision, and on 9 June 2014 she filed her formal statement of appeal. In its report of 18 June 2015, the Headquarters Board of Appeal (HBA) recommended that the Director-General dismiss the appeal, but that the complainant be awarded 5,000 Swiss francs in moral damages for the delay in handling her compensation claim and for the failure to conduct an exit medical examination. By a letter of 11 August 2015, the Director-General notified the complainant of her decision to accept the HBA’s recommendations. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, to accept her claim for compensation for a service-incurred illness as

receivable and to order that it be reviewed on the merits. She claims material damages on various counts in an amount equal to at least five years of her net salary, including entitlements, starting on 31 December 2011. She also claims moral and exemplary damages, legal costs, and such other relief as the Tribunal deems just, necessary and equitable. She seeks interest at the rate of 5 per cent per annum on all amounts awarded through the date of actual payment.

WHO asks the Tribunal to dismiss the complaint in its entirety as without merit.

#### CONSIDERATIONS

1. The complainant impugns the Director-General's 11 August 2015 decision to reject her claim for compensation for service-incurred illness. In that decision, the Director-General considered the reasons given by the complainant for the late filing of her claim and concluded they were not valid and the claim was, therefore, time-barred. However, the Director-General accepted the HBA's recommendation and awarded the complainant moral damages of 5,000 Swiss francs for the ACCC's delay in its consideration of the claim.

2. The complainant joined WHO in February 2003. The following is a summary of the complainant's employment with WHO at the material time. Between 1 September 2010 and 31 December 2011, she was a Procurement Assistant at grade G-6, on a fixed-term contract in the Operational Support Services at WHO Headquarters in Geneva. In mid-September 2011, the complainant was notified of the abolition of her post and the termination of her appointment on 31 December 2011, the expiry date of her fixed-term appointment. On 6 March 2012 she accepted a temporary appointment until 16 September 2012 as Assistant to the Executive Secretary, in the Secretariat of the Framework Convention on Tobacco. Between 17 September 2012 and 16 June 2013 she held another temporary appointment as Assistant to Team Nutrition for Health and Development in the Non Communicable Diseases and Mental Health Department. As

the complainant was on sick leave when her temporary appointment came to an end on 16 June 2013, her separation from service was deferred. The complainant's appointment was terminated on 31 August 2013 and she separated from WHO.

3. On 1 February 2011, the complainant moved to office L-256 of WHO Headquarters and worked there until the end of November 2011. The complainant states that in March 2011 she started suffering from severe allergies and periodontal problems that subsequently became more aggravated.

4. On 20 February 2013 she submitted a claim for compensation for the service-incurred illness "giant allergic urticaria, degradation of periodontal state (since March 2011)" to the ACCC, together with medical reports from her treating physician and dentist.

5. The rules governing the payment of compensation for service-incurred illness or injury are in the WHO e-Manual, III.20, Annex 7.E. Paragraph 26(b) states:

"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."

6. The complainant does not dispute that her claim for compensation was not filed within the six-month time limit. As the HBA found in the internal appeal, the claim related to the allergies should have been filed not later than 10 November 2012 and the claim related to the periodontal condition no later than September 2011. The determinative issue in this case is whether the Director-General erred in concluding that there were no valid reasons for the late filing of the claim for compensation.

7. In a 17 June 2013 letter to the Secretary of the ACCC, the complainant's legal adviser sought, among other things, "the Director-General's agreement to the consideration of [the complainant's] claim

for compensation on the basis of the [stated] valid and compelling reasons”. It is acknowledged in the letter that, although the complainant’s illness started in March 2011, the complainant hoped to recover from the consequences of working in an unhealthy office environment. However, her health had continually deteriorated from that date forward. It was only in February 2013, with the support of Dr A.B. and Dr L.B., that she realized she should submit a claim for compensation. As to the valid and compelling reasons for not submitting a claim earlier, the letter states:

“[T]hat [the] medical and dental damage occurred only progressively until they have become almost unbearable recently, causing high medical and dental expenditures which the complainant is unable to meet. Added to that, the complainant’s post was abolished and her appointment was terminated on 31 December 2011, one month before she would have been eligible for a continuous appointment, and while being on sick leave, which further increased the complainant’s distress and sense of insecurity.

It should also be noted that the [complainant] was not informed, at any time, by the WHO Administration or by the Medical Services that she had a right to claim compensation for her illness as being attributable to WHO service, nor was she informed that any such declaration of injury and claim would have to be submitted within six months of diagnosis.”

8. The letter also cited WHO e-Manual III.7.3, paragraph 240, which provides that “[a] claim may also be initiated on behalf of staff members by their supervisor, the Secretary of the ACCC, or by the HRO(GSC)”. The complainant’s legal adviser pointed out that the Medical Services and the Administration were fully informed about the deterioration of the complainant’s health over the years. Accordingly, a claim for compensation should have been initiated by an administrative official on the complainant’s behalf pursuant to this Manual provision in keeping with the duty of care of international organizations towards their staff.

9. On 20 February 2014 the ACCC reviewed the complainant's claim and on 12 March 2014 it submitted its report to the Director-General. In the report dated 20 February 2014, the ACCC noted that the claim was submitted beyond the six-month time limit and observed that "[t]he reasons for the delay were outlined by the [complainant's] lawyer who stated that 'the [complainant] only realized that she should submit a claim for compensation in February 2013' and because 'medical and dental damage occurred only progressively until they have become almost unbearable recently'". The Committee concluded that the claim was time-barred and it "did not consider that the reasons provided for the delay were valid including because the [complainant] had significant contacts with various WHO staff (HRD, GSC, DGO) during the six-month time-limit for receipt of a claim and was not incapacitated so could have submitted the claim on time". The ACCC also noted that "the documentation provided did not provide sufficient support of a causal link between the office situation and the [complainant's] allergies and periodontal problems". In her 13 March 2014 decision, the Director-General agreed with the ACCC's view that the reasons for the late submission of the claim were not valid and rejected the claim.

10. The complainant filed an internal appeal against the Director-General's decision with the HBA. In summary, the HBA found that the complainant's claim was not filed within the time limits specified in paragraph 26(b) and was, therefore, time-barred. The HBA considered whether there were valid reasons to justify the late submission of the claim and found that the reasons given by the complainant for missing the time limit did not prevent her from accepting full time employment with WHO, let alone, file her compensation claim on time. The HBA concluded that having regard to the discretionary nature of the relevant provision, the Administration was not obliged to file a compensation claim on the complainant's behalf. The HBA also found that "[i]n deciding to reject the [complainant's] compensation claim, both the ACCC and the Director-General considered all of the relevant facts of the case and correctly applied WHO rules on compensation claims for service-incurred illness". The HBA recommended that the appeal be dismissed and that the complainant be awarded moral damages for the

delay in the ACCC's consideration of her claim and WHO's failure to conduct the mandatory exit medical examination.

11. On 11 August 2015, the Director-General notified the complainant of her decision to accept the HBA's recommendation to dismiss the appeal. The Director-General reviewed the HBA's findings and took note of its observation that the ACCC and the Director-General had considered "all of the relevant facts of the case".

12. In support of its submissions that there were no valid reasons for the Director-General to exercise her discretionary authority to accept the complainant's claim, WHO stresses the ACCC's "thorough analysis" of the case and, in particular, the ACCC's findings that the complainant had extensive contacts with various WHO staff during the six-month time limit, and the documentation did not provide sufficient support of a causal link between the office environment and the claimed illnesses.

13. The ACCC report is problematic for a number of reasons. Specifically, it states that it did not consider the reasons provided for the delay were valid, including, because the complainant had frequent contacts with WHO staff and she was not incapacitated. No reasonable inference can be drawn from the fact that the complainant had contacts with WHO staff members during the six-month period, and the ACCC's statement appears to be grounded on speculative assumptions that the complainant would have engaged in conversations in the work place about her medical conditions, a private matter, and that she would have gleaned from other staff members information regarding the filing of a claim for compensation. It is also observed that incapacitation is not a requisite criterion for the purpose of demonstrating valid reasons for not filing a claim within the applicable time limit. The ACCC's statement also alludes to other considerations that were taken into account, however, those considerations are not provided. It is also observed that there are no attachments to the report or a list of materials or documents taken into account by the ACCC in reaching its conclusion. Contrary to WHO's assertion, there is no evidence to support its contention of the ACCC having made a thorough analysis.

14. As noted above, the HBA and, in turn, the Director-General found that all of the relevant facts of the case had been taken into account. However, it is observed that in arriving at the conclusion that there were no valid reasons for the claim to be accepted for consideration, the Director-General did not take into consideration that the progressive nature of the complainant's illness and all of her relevant surrounding personal circumstances presented valid reasons for making the claim for compensation on the date that she did.

15. Accordingly, the Director-General's decision of 11 August 2015 and that of 13 March 2014 will be set aside, and the complainant's claim for compensation will be remitted to WHO for the ACCC's consideration of whether the complainant's two identified illnesses can be attributed to the performance of official duties. The complainant is entitled to moral damages in the amount of 7,500 Swiss francs and costs in the amount of 5,000 Swiss francs.

In the circumstances, the request for an oral hearing is dismissed.

#### DECISION

For the above reasons,

1. The Director-General's decisions of 11 August 2015 and 13 March 2014 are set aside.
2. The complainant's claim for compensation is remitted to WHO for the ACCC's consideration in accordance with considerations 14 and 15, above.
3. WHO shall pay the complainant moral damages in the amount of 7,500 Swiss francs.
4. WHO shall pay the complainant costs in the amount of 5,000 Swiss francs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 6 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ