

**P. (No. 2)**

*v.*

**WHO**

**126th Session**

**Judgment No. 4032**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs F. P. against the World Health Organization (WHO) on 12 March 2015 and corrected on 14 April, WHO's reply of 17 July, the complainant's rejoinder of 27 October 2015 and WHO's surrejoinder of 26 January 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 challenges the decision not to accept for consideration on the merits her compensation claim for service-incurred injury.

Facts relevant to the present case are to be found in Judgment 3687, delivered in public on 6 July 2016, on the complainant's first complaint. Suffice it to recall that in October 2008 the complainant suffered an injury to her right foot. Although the initial prognosis was for a full recovery, she progressively developed a serious condition affecting the nervous system. Following a prolonged period of sick leave, the Director-General decided to terminate her appointment for health reasons with effect from 21 January 2011. The complainant challenged that decision in her first complaint, which the Tribunal dismissed as time-barred, and thus irreceivable, in Judgment 3687.

On 21 September 2011 the complainant was informed that the United Nations Joint Staff Pension Fund had approved the award to her of a disability benefit with retroactive effect from 22 January 2011.

By a letter of 19 March 2012 the complainant's counsel submitted on her behalf a compensation claim for injury attributable to the performance of official duties pursuant to Staff Rule 730. He requested that the Director-General make an exception, on compassionate grounds, to the six-month time limit for the submission of a compensation claim laid down in the "Rules governing compensation to staff members in the event of death, injury or illness attributable to the performance of official duties on behalf of the WHO", Annex 7.E to the Staff Rules. He asked that the claim be accepted on account of the complainant's physical and mental stress during her long and complex illness and her financial insecurity over her prospective loss of employment. He also requested that the six-month time limit start to run from 21 September 2011, the date of notification of the decision to award her a disability benefit.

The Advisory Committee on Compensation Claims (ACCC) considered the complainant's compensation claim at its meeting on 17 September 2012 and concluded that the complainant had not provided valid reasons warranting the acceptance of her compensation claim filed out of time. It thus recommended against its acceptance for consideration on the merits. The Director-General endorsed this recommendation and, by a letter of 19 November 2012, the complainant's counsel was informed of the decision not to accept the complainant's compensation claim.

On 8 January 2013 the complainant's counsel submitted to the Headquarters Board of Appeal (HBA) a notice of intention to appeal the Director-General's decision of 19 November 2012. On 22 February 2013 he submitted the statement of appeal. In its report of 14 November 2014, the HBA concluded that the complainant's compensation claim had not been filed within the prescribed time limit, that as early as February 2010 the complainant knew she had the right to submit a compensation claim for service-incurred injury and that she was not, at the material time, incapacitated to such an extent that either she, or her representative, could not have filed a timely claim. The HBA also

concluded that there was no new fact setting off a new time limit, nor were there compelling valid reasons for the Director-General to exceptionally consider the late claim. It thus recommended that the appeal be dismissed. By a letter of 16 December 2014, the Director-General informed the complainant of her decision to endorse the HBA's recommendation. That is the impugned decision.

The complainant asks the Tribunal to find her claim receivable on legal and compassionate grounds and to consider it on the merits. She claims compensation in the amount of at least 10 million United States dollars for the professional, personal, financial and moral prejudice which she has suffered. She also claims interest. She seeks such other relief as the Tribunal determines to be just, necessary and equitable and full reimbursement of her legal costs.

WHO submits that there were no valid reasons warranting the Director-General to make an exception to the applicable time limit. It asks the Tribunal to dismiss the complaint.

## CONSIDERATIONS

1. The complainant impugns the Director-General's 16 December 2014 rejection of her claim for compensation for service-incurred injury. In that decision, the Director-General endorsed the HBA's conclusion that there were no valid reasons for the late filing of the claim for compensation warranting the Director-General's consideration of the claim.

2. The complainant disputes WHO's submission that the scope of the complaint is limited to whether there was a valid reason for making an exception to the applicable time limit for the filing of the claim for compensation for service-incurred injury. The complainant argues that a determination in relation to whether valid reasons existed for the late submission of the claim also requires a consideration of the merits of the claim for compensation, that is, whether the injury was service-incurred. She contends that, as the existence of the service-incurred injury sustains

her allegations of negligence and breach of the duty of care on the part of WHO, it does come within the scope of the complaint.

3. The complainant's attempt to introduce in this complaint a consideration of the merits of whether the injury is service-incurred is rejected. The complainant's position fails to have regard to Staff Rule 730 and the rules promulgated pursuant to that rule.

Staff Rule 730 provides:

"A staff member, or his surviving spouse or dependants, shall be entitled to compensation in the event of illness, injury or death attributable to the performance of official duties on behalf of the Organization, in accordance with rules established by the Director-General."

The "rules established by the Director-General" are found in Annex 7.E to the Staff Rules under the title "Rules governing compensation to staff members in the event of death, injury or illness attributable to the performance of official duties on behalf of the WHO". Those rules set out a comprehensive mechanism in relation to compensation for service-incurred injury, illness or death. Section IV, paragraph 26(b), provides that a claim for compensation will not be considered unless it is submitted within six months of the injury, the manifestation and diagnosis of the illness or death. The same provision provides that, if the Director-General is satisfied that there are valid reasons for the submission of a claim after the expiration of the six-month time limit, it may be accepted for consideration. Under paragraph 28, it is the ACCC that initially reviews and makes recommendations to the Director-General concerning the compensation claims brought pursuant to the rules.

4. In the present case, the ACCC concluded that the claim was irreceivable, as there were no valid reasons for the late submission of the claim and, therefore, did not consider whether the injury was service-incurred. The Director-General accepted the ACCC's recommendation and rejected the claim as irreceivable. In the subsequent appeal, the HBA found that any allegations and claims beyond the question of the receivability of the claim for compensation for service-incurred injury were beyond the scope of the appeal. The decision impugned in this complaint only dealt with the receivability question. As no determination

has been made on the merits of the claim for compensation, the complainant's arguments in this respect are beyond the scope of the complaint and will not be considered.

5. At this juncture, some preliminary observations are required. In her pleadings the complainant did not contest any of the HBA's findings of fact or law, or any of its conclusions based on those findings. In fact, in relation to the HBA's report, except for two unfounded allegations of minor factual errors footnoted in the brief and another also unfounded allegation in the body of the brief, there is no discussion of the content of the report in the pleadings. In her complaint, the complainant reiterates the submissions made in the internal appeal and, in effect, seeks a *de novo* consideration by the Tribunal of the merits. However, this is not the Tribunal's role. The Tribunal's role is to determine whether the decision impugned in the complaint involves a reviewable error. Having said this, in the present complaint, the complainant does put forward a reason that she claims impeded her ability to submit the compensation claim within the prescribed time limit not advanced before the HBA. For the sake of completeness, it will be dealt with here.

6. The additional reason adduced by the complainant is that she was unaware of her right as a staff member to make such a claim. It is observed that the Tribunal has consistently held that "staff members are expected to know their rights: ignorance of the law is no excuse" (Judgment 1700, under 28) and has reiterated recently in Judgment 3878, under 12, that "a staff member is deemed to know the regulations and rules governing her or his appointment" (citations omitted). It follows that this additional reason is not a valid reason.

7. At this point, a comment regarding the complainant's reliance on the United Nations Dispute Tribunal decision in Judgment UNDT/2011/216 is required. The complainant cites that Tribunal as stating: "the Applicant's knowledge of his rights is essential and [...] there was no proof that he actually knew that" and "the Applicant's actions in filing an appeal upon receiving information about his rights to recourse

were ‘not the actions of an Applicant who would sleep on his rights, by failing to comply with time limits but rather the actions of one who did not have the knowledge and information of his rights in time’”.

8. It is noted that this decision was reversed by the United Nations Appeals Tribunal in Judgment 2012-UNAT-275 in which, citing Judgment 2010-UNAT-067, the Appeals Tribunal stated that as a long-time employee of the Organization the appellant is deemed to be aware of the filing deadlines in the UNDT Statute. It may be added that in the cited Judgment 2010-UNAT-067 the Appeals Tribunal held that “ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Rules”.

9. The Tribunal has conducted an extensive review of the HBA’s report. It contains a comprehensive chronology that includes the meetings and communications between the complainant and WHO, the complainant’s medical assessments, time at work and sick leave, claim for disability benefits, and other events surrounding the submission of the claim for compensation. The report also includes a detailed account of the submissions of the parties. The HBA conducted a careful and thorough analysis of each of the complainant’s arguments and made findings that were fully supported by the evidence. It must also be added that on reading the report, it is evident that the HBA was cognisant of the extremely difficult position the complainant found herself in, both medically and financially, and engaged in the consideration of whether there were valid reasons for the late filing of the claim for compensation with diligence and compassion.

10. In Judgment 3608, under 7, the Tribunal observed that it is well settled in the case law that “in some circumstances reports of internal appeal bodies warrant ‘considerable deference’”. The HBA’s report in this case warrants that deference. Accordingly, the complaint will be dismissed.

11. The complainant requests oral proceedings, however, the Tribunal is satisfied that the parties’ briefs and the evidence they have

produced are sufficient for the Tribunal to reach an informed decision. Accordingly, the complainant's application for oral proceedings is rejected.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2018, 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 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ