W.

v.

IAEA

138th Session **Judgment No. 4829**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr H. W. against the International Atomic Energy Agency (IAEA) on 10 June 2021 and corrected on 10 August, the IAEA's reply of 11 November 2021, the complainant's rejoinder of 14 December 2021 and the IAEA's surrejoinder of 16 March 2022;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant contests the decision to reject his compensation claim for service-incurred injury and illness as time-barred.

The complainant is a former staff member of the IAEA who served with the Agency from October 2013 until October 2020, at which point he separated from the Agency, having previously resigned.

On 11 October 2019, he sent an email to his supervisor to inform him that he had been placed on sick leave due to a knee injury and, on 17 October, he requested an extension of his sick leave. On 30 October 2019, he sent another email to his supervisor to update him on the status of his sick leave. In that email, the complainant explained that he had been off work due to an accident, which had caused him acute knee and

back problems. He requested an extension of his sick leave, at least until 13 November 2019, as his health had improved slowly and he had to undergo further medical exams and treatment. On 14 November 2019, he sent a further email to his supervisor to inform him that he was unable to return to work and that his medical condition necessitated a further extension of his sick leave until 27 November 2019.

Also on 14 November 2019, the complainant was notified of the decision to suspend him from duty with pay, pending the completion of an investigation initiated against him by the Office of Internal Oversight Services (OIOS) in connection with the discovery of *prima facie* evidence that he had committed misconduct allegedly consisting in the submission of falsified invoices to the insurance provider.

On 5 December 2019, he wrote a letter to the Vienna International Centre (VIC) Medical Service to report that he had been "involved in a work accident in [his] office" on 4 October 2019. In that letter, the complainant described the circumstances of his accident, indicated that he was undergoing treatment which might require an extension of his sick leave in the coming weeks, and asked the Medical Service to "accept [the] letter as written notice" of his accident. Attached to the letter was a medical report, dated 2 December 2019, regarding the complainant's status, diagnosis and treatment.

By a memorandum of 10 March 2020, the complainant submitted to the Director of the Division of Human Resources (DIR-MTHR) a "Claim for compensation under Appendix D to the Staff Regulations and Staff Rules, entitled 'Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties'". He requested that his injury and illness be recognised as service-incurred and he sought reimbursement of his medical expenses not covered by the insurance, restoration of the sick leave he had taken pursuant to Articles 3 and 18 of Appendix D, and compensation for the loss of function pursuant to Article 25 of Appendix D and the schedule attached thereto.

Several email exchanges ensued between the complainant and the Secretary of the Joint Advisory Board on Compensation Claims (JABCC) regarding the completeness of the documentary evidence

furnished by the complainant in support of his Appendix D claim. Finally, the JABCC considered the matter in December 2020 and it submitted its recommendations to the Director General in January 2021.

By a letter of 10 February 2021, the Secretary of the JABCC notified the complainant that, further to the JABCC's recommendation, the Director General had decided that "the time limit of four months of the date of the injury or onset of the illness set under Article 34 of Appendix D should not be waived". On 17 February 2021, through his counsel, the complainant asked the Director General to reconsider the 10 February 2021 decision. By a letter of 18 March 2021, the Director General advised him that he confirmed the decision not to waive the relevant time limit, thereby rejecting his compensation claim under Appendix D as time-barred. The Director General also advised the complainant that he could appeal to the Tribunal the decision contained in the 18 March 2021 letter. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to "rule upon the remedies [he] requested" in his Appendix D claim of 10 March 2020, namely: (i) reimbursement of the expenses in the part not covered by the insurance and (ii) compensation for the loss of function (in particular, the back, leg and foot loss of function), pursuant to Article 25 of the Appendix D rules and the schedule annexed thereto. He claims moral damages in an amount equal to one year's salary at the G.6 grade, or an amount the Tribunal may deem appropriate, for the unfair treatment and prejudice he suffered due to the IAEA's misapplication and misinterpretation of the applicable legal framework, its violation of fundamental principles of international administrative law, in particular the duty of transparency, accuracy of information, and accountability, and the delay in the internal process. He seeks 10,000 euros in costs for the submission of his Appendix D claim and the filing of his complaint with the Tribunal.

The IAEA asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. By his complaint of 10 June 2021, as corrected on 10 August 2021, the complainant impugns before the Tribunal the decision of the Director General of the IAEA of 18 March 2021. In that decision, the Director General found, on the basis of the recommendation of the Joint Advisory Board on Compensation Claims (JABCC), that the complainant had submitted a claim for compensation under Appendix D to the IAEA's Staff Regulations and Staff Rules on 10 March 2020, one month after the deadline provided for in Article 34 of Appendix D. The Director General thus confirmed his original decision, communicated to the complainant on 10 February 2021, not to waive the relevant time limit, thereby rejecting his claim as time-barred.

2. The complainant essentially advances three arguments in support of his claim. First, his claim for compensation under Appendix D was submitted in due time. He submits that he complied with the applicable time limit when he wrote to the Vienna International Centre (VIC) Medical Service and reported his work-related injury in his letter of 5 December 2019 (attaching supporting medical documents and sick leave certificates), which served the purpose of written notification of the incident that occurred on 4 October 2019, during the performance of his official duties. Second, the IAEA's handling of his Appendix D claim gave rise to a legitimate expectation on his part that his claim would be approved. Third, the IAEA misapplied and misinterpreted the applicable legal framework, and violated its duty of good faith and the principles of transparency and accountability by failing to provide him with the relevant forms and accurate information.

3. The rules governing claims for compensation for service-incurred injury are set forth in the IAEA's Staff Regulations and Staff Rules, contained in Administrative Manual, Part II, Section 1 (AM.II/1).

In particular, Regulation 8.04, under the heading "Compensation in [the] Event of Death, Injury or Illness Attributable to the Performance of Official Duties", provides that:

> "The Director General shall, with the approval of the Board of Governors, draw up a scheme for the compensation of staff members in the event of their suffering accident, illness or death attributable to the performance of official duties on behalf of the Agency."

Rule 8.04.1(A) provides that:

> "For staff members, except those mentioned in paragraph (B) below, compensation in the event of death, injury or illness attributable to the performance of official duties shall be payable in accordance with the provisions of Appendix D to these Rules."

Article 34 of Appendix D to the Staff Regulations and Staff Rules, under the heading "Time limit for entering claims", provides that:

> "Claims for compensation under these rules shall be submitted within four months of the death of the official or the injury or onset of the illness; provided, however, that in exceptional circumstances the Director General may accept for consideration a claim made at a later date."

While Article 34 of Appendix D sets a time limit for submitting claims for compensation, namely within four months of the incident giving rise to the claim (death, injury, or onset of illness), it does not specify what form the claim should take, what it should contain and to whom it should be addressed.

4. A step-by-step guide for reporting work-related accidents, available on the IAEA's intranet in 2018, provided as follows:

> "In case of an accident, the following steps should be taken:
>
> 1. An [Inter-Office Memorandum (IOM)] must be sent to [the Director of the Division of Human Resources (DIR-MTHR)] notifying any work-related illness/accident/death;
> 2. Compensation can be requested from DIR-MTHR upon receipt of all medical bills relating to this incident;
> 3. MTHR will inform [the Director of the Division of General Services (DIR-MTGS)], who will take care of any further administrative matters;
> 4. The Director General, upon the recommendation of the [JABCC] approves/rejects such a claim, as appropriate, and the staff member will be informed accordingly.
>
> DIR-MTHR must be notified of any work-related injury/illness - even if it is only treated by the VIC Medical Service."

It can be seen in this step-by-step guide that notification of a work-related illness/accident/death to the DIR-MTHR through an IOM is identified as the initial step.

5. The primary question that arises in the present case is whether the complainant's 5 December 2019 letter to the VIC Medical Service constituted an initial step in the compensation claim process that satisfied the requirement to submit a compensation claim within the four-month time limit stipulated in Appendix D.

6. The complainant contends that his 5 December 2019 letter served as a compensation claim under Appendix D which was submitted within the requisite four-month limit. Conversely, the IAEA argues that the 5 December 2019 letter was about the complainant's extensions of sick leave, his treatment and potential support from the VIC Medical Service regarding his return to work, without any mention of the underlying cause of his injury as being service-incurred or of a request for compensation. The IAEA further argues that, in accordance with its step-by-step guide for reporting work-related accidents, available on the intranet at the time, a compensation claim should have been addressed to the DIR-MTHR and this requirement cannot be replaced by a report of injury to medical personnel.

7. The Tribunal notes that the impugned decision was made mainly on three grounds: (1) the 5 December 2019 letter could not reasonably be viewed as a claim for compensation under Appendix D and was treated as a letter "addressing return-to-work issues"; (2) there was no basis for informing the complainant that his claim should have been submitted in a different format; (3) the claim of 10 March 2020 was submitted one month after the applicable deadline which the complainant, as a staff member, was expected to be aware of.

8. It is true, as the IAEA argues, that the 5 December 2019 letter did not strictly comply with the procedural requirements set out in the step-by-step guide for reporting work-related accidents available on the intranet at the time. The complainant did not submit an IOM, nor did he

address the letter to the DIR-MTHR. Instead, he addressed the letter to the VIC Medical Service.

9. However, the approach taken by the Director General in the impugned decision is problematic.

First, he erred in treating the complainant's letter of 5 December 2019 as a letter merely "addressing return-to-work issues". On the contrary, it is clear that in his 5 December 2019 letter the complainant intended to report his work-related accident to the IAEA and he did so about two months after the reported accident. This was within the four-month applicable time limit. In that letter, the complainant wrote: "Please accept this letter as written notice that on 4th of October 2019 [...] I was involved in a work accident in my office". The complainant also described the circumstances of his accident and the details of his treatment, and indicated that he might need further sick leave in the coming weeks. The letter was accompanied by a medical report of his status, diagnosis, and treatment. Interpreting a letter primarily focused on reporting a work-related accident, including by describing the circumstances thereof and attaching a medical report, solely as a sick leave request or a letter addressing return-to-work issues, overlooked its potential relevance to a compensation claim.

Second, according to the Tribunal's well-established case law, part of an organisation's duty of care towards its staff is to provide procedural guidance to a staff member who is mistaken in the exercise of a right insofar as that may allow them to take effective action. If there is still time, it must inform a staff member of the available means of redress (see Judgment 4369, consideration 4, and the case law cited therein). In addition, if a member of staff pursues a grievance by an incorrect procedure, but there is another procedure which would be appropriate, the organisation is under a duty to advise the staff member to follow the appropriate procedure (see Judgment 4006, consideration 13). Accordingly, an international organisation is under an obligation to clearly communicate to its staff members the appropriate procedures for submitting claims for compensation for service-incurred injuries or illnesses. This obligation is particularly important where procedural

rules are unclear and could result in significant adverse consequences for staff members who are genuinely misguided on the procedures they must follow. As previously noted, Appendix D does not explicitly detail the procedural formalities for submitting a compensation claim for service-incurred injury or illness, such as its format or intended recipient. Therefore, the IAEA had a duty to provide procedural guidance to the complainant who was mistaken in the exercise of his right. Rather than penalizing him for procedural non-compliance, which at least in part stemmed from the lack of clarity in its own rules, the IAEA should have guided the complainant to follow the appropriate procedures.

The Tribunal is of the opinion that the VIC Medical Service should have forwarded the complainant's 5 December 2019 letter to the DIR-MTHR, the competent body within the organisation. The necessity of forwarding to the competent body within the organization appeals addressed to the wrong body is articulated in Judgment 3034, consideration 15, as follows:

> "[T]he procedural rules for lodging an internal appeal must not set a trap for staff members who are endeavouring to defend their rights; they must not be construed too pedantically and, if they are broken, the penalty must fit the purpose of the rule. For that very reason, an official who appeals to the wrong body does not on that account forfeit the right of appeal. In such circumstances this body must forward the appeal to the competent body within the organisation in order that it may examine it and the person concerned is not deprived of his/her right of appeal (see, in this connection, Judgments 1832, under 6, and 2882, under 6)." (See also Judgment 4140, consideration 6.)

This case law equally applies to the present case concerning a claim for compensation for service-incurred injury addressed to the wrong body. The duty to re-direct an incorrectly filed claim for compensation for a work-related injury or illness to the competent body within the organization is an integral part of the duty of care incumbent upon organisations. It is intended to ensure that staff members are not deprived of their right to compensation for service-incurred injury or illness because of procedural missteps which can easily be remedied by re-directing compensation claims to the competent authority.

10. The Tribunal finds that the IAEA, pursuant to its duty of care, ought to have treated the complainant's 5 December 2019 letter as the initiation of a compensation claim for a work-related injury. Therefore, it follows that the complainant's claim was timely submitted under Appendix D and should be considered by the JABCC. The impugned decision of 18 March 2021 and the earlier decision of 10 February 2021 will accordingly be set aside.

11. The Tribunal notes that, in its pleadings, the IAEA referred to the fact that in October 2019 the complainant was the subject of an investigation by the Office of Internal Oversight Services (OIOS) into allegations of possible misconduct in relation with the submission of fraudulent medical claims to the insurance provider. The Tribunal considers that this issue is irrelevant to the present case.

12. In light of the foregoing, the complainant's claim for compensation will be remitted to the IAEA for the JABCC to consider whether the complainant's injury is attributable to the performance of official duties and whether he is entitled to the payment of medical expenses and compensation resulting from such injury pursuant to Appendix D.

13. Regarding the complainant's claim for moral damages, the IAEA's failure in its duty to forward the complainant's 5 December 2019 letter to the DIR-MTHR, the competent authority within the IAEA to be notified of work-related accidents and/or illnesses, has added to the delay in the final settlement of this case, whatever its eventual outcome may be (see Judgment 3674, consideration 10). This alone caused the complainant injury for which he is entitled to moral damages in the amount of 8,000 euros.

14. The complainant is also entitled to costs in the amount of 10,000 euros. His other claims will be dismissed.

DECISION

For the above reasons,

1. The decisions of 18 March 2021 and 10 February 2021 are set aside.
2. The complainant's claim for compensation for service-incurred injury is remitted to the IAEA for consideration by the JABCC in accordance with considerations 10 and 12 above.
3. The IAEA shall pay the complainant moral damages in the amount of 8,000 euros.
4. The IAEA shall pay the complainant costs in the amount of 10,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 26 April 2024, Mr Patrick Frydman, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER