

NINETY-FOURTH SESSION

Judgment No. 2189

The Administrative Tribunal,

Considering the fourth complaint filed by Mrs S. L. d. S. against the United Nations Industrial Development Organization (UNIDO) on 8 June 2001 which is an application for execution of Judgment 1464, UNIDO's reply of 13 February 2002, the complainant's rejoinder of 20 March and the Organization's surrejoinder of 1 July 2002;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a former staff member of UNIDO. She was separated from service on 15 February 1996. By Judgment 1464, the Tribunal ruled on her first complaint in which she sought compensation under Appendix D to the Staff Rules, on the grounds that the illness that she contracted in 1993 was service-incurred. She had filed it under Article VII(3) of the Tribunal's Statute, inferring rejection of an appeal submitted to the Director-General on 10 November 1994. The Tribunal dismissed her complaint but stated, under 10, that the process of appeal had to follow its course - which would entail the convening of the medical board. That board would then report to the Advisory Board on Compensation Claims, which would in turn transmit its own recommendations and the medical board's report to the Director-General for a final determination.

By Judgment 2043, delivered on 31 January 2001, the Tribunal summarily dismissed her third case, which was an application for review of Judgment 1464, as clearly irreceivable. On 23 February 2001 the complainant wrote to the Director-General; she referred to Judgment 2043 and requested that "the necessary arrangements be made for the convening of a Medical Board in compliance with UNIDO's Appendix D Rules". She gave the name of a medical practitioner that she wanted to represent her on the board.

B. The complainant infers rejection of her request under Article VII(3) of the Tribunal's Statute because of the Organization's failure to take any decision within 60 days of receiving her claim of 23 February. She submits that because of UNIDO's obvious refusal to deal with her claim she is powerless to comply with the requirement in Article VII(1) that the internal remedies be exhausted. She thus seeks the assistance of the Tribunal so that it can obtain a medical expert opinion to enable it to proceed with her case. In the event of her complaint being deemed receivable and there being a favourable outcome of the Appendix D claim she first filed in 1993, she asks the Tribunal to make a decision on her "supplementary pleas", that in her opinion fall within the scope of her claim under Appendix D.

Under the heading "supplementary pleas" she seeks: the rescinding of UNIDO's decision to separate her from service on 15 February 1996; reinstatement of her special leave status with half pay as from 1 August 1995 until such date as her Appendix D claim and her claim for disability benefit are settled (or, failing any final decision regarding the payment of benefit, she seeks payment of full salary up to the date when pension benefits become due); payment of full pension fund contributions as from 1 August 1995; payment of premiums for the group health insurance and group life insurance schemes; the production of two "anonymous" letters referred to in a memorandum appended by the Organization to its surrejoinder of 13 October 1995 on her first case; the production of any official documents that formed the basis of decisions taken by UNIDO and the United Nations Joint Staff Pension Board on her case; the suspension of publication on the internet of data concerning her previous cases to the Tribunal, and the removal of certain data from her personal file.

The principal relief sought by the complainant is as follows. She asks the Tribunal: (1) to declare her application for execution receivable under Article VII(3); (2) to waive the requirement in Article VII(1) for the exhaustion of

internal remedies; (3) to request a medical expert opinion to assist it in proceeding with her case; (4) to rule on the "supplementary pleas" if so applicable; and (5) to order payment to her of costs and damages.

In the event of the Tribunal not allowing claims (1) to (4), the complainant wants it "to urge UNIDO to allow action in execution of Judgment 1464" and, in the absence of any prescribed deadlines, set time limits for each procedural step. Those steps being: the convening of a medical board; the medical board reporting to the Advisory Board on Compensation Claims; the transmission of the Advisory Board's recommendations to the Director-General "for a final determination"; and notification to her of his final decision.

C. In its reply UNIDO contends that the complaint is irreceivable and devoid of merit. The complainant's letter of 23 February 2001 to the Director-General was not properly notified to him. A reply within the statutory time limit of 60 days was not therefore possible. Contrary to the correct procedure, she despatched it to him as private mail and it was not until December 2001 that the competent services became aware of her letter.

The Organization infers from the complainant's brief that the matter in dispute is its alleged refusal to implement Judgment 1464. However, the delay in convening the medical board referred to in that judgment was of the complainant's own making. She herself had, in a letter of 12 February 1996, expressed the wish that the convening of the board should remain pending until she knew the outcome of her application for review of Judgment 1464. At her wish, it remained pending for five years. It was only after the Tribunal dismissed her application for review by Judgment 2043 that she decided to revert to the pending proceedings under Appendix D, initiated by her in 1994. The Organization had constantly urged her to allow the medical board to proceed. It rejects any allegation that it did not act responsibly. It points out that the request for a medical board, the sole claim in her letter of 23 February 2001 that gave rise to this case, has to be seen as a continuation of her pending appeal to the Director-General of 10 November 1994. Nonetheless, subsequent to receiving the complainant's letter it began the process of convening the board.

UNIDO rejects the complainant's claim for a medical expert opinion, and says that claim is at odds with her request for a medical board and did not appear in the letter of 23 February; having been put for the first time in her complaint to the Tribunal, it is irreceivable. So, too, are the "supplementary pleas" that the complainant puts forward, particularly since they have never formed part of an internal appeal. It argues that those "pleas" intermix issues that do not form the subject of her present complaint. As for her claims against her separation, the matter regarding her termination is *res judicata*, having been dealt with by the Tribunal in Judgment 1834 in which it ruled on her second complaint.

D. In her rejoinder she puts forward the view that the letter of 23 February reached the Director-General within three days. It was UNIDO's failure to respond that prompted her to request the Tribunal to seek a medical expert opinion. As previously claimed, she wants the Tribunal to impose time limits for the procedures involved subsequent to the medical board taking up her case.

E. In its surrejoinder the Organization presses its argument that the complaint is not receivable under Article VII(3) of the Tribunal's Statute. It stresses that it was the complainant herself who held up the Appendix D procedure, and it is in no way to blame for the years of delay. Moreover, the Advisory Board on Compensation Claims has now taken up the matter and will in due course submit its recommendations to the Director-General. UNIDO holds that it is taking the required action to deal with the complainant's appeal, in line with Judgment 1464 and the provisions of Appendix D.

CONSIDERATIONS

1. The history of the complainant's involvement with her former employer, UNIDO, is long and tortuous. In 1994 she had a dispute with the Organization regarding whether an illness from which she suffered was service-incurred. On the recommendations of the Advisory Board on Compensation Claims, the Director-General decided the dispute against the complainant. On 10 November 1994 she appealed against that decision under Article 17 of Appendix D of the Staff Rules which reads, in part, as follows:

"(a) Reconsideration of the determination by the Director-General of the existence of an injury or illness attributable to the performance of official duties, or of the type and degree of disability, may be requested within

thirty days of notice of the decision provided, however, that in exceptional circumstances the Director-General may accept for consideration a request made at a later date. The request for reconsideration shall be accompanied by the name of the medical practitioner chosen by the staff member to represent him or her on the medical board provided for under paragraph (b).

(b) A medical board shall be convened to consider and to report to the Advisory Board on Compensation Claims on the medical aspects of the appeal. The medical board shall consist of: (i) a qualified medical practitioner selected by the claimant; (ii) the Medical Officer of the Organization or a medical practitioner selected by him or her; (iii) a third qualified medical practitioner who shall be selected by the first two, and who shall not be a medical officer of the Organization.

(c) The Advisory Board on Compensation Claims shall transmit its recommendations together with the report of the medical board to the Director-General who shall make the final determination."

2. Unfortunately, and because of the complainant's imperfect understanding of the process, the appeal was not allowed to come to a conclusion, and the process of referral to the medical board has in fact never been completed. The complainant first lodged a premature complaint with the Tribunal, which dismissed it in Judgment 1464, while emphasising that the referral to the medical board should be allowed to run its course.

3. The complainant then proceeded to compound her difficulties by misunderstanding the effect of that judgment and in particular its final character. She seems to have thought that the Tribunal might revisit the matter and, pending that, she refused to cooperate with UNIDO in the constitution of the medical board. Since she was continuously absent from work, the Organization took proceedings in due course to terminate her appointment for that reason. Her contestation of that process led to Judgment 1834 which was also unfavourable to her.

4. The complainant returned to and took up in earnest her attempts to have Judgment 1464 reviewed by the Tribunal. Those attempts culminated in Judgment 2043, delivered on 31 January 2001, which dismissed the application for review that she had filed. Realising finally that what she needed to do was to revive the internal appeal process which she had started in 1994 and which because of her own misguided actions had been pending since February 1996, the complainant wrote on 23 February 2001 to UNIDO as follows:

"Subject: Establishment of a Medical Board in accordance with UNIDO's Appendix D Rules

1. Following the receipt of Judgment 2043 [...] I would hereby kindly request that the necessary arrangements be made for the convening of a Medical Board in compliance with UNIDO's Appendix D Rules.

2. [...]

3. The name and address of the medical practitioner to be contacted for the purpose of representing me on the Medical Board (provision under Article 17, para. (b) of UNIDO's Appendix D Rules refers) are as follows [...]."

5. No reply having been received to this letter, the complainant treats it as an implied negative decision and has lodged this fourth complaint. Since the Organization admits that it has not responded to the letter within 60 days, or indeed at all, the complaint is clearly receivable.

6. In its reply the Organization asserts correctly that the vast majority of the complainant's claims are clearly irreceivable on the grounds that they are either an attempt to re-litigate matters which have already been definitively settled by the Tribunal's earlier judgments, or premature, as relief can only be obtained, if at all, once her internal appeal has succeeded.

In its response to the only significant part of the complaint - the request that the Organization appoint a medical board - the Organization makes essentially two points. In the first place, it says the letter was not properly sent to it because it was addressed to the Director-General as private mail. She sent it via Post Box 400, reserved for personal mail, instead of Post Box 300 to which official mail should be addressed. This argument is scarcely worthy of consideration: the Director-General is the executive head of the Organization and notices given to him are, except in very special circumstances which do not exist here, notices given to the Organization itself. The complainant's letter was sent by registered mail and there is absolutely no explanation, assuming that one was possible, as to why the Director-General failed to direct it to the appropriate quarter. It simply surpasses belief that the Director-General would not receive mail addressed to him personally and would not deal with it in an

appropriate way.

7. The Organization's second argument is almost equally devoid of merit: it says that the complainant has herself been largely responsible for the great delays which have ensued since the appeal proceedings were first started. That may or may not be so, but it does nothing to release the Organization from the obligation to deal in good faith with its staff and to respond to communications within the time limits set down by the applicable rules.

8. There is really nothing more for the Tribunal to deal with in the complaint since, with the exceptions dealt with below, all of the complainant's other claims are either irreceivable, as having already been decided by the Tribunal, or depend upon the eventual success of her internal appeal which, of course, still has to be determined.

The complainant has asked that the Tribunal establish a timetable for the medical board to deal with her appeal, but the board is an independent body and while the Tribunal certainly has the power to take steps to ensure that the board acts with reasonable promptness, there is, at present, no indication that it will not do so. The complainant has also requested that the Tribunal act to protect her privacy by taking steps to prevent public access to its judgments concerning her. The Tribunal cannot do this since its judgments are necessarily public, but it has recently adopted a practice of not mentioning the names of individuals so that such names are not available as a matter of course to any person reading the Tribunal's judgments on the internet. Cases that have already been published have passed into the public domain and are of course beyond recall.

9. The Tribunal will order the Organization to appoint a medical board without delay. The complainant is entitled to moral damages which the Tribunal fixes at 1,000 euros and to costs in the amount of 1,000 euros. All other claims are dismissed.

DECISION

For the above reasons,

1. The complaint is allowed. The Organization shall without delay establish a medical board to advise on the complainant's appeal.
2. It shall pay the complainant moral damages of 1,000 euros and costs of 1,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet