Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

115th Session **Judgment No. 3207**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 2890 filed by Mrs M. P. on 1 April 2011, the reply of the International Telecommunication Union (ITU) of 6 July, the complainant's rejoinder of 5 October 2011, the ITU's surrejoinder of 9 January 2012, supplemented on 29 February, the complainant's further submissions of 12 March and the Union's final observations of 14 June 2012;

Considering the Medical Board's report of 21 August 2012;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this dispute may be found in Judgment 2890, delivered on 3 February 2010, concerning the complainant's thirteenth complaint. Suffice it to recall that, by a letter of 25 May 2001, she was informed 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. A medical board responsible for determining whether or not the illness leading to the termination of the complainant's contract was service-incurred was set up in August 2008. However, the meeting scheduled for 27 March 2009 could not take place, because the complainant objected to the physician whom she had designated to serve on the Board. In the above-mentioned judgment the Tribunal gave the ITU a period of 30 days, as from the date on which the complainant informed it of the designation of the physician of her choice, finally to appoint the Medical Board, and it decided that the Board would have 90 days as from the date on which it was established to announce its findings.

On 22 June 2010, after an exchange of correspondence with the Union, the complainant designated the practitioner who would represent her on the Board. As the ITU challenged this choice on the grounds that the person in question was not a qualified doctor, the complainant was asked to designate someone else. By a letter of 27 July the Union informed her that it had chosen Dr M.-B. The complainant, who unsuccessfully challenged that appointment, informed the Secretary-General by a letter of 28 October 2010, which he received the next day, that in the end she had designated Dr N. In the course of the following month, Dr B. replaced Dr M.-B. and Dr G. was then designated as the third member and Chair of the Board. Dr N. informed the complainant by a fax of 30 March 2011 that the Board could not start its work because the ITU had not "officially designated" Dr B.

B. The complainant denounces the ITU's bad faith. She taxes it with contributing to the delay in executing Judgment 2890 by creating several obstacles to the setting up of the Medical Board, for example by not giving Dr B. any terms of reference. In her opinion, the Board should have delivered its report by 28 February 2011 at the latest.

The complainant's main claim is that the "expenses and fees" of Drs N. and G. should be defrayed by the ITU. She alleges that the Union displayed "arrogance" towards her and she requests 5,000 euros in damages. In addition, she requests that the Union be ordered to pay

her a penalty for delay of 500 euros a day as from 29 October 2010, to set up the Medical Board within ten days of the date of the delivery of the judgment in the instant case, on pain of having to pay her compensation in the amount of 800,000 Swiss francs, plus 5 per cent interest per annum as from 25 May 2001, and to pay her costs. Subsidiarily, she claims the same compensation for psychological harassment.

C. In its reply the Union submits that it did everything possible to ensure that the Medical Board was set up in a timely manner, but that the complainant deliberately delayed the process. It states that Dr B., to whom it sent terms of reference by a letter of 22 March 2011, informed it that the complainant had ignored the notifications of appointments which he had sent her on 12 May and 1 June 2011, as well as those sent by the Chair of the Board.

D. In her rejoinder the complainant enlarges on her pleas by making accusations of lies, manipulation and forgery. She says that the letter of 22 March 2011 was contrived and that the ITU, which, in her opinion, is "responsible for an internal plot", has "give[n] [Dr B.] its blessing to subvert the Medical Board". She asserts that she never received any notifications of appointments and invites the Union to supply proof that they were sent. She again mentions her working conditions and touches on various issues, such as her termination allowances and her "life/death insurance". She modifies her claims and presents new ones.

E. In its surrejoinder the defendant asks the Tribunal to dismiss as irreceivable all the complainant's submissions, assertions and claims that are unrelated to the execution of Judgment 2890. It takes issue with her "sometimes hate-filled verbal excesses" and draws attention to the fact that the Tribunal's case law imposes limits on freedom of expression when personal dignity and reputation are at stake.

On the merits, the Union provides documentary evidence that the complainant failed to attend at least two appointments, although she had been notified of them by the Medical Board. It refutes the

accusations of manipulation, plotting or forgery, and informs the Tribunal of the measures which it intends to take.

On 29 February 2012 the defendant forwarded to the Tribunal a letter of 16 January in which it asked the members of the Medical Board to confirm that they accepted their terms of reference and, if so, to send the complainant a letter fixing an appointment. The letter of 16 January also shows that, on receipt of a copy of the Board's letter, the ITU was to write to the complainant to inform her that, if she failed to give a positive response within 30 days, her file would be considered closed.

F. In her further submissions the complainant states that she has still not been requested to attend an appointment by the Medical Board.

G. In its final observations the ITU maintains that the complainant has been notified of several appointments but that she has failed to attend them. It produces a letter of 4 June 2012 in which the Chair of the Board gave her an appointment on 12 July and another letter of 14 June reminding her that, if she failed to attend this appointment, her file would be considered closed.

H. In its report of 21 August 2012 the Medical Board stated that the illness giving rise to the termination of the complainant's contract was 40 per cent service-incurred.

CONSIDERATIONS

1. In Judgment 2890, delivered on 3 February 2010, the Tribunal gave the ITU 30 days, as from the date on which the complainant would inform it of the designation of the physician of her choice, to appoint the Medical Board responsible for determining whether or not the illness which led to the termination of her contract was service-incurred. It decided that the Board would have 90 days, as from the date on which it was established, to announce its findings.

2. On 10 February the Union invited the complainant to inform it of the name of the physician who would represent her on the Board. On 28 October 2010 she announced that she had finally decided to choose Dr N. The doctor designated by the ITU and Dr N. then jointly designated the Chair of the above-mentioned Board. However, as Dr N. advised the complainant by fax on 30 March 2011 that "no physician ha[d] been officially designated by the ITU", on 1 April 2011 she filed the application for execution presently before the Tribunal.

3. In her initial submissions to the Tribunal the complainant's main claim was that the Union should be ordered to pay her a penalty of 500 euros for each day's delay as from 29 October 2010, to set up the Medical Board within ten days of the date of the delivery of the judgment in the instant case and to defray the "expenses and fees" of Dr N. and the Chair of the Board. She also sought payment of damages for the "arrogance" which, in her opinion, the ITU had displayed towards her and an award of costs. Subsidiarily, she claimed compensation for psychological harassment.

In her rejoinder the complainant modified her claims and presented new ones.

4. The complainant's application for execution has become moot, because on 26 October 2012 she delivered the Medical Board's report of 21 August 2012 to the Registry of the Tribunal.

5. Although the complainant has presented several financial claims in connection with this application, these are receivable only insofar as they are based on the delay in executing Judgment 2890 and, in fact, they are completely groundless. Indeed, it is plain from the correspondence exchanged after 10 February 2010, either between the parties or between the latter and the members of the Medical Board, which is in the file, that the undeniable delay in the setting up of this body and the drawing up of its report was largely due to the complainant's behaviour.

These financial claims must therefore be rejected.

6. As stated earlier, the complainant presented new claims in her rejoinder. However, as the Tribunal has consistently held, a complainant may not in his or her rejoinder enter new claims not contained in his or her original submissions (see, for example, Judgments 1768, under 5, or 2996, under 6). Consequently, these new claims must in any case be dismissed.

DECISION

For the above reasons,

The application is dismissed insofar as it has not become moot.

In witness of this judgment, adopted on 26 April 2013, Mr Seydou Ba, 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 4 July 2013.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet