

## **EIGHTY-SEVENTH SESSION**

### ***In re Wassef (No. 27)***

#### **Judgment 1889**

The Administrative Tribunal,

Considering the twenty-seventh complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 15 October 1996 the FAO's reply of 19 February 1999, the complainant's rejoinder of 6 March and the Organization's surrejoinder of 12 April 1999;

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. Information about the complainant's career with the FAO, and the illness he caught while on duty in Chad, is set out under A in Judgments 1401 and 1486 on his first and second, and eighth complaints. Further information relevant to the present complaint may also be found in Judgment 1701 on his twenty-fifth complaint. He left the service of the Organization in January 1994.

On 19 June 1995 the secretary of the Advisory Committee on Compensation Claims wrote to the complainant informing him that the Director-General had endorsed the Committee's recommendation to reimburse the expenses he incurred during his hospitalisation and treatment for hepatitis B and to grant him sick leave on full pay during that period. On 25 July 1995 the secretary notified to him an extract from the Committee's report on his case which said "there is ample evidence that Chad is .... a duty station hazardous to health". By a further notification sent to the complainant on 27 July 1995 the secretary of the Advisory Committee confirmed that the Director-General had accepted the recommendation of the Committee to recognise his illness as service-incurred.

The same day the complainant appealed to the Director-General maintaining that the medical service ought to have vaccinated him against hepatitis B prior to his departure for Chad in 1991; because of the suffering his illness exposed him to he claimed 1.5 million United States dollars in damages. He then sent an almost identical appeal to the Director-General on 2 August 1995, claiming an additional 1.5 million dollars for the "gross negligence of the Medical Service".

The Assistant Director-General in charge of Administration and Finance replied on the Director-General's behalf on 21 September 1995, rejecting those two appeals. On 9 October the complainant filed two internal appeals with the Appeals Committee that it subsequently joined. The Committee reported on 23 May 1996. It was of the opinion that at least on arrival in Chad the complainant had had sufficient information to make "an informed decision" as to the need for vaccination, and it recommended rejection of his claims for compensation. The complainant filed his complaint with the Tribunal on 15 October 1996, challenging the report of the Committee.

B. The complainant contends that his complaint is receivable as the Director-General received the Appeals Committee's report on 23 May 1996, and he had waited a "reasonable time" for the Director-General's final decision before filing his complaint with the Tribunal.

He pleads that as hepatitis B was endemic in Chad there was "gross negligence" on the part of the FAO medical service in not vaccinating him against it before he left on mission there in 1991. The Organization should have paid heed to recommendations laid down by the World Health Organization (WHO) in its general guidelines for vaccination and by the United Nations Development Programme (UNPD) in the 1991 edition of its circular "Country Living Conditions in Chad". Even if no WHO guidelines existed at all the employer organization should still keep its own information on vaccinations up to date. Its failure to vaccinate him was the "root cause" of his daily physical suffering and loss of career prospects.

He faced "exorbitant" interest rates on money he borrowed for financial survival and deplores the "procedural dilatory tactics" on the part of the Administration.

He seeks: an award of 1.5 million dollars in damages; an award of 1.5 million dollars for the Organizations' "inexcusable serious fault"; payment of "a cost of money" equivalent to 24.25 per cent of those sums with effect from 21 September 1995, the date of the reply from the Director-General giving rise to the complainant's internal appeals; and 4,000 dollars in costs.

C. In its reply the FAO argues that the complaint is irreceivable as the complainant filed it before he received a final decision under the terms of Article VII(1) of the Statute of the Tribunal. That decision was sent to him in a letter of 4 November 1996, produced by the Organization with its reply, in which the Director-General informed the complainant that he had endorsed the recommendation of the Appeals Committee to reject his claims for compensation.

His allegation of "gross negligence" by the medical service is the subject of this complaint and his thirtieth which he filed on 2 January 1997 after receiving the final decision from the Director-General, and the Organization asks for joinder of the two cases. This case raises issues which have been dealt with in earlier complaints, and which are therefore *res judicata*. In essence it focuses on the same facts as his twenty-fifth complaint directed against the "wilful misconduct" of the medical service, and which was dismissed by the Tribunal.

On the merits the Organization argues that the complainant has adduced no evidence of alleged "gross negligence" in not vaccinating him against hepatitis B in 1991, and rebuts his claim to damages on that score. It relied on the WHO guidelines which it regarded as the "most authoritative information available" at the time. According to the 1991 version of that document vaccination against hepatitis B should be "considered", it was only in the 1993 version of those guidelines that it became "indicated".

In coming to his final decision the Director-General relied on a memorandum prepared by the chief medical officer after the Appeals Committee had reported its findings. The medical officer drew attention to the difference between vaccinations requested at the point of entry into a country "to protect countries from the importation of diseases" and vaccinations given for personal protection. Although the medical service does provide vaccination for individual protection, it did not consider that the complainant came within the groups of persons at risk, who warranted extra protection, referred to in the WHO guidelines.

D. In his rejoinder the complainant presses the arguments "submitted in all [his] previous cases". He also asks the Tribunal: (a) to impose a monthly penalty in the event of the Organization not implementing the Tribunal's decision within thirty days from the date of the judgment; (b) to award him all his rights, entitlements and damages claimed including granting him a post at headquarters "in accordance with the Rules and Regulations for those incapacitated as a result of a service-incurred illness" or a post in a European or North American office of the Organization; (c) the immediate payment of his "due salaries" from 1 October 1993 to the date of the judgment and at P.4 level; and (d) the "restoration of [his] status and granting of permanent/continuing appointment in addition to the complete restoration of [his] pension and disability rights ... as well as the payment of all due indemnities, compensations and benefits under all schemes" in relation with his service-incurred illness "including but not limited to insurance entitlements, medical coverage".

E. In its surrejoinder the Organization draws attention to a statement made by the complainant in his rejoinder where he says: "There is neither an issue nor an argument which was not ... fully covered in one or more of my previous cases". This is implicit recognition by him that the issues raised in the present case are *res judicata*. It submits that the complaint is devoid of merit.

## CONSIDERATIONS

1. As in the twenty-six previous cases filed by this former FAO official and examined by the Tribunal, the present case concerns the circumstances in which the complainant contracted hepatitis B in August 1993, when he was serving in Chad on behalf of the Organization on a United Nations Development Programme (UNDP) project. Finally, after numerous equivocations, which are recalled in certain of the cases already examined, the Administration gave the complainant the "benefit of the doubt" and admitted that his illness should be recognised as service-incurred under Manual paragraph 342 and that the complainant was entitled to the reimbursement of his expenses for medical treatment and hospitalisation and to full pay until the end of his sick leave. The complainant

was not content with these measures and has filed numerous complaints claiming compensation for the harm he considers he suffered. The Tribunal has already ruled on these complaints. In Judgment 1701 (*in re* Wassef No. 25), delivered on 29 January 1998, it found that the complainant had not adduced proof of the "wilful misconduct" of which he accused the medical service and dismissed his claim that the Organization should pay him two million dollars.

2. While, in the above case, the complainant made vague allegations concerning the misconduct or negligence of the medical service, he has also levelled more detailed criticisms of the fact that he had not been warned before his departure for Chad in 1991 of the risk of contracting hepatitis B and had not been vaccinated against the illness, which is endemic in many African countries, and particularly in Chad. He appealed twice, on 27 July and 2 August 1995, to the Director-General of the FAO, who rejected his claims. In a report of 23 May 1996, the Appeals Committee considered that the complainant had been provided with sufficient information, at least on his arrival in Chad, to make an informed decision as to whether to be vaccinated and that his requests for financial compensation were unfounded. The Appeals Committee nevertheless recommended to the Director-General that staff members should be provided with information allowing them to take all the necessary medical precautions and that the medical service be instructed to be more vigilant in this regard so that "such unfortunate cases can be avoided in the future". The Director-General took his final decision on 4 November 1996. He refuted any allegation of negligence by the medical service and confirmed his previous decision dismissing the claims for compensation made by the complainant.

3. On 15 October 1996, he filed a complaint with the Tribunal seeking the quashing of the Director-General's decision, which was not as yet an explicit decision. He also filed another complaint (No. 30), challenging the decision of 4 November 1996: see Judgment 1890 issued this day.

#### *Receivability*

4. The Organization challenges the receivability of the complaint, which it considers premature, but does not press its claim. However, it is clear that, in view of the time delay since he lodged his appeal, the complainant had legitimate grounds for considering that it had been dismissed. The complaint can therefore be examined on its merits.

#### *Res judicata*

5. The Organization submits that the complainant's claims concern issues which have already been resolved by the Tribunal, particularly in Judgment 1701 referred to above. However, even though the complainant himself believed it necessary to emphasise in his rejoinder that there is neither an issue nor an argument which has not been "discussed, documented and fully covered" in one of his previous cases, the question of the responsibility of the Organization for the non-vaccination of the complainant is new. The Tribunal will therefore examine the merits of the pleas and dismisses the Organization's submission of *res judicata*.

#### *The merits*

6. The opinion of the Appeals Committee is not totally unfavourable to the complainant's pleas, even though it recommends the dismissal of his claims. The Appeals Committee emphasises that, in view of the fact that hepatitis B is highly endemic in Chad, it is in the interests of staff members and of the Organization that the relevant vaccination be provided, irrespective of whether or not it is requested on entry into the country. The Appeals Committee considers that the medical service did not completely fulfil its role and did not offer the staff member concerned the advice that it could have supplied. The Appeals Committee even refers to responsibility being "equally shared".

7. In practice, there could be no grave fault of the medical service incurring the responsibility of the Organization unless the protective measures recommended by a competent authority had been disregarded. In the material case, the Organization demonstrates that in 1991, the year in which the complainant was assigned to Chad, the World Health Organization's guidelines did not specifically recommend vaccination against hepatitis B for persons posted to African countries affected by an endemic illness of this type. Moreover, the complainant would not appear to be in a category of persons at risk, for whom vaccinations were recommended. Nor is it denied that the complainant, who was assigned to a UNDP project, was aware at least upon his arrival in Chad, of a UNDP circular which advised vaccination. As emphasised by the Appeals Committee, he was therefore informed of the risks incurred and

the precautions that could be taken.

The complainant does not adduce proof of either the negligence or the wilful misconduct of which he accuses the medical service. The Tribunal must therefore dismiss his pleas and his claims for the payment of three million dollars, as well as 24.25 per cent of that amount in compensation for the interest on the sums that he had to borrow. The various other claims pressed both in the complaint and the rejoinder, which reiterate those already made in other cases, are also dismissed.

## 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, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

*(Signed)*

Michel Gentot  
Mella Carroll  
James K. Hugessen

Catherine Comtet