

## **EIGHTY-SEVENTH SESSION**

### ***In re Sehra***

#### **Judgment 1850**

The Administrative Tribunal,

Considering the complaint filed by Mr Parmjit Singh Sehra against the World Meteorological Organization (WMO) on 3 April 1998, the WMO's reply of 26 June, the complainant's rejoinder of 12 August and the Organization's surrejoinder of 16 September 1998;

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

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

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

A. The complainant, an Indian who was born in 1947, joined the staff of the WMO in September 1991 on a twelve month fixed-term contract. From 1 November he occupied a post of instructor at grade L.4 in Harare, Zimbabwe, in the framework of a technical assistant project. His contract was extended until March 1994. At the end of his contract, he decided to stay in Harare with his family for a further six months at his own "cost [and] risk".

The complainant used the services of Libyan Arab Airlines to transport his personal effects when he travelled on 30 October 1991 from Tripoli (Libya), where he was a teacher at the Faculty of Science, to Geneva to be briefed on his appointment in Zimbabwe. Two of his suitcases were lost on that occasion. The company Swissair helped to find one of them and sent it on to Harare.

By a letter of 1 March 1992, the Libyan airline requested the complainant to come and collect his second suitcase in Tripoli. The complainant was not able to make the journey.

In a communication of 4 February 1993, the secretary of the Claims Board explained to the complainant at his request the steps to be taken to claim compensation from the WMO. On 19 May 1993, the complainant replied that he preferred to obtain compensation from the Libyan airline, rather than from the WMO.

In a letter of 20 September 1994, he asked the Director of the Administration Department to request the intercession of the office of the United Nations Development Programme (UNDP) based in Tripoli to recover his suitcase or obtain compensation of 4,530 United States dollars from Libyan Arab Airlines. By a letter of 28 September, an official of the Personnel Division requested the UNDP office in question to intercede on behalf of the complainant. The UNDP Resident Representative replied in a letter dated 10 October 1994 that the sanctions decided upon by the United Nations against the Libyan Government had resulted in the closure of the airline's offices.

By a fax of 5 March 1996, addressed to the chief of the Personnel Division, the complainant claimed compensation for the loss of his suitcase. In a letter of 4 April 1996, the WMO informed him that, since he had not made a claim within the time limits allowed, it would not pay him compensation.

In the meantime, in September 1994, when he was in Geneva for debriefing following his assignment in Zimbabwe, the complainant was robbed on 6 September of his briefcase containing many documents, including his diplomas, certificates, identity documents, cash, etc. On the same day, he reported the theft to the police in Geneva.

In a fax of 1 February 1995, the complainant informed the chief of the Personnel Division that, having lost his original certificates, it was impossible for him to find another job. He wanted to know whether WMO could find him a job. On 2 February 1995, the chief of the Personnel Division replied to him that there was no vacant post corresponding to his qualifications. By a letter of 23 February 1996, the complainant repeated his request to the Secretary-General. On 25 February, he sent a second letter claiming the reimbursement of his travel expenses, his

briefcase and the personal effects that it contained. On 11 March, the cantonal lost property office informed the complainant through the WMO that it had not found any of his personal effects. In a letter of 26 August 1996, the complainant complained to the Secretary-General that he had not received any compensation for the theft of his briefcase. He added that the loss of his certificates could only be compensated by the WMO giving him a job and asked the Secretary-General to transmit his case to the Claims Board so that it could decide on the compensation for the theft of his briefcase.

On 10 January 1997, the Claims Board issued its report. It explained that, according to the applicable rules, the WMO could not compensate the loss of documents. It recommended the payment of total compensation of 2,004 Swiss francs and rejected the request for a job in the WMO. In a letter of 4 February 1997, the secretary of the Claims Board informed the complainant that the Secretary-General had decided on 29 January to endorse the recommendations of the Board. The complainant replied in a letter of 8 November that he refused the compensation which had been offered to him, since it was too meagre in relation to the losses which he had suffered. He once again requested the Secretary-General to offer him a job and to reconsider his decision to refuse the compensation that he had claimed. In a letter of 24 December 1997, which is the impugned decision, the Secretary-General indicated that he was out of time in respect of his appeal against the decision of 29 January 1997. Moreover, since he had not made any claim concerning the loss of his baggage in 1991 within the time limits, no appeal was possible.

B. The complainant contends that the theft of his original educational certificates prevented him from finding a job. He submits that these are not "ordinary documents" and that they cannot therefore be excluded from any compensation. He indicates that the steps that he has taken at the universities which he attended have not enabled him to obtain duplicates of the certificates, because the records had been destroyed.

He asks the Tribunal to order the WMO to find him a job as compensation for the loss of his educational and professional certificates; to pay him 200 Swiss francs and 230 dollars as compensation for the cash which was stolen from him; and to obtain suitable compensation from the Libyan airline for the loss of his suitcase and to bear the costs.

C. In its reply, the Organization says that the complaint is irreceivable. It states that technical assistance project personnel are subject to specific staff rules, such as Project Personnel Service Note No. 112, entitled "Compensation for loss of or damage to personal effects". According to the terms of this Note:

"1. ... project personnel shall be entitled, within the limits and under the terms and conditions established by the Secretary-General to reasonable compensation in the event of loss or damage to their personal effects, determined to be directly attributable to the performance of official duties on behalf of the World Meteorological Organization ...;

2. ...

(b) No compensation shall be paid for any loss or damage which was occasioned by the negligence or misconduct of the claimant;

...

5. (a) No compensation will be paid for loss of or damage to [personal effects] as in the opinion of the Secretary-General cannot be considered to have been reasonably required by the claimant for normal living under existing circumstances."

Under the terms of point 7 of the Note, claims for compensation shall be made "within two months of the discovery" of the loss or damage. Since the claimant never made a claim, he is out of time. Moreover, he did not appeal against the decision of 29 January within the time limits set out in Staff Rule 1111.3(a).

Subsidiarily, it submits that neither the existing rules nor the general principles of insurance envisage that compensation could take the form of the offer of a job in the WMO. It explains that compensation can only be granted in respect of the loss of an article, but not the consequences of such a loss; that the loss of documents cannot be compensated by the WMO; that the papers do not appear to have been required by the complainant to lead a normal life in the existing circumstances, either in Geneva or Zimbabwe; and finally, that he has not demonstrated a clear link between the loss of the above documents and his difficulties in finding a job. It contends that the fact of carrying documents of this value constituted "an unreasonable risk", particularly since the Organization had not requested to examine them, and expresses surprise that the former universities of the complainant cannot supply him with duly certified duplicates of his certificates.

Because the briefcase was stolen from the complainant without the use of any force, it adds that he was "negligent" and refuses to compensate him for the cash lost in the theft.

As the complaint is ill-founded, the Organization refuses to pay the complainant compensation for costs.

D. In his rejoinder, the complainant states that the rules should include compensation for the consequences of the loss of educational certificates. He explains that the WMO only appointed him to his post after verifying his qualifications and that it could have required to see his certificates once again in September 1994. He alleges that his documents were necessary for his normal living in Zimbabwe.

Referring to the report of the Claims Board, he refutes the allegation that he was negligent on the occasion of the theft of his briefcase.

He submits that the Secretary-General and the Board could have made a more favourable interpretation of Service Note No. 112 and offered him a job. The WMO could also have recompensed the dedication that he showed in Zimbabwe in staying six months beyond the end of his contract to ensure the success of his mission.

He presses his claims to compensation for the loss of the other personal effects contained in his briefcase.

He submits that the loss of his baggage in 1991 was the consequence of the delayed action by the WMO in contacting UNDP and of the United Nations sanctions against Libya. He requests the WMO and the United Nations to pay him compensation or obtain a reimbursement from the airline.

E. In its surrejoinder, the Organization states that at no time did it request the complainant to provide his original certificates. It was therefore the complainant's own choice to take the risk of hand-carrying these documents.

It refuses to make a more favourable interpretation of the Staff Rules since, in any event, the complainant's claim that he be offered a suitable job is disproportionate to the loss incurred.

With regard to the loss of the baggage in 1991, it observes that the complainant's first claim to the WMO was only made in 1994.

## CONSIDERATIONS

1. The complainant, who is an Indian national, joined the staff of the WMO on 1 September 1991 as an instructor in meteorology in Harare (Zimbabwe). His one-year fixed-term appointment was renewed on several occasions, until 5 March 1994.

At the beginning of September 1994, the complainant came to the WMO in Geneva for debriefing.

2. The facts at the origin of the dispute relate to: (a) the loss of his baggage in Tripoli at the end of October 1991 by the Libyan Arab Airlines; and (b) the theft of his briefcase in Geneva on 6 September 1994 while he was registering at a hotel.

3. By a letter of 20 September 1994, the complainant reported the loss of a suitcase on the occasion of his departure from Tripoli for Geneva in 1991. He estimated the value of his personal effects at 4,530 United States dollars. He requested the WMO to intercede on his behalf with the Libyan airline to retrieve his luggage intact or otherwise pay him compensation.

4. On 12 March 1996, the chief of the Personnel Division informed the complainant that his claim had been transmitted to the Claims Board.

On 4 April 1996, the secretary of the Claims Board replied that, according to the WMO standing instructions (Project Personnel Service Note No. 112, point 7): "Claims for compensation shall be made as soon as possible after the loss or damage and in all cases within two months of the discovery thereof ...". The time limit expired before the month of February 1992.

5. The second fact referred to by the complainant is the theft of his briefcase on 6 September 1994 after his arrival in Geneva for debriefing at the WMO. According to the report that he made to the police in Geneva, he was robbed

of his briefcase which contained his original educational and professional certificates, his passport and his laissez-passer, his insurance card, air ticket, travellers cheques to a value of 3,250 dollars and 200 Swiss francs and 230 dollars in cash.

6. In his letter of 20 September 1994, referred to in 3 above, the complainant informed the WMO of these circumstances and announced his intention to submit a formal claim upon his arrival in India and determine the precise value of his loss.

On 1 February 1995, the complainant notified the WMO that, following the loss of his original educational certificates and testimonials, it had become impossible for him to find work. He also requested information on the possibility of obtaining a job in the Organization.

7. On 25 February 1996, the complainant reiterated his claims and requested compensation for the loss of his briefcase and cash, for the renewal of visas and his passport, as well as for the costs of his extended stay in Switzerland.

8. In his reply of 12 March 1996, the chief of the Personnel Division of the WMO informed the complainant that his application for employment had been transmitted to the Director of the Technical Cooperation Department. The latter informed the complainant one week later that there were no suitable vacant posts.

On 26 August and 19 November 1996, the complainant once again requested compensation for the loss of his briefcase and the costs of obtaining duplicates for his documents. He also pressed his claim to be found a job by the Organization.

On 4 February 1997, the complainant was informed that on 29 January 1997 the Secretary-General had approved the recommendations of the Claims Board awarding him 2,004 francs for the loss of his personal effects and rejecting his request for a job.

9. On 8 November 1997, the complainant refused the compensation which had been offered and requested, by way of compensation, a job suited to his qualifications.

On 24 December 1997, the Secretary-General sent his reply to the complainant in which he informed him that he was out of time in his appeal against the decision of 29 January 1997 and that the claim for compensation for the loss of his suitcase in Tripoli in 1991 was time-barred.

It is this decision which is the subject of the present complaint.

10. The complainant asks the Tribunal to order the Organization: (a) to provide him with a job suited to his qualifications in the WMO as compensation for the loss of his original educational and professional certificates and testimonials which were in the briefcase; (b) to reimburse the cash which was in it; (c) to take the necessary steps to obtain compensation from Libyan Arab Airlines for the loss of his suitcase in 1991; and (d) to pay him costs.

11. According to point 7 of Service Note No. 112: "Claims for compensation shall be made as soon as possible after the loss or damage and in all cases within two months of the discovery thereof ...".

Insofar as the loss of his suitcase in Tripoli in 1991 is concerned, the complainant made no formal claim within the time limits allowed. His claim is therefore time-barred.

12. In relation to the theft of his briefcase in 1994, the complainant seeks compensation for the loss of his original educational and professional certificates, as well as the reimbursement of the cash.

#### *Compensation for the loss of his original educational and professional certificates*

The complainant is not seeking compensation for the value of the documents stolen, but a job in the WMO suited to his qualifications which, he says, would be the only possible compensation. He contends that the loss of the original certificates is preventing him from finding a job elsewhere. The complainant provides no convincing proof of the consequences which he says resulted from the loss of his documents.

13. It should be emphasised in the first place that the rules of the Organization respecting compensation for loss exclude the payment of any compensation for the loss of documents which cannot be considered to have been reasonably required for normal living under existing circumstances (Service Note No. 112, point 5(a)). Furthermore, these rules state that compensation can only be granted to replace the value of lost objects and not to cover the consequences of such a loss. Such an eventuality could only be considered in the case of negligence by the Organization towards its employee.

14. The complainant contends that it is impossible for him to obtain duplicates of his educational and professional certificates. This claim is untenable. It is difficult to believe that universities and other educational institutions are not able to provide duplicates or other attestations to their former students, as alleged by the complainant.

15. The complainant states that he was carrying the originals of his educational and professional certificates in the briefcase stolen in Geneva. The rules of the Organization concerning compensation for loss indicate that compensation can only be paid for the loss of personal effects considered to have been "reasonably required by the claimant for normal living under existing circumstances" (Service Note No. 112, point 5(a)).

The Organization cannot be held responsible for the fact that an expert travels with the originals of his university and other certificates, with all the risks that this involves.

#### *Reimbursement of the sums in cash*

In accordance with point 5(b) of the above Note, the maximum limit for compensation for the loss of cash is 400 dollars.

The Claims Board rejected this claim for compensation by the complainant on the grounds that he had been negligent in placing the cash in his briefcase and not in his wallet, and based its opinion on point 2(b) of the above Note, which states that: "No compensation shall be paid for any loss or damage which was occasioned by the negligence or misconduct of the claimant".

The Tribunal is of the same opinion. The negligence of the complainant appears evident in this regard.

16. Since the principal claims fail, so must the subsidiary claims.

### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 May 1999, Mr Michel Gentot, President of the Tribunal, Mr Julio Barberis, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

*(Signed)*

Michel Gentot  
Julio Barberis  
Seydou Ba

Catherine Comtet