

FORTY-SEVENTH ORDINARY SESSION

***In re* ROLLE**

Judgment No. 478

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the International Centre for Advanced Technical and Vocational Training (International Labour Organisation) by Mrs. Maria Corina Tisera Rolle on 28 October 1980 and brought into conformity with the Rules of Court on 31 October, the Centre's reply of 13 February 1981, the complainant's rejoinder of 20 March and the Centre's surrejoinder of 23 April 1981;

Considering Articles II, paragraphs 1 and 6, and VII of the Statute of the Tribunal and Articles 0.2, 9.3 and 12.1 of the Staff Regulations of the Centre;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant is the widow of Nazzareno Rolle, who at the time of his death, on 24 December 1979, was an official of the Centre. To make savings the Centre decided to close down from 22 December 1979 to 1 January 1980 and accordingly to send a group of trainees, who would otherwise have put up at the Centre hall of residence, on a cultural visit to Rome, Naples and Florence. Mr. Rolle, whose normal duties consisted in providing social and cultural assistance for the trainees, was to be paid a special allowance of 500,000 lire for his services over and above a daily allowance. Towards midnight on 23 December Mr. Rolle was standing in front of a bar window near the hotel in Rome when a man dressed in black - later identified as a nightwatchman - came up to him. Mr. Rolle, who had in his possession the funds required for the excursion, took fright, started to run, and stumbled to the ground, suffering an injury to his knee. He was taken at once to hospital, where his leg was put in plaster and he was kept overnight. On 24 December he resumed his duties in charge of the group of trainees. In the evening he was taken seriously ill and sank into a coma. He was taken to the San Giovanni Hospital, where he died just after 11 p.m., the cause being identified by the hospital as "cerebral haemorrhage in a state of hypertension". The medical adviser of the Centre and two other officials were sent to Rome to inquire into the matter and reported. Applying ILO procedures by analogy, on 11 January 1980 the Director asked the Director-General of the International Labour Office to refer the case to the ILO Compensation Committee for advice. The Director-General agreed. The legal and medical experts appointed to the Committee by the ILO and the ILO Staff Union Committee concluded that the death was not service-incurred. On 29 April the counsel of the complainant wrote to the Centre alleging that the death had been service-incurred and claiming the compensation provided for under the insurance policy taken out by the Centre with a private insurance company in London. The policy provided personal accident insurance for all staff members, whether the accident was service-incurred or not. The company took the view that no compensation was due on the grounds that death had not been "caused by an accident solely and independently of any other cause". as the terms of the policy required, the deceased having suffered from hypertension and cardio-vascular trouble. The ILO Compensation Committee shared that view. By a letter addressed to the Director on 10 June 1980 the complainant's counsel claimed compensation under Article 9.3 of the Staff Regulations, which reads: "In the event of illness or injury attributable to the performance of official duties an official shall be entitled to compensation as prescribed in Annex F. In the event of the official's death in consequence of such illness or injury, his dependants shall be entitled to compensation as prescribed in Annex F." There is in fact no Annex F, and that is why ILO procedures were applied by analogy. In a letter addressed to the complainant's counsel on 25 June and received on 26 June the Director rejected the claim on the grounds that the death had not been attributable to the performance of official duties. By a letter addressed on 15 July to the Director the complainant filed a "complaint" under Article 12.1 of the Staff Regulations against the decision of 25 June. By a letter dated 30 July 1980 the Director of the Centre replied that under Article 12.1 complaints might be filed only by Centre staff members, and he confirmed his earlier decision. It is the decision in the letter of 30 July 1980 that is impugned.

B. The complainant believes that, being the dependant of the deceased, she was competent, contrary to what the

Director said in his letter, to file the "complaint" under Article 12.1 of the Staff Regulations. She contends that it is inconceivable that the incident of 23 December had no connection with her husband's death. According to a report, dated 27 October 1980 and appended to the complaint, by a professor of nervous diseases at a Turin hospital, it is impossible to rule out a causal link between the incident of 23 December and the death which occurred the following day. Had the deceased been in Turin on 24 December he could have received medical attention; instead he was obliged, being on mission for the Centre and having no assistant, to continue to look after the trainees. During the day he had no rest and no medical attention. The fact that he kept to a hotel room may have meant that he did not receive attention in time. It is therefore unfair to deny his widow compensation. She accordingly invites the Tribunal: (a) to find that the death of her husband was attributable to the performance of official duties in Rome, and accordingly to order the Centre to pay her in full the compensation prescribed by Article 9.3 of the Staff Regulations; (b) subsidiarily, to find that the death was connected with the performance of official duties and accordingly order the Centre to pay compensation amounting to not less than half of the full amount; (c) to pay interest on the sum due from January 1980, with due regard to the rate of inflation in Italy; and (d) to award her costs.

C. In its reply the defendant organisation contends that the complaint is time-barred and therefore irreceivable. The complainant made her claim under Article 9.3 on 10 June, and the Director's rejection of it was notified to her counsel on 26 June. Not having filed her complaint until 28 October, she failed to respect the 90-day time limit-prescribed in the Statute of the Tribunal. Her later complaint under Article 12.1 of the Staff Regulations did not alter the time limit since it was null and void. Time limits are not extended by mistaken recourse to internal procedures. In any event she still had 54 days after that complaint was rejected in which to appeal to the Tribunal. The Centre further contends that the complaint should be dismissed on the merits. The burden of proof is on the complainant to show that death was attributable to the performance of official duties: no such presumption may be made simply because death occurred during an official mission. She has failed to show either that the accident of 23 December was service-incurred and the direct cause of death, or that the illness which was the direct cause of death was attributable to the performance of official duties. She has not even sought to explain what official duties might have led the deceased to be looking through the window of a bar in Rome at 11 p.m. on a Sunday night. If he wished to go for a walk that was his own affair. Even on the unlikely assumption that the accident could be regarded as service-incurred it was not the direct cause of death. The medical reports, including that of the Turin professor cited by the complainant, agree that the most likely cause of death was a cerebral haemorrhage, in turn probably due to hypertension, of which he had been giving signs for some time and for which he had already received hospital treatment. The Director of the United Nations Medical Service in Geneva, a member of the ILO Compensation Committee, found the death to be a classic complication of a pre-existing pathological condition. True, the accident may have had harmful consequences, but they were undoubtedly not the direct cause of death. The Centre accordingly invites the Tribunal to declare the complaint irreceivable and, subsidiarily, to dismiss it as unfounded.

D. In her rejoinder the complainant contends that the complaint is receivable. Her counsel's letter of 10 June was intended merely to raise the matter with the Director: only after that claim had been refused did she submit a formal complaint under Article 12.1 and it was from the rejection of the latter that the time limit began to run. The procedure prescribed in that article is not confined to serving officials: it applies also to former officials, and likewise to an official's successors. The term "official" in Article 0.2 of the Staff Regulations must be taken to include the official's successor; otherwise there would be obvious injustice. As to the merits, the complainant points out that there were no set hours for the performance of official duties by her husband during his mission to Rome. The terms of his mission were broad: to look after the trainees, and he was therefore on duty full time. He could have been called upon at any hour of the day and night. He was perhaps checking that the bar in Rome was a suitable place for the trainees to meet. In any case the burden of proof is on the Centre to show that the accident was not attributable to the performance of official duties. He was obliged to carry with him the funds for the excursion since the hotel had no safe. That was why, not unreasonably, he took fright when accosted by the nightwatchman, who was armed. His collapse into a coma and his death occurred so soon after his fall that it is difficult to rule out a causal link. The most likely cause of death was indeed a cerebral haemorrhage, but the diagnosis is not borne out by an objective test. The doctors who were appointed to the Compensation Committee did not agree. The one appointed by the Administration found that the accident had no direct bearing on the death; but the one appointed by the Staff Union found a connection between the fatal attack of hypertension and "emotional trauma (fright), muscular lesion, a state of apprehension caused by the pain, and a feeling of discomfort and insecurity because of being away from home". All these are factors which operated during the last day of Mr. Rolle's life. Since it now appears that the Centre was aware of his hypertension and anxiety, it should never have put him in charge of the trainees, and it is only right that it should bear the consequences of its own misjudgment.

The conclusions of the ILO Compensation Committee are in any case invalid since the Centre should have appointed its own advisory body, and it is not clear on what evidence the Committee based its conclusions. Its findings should be set aside. The complainant accordingly presses her claims for relief.

E. In its surrejoinder the Centre rejects the complainant's interpretation of the term "official" in Article 0.2 of the Staff Regulations. If it includes the official's successors, why was it found necessary to include a reference to dependants in Article 9.3? The inference is that Article 12.1, which does not refer to dependants, does not apply to them, but only to "officials" as defined in Article 0.2. The Director's letter of 30 July 1980 therefore merely confirmed the final decision notified on 26 June, and the complaint is therefore time-barred. As to the merits, the rejoinder mistakenly assumes a presumption in law that any accident suffered at any time and at any place during an official mission is attributable to the performance of official duties. True, the hotel had no safe; but it was irresponsible for the deceased to go out at night carrying such a large sum of money in a district he knew to be dangerous. Indeed such irrational behaviour may be interpreted as a sign of the coming brain haemorrhage. All the doctors agree that it is difficult to see any connection between the accident and the death and that the most probable cause was, as the complainant herself admits, the pre-existing hypertension. Contrary to what the complainant maintains, there is no conflict between the conclusions of the two medical experts: both attribute death to hypertension, but one of them simply adds that the accident may have had a harmful effect. That is not to say it was the cause of death. It is unfair to take the Centre to task for putting the deceased in charge of the trainees. Hypertension is not a disability, and the complainant's husband was quite fit to carry out the mission. The trainees were not adolescents and none was in poor health. The programme of the excursion was not heavy and did not entail any greater stress than that inherent in his usual duties in Turin, which he had been performing since 1969. The reason why the Director did not set up a compensation committee at the Centre was explained in a minute to the Director-General of the ILO on 11 January 1980: he did not have the funds to do so. The two medical experts - one appointed by the ILO Staff Union Committee, because the Centre staff union had not elected a committee at the time - based their conclusions on all the available medical evidence, and there is no reason to set them aside. The Director was not bound by the Staff Regulations to consult anyone: there was therefore no procedural flaw. In fact he acted in good faith, and he showed great prudence, despite the lacunae in the Staff Regulations, before taking a decision. The Centre accordingly abides by its original arguments.

CONSIDERATIONS:

1. According to Article VII of the Statute of the Tribunal, to be receivable a complaint must have been filed within ninety days after the complainant was notified of the decision impugned.

On 10 June 1980 the complainant's lawyer addressed to the Director of the Centre a claim for compensation for the death of her husband under Article 9.3 of the Centre Staff Regulations (injury attributable to the performance of official duties). On 25 June 1980 the Director rejected the claim by a registered letter accompanied by an official acknowledgement of receipt. The Centre states, and the complainant does not deny, that that decision was notified to her lawyer on 26 June. The complaint was not filed with the Registry of the Tribunal until 28 October 1980, and it is therefore time-barred.

2. It is true that the complainant submitted a further claim which was dismissed by a decision taken on 30 July and notified on 4 August 1980. As the complaint was filed within ninety days after 4 August 1980 it would be receivable if this further decision were deemed to have given rise to a new time limit.

In his reply to the second claim, however, the Director, who had carried out no further inquiry, merely confirmed his earlier position. The decision of 30 July was therefore purely confirmatory in character and did not give rise to any new time limit.

3. In an attempt to remove the time bar the complainant argues that the legal basis for the new claim was not Article 9.3 - the basis for the first claim - but Article 12.1 of the Staff Regulations and that there was therefore substitution of one claim for another.

The plea fails. The second claim may not be treated as constituting a new appeal since it was based on the same cause of action as the first.

4. The Tribunal therefore holds that the complaint is irreceivable, and hearing the witness whom the complainant wishes to call would serve no purpose.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 28 January 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner