

EIGHTY-FOURTH SESSION

In re Qureshi (No. 2)

Judgment 1723

The Administrative Tribunal,

Considering the second complaint filed by Mr. Nazir Mohammad Qureshi against the Food and Agriculture Organization of the United Nations (FAO) on 2 November 1996 and corrected on 7 January 1997, the FAO's reply of 17 April, the complainant's rejoinder of 7 June and the Organization's surrejoinder of 28 August 1997;

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 and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out under A in Judgment 1426, of 6 July 1995, which dismissed Mr. Qureshi's first complaint as irreceivable for failure to exhaust his internal remedies. While on duty in the car park of the FAO's headquarters in Rome at some date early in October 1990, he had a dispute with another official. Whether the date was the 8th or the 9th is not clear, but the parties concur that the incident occurred at 9 o'clock in the morning. The complainant sustained injury to two fingers, for which the FAO says he got treatment from its medical service before returning to duty.

On 10 October he telephoned the office from home to say that he was ill and to ask for help. The chief medical officer of the Organization went to see him, diagnosed a stroke, and had him sent to hospital. After several days in a public hospital he was moved to a private clinic. He was suffering from sleeplessness, aphasia and paralysis of the right arm and leg. Though treatment brought improvement he never became fit to go back to work.

In a letter of 7 September 1991 to the alternate secretary of the Advisory Committee on Compensation Claims he asked that his illness and disability be declared service-incurred. In a reply dated 19 November the alternate secretary told him that the Organization had rejected his claim because the medical service found that the incident in the car park could not have brought on the stroke. He sought review of the decision in a letter of 17 December 1991, and a medical board was duly convened. It was made up of the complainant's doctor, an independent doctor and the medical officer of the FAO. On 21 April 1992 the FAO granted him a disability pension and separated him from service.

In its report of 4 February 1993 the medical board said that the independent doctor and the FAO's medical officer found no evidence of a link between the stroke and the dispute; the complainant's doctor said that the lapse of time was not so long as to preclude treating the incident in the car park as a "concomitant cause", together with the complainant's chronic high blood-pressure. By a letter of 30 December 1993 the secretary of the Advisory Committee told him that the Director-General had rejected his claim on medical grounds and the secretary referred him to the rules on appeals in case he wanted to challenge the decision. In a letter of 19 March 1994 he applied to the Director-General for review. The Assistant Director-General in charge of Administration and Finance told him by a letter of 18 May 1994 that the Director-General was upholding the decision and that he was free to go to the Appeals Committee.

By a letter of 5 August 1994 he lodged an appeal with the Committee, which reported to the Director-General on 23 May 1996 and recommended rejection. By a letter of 7 October 1996, which he impugns, the Director-General endorsed the Committee's recommendation.

B. The complainant charges the Organization with gross breach of human rights. In his submission his illness was service-incurred and the medical service misused its authority in an effort to "torture" or even "assassinate" him. To back up its case, he says, it tampered with the records and blamed his illness on chronic high blood pressure, citing documents of which it failed to give him notice.

He wants the FAO to acknowledge that his illness was service-incurred and to pay for the costs of treatment. He also wants the authority of the medical service to be "curtailed".

C. The Organization replies that the complaint is devoid of merit. A dispute of the kind that the complainant had with another staff member cannot cause a stroke of the type he suffered, whether it came 36 hours or even - as the complainant would have it - 12 hours later. Nor does the occasional risk of such row constitute a "special hazard" within the meaning of Manual section 342.213. There is no evidence of any mistake of fact or of law that the medical board committed in discounting the incident in the car park as a cause of the stroke. As for his charge of tampering with the records, the complainant has failed to discharge the burden of proof.

D. In his rejoinder the complainant recounts the facts as he sees them and invites the Tribunal to compensate him under whatever law it sees fit. Having "no knowledge" of international law, he prefers not to discuss it. He claims the equivalent of 500 million lire in United States dollars and payment of the expenses his family incurred in travelling from Kohat, in Pakistan, to join him in Rome.

E. In its surrejoinder the FAO observes that there is no new evidence or argument in the rejoinder. It presses its earlier pleas.

CONSIDERATIONS

1. The complainant claims compensation for an alleged work-related injury arising out of an incident reported in the documentation to have taken place at about 9 a.m. on 8 October 1990, but said by the complainant to have in fact occurred on the following day. The injury in question is a stroke suffered by the complainant at about 9 p.m. on 9 October. There is no question that the stroke was permanently disabling and the complainant has been on disability pension since 21 April 1992.

2. The complainant, a security guard, started working for the Food and Agriculture Organization of the United Nations (FAO) in May 1978 at its headquarters in Rome. On the date of the incident in question he was working at the Commissary garage when, at approximately 9 a.m., he had an altercation with an FAO staff member and suffered an injury to his hand. The injury was not disabling and he continued working until his shift ended at 3 p.m. that day.

3. The complainant's claim to compensation is dependent upon his establishing that the stroke suffered by him on 9 October 1990 was, in accordance with Staff Rule 302.641, "attributable to the performance of official duties". That, in turn, is to some extent dependent upon his contention that the incident in fact took place on 9 October rather than 8 October, but even more fundamentally on his establishing a causal relationship between the altercation, whenever it took place, and the stroke.

4. In January and February 1993 the complainant's claim to compensation was submitted to a medical board composed of three qualified physicians, one appointed by the complainant, one by the FAO and one independent arbitrator. That Board found itself unable to establish the date of the incident but, giving the benefit of the doubt to the complainant and assuming the date to be 9 October, found by a majority that it was "unable to find sufficient scientific evidence to link the incident at 9 am with the stroke at 9 pm". This finding was specifically predicated upon documents submitted by the FAO establishing that the complainant had suffered from high blood pressure for approximately 10 years. The dissenting member of the medical board, the complainant's appointee, acknowledged the pre-condition of high blood pressure but considered that the interval of twelve hours was "not sufficient to exclude the stressful event in the morning as a concomitant cause of the cerebral vascular episode".

5. The complainant launched an abortive appeal to this Tribunal which, in Judgment 1426 of 6 July 1995, dismissed it as irreceivable. The complainant then appealed to the Appeals Committee of the FAO, which in a report dated 23 May 1996 held that because of "the particular circumstances of the appellant" the appeal was receivable and should be judged on its merits; the Committee went on, however, to recommend that the appeal should be rejected. The Director-General accepted that recommendation in a letter of 7 October 1996, which has prompted the present complaint.

6. The complainant makes a number of extremely serious allegations against the FAO. He alleges that the

original handwritten incident report, which is in the first person and dated 8 October 1990, has been falsified by the FAO; that the FAO stole his copy of the report while he was in hospital; and that the FAO arranged for his transfer from a public hospital to a private hospital with the intention of inflicting mental torture upon him. He even goes so far as to assert that there was an attempt to assassinate him. Finally, he alleges that his medical records were falsified with respect to his high blood pressure.

7. The Tribunal, after carefully reviewing all the documents before it, has no hesitation in finding that there is not one shred of credible evidence to support any of his allegations. The date on the incident report, which appears to be in the complainant's own handwriting, is clearly and unambiguously shown as "8-10-90". There is no indication of any alteration. There are duplicate copies of the report on file. Since both copies appear identical as regards the date, any falsification would have required an extremely sophisticated exercise in forgery carried out on two documents so as to make them appear the same. Nothing supports the view that the transfer of the complainant from a public to a private hospital was carried out with any intent to harm him. Indeed, on the contrary, the transfer seems to have had as its only purpose his own comfort and well-being. Allegations of attempts to torture and assassinate him are the purest fabrication. The same is true of the allegation that the medical records showing his high blood pressure were altered.

8. If it were necessary to do so, the Tribunal would unhesitatingly find as a fact that the incident which lies at the very foundation of the complainant's claim, namely the altercation at the Commissary garage, took place on 8 October 1990 and not, as the complainant alleges, a day later.

9. It is not, however, necessary to make such a finding. The medical board, as indicated, proceeded on the assumption that, even if the incident had happened on 9 October 1990, there was not sufficient evidence to link it causally to the stroke. The Tribunal has not been persuaded that there was any defect in the procedure before the medical board or that its findings can otherwise be validly attacked. The Tribunal has no authority to substitute its own assessment of the cause of the complainant's injuries for those of the medical experts: see Judgments 620 (*in re* Loroche No. 2) under 4 and 1284 (*in re* Fahmy No. 2) under 6.

10. Finally, three matters that the complainant raises in his rejoinder need to be briefly mentioned and disposed of:

(a) The complainant now says that all his costs at the private hospital to which he was sent were paid by himself and have not been reimbursed. If this is so, and no proof has been offered, it is clear that the complainant was covered by the staff insurance plan and was entitled to claim reimbursement from such plan. If he did not do so, that is his responsibility.

(b) He raises as a new ground of appeal the fact that the Appeals Committee did not grant him a hearing. It was not required to do so and made a specific finding that his presence was not necessary. The Tribunal sees no reason to interfere with that finding.

(c) The complainant applies for hearings before the Tribunal. The Tribunal rejects his application.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Seydou Ba, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

Michel Gentot
Seydou Ba
James K. Hugessen

A.B. Gardner

