

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

SIXTIETH ORDINARY SESSION

In re PETRUC (No. 4)

Judgment No 779

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Théodore Claude Petruc against the Food and Agriculture Organization of the United Nations (FAO) on 21 May 1986 and corrected on 13 June, the FAO's reply of 23 July, the complainant's rejoinder of 16 September and the FAO's surrejoinder of 24 October 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual provisions 342.621. 342.636, 342.6521, 342.711 and 342.72;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. For an account of the complainant's first three complaints, the facts of which are in part relevant to the present one, see Judgments 501, 502 and 778, under A. On 1 March 1977, four months after leaving the Organization, the complainant asked that a medical board be set up to say whether the illnesses he had contracted in Senegal in 1973 and 1975 were "service-incurred". On 25 March he claimed compensation on those grounds. At the Organization's request an independent doctor, Professor Angelo Fiori of Rome, saw him on 28 March. Professor Fiori's findings, which the FAO endorsed, were that his colitis had not been service-incurred and that factors other than his duties in Senegal were more than enough to account for the heart attack he had had in 1975. Having submitted a claim to the Director-General on 8 December 1978 but got no answer, he lodged an appeal with the Appeals Committee on 26 December. The Committee recommended referring the case to the competent body and by a letter of 13 May 1980 the Deputy Director-General informed him that the Director-General had accordingly decided to refer his claim to compensation to the Advisory Committee on Compensation Claims. Moreover, since the two sides disagreed on the medical aspects, a medical board was to be convened in accordance with Manual provision 342.72, and he was asked to name a doctor to represent him on it. The Advisory Committee recommended rejecting his claim. A letter of 30 October 1980 said that the Director-General did so but again invited him, if he disagreed with the medical findings, to choose his representative on the board. The complainant having submitted a request for review on 2 December, the secretary of the Committee twice repeated that invitation. On 28 April 1981 he filed his second complaint with the Tribunal challenging what he saw as implied rejection of his request. In Judgment 502, on 3 June 1982, the Tribunal held that he had failed to exhaust the internal means of redress but suggested further administrative action such as appointing the medical board. The board met on 7 July 1983 and found that the complainant's colitis and heart attack were not service-incurred, but "occurred while [he] was on the FAO staff and may not have been given proper attention". The Advisory Committee took up his request for review. On 24 November its deputy secretary confirmed the rejection of his claim. His appeal of 20 February 1984 to the Director-General was rejected on 21 March. On 19 April he lodged another appeal with the Appeals Committee repeating various claims, including the one to compensation for service-incurred illnesses. The Committee reported, and on its recommendation the complainant was informed by the Deputy Director-General in his letter of 3 September 1985 that the final decision on that claim must wait until the Advisory Committee had explained how it read the medical board's remark quoted above. Confirming its finding that the illnesses were not service-incurred, the Committee said that the remark was immaterial. By a letter of 21 February 1986, the decision challenged, the complainant was informed that the Director-General finally rejected his claim.

B. The complainant goes over the facts of the case, repeating the objections he raised in earlier complaints to the FAO's obstructive and negligent attitude and behaviour and recalling the medical board's conclusion that the Organization had not given his illnesses "proper attention". He alleges that in taking the final decision the Director-General failed to give proper weight to that conclusion. There is no sound medical basis for the rejection of his claims in that he was never put through a complete medical check-up on the termination of his appointment. The medical service of the Organization improperly influenced the findings of Professor Fiori by giving him a

tendentious account of the complainant's case. He cites a letter written by his own nominee, Dr. Jean-Jacques Morisseau, on 8 July 1983 to the chairman of the board: "We were unable to settle the matter medically and the complainant might have the benefit of the doubt". He asks the Tribunal to order the disclosure of written evidence and to take written testimony from two members of the medical board which, he believes, will support his pleas. He invites the Tribunal to declare that his colitis is directly attributable to the performance of his official duties as an FAO official, to appoint a medical board to determine the degree of his disability due to that illness and to order the FAO to pay him the corresponding disability benefit in accordance with Manual section 342 as from 1 February 1976.

C. The FAO replies that the complaint is devoid of merit. It observes that in its replies to the complainant's earlier complaints it has already answered many of the points he raises. It submits that in taking his decision the Director-General took account of all the relevant material, including the medical board's findings and the recommendations of the Advisory Committee on Compensation Claims, in accordance with Manual provision 342.723. Neither the board's report nor Dr. Morisseau's letter establishes that his colitis was service-incurred. Nor, for that matter, do Professor Fiori's findings in 1977. The Director-General correctly took the view that, read in its context, the remark at the end of the board's report did not alter its opinion on the origin of the illness, and he took that view after acting on the Appeals Committee's recommendation that he consult the Advisory Committee again on the point.

D. In his rejoinder the complainant observes that the FAO has failed to answer most of his submissions and that on the others its replies are weak and sometimes in bad faith. He corrects the Organization's account, which he considers to be wrong or tendentious in many respects and a specious effort to cover or gloss over its own shortcomings. He elaborates on the facts of the case, on his criticisms of the FAO's behaviour and on the arguments in his original brief. He submits that its pleadings relating to a brief passage in the medical board's report are sophistry. It has refused to disclose evidence that he asked for, though not denying its existence. It has never sought to refute Dr. Morisseau's comments in his letter of 8 July 1983. He presses his claims.

E. In its surrejoinder the FAO contends that the complainant's rejoinder fails to address the main issues, which it believes it has fully argued in its reply. It submits that his further submissions are almost entirely irrelevant and, where relevant, do nothing to weaken its case. It accordingly again invites the Tribunal to dismiss the claims as devoid of merit.

CONSIDERATIONS:

The material rules

1. Manual provision 342.621 says that a claim to compensation for service-incurred illness shall be filed within four months of the onset of the illness; 342.636 that all claims for 10,000 United States dollars and over are referred to the Deputy Director-General for decision; and 342.6521 that the Director-General may refer any claim to the Advisory Committee on Compensation Claims and that it makes recommendations.

Under 342.711 "reconsideration of a determination" may be applied for within 30 days. If the reason is disagreement on the "medical aspects" of the case a medical board is convened under 342.721. The board consists of three doctors, one of them being appointed by the applicant. Under 342.723 the Director-General takes a decision on the medical board's report and the Advisory Committee's recommendations. Appeal lies to the Appeals Committee. The Director-General takes the final decision on the Appeals Committee's recommendation, and appeal then lies to the Tribunal.

The proceedings in this case

2. On 1 March 1977 the complainant applied for examination by a medical board to determine whether the illnesses from which he had suffered while on duty in Senegal had been "service-incurred". The Organization appointed Professor Fiori for the purpose, and he examined the complainant on 28 March. The complainant submitted an internal appeal to the Director-General on 8 December 1978 but, having got no answer within the time limit, appealed to the Appeals Committee on 26 December. The Committee recommended asking the competent body whether there was any causal link between his duties and the illnesses. A letter of 13 May 1980 from the Deputy Director-General informed him that the Director-General agreed to put his claim to the Advisory Committee and to a medical board.

On 30 October 1980 the secretary of the Advisory Committee informed him that on its recommendation the Director-General rejected his claim but that he might seek "reconsideration" and, if there was disagreement over the "medical aspects" of the case, a medical board would be convened and he should name his doctor. He applied for reconsideration on 2 December 1980. He was twice asked to name a doctor.

On 3 June 1982 the Tribunal declared his second complaint irreceivable in Judgment 502 on the grounds that he had failed to exhaust the internal means of redress.

On 30 June 1982 the complainant gave the name of a doctor. The board met on 7 July 1983. The Advisory Committee recommended rejecting his claim. The Director-General rejected it on 24 November 1983 and confirmed the rejection on 21 March 1984. The complainant appealed to the Appeals Committee on 19 April. In its report of 18 February 1985 the Committee observed that the FAO medical officer had influenced the view the Advisory Committee took of the meaning of an ambiguous remark in the medical board's report, that the complainant ought to have been given the benefit of the doubt and that the Advisory Committee should have asked the board to explain or else sought an independent medical opinion. The Appeals Committee recommended that the Director-General refer the claim again to the Advisory Committee for impartial review.

On 3 September 1985 the Deputy Director-General informed the complainant of the Director-General's decision to consult the Advisory Committee on the meaning of the board's remark. The Advisory Committee abided by its original opinion and the Director-General finally rejected the claim on 21 February 1986. The complainant is challenging that decision, his sole purpose being to secure a ruling that his duties in Senegal were the cause of the "functional colopathy" he is suffering from.

3. Though slow, the proceedings described in 2 above complied with the rules. The complainant himself does not deny that. All that can be said is that, as the Appeals Committee had recommended, the Director-General ought perhaps to have asked the Advisory Committee to approach the medical board or an independent doctor. But the point may be left unsettled. Both parties agree to treat the medical board's remark as irrelevant to the cause of illness. In his initial brief the complainant implies that it refers to impediments in the pursuit of his rights, and in their reply the Organization say that the board was not commenting on the liability of either party. Such being the views the parties took, there was no need to consult the board again.

The substance of the impugned decision

4. In its first report the Advisory Committee found no causal link between the complainant's duties and his illnesses. After further consideration at the Director-General's request the Committee abided by its earlier conclusions, and the impugned decision finally rejects the claim.

5. Of course the Committee's recommendations were not binding and the Director-General might have rejected them on the grounds that the complainant should be given the benefit of the doubt. But he acted correctly in accepting them. It was quite proper for him to endorse the view of the experts on the Committee, better fitted as they were to answer medical questions.

The complainant observes that the FAO acted in breach of its duty of discretion and impartiality in passing on to Professor Fiori a "summary" which he incorporated into his report and which may have influenced the medical board. But Professor Fiori or a member of his staff examined the complainant, X-rayed him and drew from personal observation conclusions there is no reason to suspect of bias.

The complainant further pleads that the Organization's refusal to analyse samples of drugs he was given at the hospital in Dakar hampered the Advisory Committee and the board in tracing the cause of the illnesses he contracted in 1973 and 1975. This plea also fails. Though such analysis might have given the Committee and the board a clearer idea of the nature of the illnesses, it would probably not have made it any easier to rule on the issue in dispute, the existence of a causal link between the complainant's duties and his illnesses.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

(Signed)

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.