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

NINETY-THIRD SESSION

Judgment No. 2143

The Administrative Tribunal,

Considering the complaint filed by Mr B. E. P. against the International Labour Organization (ILO) on 9 June 2000 and corrected on 15 November 2000, the ILO's reply of 31 July 2001, the complainant's rejoinder of 7 September, and the Organization's surrejoinder of 23 November 2001;

Considering Articles II, paragraphs 1 and 2, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to allow the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a citizen of Sweden, was born in 1946. He was recruited by the International Labour Office, the Organization's secretariat, in May 1992 as a construction adviser at grade P.4 on a technical cooperation project in Nampula, northern Mozambique.

He gave notice in March 1994 that he wanted his employment to end. In a memorandum of 24 March 1994 to the project's chief technical adviser, he referred, inter alia, to medical problems experienced in 1993. Writing to the same official on 12 April 1994, he said his problems were ongoing; he spoke of his wish to obtain treatment albeit not at his expense. By a fax of 20 April from ILO headquarters he was urged to discuss his health situation with a United Nations doctor in Maputo, southern Mozambique, who would in turn have to send a confidential report to the ILO's Medical Adviser in Geneva. Between 5 and 19 May the complainant underwent a compulsory exit medical examination carried out by a United Nations doctor in Maputo. The complainant's service came to an end on 16 May when his contract expired.

He returned to Sweden on 24 June 1994, but continued to experience health problems. Meanwhile, his medical file and the report from the UN doctor in Maputo had gone astray. Neither the report nor any of his medical records were received at ILO headquarters. By a letter of 21 September 1994 to the complainant, the Director of the Joint Medical Service in Geneva suggested that the complainant should obtain a comprehensive report on his state of health from his doctor in Sweden. That was not done at the time and in 1995 the complainant continued to contact the ILO enquiring about the missing report from Mozambique. It was finally received in Geneva on 2 October 1995.

The complainant subsequently sent numerous communications to the Organization, containing various claims. In a letter of 5 January 1996 to the Director-General he claimed compensation because of the circumstances of his departure from Mozambique; he also referred to his wish to obtain compensation under Annex II to the Staff Regulations (which concerns compensation in the event of illness attributable to the performance of official duties). On 17 January the Chief of the Technical Cooperation Personnel Branch acknowledged receipt of the complainant's letter and told him that if he considered that his health condition had resulted from his assignment to Mozambique he should file a compensation claim. He enclosed the relevant rules, namely Annex II of the Staff Regulations and circular 42 (Rev. 4) of series 6, together with a claim form which had to be sent to the Compensation Secretariat at ILO headquarters, and said that, pursuant to paragraph 23(b) of Annex II, if his claim was submitted more than six months after the illness had manifested itself, he should justify why it should be accepted for consideration.

By a letter of 26 January 1996, from the same official, the Office further responded to his claim of 5 January 1996. It proposed a settlement to the complainant to take account of his health condition when he left Mozambique. It recognised that because of the time taken to complete the exit medical examination, he did not have sufficient time to arrange for his departure from Mozambique. It principally proposed paying him the equivalent of a month's salary - from 17 May to 16 June 1994 - "for extended sick leave reasons". By a letter of 20 February 1996, the Administration gave the complainant authorisation, in the event of disagreement with that settlement, to file a complaint directly with the Tribunal. The letter stated that that authorisation would not apply to any claim that his condition was service-incurred, as internal procedures still had to be followed if he wished to pursue such a claim. The amounts decided upon by the ILO were paid into his account on 23 February 1996.

In February 1998 his new doctor contacted the ILO Medical Adviser wanting to see the complainant's medical records from Mozambique. On 7 May the complainant submitted a further claim for compensation to the Director-General. On 18 May 1998 the Organization informed his doctor that it would be prepared to reopen the case if it could be medically certified that since 1994 the complainant's mental capacity was affected to the point where he was considered incapable of handling day-to-day matters. On 14 September the doctor provided the necessary certification. On 1 October the Administration wrote back to say that the information so far provided was not sufficient to reopen the case. The Chief of the Personnel Administration Branch wrote to the complainant's counsel on 6 November 1998 saying that the Office was receiving numerous communications from the complainant, but he had neither lodged a complaint with the Tribunal nor filed a compensation claim, and it had accordingly been decided to close his file. On 4 and 20 May 1999 the complainant wrote to the ILO restating previous claims.

Although further medical reports had been supplied by the complainant's doctor, the Administration considered that they did not show that the complainant's health condition had been such that it prevented him from understanding the procedures to be followed if he considered that his state of health was attributable to his work in Mozambique. It conveyed this to him in a letter of 30 July 1999, repeating that there was no reason to reopen his case. In a letter of 10 December 1999 his new counsel asked the Organization to take a decision as to whether the complainant's case could be reopened and whether the ILO would accept a claim to compensation relating to his medical situation since 1994. The Manager of the Human Resources Administration and Support Branch replied on 10 March 2000 saying that the last decision concerning the complainant's situation was taken on 6 November 1998 to the effect that his case had been closed. The complainant is challenging the letter of 10 March.

B. He submits that his case was finally decided upon on 10 March 2000, and that his complaint is not time-barred. His right to receive periodic payments for as long as he is sick or handicapped is ongoing and is not subject to any time limit imposed by Article VII of the Statute of the Tribunal. He refers to the claims for compensation that he filed on 7 May 1998 and 20 May 1999 and says that the ILO has not taken a decision on those claims within a reasonable period of time. Its decision to close his case in November 1998 violated his rights for future compensation and his right to have his case reviewed by the Compensation Committee in accordance with circular 42.

The complainant is of the opinion that his present health problems have evolved from a disease that started in late 1992 when he was working for the ILO in Mozambique. He says that he underwent tests in Nampula hospital on 25 January 1993, testing positive for bilharzia and salmonella. Proper medication, such as antibiotics, was not available. By late 1993 he displayed typical encephalitis symptoms and had problems concentrating. On his return to Sweden in 1994 he continued to suffer from fever, nausea, headaches and short-term memory loss and is still sick and handicapped. He has done all within his power to adhere to regulations for obtaining compensation.

The medical records from Mozambique were necessary both for the diagnosis of his illness by his Swedish doctors and for any claim submitted in accordance with the Staff Regulations. The ILO, he argues, had a duty to help him obtain the medical information he needed. It did not do enough to trace his missing medical file, and he finds it unfair that the ILO should ask him to produce documentation that it could have obtained from its own medical adviser and the UN doctor in Maputo. His health problems were compounded by the Organization's "nonchalance" after his return to Sweden; because of its lack of support he is now in a state of destitution.

He argues that the personnel department failed to "fulfil responsibilities in relation to the staff regulations and employment contractual rights" in several respects. It failed, inter alia, to take into account his ongoing medical test results in Sweden, even though it had made them a requirement for finalising his case; it failed to take account of his pensions rights and rights to sick pay; and due to lack of "administrative control" on its part he was denied "proper medical attention" with the result that he is now undergoing treatment for severe mental stress, as is his

young son who is in his care.

On account of the above he seeks the following compensation: 250,000 United States dollars in damages; 72,803 dollars in sick pay for the period from 26 June 1994 to 15 May 1995 under paragraph 7 of Annex II to the Staff Regulations; disability compensation for his son; and, for himself, 266,944 dollars as disability compensation for the period from 16 May 1995 to 30 June 2000 under paragraph 8 of Annex II, plus relevant increments at P.4 level, and interest; and an ongoing monthly disability pension in accordance with Annex II.

C. The Organization submits that the complaint is plainly irreceivable under Article VII of the Tribunal's Statute as the complainant failed to resort to the internal procedures available to him even within the "very extended time-limits" accorded to him. Furthermore, the supposed decision that he impugns was no more than an informatory letter stating why his case had been closed. A final decision to close the case was taken on 6 November 1998. To be receivable his complaint should have been submitted to the Tribunal within ninety days of that date.

Except for his claim to damages, his claims for redress are contingent on a decision by the Director-General on the basis of a recommendation made by the Compensation Committee that his illness was attributable to the performance of official duties. Such a decision has not been taken because the complainant has never followed the established procedure for submitting a claim under Annex II; so there is no appealable decision. The Organization's letter of 26 January 1996 made it clear to the complainant that there was a specific procedure for examining claims. All the letters that the complainant sent to the Organization claiming direct payment of entitlements foreseen in Annex II are irreceivable through his failure to follow the applicable procedure within the statutory time limits. Besides, his claims were unclear and often contradictory. He did not follow advice given to him, and cannot now hold the Organization responsible.

While recognising that because no compensation claim has ever been submitted it has not yet had the opportunity to examine fully the merits of the case, the ILO holds that the complainant's condition was not necessarily service-incurred. Indeed, the medical reports appended to his complaint would seem to preclude recognition of his condition as a service-incurred illness. The origin of his condition remains "undetermined" and could have resulted from multiple factors. In any event, medical opinion indicates that the condition for which he is claiming compensation was not the "direct and exclusive consequence" of his service with the ILO. It would be up to the complainant to prove that his illness resulted from his official duties. His allegations that there is a link with his employment in Mozambique could only be examined by the Tribunal if there was a previous administrative assessment undertaken by the Organization.

D. In his rejoinder the complainant requests the Tribunal, before coming to a decision on his case, to make an assessment regarding the relationship between his illness and his employment with the ILO and the conditions of work in Mozambique. Alternatively, he wants the ILO to open "the ordinary administrative procedure" regarding his compensation claim and, within a set period, report the outcome to the Tribunal.

The complainant states that before his service came to an end in Mozambique he raised the matter of compensation. He also wrote to the ILO on 20 May 1999 filing a full compensation claim, but it did not lead to a "decision-making process". He claims not to have had access to the "rules, regulations and established procedures" governing the ILO Administration.

He alleges that in order to prove his medical status he was being asked to produce reports that not even the ILO had been able to locate; before they could be found, his claims were time-barred. He considers that there were failures on the part of the Organization in that it went so far as to deny the very existence of the reports. He says that he was at a loss to know what else he should have done to obtain compensation.

On the merits, he states that the final report regarding his medical status was issued by his Swedish doctor on 7 December 1999. It states that he was suffering from a post-encephalitis syndrome, as a result of an infection contracted in 1993 in Mozambique.

E. In its surrejoinder the Organization enlarges on its arguments concerning the irreceivability of the complainant's claims. It stresses that additional copies of the applicable texts were sent to his various counsels every time he claimed that he was unaware of them.

Noting that the complainant asks what else he could have done to obtain compensation, the Organization answers

that he should have filled out the claim form conveyed to him on 17 January 1996 and returned it to the Compensation Secretariat. It points out that it could not have commenced the procedure under Annex II of the Staff Regulations on its own initiative. In the light of medical opinions received it contests the accuracy of the opinion put forward in the rejoinder that the post-encephalitis syndrome had resulted from the infection in 1993.

Concerning the complainant's wish that the Tribunal should assess his case, it repeats its view that the complainant's case must first be examined internally.

CONSIDERATIONS

1. The complainant, a Swedish national, was recruited by the ILO in 1992 to assist in a technical cooperation project in Mozambique. His contract, which was initially for one year, was renewed for one further year and expired on 16 May 1994. During his assignment, he suffered numerous health problems, which continued to affect him after his return to Sweden in June 1994. He had undergone medical examinations in Maputo before his departure, in conditions which are not elucidated by the written submissions, but which bear witness to real administrative problems; the results of these examinations, including his compulsory exit medical examination, did not reach the ILO's Medical Adviser until 2 October 1995. In the meantime, there was an extensive exchange of correspondence between the ILO and the complainant, who amplified his requests for the payment of his medical expenses as well as for compensation - as a result of having to stay an extra month in Mozambique after his contract had expired.

2. In a letter of 5 January 1996, the complainant first combined his requests for compensation with a claim under Annex II of the Staff Regulations. The ILO replied on 17 January 1996 that, with regard to this latter claim, if he considered that his health condition had resulted from his assignment to Mozambique, he should file a compensation claim on the corresponding form. The complainant was told that the claim had to be submitted within six months of the manifestation or diagnosis of the illness and if it was submitted after that time limit, he should give the reasons why it should still be taken into consideration.

3. After consulting the ILO's legal services, which indicated that some of the complainant's letters sent in 1994 - in which he stated that he was suffering from a service-incurred illness - would need to be taken into account if he decided to file an official claim, the Chief of the Technical Cooperation Personnel Branch informed the complainant of the following decision, dated 26 January 1996: he would be paid the equivalent of one month's salary, from 17 May to 16 June 1994, for extended sick leave reasons, and for eight additional days between 17 and 24 June, the date of his departure for Sweden. The expenses incurred for his exit medical examination would also be reimbursed on submission of proof of payment. The sums due would bear interest at 8 per cent, but the claims for compensation, particularly for moral damages, were rejected. Lastly, the complainant was once again invited to submit a claim under Annex II of the Staff Regulations, setting out the reasons for the delay in making such a claim. Further exchanges of correspondence followed, leading the Administration to inform the complainant on 20 February 1996 that steps had been taken to pay him the amounts that the ILO acknowledged as being due to him and that, if he was dissatisfied with the decision of 26 January, he was exempted from the need to follow the procedure under Article 13.2 of the Staff Regulations and could appeal directly to the Tribunal. However, such an exemption did not apply to his claim to have his illness declared service-incurred. By a letter of 27 February the ILO informed the complainant that the sums in question had been paid to him.

4. The complainant did not come to the Tribunal at that stage, even though he had informed the ILO in a letter of 25 March 1996 that he would "of course" do so. It was only at the beginning of 1998 that the correspondence took up again. On 6 February the complainant's new doctor contacted the ILO and on 7 May the complainant's lawyer made a series of claims to the Director-General.

5. In a reply of 18 May 1998 to the complainant's doctor, the ILO indicated that the case had been closed since 1996 but, if it appeared that the complainant's mental capacity was affected to the point that he should be considered incapable of handling day-to-day matters, the Office would be prepared to take this fact into consideration, provided that it was medically certified, in order to examine whether his case could be reviewed under established procedures.

The Office replied to the lawyer on 26 June that it had considered it reasonable to believe that the complainant did

not wish to renew his claim for compensation under Annex II, but that should his health condition prove a "valid reason" within the meaning of paragraph 23(b) of that Annex, it would be prepared to take his claim into consideration.

These replies were confirmed to the complainant in a letter of 20 July, and then in another of 17 August 1998.

6. The complainant's doctor, replying on 14 September 1998 to the letter of 18 May, certified that the complainant was unable to deal with day-to-day matters and described the disorders from which he was suffering. However, the Administration considered this certificate insufficient to reopen the case and said that additional information would be necessary, such as a certificate from the psychiatrist who had treated him. On 23 October the complainant's lawyer requested that a "final decision" be taken. On 6 November 1998 the Chief of the Personnel Administration Branch replied that the decision taken in January 1996 had not been challenged. He pointed out that, although the Office was previously willing to review the case under certain circumstances, it had now been decided to close the file. The letter, however, ended with the indication that, if sufficient evidence was received from the complainant's doctor that the complainant's state of health had prevented him from filing a compensation claim within the time limits, the Office would once again revert to the matter.

7. In April 1999, a new certificate was issued by the doctor, followed by a neuropsychological report. The Administration considered that this information did not require it to reopen the case, as it duly indicated on 30 July 1999 to the complainant, who had submitted another request for compensation on 20 May 1999. It confirmed this position on 10 March 2000 to the new counsel that the complainant had appointed and who had submitted a claim to the ILO on 10 December 1999, accompanied by a new medical certificate dated 7 December 1999. In the above letter of 10 March 2000, the Manager of the Human Resources Administration and Support Branch informed the complainant's counsel that, after re-examining the complainant's administrative file and medical record, he could "unfortunately only confirm what [he] stated in [his] letter of 30 July 1999", namely that there was no reason for the Office to reopen his case. He added that the last decision concerning the case had been taken on 6 November 1998 and that any complaint against that decision should have been filed with the Tribunal within ninety days from its notification. A complaint filed after that time limit would be irreceivable. However, the Tribunal remained the only body competent to hear his complaint.

8. The decision contained in the letter of 10 March 2000 was referred to the Tribunal in a complaint dated 9 June 2000. The complainant challenges this decision, and asks for the award of various amounts to compensate for the errors and failings of the personnel department, and moral damages. His claims are set out under B above.

9. The ILO contests the receivability of the complaint, basing its argument on the definitive nature of the decision taken on the complainant's case on 6 November 1998, well before the impugned letter of 10 March 2000 which, it says, was merely an informatory letter, confirming the November decision.

10. The chronology of events, as summarised above, shows that the complaint must be dismissed as irreceivable. In practice it is clear that, despite the indications provided on several occasions regarding the procedure to be followed, the complainant did not file a compensation claim within the time limits set out in Annex II of the Staff Regulations to establish that the illnesses he says he contracted while in Mozambique were service-incurred. Admittedly the ILO opened the door to waiving the time limit by indicating in June 1998 that it would be prepared to accept for consideration a claim for compensation if his health condition proved a valid reason, in the view of the Director-General, for accepting that there were exceptional circumstances for filing a claim out of time. The letter of 6 November 1998, considered by the ILO to be a final decision in that it declared the case closed, still left the complainant with hope. After giving the reasons why the complainant's claims were irreceivable, the Chief of the Personnel Administration Branch indicated that if sufficient evidence was received the Office would revert to the matter. But the letter of 30 July 1999 leaves no room for doubt: after examining the medical documents provided, the Office considered that there was no reason to believe that the complainant's health condition over the past five years had prevented him from understanding the communications sent to him concerning the procedures to be followed for the recognition of his condition as being attributable to his assignment. The complainant did not appeal to the Tribunal, as he had been authorised to do since 1996, against any of the decisions to close his case, including the decisions contained in the letters of 6 November 1998 and 30 July 1999. The decision set out in the letter of 10 March 2000, which is the only one challenged by the complainant on 9 June 2000, merely confirms the decisions taken earlier and cannot, according to constant precedent, have the effect of setting off once again time limits which had already expired.

11. The complainant's claims seeking the quashing of the decision communicated in the letter of 10 March 2000 are irreceivable. His claims for compensation for the service-incurred diseases from which he has suffered and still suffers must therefore fail. Indeed, the Tribunal finds no evidence that the ILO failed in its duty to assist its employees or former employees. It provided the complainant with precise indications in good time, and on several occasions, on the procedures to be followed for the submission of a compensation claim under Annex II of the Staff Regulations. Even though the complainant's personal situation, in view of his mediocre social protection, is extremely regrettable, as acknowledged by the ILO, it is not within the latter's power, nor within that of the Tribunal, to remedy the situation. The claims that the ILO be ordered to pay compensation for the prejudice, including the moral injury suffered by the complainant must therefore be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2002, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

(Signed)

Michel Gentot

Seydou Ba

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 22 July 2002.