

F. (No. 3)

v.

UNESCO

122nd Session

Judgment No. 3638

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr T. R. F. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 19 March 2014, UNESCO's reply of 17 December 2014, the complainant's rejoinder of 15 April 2015 and UNESCO's surrejoinder of 22 July 2015;

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

Having examined the written submissions;

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

The complainant impugns UNESCO's implied rejection of his claim for reimbursement at the rate of 100 per cent of medical expenses related to a service-incurred injury.

The complainant is a former staff member of UNESCO. In May 2000 he was injured while on official mission. The Advisory Board on Compensation Claims (ABCC) determined that his injury was attributable to the performance of official duties. Subsequently, in light of the findings of a Medical Board, it determined that this injury had led to a permanent partial incapacity at the rate of 30 per cent on the UNESCO scale. By a letter of 29 July 2009, the complainant was notified that the Director General had decided that he should be reimbursed under the Staff

Compensation Plan at the rate of 100 per cent for all claims related to his service-incurred injury.

In the period between September 2013 and January 2014 the complainant incurred certain expenses for hospitalisation and medical treatment. On or about 4 February 2014 he sought an explanation from the Chief Medical Officer as to why these medical expenses had not been reimbursed at the rate of 100 per cent. On 19 March 2014 he filed the present complaint with the Tribunal. In the complaint form he indicates that the complaint is directed against the implied rejection of his claim notified to UNESCO on 4 February 2014. In his brief he states that it is directed against UNESCO's "failure to follow a Medical [Board's] finding, 2 June 2009" and its "sudden decision – never communicated to [him] in writing or verbally – to follow its own rules of medical reimbursement for work-related accidents, one resulting in chronic, unbearable handicap".

The complainant requests that UNESCO's decision to reduce the rate of his coverage to 90 per cent be quashed and that UNESCO be ordered to reimburse him for his injury-related medical expenses at the rate of 100 per cent. He claims moral damages for himself and his three children, punitive damages and costs.

UNESCO, which was authorized by the President of the Tribunal to confine its reply to the issue of receivability, submits that the complaint should be dismissed as irreceivable; firstly, because the Administration has not taken any final administrative decision and, secondly, because the complainant has not exhausted the internal remedies regarding the reimbursement of medical costs.

CONSIDERATIONS

1. The complainant was found by a Medical Board (report of 2 June 2009) to have a work-related permanent partial incapacity resulting from an injury incurred while he was on mission for UNESCO. As it was directly related to the execution of his duties, the ABCC recommended *inter alia* that medical bills related to his service-incurred injury be reimbursed at the rate of 100 per cent. The Director-General endorsed

this recommendation on 29 July 2009. The complainant incurred further medical expenses in the period between September 2013 and January 2014. When he realized that they had not all been covered at the rate of 100 per cent, he called UNESCO's Chief Medical Officer on or about 4 February 2014 and requested that these medical expenses be fully reimbursed. The present complaint is directed against the implied rejection of that request. The complainant asks the Tribunal to order the quashing of the decision to reduce his coverage to 90 per cent and the full reimbursement of all of the medical expenses occasioned by his service-incurred injury, and also to award him moral and punitive damages and costs. He requests oral proceedings.

2. UNESCO, which was allowed to limit its submissions to the issue of receivability, submits that there has been no decision to reduce the complainant's coverage for medical expenses related to his service-incurred injury but that it has merely requested that the complainant submit all required documents establishing a link between the medical expenses and his service-incurred injury, so that his claims can be properly processed. If a decision is made not to authorise reimbursement of any claim at the rate of 100 per cent, after the claim has been processed, the complainant can request a review of that decision and avail himself of the internal means of redress available to him, which would then result in a final decision that can be impugned before the Tribunal. As this has not yet occurred, UNESCO considers that the complaint should be declared irreceivable on the grounds that the complainant does not impugn a final decision and has failed to exhaust the internal means of redress within the meaning of the Tribunal's Statute.

3. The complainant has applied for oral proceedings but has given no justification for his application and, in fact, does not even mention it in his complaint brief. As the facts are fully documented and uncontested and the written submissions are sufficient to enable the Tribunal to make an informed decision, the application for oral proceedings is rejected.

4. The Tribunal finds that the complaint is irreceivable. The fact that some of the complainant's medical expenses have not yet been reimbursed at the 100 per cent rate is not a decision, much less a final one. As UNESCO has convincingly submitted, full reimbursement is pending submission by the complainant of all documentation. In fact, some of the requested reimbursements have since been paid following receipt of the requested documents. If the complainant's claims are not satisfied after the reimbursement process has been completed, he must file a request for a review of that decision. Only once he receives a final decision on his claims can he then, if necessary, file a complaint with the Tribunal. Thus, in accordance with Article VII, paragraph 1, of the Statute of the Tribunal, the complaint is irreceivable and must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ