

SIXTH ORDINARY SESSION

In re WOOLLETT

Judgment No. 26

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the World Meteorological Organisation drawn up by Mrs. Edna N. Woollett on 6 October 1956, transmitted to the Registry on 20 October 1956 and registered under No. 5610 on 22 October 1956, and the reply of the World Meteorological Organisation of 28 December 1956 registered under No. 5614;

Considering the Staff Regulations and internal Staff Rules of the defendant organisation and in particular Article 6.2 of the Staff Regulations and Rules 131, 132 and 144 of the Staff Rules;

Having heard the oral arguments of the parties in the course of public hearings held on 28 June 1957;

Considering that the facts of the case are the following: The complainant was granted a temporary appointment in the defendant organisation as a typist for the duration of its Second Congress held at Geneva from 14 April to 11 May 1955.

On 26 April 1955, while on duty, the complainant had a fall in the office, following which she was medically examined and found to be suffering from a fracture at the base of the spine. The defendant organisation agreed to bear the cost of medical and hospital treatment and the complainant was admitted to a private hospital on 10 May 1955 but, on the advice of its medical adviser, the defendant organisation notified the complainant that it was not prepared to bear hospital costs after 8 June 1955. On 9 June 1955 the complainant left the clinic where she was staying and on 17 June went to Italy, where she continued to receive treatment. On the same date the physician who had treated her in Geneva reported to the medical adviser of the defendant organisation that the complainant should be considered as totally incapacitated for a period of three weeks after 14 June 1955, after which she would suffer no further disability.

In order to compensate the complainant during the period of her incapacity, the defendant organisation maintained her on full salary until 5 July 1955, and further proposed to grant to her an *ex gratia* payment equivalent to three weeks' salary in order to pay for a period of rest in a watering place, this having been medically recommended although there was no evidence that she was still incapacitated. The complainant in a letter of 23 July 1955 rejected this offer and claimed continuing financial support. In a letter of 2 August 1955 the defendant organisation agreed to the request of the complainant that the case be submitted to a Medical Commission and requested the complainant to come to Geneva at the organisation's expense. The complainant came to Geneva on 8 August 1955 but was dilatory and evasive with regard to the appointment of the member of the Medical Commission she was to designate and suddenly left for England without informing the defendant organisation or her own medical adviser, with the result that the Medical Commission was consequently not able to meet until 26 October 1955, when the complainant finally appeared before it.

The Medical Commission, in a report of 27 October supplemented by a further report of 9 November 1955, stated that the sick leave should have come to an end on 5 July 1955 and proposed that the case should be settled by the grant of six weeks' salary.

The complainant then submitted an appeal to the Appeals Board, which, on 6 February 1956, recommended to the Secretary-General of the defendant organisation that he should grant to the complainant an indemnity in addition to that in issue before the Appeals Board; the amount of such indemnity should be calculated taking into account the liability of the defendant organisation with respect to service-incurred accidents and, in addition, the extra *per diem* paid to the complainant as a result of the delay which she had caused in convening the Medical Commission. The Secretary-General of the defendant organisation considered that he was not in a position to grant this additional indemnity and proposed to the Executive Committee, at its Eighth Session held from 17 to 30 April 1956, that the indemnity recommended by the Medical Commission should be recognised as adequate. The Executive Committee approved this proposal. The complainant, however, stated that she was unable to accept it and the defendant organisation on 16 July 1956 consequently informed her that it could not take any further action and that its decision was final.

Considering that the complainant seeks an immediate settlement of her accident claims and in particular that the defendant organisation pay to her all medical fees until she is fully recovered, together with legal fees, that she be refunded her travelling expenses to and from Geneva, that is to say, a single fare to the United Kingdom for medical treatment and a return air fare to Geneva to attend the Medical Commission in October 1955, that she be paid salary for the period 5 July 1955 to 31 January 1956 when she submits she was totally incapacitated and from 31 January 1956 to the date of her complaint when she submits she was partially incapacitated, and that she be compensated for mental and physical distress.

Considering that the complainant relies upon the medical evidence she has submitted in support of her claim, that she alleges that the defendant organisation has refused her medical aid to which she was entitled under the Staff Regulations and has acted in an evasive manner in dealing with her claims.

Considering that the defendant organisation submits that the complaint should be declared not receivable, as being out of time and, as a subsidiary motion, submits that the offer of the defendant organisation to pay an indemnity to the complainant should be recognised as adequate and as fully discharging the said organisation and, in consequence, that the complaint be rejected.

Considering that the defendant organisation alleges that while the final administrative decision with respect to the complainant was taken on 16 July 1956, the complaint was only deposited on 22 October 1956 and was therefore not submitted within the period set forth in the Statute of the Tribunal and that the said organisation also submits the following arguments. The complainant has no proof that she was totally or partially incapacitated on the dates to which she refers; moreover, it is not manifest that the liability of the defendant organisation is involved, although it has not contested its duty to provide for her accident. The complainant has no basis for her claim in law and only the amount of the indemnity is in question. The indemnity paid or proposed was based on medical opinions which are not contradicted by the documents produced, the complainant's incapacity having ceased on 5 July 1955. The indemnity of six weeks' salary covered the sequelae of the accident and would bring to the amount of Swiss francs 5,729.15 the total amount paid to the complainant. The Secretary-General was justified in not following the recommendation of the Appeals Board since any factor detrimental to the complainant's health during the period prior to the examination by the Medical Commission would have been observed by that Commission and that in any event her dilatory and evasive behaviour enabled her to receive salary for the period for which she would otherwise have been paid for treatment. The claim for moral damage is unfounded in view of the complainant's unjustifiable behaviour.

Considering that the complaint was not submitted in accordance with Article VII of the Statute of the Tribunal in that it was not filed within ninety days of the notification of the decision impugned and must therefore be regarded as tardy and irreceivable;

Considering, however, that the defendant organisation has offered and maintained its offer in the course of the oral proceedings, to pay the complainant the sum of Swiss francs 1,554, amounting to six weeks' salary in fulfilment of its obligations to the complainant notwithstanding the fact that the complaint is irreceivable;

Considering that the accident occurred in the course of employment and must consequently be deemed to have arisen out of employment, which the defendant organisation does not dispute, and that reasonable compensation must therefore be paid to the complainant;

Considering that the complainant adduces no satisfactory evidence that she suffered any working incapacity after the defendant organisation ceased to pay her full salary on 5 July 1955, that delays in the formulation of the Medical Commission's recommendation are entirely attributable to the complainant's inexcusable procrastination, under various pretexts, none of which the Tribunal accepts as justified, that no satisfactory evidence has been adduced to prove that the payment of the sum recommended by the Medical Commission does not fully and generously compensate the complainant for the injury sustained, and that the settlement of the case has been postponed solely because of the complainant's unjustified refusal to accept it;

ON THE GROUNDS AS AFORESAID

THE TRIBUNAL

Declares that the payment to the complainant of six weeks' salary, without interest, fully discharges the defendant

organisation's obligations and, noting that such payment is offered to the complainant, rejects the complaint.

In witness of which judgment, delivered in public sitting on 12 July 1957 by His Excellency Albert Devèze, President, Professor Georges Scelle, Vice-President, and Sir John Forster, K.B.E., Q.C., Judge, the aforementioned have hereunto subscribed their signature, as well as myself, Lemoine, Registrar of the Tribunal.

(Signatures)

Albert Devèze
Georges Scelle
John Forster
Jacques Lemoine

Updated by SD. Approved by CC. Last update: 30 May 2008.