

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

## FIFTY-FOURTH ORDINARY SESSION

In re FARAH

Judgment No. 641

### THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Health Organization (WHO) by Mrs. Despina Farah on 31 July 1983 and corrected on 26 October, the WHO's reply of 14 December, the complainant's rejoinder of 15 March 1984 and the WHO's surrejoinder of 15 June 1984;

Considering Article II, paragraphs 5 and 6(a), of the Statute of the Tribunal and WHO Manual provision II.7, Annex E, paragraphs 3 and 28(b);

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant is the widow of Iscandar Naguib Farah, an Egyptian born in 1925, who joined the WHO in 1962 and was employed as an administrative assistant in its regional office in Alexandria. Iscandar Farah suffered a heart attack on 23 August 1979. He resumed work on 7 November. Returning from the office on Sunday, 9 December 1979, he had another, instantly fatal, heart attack on the staircase of the building in which he lived. WHO Manual provision II.7, Annex E, paragraph 3, says that "in the event of the staff member's death in consequence of ... illness or injury [attributable to the performance of official duties] his dependants shall be entitled to compensation as prescribed in this Annex". On 1 February 1980 the complainant wrote to the WHO asking that her husband's death be regarded as the consequence of such an illness. Her claim went to the Advisory Committee on Compensation Claims and, having read the report of the Director of the United Nations Joint Medical Service, on 22 August 1980 the Committee recommended rejecting her claim. There being a "conflict of opinion" on the medical aspects, the complainant applied under paragraph 28 of Annex E for referral to a medical board. In the light of the board's report of 27 October 1982 the Advisory Committee on Compensation Claims reaffirmed its view that death had not been attributable to the performance of official duties. The Director-General endorsed that finding, as the complainant was informed by a letter of 27 April 1983 from the Secretary of the Advisory Committee, which she received on 8 May and which is the decision she impugns.

B. The complainant produces a letter of 27 November 1979 from the Regional Staff Physician to the Director of the Joint Medical Service recommending that her husband stay off work in the afternoons and a certificate of 8 November 1979 from his own doctor saying that he should work only half-days. The WHO nevertheless wrongly authorised him to work overtime on Saturdays and Sundays from 7 November 1979. He did so and was paid accordingly. The complainant contends that the WHO should never have let him do overtime and, since overwork brought on his fatal heart attack, should be held liable. She seeks disclosure of the medical board's report and of papers which the Director of the Joint Medical Service referred to in a report of 20 February 1980 to the Advisory Committee and which he said suggested that Mr. Farah had been asked not to work any harder than his health allowed. She seeks the compensation payable in the event of death attributable to the performance of official duties.

C. In its reply the WHO submits that the complaint is devoid of merit. The medical board found no direct causal link between Mr. Farah's death and his WHO work. The complainant's own nominee on the board believed that his condition was not the direct result of any special health risk at work and that he could have died of a heart attack at any time. Unless the board's findings are challenged, the Director-General had sound reasons for his decision. Subsidiarily, the WHO observes that Mr. Farah was on sick leave on two half-days a week and though he worked at the weekend to make up, and the work was paid for as overtime, his total hours did not exceed the weekly norm. The general authorisation for him and others in his category to do overtime did not oblige him to do it: it could have been spread among other, fitter, staff members. The authorisation merely denoted willingness to pay for overtime actually done. He should have known better than to try to work as hard as before. The WHO produces the board's report and says that all the other relevant papers are already in the complainant's hands.

D. In her rejoinder the complainant submits that she ought to have seen the medical board's report at the time, not just find it appended to the Organization's reply. She challenges the board's finding that her husband's death was not attributable to the performance of official duties. Two members based their conclusions entirely on a report of 30 May 1981 by Mr. Farah's doctor, but this greatly differed from one made by him on 8 November 1980 saying Mr. Farah should not be allowed to work full time, let alone do overtime. The third member of the board did not expressly rule out a causal link. The number of hours Mr. Farah devoted to official duties may reasonably be deemed to have made his death more likely. He did not do overtime on his own initiative, but because his supervisors gave him to understand it was expected of him. In any event he should not have been authorised to do overtime. The complainant presses her claims.

E. In its surrejoinder the WHO rejects the allegation that the two board members the complainant refers to reached their conclusions solely on the strength of the doctor's report of May 1981. As for the latter's report of 8 November 1980, Mr. Farah had by that time been dead for eleven months.

#### CONSIDERATIONS:

1. Iscandar Farah, who had been on the staff of the WHO since 1962, was employed as an administrative assistant in its office in Alexandria when he died, on 9 December 1979. His widow is asking that his death should be treated as attributable to the performance of official duties.

2. According to the rules in the WHO Manual governing the payment of compensation to WHO staff members anyone who suffers illness or injury attributable to the performance of official duties in the service of the WHO is entitled to special compensation. So is the dependant of a staff member who dies in consequence of such illness or injury.

3. When Mr. Farah joined the WHO he underwent a medical examination and was declared to be in sound health. Nor did later check-ups reveal anything amiss until 1976. Although a coronary ailment was then identified, he was declared fit for sedentary work and continued to perform his duties.

On 23 August 1979 he suffered a heart attack. He returned home after spending ten days in hospital and went back to work on 7 November 1979. One month later he died.

4. The WHO decided on 27 April 1983, after lengthy internal proceedings, to reject the complainant's claim to compensation under the rules in the Manual. The impugned decision said that the Director-General accepted the finding of the advisory bodies that there was no causal link between the overtime done by Mr. Farah and the illness which was the cause of death.

5. There is no evidence to suggest, nor does the complainant contend, that the coronary thrombosis from which her husband suffered was attributable to the performance of his duties in the WHO. Her case rests on what happened after August 1979, and it is only in that light that the Tribunal will entertain her claim.

6. When Mr. Farah's sick leave ended on 7 November 1979 his doctor said he could go back to the office provided he did not work more than half a day at a time.

At the time the Alexandria office opened on only two afternoons a week, and the effect of the doctor's certificate was that Mr. Farah worked only in the morning five days a week.

In the afternoon he was on sick leave. But he did work on Saturday and Sunday mornings for a number of hours equivalent to the number he would have performed on the two working afternoons, i.e. just under nine a week. It was on returning home after working on a Sunday that he died. The hours treated as overtime, which merely made up for his absence on the two afternoons a week, were paid at the overtime rates.

7. Such an arrangement was obviously improper. There is much discussion in the pleadings about whose idea it was, but that is beside the point. It is quite wrong for an employer -- and especially the WHO -- to allow such arrangements with a staff member whom it recognises as being on sick leave yet who, from a sense of professional responsibility or for some other reason, volunteers to do more work than he is authorised to do. The WHO was therefore at fault and the question of its liability does arise.

8. What, in fact, were the consequences of the WHO's attitude? The complainant's case is that the WHO was to blame for her husband's death. The plea will succeed only if the Tribunal finds a causal link in the legal sense, that is to say, some fairly definite connection between the cause and the effect. The medical board's findings provide the evidence on which the Tribunal may found its decision in this case.

The board found -- its membership changed for various reasons while the internal proceedings were going on -- that Mr. Farah's death was not attributable to the performance of official duties. Two members of the board were quite categorical about it: the Director of the Joint Medical Service, who was representing the WHO, and the co-opted member. The complainant's own nominee was more cautious. He said that death was a normal consequence of the illness and could have occurred at any time, even in sleep, and that, although Mr. Farah's duties had been sedentary his death might have been due to mental exertion. It would have been preferable had his own doctor's recommendation of shorter working hours been followed. But the complainant's nominee goes on to admit that it is not for him to say whether Mr. Farah had done overtime on his own initiative or on the WHO's instructions.

9. The complainant is critical of the report. She maintains that the two doctors who rejected any causal link between her husband's death-and the work he did in November and December 1979 did no more than endorse a report by her first nominee on the board, whom she later chose to replace.

The two doctors reject her allegation outright. They maintain that they reached their findings after careful thought about the case and as their own conscience dictated. The Tribunal finds not a shred of evidence which would cast doubt on their competence or impartiality. Nor does the other doctor actually affirm the required causal link: he merely expresses doubts, and they do not carry conviction.

10. The Tribunal accordingly holds that between the overtime Mr. Farah performed and his death no causal link is proved so close as to warrant the conclusion that death was attributable to official duties. His death was not the direct outcome of the additional work he did. Such being the facts of the case, the Tribunal will dismiss the complaint.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner