

THIRTY-FIRST ORDINARY SESSION

In re SMITH (No. 3)

Judgment No. 222

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Health Organization (WHO) drawn up by Mr. Horace Arthur Smith on 15 November 1972, the Organization's reply of 27 December 1972, the complainant's rejoinder of 2 March 1973 and the complainant's further memorandum of 8 April 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal, WHO Staff Rule 720, sections II, paragraph 6, and IV, paragraphs 27(a) and 28(b), of the Rules Governing Compensation to Staff Members in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the Organization, and article 34(a) of the Regulations and Rules of the United Nations Joint Staff Pension Fund;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

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

A. Mr. Smith was appointed to the headquarters staff of the WHO on 22 March 1967 at grade G.4. His original two-year contract was extended by one year on 1 December 1968. He did not ask for its renewal, and on its expiry on 31 March 1970 his appointment came to an end. On 15 January 1968, while still employed by the WHO, he slipped on the ice on his way to work and struck his head on the roadway. The Medical Service examined him on 15 and 16 January. Ten days later he complained of headaches and dizziness and was put on full sick leave from 25 January to 8 February and on partial sick leave from 19 to 27 February. He showed further symptoms in September and the Director of the Medical Service held that the accident of 15 January had given rise to symptoms developing from earlier spinal arthritis.

B. The Advisory Committee on Compensation Claims examined the case on 25 March 1969 to determine the extent to which the symptoms which became apparent after the accident might be regarded as a direct consequence thereof. The Director of the Medical Service advised the Committee that the accident could be regarded as the sole cause of the symptoms which had become apparent between 15 January and 27 February 1968. The Committee endorsed the Director's opinion that only the period from 15 January to 27 February 1968 could be regarded as directly relevant to the accident. Since the complainant had suffered the accident on his way to work, the Committee held it to be attributable to the performance of his official duties and recommended the Director-General to refund him all reasonable medical expenses incurred from 15 January to 27 February 1968. The Director-General accepted that recommendation and so informed the complainant by letter of 17 April 1969.

C. On 18 April 1969 the complainant informed the Administration that he wished to claim all the medical expenses incurred by him in 1968 following his accident as attributable to the performance of his official duties and asked that a medical board be set up in accordance with the rules governing compensation (section IV, paragraph 28(b)). He left the WHO on 31 March 1970 on the expiry of his contract. The Director of the Medical Service found that at the date of separation he was not permanently disabled within the meaning of article 34(a) of the Regulations and Rules of the United Nations Joint Staff Pension Fund, which reads as follows:

"A disability benefit shall ... be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration."

At a meeting on 22 April 1971 the medical board found that, although the complainant was by then totally incapacitated for work, the accident of 15 January 1968 could not be regarded as the sole and direct cause of his disorders since 27 February 1968. It estimated the degree of permanent disability attributable to the accident at 15 per cent.

D. Meanwhile the case had also been referred to the WHO Staff Pension Committee in accordance with the

Regulations and Rules of the United Nations Joint Staff Pension Fund. After examining the case on 25 May 1971 the Committee decided that it could not grant a disability benefit on the evidence before it. On 10 June 1970 the Advisory Committee on Compensation Claims examined the claim for compensation for the service-incurred accident. In view of the medical board's findings the Committee recommended that the complainant's disability should be regarded as partly attributable to the performance of official duties, that the part so attributable should be estimated at 15 per cent and that he should be granted an annual permanent disability benefit. The Director-General accepted that recommendation and the complainant was awarded a pension of 237.55 Swiss francs a month, plus a child allowance of 54 francs.

E. At the same time the complainant had asked for review by the Joint Staff Pension Fund of his claim for a full disability benefit, and a new medical board was set up in accordance with the Regulations and Rules of the Fund. The board met on 17 February 1972 and held that on 31 March 1970, the date of separation, the complainant was capable of rendering service reasonably compatible with his abilities and that article 34(a) of the Regulations and Rules of the Fund was therefore inapplicable. On 30 May 1972 the Staff Pension Committee decided in view of the medical board's findings to dismiss the complainant's claim for review. The complainant appealed against that decision to the Standing Committee of the United Nations Joint Staff Pension Board, which considered the appeal at a meeting in Paris on 18 July 1972 and awarded the complainant an annual disability benefit, payable from 31 March 1970, of US\$1,747.56, plus child allowance.

F. On 8 August 1972 the WHO informed the complainant that under section II, paragraph 6, of the rules governing compensation the award of the disability benefit by the Joint Staff Pension Fund would entail the deduction of that benefit from the amount payable in compensation. Paragraph 6 reads as follows:

"Without prejudice to the responsibility of the Organization under Staff Rule 720 and this Annex in respect of compensation for illness, injury or death attributable to the performance of official duties on behalf of the World Health Organization, the following shall be deducted from the compensation prescribed herein:

(a) all benefits actually paid in respect of the same series of circumstances under the regulations of any international staff pension fund or international provident fund to which the staff member may belong, other than any part of such benefits deriving from voluntary contributions made under Article XVIII of the Regulations of the United Nations Joint Staff Pension Fund: provided that the deduction made under this subparagraph shall not have the effect of reducing the compensation otherwise payable to less than 10 per cent thereof as long as the amount of pension benefit together with compensation payments does not exceed the pensionable remuneration and dependant's allowances of the staff member."

Since the amount which remained due to the complainant was small (29.16 Swiss francs a month), the WHO proposed commuting the benefit into a lump-sum payment of 4,290 Swiss francs. The complainant offered to make no further claim against the WHO if it commuted his benefit into a lump sum of 50,000 Swiss francs. The Organization stood by its decision and, having been so informed by a letter of 5 October 1972, the complainant now impugns it before the Tribunal.

G. In his list of claims the complainant asks the Tribunal:

(a) to rule that, on the grounds of the facts, the arguments and the evidence produced by the complainant, he is entitled to be paid the annual permanent disability pension as awarded to him by the WHO in July and August 1971, and that this basic pension of 237.55 Swiss francs a month, increased, while applicable, to 291.55 Swiss francs by a child's allowance, should be paid to the complainant, continuously and at an unreduced figure, during the whole course of his lifetime, in accordance with the contract concluded and approved at the time by the WHO;

(b) to require the WHO to remit regularly each month to the complainant the full amount of the awarded pension, as referred to and in the manner alluded to above, repaying to him at the earliest opportunity any sums of money it has deducted from the aforementioned pension, particularly since and including August 1972; and

(c) to award the complainant 1,000 Swiss francs for the costs of the present complaint.

H. The Organization stresses the binding nature of section II, paragraph 6, of the rules governing compensation mentioned in paragraph P above and prays that the complaint be dismissed.

CONSIDERATIONS:

1. The award letter in which the Director-General notified the complainant of his decision to grant him an annual permanent disability pension amounting to 2,850 Swiss francs per annum is not a fresh promise to pay that sum to the complainant thereby creating a new contract. It is a statement of the manner in which the Organization proposed in the circumstances to fulfil the obligations which it has already undertaken by its contract of employment with the complainant, governed as that contract is by the Staff Regulations. It is therefore to be read in conjunction with the Staff Regulations and subject to them. It is unnecessary and would be inappropriate that it should include any express reservation to that effect. It is not a separate and permanent promise; and in any event the word "permanent" in the letter applies to the nature of the disability and not to the duration of the pension.

2. Staff Rule 720 provides that a staff member shall be entitled to compensation in the event of illness, accident or death attributable to the performance of official duties on behalf of the Organization, in accordance with rules established by the Director-General. Paragraph 6 of section II of the rules so established provides that there shall be deducted from the compensation prescribed "all benefits actually paid in respect of the same series of circumstances under the regulations of any international staff pension fund or international provident fund to which the staff member may belong". The complainant agrees that benefits under such a fund which are actually payable at the time when the compensation is being established under Staff Rule 720 would fall to be deducted from the amount to be fixed; but he contends that, once the compensation has been established and embodied in an award, no deduction can be made from it because thereafter pension fund benefits become payable. It is possible that on a strict and literal construction of paragraph 6 this contention is sustainable. But the contention is contrary to the principle that is clearly being expressed in the Rules, which is that the accident should not form an element in the assessment both of the compensation and of the pension benefits, i.e. the familiar principle of insurance law that there should be no double indemnity. Accordingly this contention fails.

DECISION:

For the above reasons,

The appeal is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

M. Letourneur
André Grisel
Devlin

Roland Morellet