

THIRTY-SECOND ORDINARY SESSION

In re McCUBBIN

Judgment No. 235

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Inge Adele Patricia McCubbin on 27 June 1973, the Organization's reply of 31 October 1973, the complainant's rejoinder of 11 February 1974 and the Organisation's surrejoinder of 29 March 1974;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Manual provisions 301.062, 302.641, 302.642, 342.211, 342.212, 342.213, 342.331, 342.422, 342.425 and 370.92;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. Mrs. McCubbin's husband joined the staff of the FAO on 12 March 1967 at the age of 57. He was sent to Lesotho under the World Food Programme at grade P. 4 as a Programme Adviser and in October 1969 transferred to Taiwan at the same grade and with similar duties. On 29 September 1970 he suddenly became ill at the office, suffering severe backache, and went to consult a Dr. Dale at the Christian Clinic. Several examinations made on 29 September, 30 September and 2 October 1970 proved inconclusive. He was unable to obtain an appointment between 2 and 6 October, but on 6 October underwent a complete check-up which revealed an aortic aneurysm. Arrangements were made with the American surgeon at McKay Hospital to confirm the diagnosis and, if it was confirmed, the intention was to send the patient to England for an operation. On 7 October at McKay Hospital he suffered a severe attack and fell into a coma. His only chance of survival was an operation on the spot for which a Teflon graft was necessary. Unfortunately the only graft obtainable was not of the right kind. He died in the night of 7 October 1970.

B. The complainant cites Dr. Dale's opinion that had her husband been operated on in England he would have stood a fair chance of recovery. She believes that a cause of her husband's death was the limited diagnostic and surgical facilities available in Taiwan and that although her husband would have stood a fair chance of survival in England he had none in Taiwan, where the FAO had sent him on duty. By virtue of FAO Manual section 342, as the widow of a staff member whose death was attributable to the performance of his official duties, she therefore claimed the compensation prescribed in the relevant provisions, in her own name and in that of her two children, who were minors at the time.

C. Her claim for compensation was referred to the FAO Advisory Committee on Compensation Claims, which held that her claim was not allowable and made a recommendation to that effect. The Organization endorsed that recommendation and so informed the complainant on 13 December 1971. At her request the Advisory Committee reconsidered the case and reached the same conclusion as before. The complainant then appealed to the FAO Appeals Committee, which examined the case on 1 February 1973. Four out of the Committee's five members recommended paying the compensation prescribed by the statutory provisions. The fifth member recommended an ex gratia payment. On 30 March 1973 the Director-General rejected the Appeals Committee's recommendation. The complainant is impugning that decision.

D. In her claims for relief the complainant asks the Tribunal:

(a) to quash the Director-General's decision of 30 March 1973;

(b) to endorse the majority recommendation of the FAO Appeals Committee;

(c) to award compensation to her and her two sons, who were under the age of 21 years at the time of their father's death, as provided for in the relevant FAO regulations; and

(d) to award costs against the FAO.

E. In its reply the Organization maintains that for the death of the complainant's husband to be admitted as attributable to the performance of his duties it has to be shown to be "directly" attributable to such performance. If the FAO's rules on compensation were broadly interpreted to cover the death of a staff member which was not "directly" attributable to his official duties, the causes of his death would nevertheless have to be "attributable" to the performance of such duties. In the Organization's view that is not so when death is due to an unforeseeable combination of circumstances. As to the merits, the Organization points out that in cases of claims for compensation the burden of proof of the existence of a relationship of cause and effect lies on the complainant. If the complainant's husband had not been sent to Taiwan, the medical facilities at his disposal would have been less favourable both in Lesotho, the country of his previous assignment, and in Kenya, where he had lived before joining the staff of the FAO. The Organization contends that the time taken for diagnosis was not unusual in the light of the nature of the illness of the complainant's husband and could have occurred anywhere in the world. The allegation that only one Teflon graft was available is not conclusively proved. Nor is it certain that a graft of the required kind could have been procured in time in an advanced country. Finally, even had the complainant's husband been in England it is doubtful whether his life could have been saved.

F. The Organization therefore asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

The Tribunal does not propose to base its Judgment in this case upon an analysis of the phraseology of the rules and regulations. It will, for the purposes of this case, accept the complainant's contention that what has to be proved is that the performance of official duties was a cause of the death of her husband. It must, however, be a cause in the legal sense. It is recognised in all legal systems that for a cause to qualify as such for the purposes of the law there must be a link or links of some strength between the cause and the event. This is sometimes expressed by saying that the cause must be approximate or direct or not too remote. Whatever the language used, the test is one which is generally understood; its application is a matter of appreciation and experience and there is usually not much room for elaborate reasoning.

In the present case the chain of events is as follows. The complainant's husband was sent to Taiwan to perform in that country his duties as a Programme Adviser. A year later, on 29 September 1970, he had a severe backache and immediately saw a doctor. A full physical examination could not be arranged before 6 October, and on that day the doctor diagnosed an aortic aneurysm. He decided that, if the diagnosis was confirmed the next day by the surgeon, the husband should be sent to England immediately for surgery. On the next day, while the husband was at the hospital for the further examination, he collapsed; and on the same day and after an unsuccessful emergency operation he died.

Successful treatment would have depended upon the replacement of part of the aorta by an appropriate graft. The only graft available in Taiwan was not of a kind that could be used in such an extreme aneurysm. The medical evidence, put at its most favourable for the complainant, is that, though it must remain a matter of doubt whether the husband's life could have been saved, "he would have stood a greatly increased chance of possible recovery if he had been in England."

On this evidence the complainant contends that a cause of the death was the absence of proper facilities and/or equipment in Taiwan, Taiwan being the place in which the official duties were being performed. In the opinion of the Tribunal there is not on these facts established a sufficiently close connection between the death and the performance of the duties to constitute the performance as a cause of the death.

The Tribunal's decision depends on the circumstances of this case, including in particular the peculiar nature of the husband's disease and the perils to life inherent in it. The decision is not to be taken as laying it down that death in a country to which an official is assigned and which lacks ordinary medical facilities can never be attributed to the performance of official duties.

DECISION:

For the above reasons,

The complaint 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 6 May 1974.

M. Letourneur
André Grisel
Devlin

Roland Morellet

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