SEVENTY-NINTH SESSION

In re EL MAHJOUB (No. 4)

Judgment 1429

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Mohamed El Mahjoub against the International Labour Organization (ILO) on 20 June 1994, the ILO's reply of 31 August, the complainant's rejoinder of 9 September and the Organization's surrejoinder of 18 October 1994;

Considering Articles II, paragraph 1, and VII, paragraphs 1 and 3, 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, a Libyan, was on the staff of the ILO from 1 January 1985 until 31 December 1991. Information on his career in the Organization appears under A in Judgment 1213, which was about his first complaint.

On 13 February 1992 he filed a claim under Annex II of the Staff Regulations of the International Labour Office, which is headed "Compensation in event of illness, injury or death attributable to the performance of official duties". The claim arose out of injury to his knee which, he alleged, was attributable to two accidents, one on 23 July and the other on 23 October 1991.

By a letter of 28 May 1993 the secretary of the ILO's Compensation Committee informed him that the Director-General had endorsed the Committee's recommendation that the two accidents should not be recognised as "attributable to the performance of your official duties". The secretary explained that in the Committee's opinion several causes of his knee injury were possible and there was no evidence to suggest that either accident had had any significant effect on it.

The complainant disputed the rejection of his claim and after correspondence with the secretary filed on 28 February 1994 a "complaint" under Article 13.2 of the Staff Regulations. In a letter dated 28 March 1994 the Chief of the Personnel Administration Branch asked him to identify the decision he was objecting to and, if appropriate, to explain, along with any further comments he wished to add, why he considered his "complaint" receivable despite his failure to observe the six-month time limit in 13.2.

The Administration having lost the text of his reply of 17 April 1994, the Chief of the Personnel Administration Branch expressed regret in a letter of 10 June and asked him for another copy.

By a letter of 3 July, to which he appended a copy of his communication of 17 April, the complainant told the Chief of the Branch that he had already put his case to the Tribunal under Article VII(3) of its Statute.

B. The complainant submits that he is entitled to compensation for service-incurred injury. He says that he submitted his claim in time and that, not having referred the matter to a medical board, the Director-General plainly does not dispute the relevant medical issues. Besides, the Staff Regulations "do not describe anything about the Compensation Committee and its functions".

He asks the Tribunal to "quash the unlawful action" which he says "froze" his "compensation payments" under Annex II of the Staff Regulations.

C. In its reply the ILO contends that the complaint is irreceivable under Article VII(1) of the Tribunal's Statute because of the complainant's failure to exhaust the internal means of redress. It was he who preferred making a 13.2 "complaint" to the setting up of a medical board, which the secretary of the Compensation Committee suggested in a letter to him of 18 August 1993. Article 13.2 requires that any complaint of treatment inconsistent with the Staff Regulations be filed "within six months", and his 13.2 "complaint" of 28 February 1994 came well after time had

run out for appeal against the ILO's refusal to pay compensation.

As for the rejection he infers under Article VII(3) of the Statute, the reason why he did not get immediate notice of rejection - apart from the clerical error that compounded the delay - was the Administration's wish to respect due process by letting him state first his views on receivability.

On the merits the ILO observes that he failed to inform its Medical Service of the two accidents, only the second of which had been witnessed; that he did not consult a doctor after the first accident and did so only nine days after the second; and that there was no evidence to show that either of the accidents had any effect on his condition. Although the Director-General had told him the reasons for the rejection of his claim, he failed to assert his right - which the Administration reminded him of in its letter of 18 August 1993 - to have a medical board review his case.

D. The complainant rejoins that his complaint is receivable and presses his pleas on the merits. The Administration has never indicated the exact reference of the circular by which it set up the Compensation Committee. The recommendation of the committee is "illegal".

E. In its surrejoinder the Organization maintains its stand on receivability and, subsidiarily, on the merits. It produces "General Instruction No. 290" of 1 July 1965 by which the Director-General set up the Compensation Committee to advise him on claims arising under Annex II of the Staff Regulations.

CONSIDERATIONS:

1. The complainant's appointment at the ILO ended on 31 December 1991. He is claiming compensation for a knee injury which he attributes to two accidents that occurred during working hours on the Organization's premises, one on 23 July and the other on 23 October 1991.

2. The complainant failed to report the accident of 23 July to the ILO's medical service. A private practitioner examined him on 23 October after the other accident. Although he consulted the medical service on 13 September and on 4, 25 and 26 November 1991, not until 29 November did he consult it about the injury to his knee, which he blamed on the accident of 23 July.

3. On 13 February 1992 he filed a claim under Annex II to the Staff Regulations, which contains the rules on compensation. The Administration referred his claim to its Compensation Committee. The secretary of the Committee informed him by a letter of 28 May 1993 that the Director-General had decided on the Committee's recommendation that the accidents were not to be regarded as service-incurred or as having had any "significant effect" on his condition.

4. By a letter of 18 August 1993 the secretary informed him of his right to have a medical board appointed under the provisions of paragraph 25(b) of Annex II to the Staff Regulations. But he declined on the grounds that the Director- General had not chosen to refer the matter to a medical board and he himself was therefore entitled to presume that there was no conflict of opinion on the medical aspects of the connection between the injury and the performance of his official duties. Further, he took the view that as the Compensation Committee was not provided for in the Staff Regulations the establishment of it was at variance with those Regulations.

5. The Organization pleads that the complaint is irreceivable because the complainant failed to exhaust within the prescribed time limits the internal means of redress that were available to him. It cites Article 13.2 of the Staff Regulations, which provides:

"Any complaint by an official that he has been treated inconsistently with the provisions of these Regulations, or with the terms of his contract of employment, or that he has been subjected to unjustifiable or unfair treatment by a superior official shall ... be addressed to the Director-General through the official's responsible chief and through the Personnel Department, within six months of the treatment complained of. ..."

6. That plea is sustained. As the Tribunal has often declared - for example in Judgment 1244 (in re Popineau No. 5) under 1 - Article VII(1) of its Statute means that a complainant must have not only gone through any internal appeal procedure within the organisation but duly complied with the rules on that procedure. The Director-General's decision to refuse compensation was notified to the complainant in the letter of 28 May 1993 from the secretary of the Compensation Committee. He did not lodge his internal appeal until 28 February 1994, i.e. after the

time limit of six months in Article 13.2. His complaint is for that reason irreceivable under Article VII(1) of the Tribunal's Statute.

7. There is therefore no need to rule upon the ILO's further objection that he failed to exhaust the internal means of redress because he did not ask to have a medical board set up.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

William Douglas
E. Razafindralambo
Mark Fernando
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.