Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

108th Session **Judgment No. 2890**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirteenth complaint filed by Mrs M. P. against the International Telecommunication Union (ITU) on 14 February 2008 and corrected on 29 February 2008, the ITU's reply of 9 February 2009, the complainant's letter of 20 February, the Union's letter of 6 May, the complainant's letter of 23 May and the ITU's final observations of 29 June 2009;

Considering Article II, paragraph 5, 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. Facts relevant to this dispute are set out, under A, in Judgment 2200 concerning the complainant's seventh, eighth, ninth and tenth complaints. It should be recalled that the complainant was informed by a letter of 25 May 2001 that, since she was no longer able to carry out her duties and had exhausted her entitlement to sick leave, her contract would be terminated on 29 May 2001.

In Judgment 2551, delivered on 12 July 2006, concerning the complainant's eleventh complaint, the Tribunal considered that the procedure followed in order to ascertain whether there was a plausible causal link between the complainant's professional activities in the ITU and the illness that had led to her separation had been improperly conducted and was tainted with a denial of justice. It therefore decided to refer the case back to the ITU, and it ordered the latter to appoint a medical board to consider whether the illness leading to the termination of the complainant's contract was service-incurred or not and, if appropriate, determine what additional compensation might be due to her. The Medical Board was appointed, but in December 2006 Dr B. – whom the Medical Adviser of the ITU had designated to represent the Union on the Board – announced that he had decided to relinquish his appointment. On 12 March 2007 the complainant filed an application for execution of Judgment 2551, which gave rise to Judgment 2684, delivered on 6 February 2008. In this judgment the Tribunal noted that on 2 October 2007 the Union had decided to appoint a new medical board, but at the same time it emphasised that henceforth the case must be treated "all the more rapidly on account of its already excessive length".

B. The complainant, who entitles her complaint "application for execution of Judgments 2551 and 2684", says that it is directed not only against the ITU but also against the Medical Services Section of the United Nations Office at Geneva (UNOG) and against UNOG itself, because since 1 April 2007 the above-mentioned section has been responsible for handling all medical matters concerning ITU staff.

On the merits she reiterates in particular that all her attempts to persuade the ITU to nominate another physician to replace Dr B. have been fruitless. She also takes issue with the Medical Services Section for not setting up the Medical Board and she suspects that it has no intention of securing the execution of Judgments 2551 and 2684, since, in a letter of 4 January 2008, it stated that Appendix D to the

Staff Rules of the United Nations – containing, inter alia, the rules governing compensation in the event of illness attributable to the performance of official duties – was a "document which does not concern the ITU at all", whereas in her opinion it is "well established" that the appendix is applicable. She holds that the "only neutral, independent and impartial expert opinion" which could be carried out was that drawn up in December 2005 by Geneva University Hospital at the request of the Disability Insurance Office of the Canton of Geneva which, in her view, shows that her illness is service-incurred.

The complainant asks the Tribunal to order the application of Articles 11.2(d) and 11.3(c) of the above-mentioned Appendix D and to order the Medical Services Section, or the ITU, to pay her compensation in the amount of 418,391 Swiss francs on the basis of the aforementioned articles and 336,000 francs – plus 5 per cent interest on this sum – for the "difference in salary [she] would have received at ITU until [she] reached retirement age" if the Union had not terminated her contract in May 2001, less the "disability benefit paid by the United Nations". She also claims compensation for the injury she has suffered on account of the fact that her contract was terminated on health grounds without the appointment of a medical board, that the processing of her file has been greatly delayed and that Judgments 2551 and 2684 have not been executed. Furthermore, she requests compensation for moral injury and an award of costs. Should the Tribunal maintain that a medical board must be set up, despite the expert opinion already drawn up at the request of the Disability Insurance Office, she asks the Tribunal to order the Medical Services Section, or the ITU, to pay her 500 euros per day for the delay incurred since 1 April 2007, until the date that the board convenes.

C. In its reply the ITU explains that it designated the physician to represent it on the Medical Board at the beginning of March 2008 and that the appointment of the Board was completed in August 2008 when that physician and the complainant's nominee co-opted a third member. The Union states that it is waiting for the Board's findings

but that, since the latter has been set up, it cannot be taxed with having failed to act with due diligence in executing Judgment 2684. It therefore asks the Tribunal to dismiss the complaint as unfounded inasmuch as the complainant presents it as an application for execution. Similarly, it asks the Tribunal to reject the claim for compensation for failure to execute Judgments 2551 and 2684.

The ITU submits that the claim to compensation for disability attributable to the performance of official duties is irreceivable because the Tribunal may not substitute its own opinion for that of a medical board by ruling on any causal link which, from a medical standpoint, might exist between the complainant's unfitness for work and the exercise of her official duties. It contends that the complainant's plea that the expert opinion drawn up by Geneva University Hospital shows that her illness is service-incurred is irreceivable, because it was already submitted in the context of her twelfth complaint and the Tribunal rejected it. It adds that this expert opinion did not, in its view, establish any causal link between the complainant's mental state and her professional activity. It holds that, in these circumstances, it is pointless to debate the applicability of Appendix D.

The Union considers that the complainant's claim for compensation in respect of the termination of her contract on health grounds must be dismissed in accordance with the principle of *res judicata*, as this issue formed the subject of Judgment 2200, in which the Tribunal found that the Union's "actions were taken in compliance with the applicable regulations". It stresses that it is up to the physicians on the Medical Board to determine how much time they need to arrive at well-founded and reasoned conclusions and that neither it nor the Medical Services Section can be held responsible in that connection. Lastly, it informs the Tribunal that it will forward the Board's findings as soon as the latter presents them.

D. In her letter of 20 February 2009 the complainant draws attention to the fact that, because of his position at Geneva University Hospital, the ITU's nominee on the Medical Board is called upon to countersign all the psychiatric expert opinions drawn up by the hospital. She infers

from this that the Union's criticism of the expert opinion on her case which was drawn up by the hospital in December 2005 is inappropriate. In her opinion, this expert opinion, which satisfies the Tribunal's "orders", confirms that she was subjected to psychological harassment at the ITU.

E. In its letter of 6 May 2009 the Union explains that the Medical Board's first meeting was scheduled for 27 March 2009, but that in a letter of 10 March 2009 the complainant announced that she had decided to object to the physician whom she had designated to serve on the Board, on the grounds that pressure had been brought to bear on him and that he could therefore no longer be an "impartial member of the Board". In this connection it produces a letter dated 16 March 2009 in which the Medical Services Section informed the complainant that it took note of her decision. It adds that the Board is now waiting for the complainant to designate another physician.

F. In her letter of 23 May 2009 the complainant asserts that she never received the letter of 16 March 2009 and asks the Tribunal to invite the ITU to produce a copy of the acknowledgement of receipt. She claims that she has proof that the physician whom she designated to serve on the Medical Board has been "manipulated […] in the ITU's favour", especially by the Chief Medical Officer of the Medical Services Section. In her opinion, if the Board had really been set up in August 2008, it would not have decided to hold its first meeting only seven months later. She explains that she is waiting for a reply to her letter of 10 March 2009 before designating her representative.

G. In its final observations, the Union notes that the complainant has levelled some extremely serious accusations at the Medical Services Section but that, as she furnishes no evidence, they are merely defamatory statements which must be dismissed as groundless.

Moreover, the ITU states that it has received confirmation from the Medical Services Section that the letter of 16 March 2009 was

given to the UNOG mail service and that it will forward the supporting documents to the Tribunal as soon as it receives them. Lastly, it points out that the complainant has not yet designated a physician to represent her on the Medical Board.

CONSIDERATIONS

1. The complainant is a former staff member of the ITU whose contract was terminated on health grounds on 29 May 2001. She was awarded a disability benefit as from 30 May 2001 and was also granted an invalidity benefit under the Swiss federal law of 19 June 1959.

The complainant has filed several complaints with the Tribunal which seek to have her unfitness for work prior to the termination of her contract and her disability recognised as being service-incurred. In Judgment 2551, delivered on 12 July 2006, concerning the complainant's eleventh complaint, the Tribunal referred the case back to the ITU for it to appoint a medical board to consider whether the illness leading to the termination of the complainant's contract was service-incurred or not and, if appropriate, to determine what additional compensation might be due to her.

As the complainant considered that the ITU was unduly delaying the appointment of that board, she filed a twelfth complaint with the Tribunal seeking execution of Judgment 2551. In Judgment 2684 the Tribunal found that the Union had failed in its duty to execute Judgment 2551 in good faith. It noted, however, that the file had been transferred to the Medical Services Section of UNOG, which had been responsible for handling all medical matters concerning ITU staff since 1 April 2007, and it emphasised that the case must henceforth be treated "all the more rapidly on account of its already excessive length".

2. It has been ascertained that, although the Union had informed the Tribunal in October 2007 that the Medical Board was then on the point of being set up, in the end it was not appointed until August 2008 when the physicians designated by both parties co-opted a third

colleague. Similarly, it has been established that this board ought to have met on 27 March 2009 to examine the complainant's file as ordered in the decision in Judgment 2551. This meeting could not, however, be held because, shortly before that date, the complainant objected to the physician whom she herself had designated as a member of the Board.

3. It is unnecessary to enter into the parties' debate regarding the nature of the complaint, presented by the complainant as an application for execution of Judgments 2551 and 2684. Nor is there any need to express an opinion on her reasons for objecting to the physician whom she had designated, or on the merits of her statement that the expert opinion drawn up in December 2005 at the request of the Disability Insurance Office of the Canton of Geneva shows that her illness is service-incurred.

4. The Tribunal may confine itself to noting that Judgment 2551 has not yet been executed and that the delays that have occurred since the delivery of Judgment 2684 are to some extent ascribable to both parties. The proper course is therefore to order the setting up, without further delay, of the Medical Board whose establishment was announced by the Union more than two years ago and whose functioning has been paralysed since the complainant objected to the physician whom she had designated to represent her.

The ITU must be given a period of thirty days, as from the date on which the complainant informs it of the designation of the physician of her choice, to finalise the setting up of the board. The latter must supply an answer on the issue in dispute, which was reiterated in Judgment 2551, within ninety days of being established.

5. The complainant's claims which lie outside the framework defined in the previous paragraph, some of which do not fall within the Tribunal's jurisdiction, must be dismissed without there being any need to determine their receivability.

There are no grounds for awarding costs.

DECISION

For the above reasons,

1. The ITU shall be given a period of thirty days, as from the date on which the complainant informs it of the designation of the physician of her choice, to appoint the medical board responsible for determining whether the illness which led to the termination of the complainant's contract was service-incurred or not.

2. This medical board must announce its findings within ninety days of the date on which it is established.

3. The complainant's claims which lie outside the framework defined in points 1 and 2 above are dismissed.

4. No costs are awarded.

In witness of this judgment, adopted on 6 November 2009, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2010.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet