

SIXTY-SIXTH SESSION

In re MUIGA

Judgment 971

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Michael Ikua Muiga against the World Health Organization (WHO) on 22 August 1986;

Considering the first interlocutory order in Judgment 875 of 10 December 1987;

Considering the medical report dated 14 October 1988 submitted by Dr. David Guéret Wardle, the expert appointed by order of the President of the Tribunal on 1 February 1988 in accordance with Judgment 875;

Considering the second interlocutory order in Judgment 947 of 8 December 1988 putting several questions to the parties, the complainant's replies of 8 February 1989 and the WHO's of 22 March 1989;

Considering the complainant's further observations of 12 April and the WHO's comments thereon of 27 April 1989;

Having examined the written evidence;

CONSIDERATIONS:

1. While in the service of the World Health Organization the complainant suffered serious injuries in a fall on WHO premises in Addis Ababa on 3 April 1982. The history of the dispute is recounted in Judgment 875, which the Tribunal delivered on 10 December 1987 and by which it made an interlocutory order that a clinical and psychological examination of the complainant should be carried out. In Judgment 947 of 8 December 1988 the Tribunal issued a second interlocutory order in which it invited further submissions from the parties in answer to specific questions. The parties having filed the further submissions, the remaining issue is the amount of compensation to be awarded to the complainant.

The medical findings

2. In Judgment 947 the Tribunal accepted the findings of the examination it had ordered in Judgment 875. The main findings about the state of the complainant's health were:

(i) Fractures in his back were almost certainly sustained at the time of the accident in 1982. Old fractures in his spine and left ankle were 100 per cent due to the accident. Most of the muscle wasting and oedema (swelling of tissue with watery fluid) in his legs is due not directly to the accident but to his own deliberate inactivity, which in turn is due to his underlying neurosis.

(ii) The foot injury he suffered resulted in 20 per cent loss of function of the whole body.

(iii) He is totally disabled for work but it is his present state of mind that is preventing him from working. The neurosis he is suffering from is 50 per cent attributable to the accident and to the events which followed it. If he receives no further treatment his condition will deteriorate further and he will become permanently unemployable.

(iv) In retrospect the neurosis appears to have occurred from the outset.

Pension for total work disability

The Organization's offer

3. By a letter of 3 January 1989 to the complainant's counsel the WHO made him an offer of two options in compensation for his total work disability caused as to 50 per cent by the accident.

Over two months later, in its reply dated 22 March 1989 to the Tribunal's questions, the Organization made a new offer. In its new offer it says that it is willing to grant him an invalidity pension in monthly payments in accordance with the Rules governing compensation to staff members which appear in Annex E to Manual provision II.7 and subject to certain qualifications, each monthly payment being equal to 50 per cent of two-thirds of the monthly pensionable remuneration corresponding to grade P.4, step 2, which is the grade and step the complainant held at the time both of the accident (3 April 1982) and of his separation from service (9 August 1983).

The WHO is thus offering him 50 per cent of the pension for total invalidity prescribed in paragraph 10(a) of the compensation rules, payment to begin as from 1 January 1984. The yearly amount of his pensionable remuneration came at 1 January 1984 to 54,093 United States dollars. Thus he would then have been entitled to a payment for 1984 of one-third of that sum, or \$18,031. Increases since then being taken into account, one-third of his yearly pensionable remuneration as at 1 January 1989 would, had he still been on the WHO staff, have come to \$21,453.69, to be further adjusted for the future, in accordance with the Organization's practice, to take account of cost-of-living variations. The WHO proposes that all payments for past and present be made at the rate prevailing in January 1989 instead of payment of interest at the rate of 10 per cent a year on the actual amounts as they fell due. The interest payments are, however, the greater amount.

The Organization proposes that the starting date be 1 January 1984 because, it submits, the complainant was both physically and psychologically fit for sedentary work at the date of his separation (9 August 1983) and it was in January 1984 that "a deep mental fixation" was detected.

The WHO's offer is subject to several conditions.

(1) If the complainant became fit for full-time employment before he reached the age of 50 (he was born in 1946) payment would cease at the end of the month in which he became fit. If he became fit between 50 and 55 payment would be reduced by half.

(2) He would undergo psychotherapeutic treatment and supply medical certificates each year.

(3) He would prosecute at the WHO's expense an appeal against the decision by the United Nations Joint Staff Pension Fund refusing him disability benefit and any amount he recovered would be deducted from the WHO's payments to him. The Organization also asks that 90 per cent of the pension due up to the date of the Tribunal's judgment be placed in escrow pending a decision on a pension from the Fund.

(4) The complainant would submit a yearly statement of his earnings, of which 50 per cent after tax would be deducted from the monthly payments.

(5) Payment of the pension would be suspended for failure to comply with any of the conditions.

The complainant's claim

4. In his submissions dated 8 February 1989 in answer to the questions the Tribunal put to him in Judgment 947 the complainant seeks:

(a) as from 9 August 1983, the award of a yearly pension equivalent to two-thirds of the current yearly pensionable remuneration corresponding to his former grade and step (he gives the figure). (The Organization observes that the figure the complainant gives was the yearly pensionable remuneration for grade P.4, step 5, whereas the complainant was at grade P.4, step 2.)

(b) as to the future, the award of a yearly pension equivalent to 75 per cent of two-thirds of the same figure to compensate for the loss of function (50 per cent) and for half of the service-incurred "neurosis" (25 per cent).

Compensation for the total loss of function of the foot and for loss of enjoyment of life

The Organization's offer

5. In its submissions of 22 March 1989 in answer to the questions addressed to it in Judgment 947 the WHO offers to pay in accordance with paragraph 14 of its compensation rules 20 per cent of \$110,438, the amount referred to in item (i) of the schedule thereto that applied at the date of the accident (3 April 1982), that amount being twice the

sum of \$55,219, the yearly pensionable remuneration corresponding to grade P.4, step 5, at that date. It also offers payment of interest at the rate of 10 per cent a year from the date of separation up to the date of payment.

The Organization takes the view that compensation for loss of enjoyment of life is covered by that figure, but it adds that if the Tribunal disagreed it would be willing to pay another 8 per cent under that head, bringing the amount up to 28 per cent of \$110,438, the amount referred to in item (i) of the schedule, plus the 10 per cent interest.

The complainant's claim

6. The complainant rejects that offer and presses his claim to 100 per cent compensation under Annex C to Manual provision II.7: \$121,456. Total loss of function of a foot is rated at 50 per cent under schedule B, point 5, of Annex C, and he attributes the remaining 50 per cent to loss of enjoyment of life. Alternatively, he submits that he is 100 per cent disabled for gainful employment and is therefore entitled to the 100 per cent compensation payable under Annex C, result B, paragraph 6, for "total and permanent disablement from following or giving attention to normal occupation or business": again \$121,456.

General observations

7. The Tribunal may order the WHO to pay the complainant only what he is entitled to under the compensation rules, which are in Annex E to Manual provision II.7.

8. The complainant claims payment under Annex C. But only the WHO, not the complainant, is entitled to payment under this Annex, which concerns its insurance policy. The policy is exclusively a matter between the WHO and its insurers. In application of its administrative practice, as reflected in paragraph 365 of Manual II.7, the Organization does hand the difference over to the staff member if the sum it has actually received from the insurers more than covers its liability to him. But in the complainant's case the sum payable to the Organization under its insurance policy is smaller than the capital value of the benefits he is entitled to under the compensation rules and will be unless as a result of his pending appeal he is eventually granted a disability benefit by the United Nations Joint Staff Pension Fund.

9. An employee who becomes ill or disabled during the period of his service is entitled under Rule 9 of the compensation rules to the reimbursement of all reasonable medical expenses.

The complainant is making no specific claim under that head.

Pension for total work disability

10. The complainant is suffering from continuing total disability. Dr. Guéret Wardle, the medical expert appointed by the President of the Tribunal, stated in paragraph 8 of his report dated 14 October 1988 that the complainant was "now totally unable to work but it is his present state of mind which is preventing him from working"; and in paragraph 9: "Dr. Jamoun and I would put the extent to which this neurosis is attributable to the accident and the events which followed it at 50 per cent".

11. Rule 10(a) of the compensation rules in Annex E provides that for continuing total disability the staff member is entitled to payment of an annual invalidity pension equal to two-thirds of his yearly pensionable remuneration as from the date at which his salary and allowances cease to be payable under Rule 9(c). Rule 5(a) gives pensionable remuneration the meaning assigned to it by Staff Rule 310.3.

12. The WHO Staff Pension Committee has dismissed the complainant's application for a disability benefit on the grounds that he was not incapacitated for work at 9 August 1983, the date of his separation. The WHO submits that since he was not incapacitated for work at that date he is not entitled to the grant of an invalidity pension under Rule 10(a); in the alternative that since he is partly to blame for his condition he should bear liability equally with the Organization.

13. After considering all the medical reports before it the Tribunal is satisfied that the complainant was psychologically incapacitated for work at the date of separation. The depression was evident to the examining doctor in Addis Ababa in November 1983, and Dr. Guéret Wardle states that in retrospect the neurosis appears to have occurred from the outset.

The date for payment of the pension will therefore be fixed at 9 August 1983.

But the Organization is liable only in respect of 50 per cent of the total incapacity.

Accordingly the Tribunal awards the complainant compensation under this head in the form of an annual invalidity pension equal to one-third of the yearly figure of his pensionable remuneration, i.e. half the full pension. (The amount was \$18,031 per annum at the date of separation and now comes to \$21,453.69 per annum.) Payment is due from the date at which his salary and allowances ceased to be payable and is subject to the periodic cost-of-living increases granted under the rules.

14. Under Rule 6(a) of the compensation rules disability benefits paid by the United Nations Joint Staff Pension Fund are deducted from any compensation paid by the WHO, subject to a minimum payment of 10 per cent.

A disability benefit under the Pension Fund Regulations has been refused on the grounds that at the date of separation the complainant was fit for sedentary work compatible with his abilities. He has an appeal pending before the Standing Committee of the Fund. Decisions by the Fund are not reviewable by the Tribunal and it will not comment on the likely outcome of the appeal. At present Rule 6(a) does not apply, but if the decision is set aside it will.

The Tribunal rejects the WHO's request that 90 per cent of the award of compensation for total disability up to the date of this judgment be put in escrow pending the final decision on the Fund pension.

The Tribunal considers it appropriate that the complainant prosecute his appeal at the expense of the WHO.

15. In paragraph 17 of his report Dr. Guéret Wardle concluded that the complainant's physical decline could be arrested and partly reversed with proper treatment. If the complainant becomes fit for full-time or part-time employment the Director-General has power under Rule 27(a) of the compensation rules to require him to undergo a medical examination and if he refuses or fails without valid reason to undergo such examination he may be denied compensation in full or in part. Under Rule 30 the Director-General may periodically review the amount of the pension and alter it if satisfied that the disability which constitutes the basis of the pension has changed.

There is therefore no need for the Tribunal to make a specific order that the complainant submit to periodic medical examination.

Compensation for the total loss of function of the foot

16. Besides an annual invalidity pension an employee is entitled under Rule 14 of the compensation rules to lump-sum compensation for permanent loss of a member or function whether or not he returns to duty with the WHO and whether or not he suffers from continuing invalidity which affects his earning capacity. The amount of such lump-sum compensation is assessed on the medical evidence and as to loss of enjoyment of life by reference to the schedule to Annex E. The effect of item (vii) of the schedule is to require that for total loss of use of the foot at or below the ankle the amount shall be 28 per cent of the sum equivalent to twice the amount of yearly pensionable remuneration at grade P.4, step 5.

17. The foot injury suffered by the complainant has resulted in 100 per cent loss of function of the foot. On that account alone the complainant is entitled to full compensation according to the table calculated at 28 per cent of \$110,438 i.e. twice the amount of yearly pensionable remuneration at grade P.4, step 5.

Compensation for loss of enjoyment of life

18. According to the Organization's own interpretation of Rule 14 the sum awarded in compensation for permanent loss of function is intended to cover loss of enjoyment of life as well and the percentages should be considered to reflect such loss in "the normal situation".

The Tribunal considers that the complainant's case goes beyond "the normal situation". He is only 46 years old, he is still in great pain, and his suffering is likely to continue.

The Tribunal accordingly awards him a further 5 per cent of the basic figure of \$110,438 mentioned above for loss

of enjoyment of life.

19. The amounts are payable from 3 April 1982, the date of the accident.

Interest

20. The Tribunal orders that the WHO pay interest at 10 per cent a year on the awards in 17 and 18 above from the due date up to the date of payment and on the invalidity pension, which is payable monthly, from the date at which each month's payment fell due.

Deduction of the interim award

21. The interim award in Judgment 947 shall be deducted from the sums awarded in this judgment.

Costs

22. The Tribunal orders the WHO to pay the complainant 10,000 Swiss francs in costs over and above the 10,000 francs it awarded towards costs in Judgment 947.

DECISION

For the above reasons,

1. In respect of the complainant's continuing total work disability the WHO shall pay him an annual invalidity pension equal to one-third of his yearly pensionable remuneration and adjusted to take account of cost-of-living variations.

The pension is payable under Rule 9(c) of the compensation rules from the date at which salary and allowances ceased to be payable.

It is subject to any deductions that may be made under Rule 6(a) of the compensation rules and, as stated in 15 above, to periodic review by the Director-General under Rules 27(a) and 30.

2. In respect of the permanent loss of function of the complainant's foot, including loss of enjoyment of life, the WHO shall pay him lump-sum compensation equal to 33 per cent of \$110,438, viz. twice the amount of yearly pensionable remuneration at grade P.4, step 5 (\$55,219). That sum, which comes to \$36,444.54, is payable from the date of the accident.

3. On the above two awards the WHO shall pay interest at the rate of 10 per cent a year from the date at which each sum was due up to the date of each payment.

4. The interim award which the Tribunal made in Judgment 947 shall be deducted from the sums awarded.

5. The WHO shall pay the complainant 10,000 Swiss francs in costs over and above the 10,000 francs awarded in Judgment 947.

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

Delivered in public sitting in Geneva on 27 June 1989.

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

