ADMINISTRATIVE TRIBUNAL

Judgement No. 918

Case No. 998: MERON

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Raya Meron, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 October 1997 and to 31 January 1998 the time-limit for the filing of an application with the Tribunal;

Whereas, on 23 January 1998, the Applicant filed an application requesting the Tribunal, inter alia:

"...

(a) *To rescind* the decision of the Secretary-General rejecting the Applicant's appeals;

(b) *To find and rule* that the Joint Appeals Board erred as a matter of law and equity in finding that case No. 320 was not receivable, that case No. 300 was moot and by failing to provide appropriate and adequate compensation for the harm done to the Applicant for violation of her rights under Staff Regulations and Rules;

(c) *To order* the Respondent to make available to the Appellant her full and complete medical file for examination and reproduction;

(d) *To order* that a Medical Board be convened without further delay to consider all outstanding medical issues and that the ABCC expedite its consideration of all outstanding claims;

(e) *To award* the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof;

(f) *To award* additional compensation for the unreasonable delays of the Respondent in handling the Applicant's claims and interest on those payments due the Applicant;

(g) *To fix* pursuant to article 9, paragraph 1 of the Statute and Rules, the amount of compensation to be paid in lieu of specific performance at three year's net base pay in view of the special circumstances of the case;

(h) *To award* the Applicant as cost, the sum of $10,000.00 in legal fees and $10,000.00 in expenses and disbursements."

Whereas the Respondent filed his answer on 31 December 1998;

Whereas, on 13 January 1999, the Applicant made additional submissions;

Whereas the Applicant filed written observations on 31 May 1999;

Whereas, on 5 July 1999, the Tribunal ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNHCR on 29 April 1991, on a short-term appointment, at the G-4 level, in the Resettlement Section. She received a one-year fixed-term appointment, effective 1 January 1992, as Secretary, Regional Bureau for Asia and

Oceania in Geneva. Her appointment was continuously extended. From 26 April to 31 December 1992, the Applicant served on mission in Cambodia. She retired on 31 July 1997.

On 17 May 1992, while the Applicant was serving on mission in Cambodia, a UN vehicle in which she was a passenger collided with a truck. According to a medical report dated 18 May 1992, the Applicant sustained "head contusion/neck and back contusion". A second medical report dated 27 May 1992, notes under the heading "Diagnostic:", "traumatic inflammation of neck and back muscles".

On 5 September 1992, the Applicant submitted Accident Claim forms to the UNHCR Administration. On 15 December 1992, a physician with UNTAC examined the Applicant and submitted a report to UNHCR, noting that the Applicant suffered "fracture of the front sides C5-C7," that she "cannot turn her head more than 50 degrees to each side due to pain", that "due to excessive medication, Ms. Meron's stomach can no longer support medication," and that "[h]er teeth became very loose." The Applicant continued to submit medical evaluations and bills to the Administration in support of her claim for compensation.

On 25 May 1994, the Advisory Committee on Compensation Claims (ABCC) convened and on 26 May 1994, it recommended that:

> "(i) the [Applicant's] injury (whiplash) be considered as attributable to the performance of official duties on behalf of the United Nations and that therefore all medical expenses, including those dental expenses certified by the Medical Director as reasonable and directly related to the injury may be reimbursed; and
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> (ii) the claimant be granted special sick leave credit equal to the number of days covering the period from 1 March 1993 until 30 July 1993 under Article 18(a) of Appendix D to the Staff Rules."

The Secretary-General approved this recommendation on 27 May 1994. On 30 June 1994, the Secretary, ABCC, informed the Applicant that, in accordance with the Secretary-General's decision of 27 May 1994, "only the expenses recognized by the Medical Director as related to your accident of 17 May 1992 can be reimbursed." She further explained, inter alia, that:

> "... your file was reviewed by the Medical Director, who has confirmed that all the expenses previously denied, including your stay at [Loèche-les-Bains] - lodging at the hotel and the travel to the spa - were not reimbursable, since the physical therapy treatments which were approved for reimbursement could have been administered locally without going to a spa. Notwithstanding the liberty of choice of a claimant to obtain treatment wherever he/she chooses, it has been established that stays at spas are not recognized reimbursable under Appendix D to the Staff Rules, except for the actual cost of medical treatment."

On 30 July 1994, the Applicant requested the Secretary-General, under Article 17, Appendix D to the Staff Rules, to review "the decisions taken so far as regards the existence, type and degree of injury and disability attributable to a service-incurred [automobile accident]" and to convene a Medical Board to review the claims that had been rejected by the Medical Director.

On 29 September 1994, the Secretary, ABCC, advised the Officer-in-Charge, Compensation Claims, UN Office in Geneva (UNOG), that the Applicant had not submitted sufficient medical proof to the Medical Director that certain claimed expenses were related to the accident of 17 May 1992, and explained what proof would be required by the Medical Director.

On 14 December 1994, the Applicant wrote to the Secretary-General and the Secretary, ABCC, in response to the 29 September memorandum, detailing her injuries and the treatment for which she submitted claims, requesting access to her medical file, requesting copies of the Joint Medical Service (JMS) reports on which the Medical Director's decisions were based, and asking that the Applicant's submissions be submitted to a Medical Board.

According to the Applicant, on 9 January 1995, she sent a letter to the Secretary, ABCC, enclosing her only copy of a full mouth X-ray, taken on 23 September 1991.

On 20 March 1995, the Secretary, ABCC, informed the Applicant that the Medical Director had advised that the Applicant had not submitted documentation that had been requested of her in the 29 September 1994 memorandum to the Officer-in-Charge, Compensation Claims, UNOG, which had been copied to her. Specifically, the Applicant had

been requested to submit all dental and medical records dating from before her departure to Cambodia.

In a response dated 19 April 1995, the Applicant cited several dental reports made *after* her departure to Cambodia and noted that JMS classified her as being in "1A" physical condition prior to her departure to Cambodia. She further requested that she be given full access to her medical file at JMS.

On 4 May 1995, the Secretary, ABCC, informed the Applicant that the dental X-rays that the Applicant claimed to have sent to her office were never received, and requested the Applicant to send another copy.

On 29 May 1995, the Applicant, accompanied by a member of the Panel of Counsel and a second adviser, examined her full JMS medical file. She arranged to return the next day to photocopy several documents in her file. On 30 May 1995, the Medical Officer notified the Applicant that the Senior Legal Officer, Division of Human Resources Management (DHRM), wished to consult the Office of Legal Affairs, New York, before her request could be granted.

On 31 May 1995, the Applicant requested the Secretary-General to review the administrative decisions not to grant the Applicant full access to her medical file and not to allow her to photocopy the documents from that file. On 14 June 1995, the Senior Legal Officer, DHRM, informed the Medical Officer, UNHCR, that staff members had no absolute right to obtain access to their medical records simply on demand, since such records are kept by JMS for the purposes of the Organization.

On 8 August 1995, the Applicant lodged an appeal with the Geneva Joint Appeals Board against the decision not to grant her full access to her medical file (the "first appeal").

On 13 October 1995, the Director, DHRM, informed the Assistant-Secretary-General, Office of Human Resources Management, that the Applicant's physician had recently submitted an evaluation that she should be placed on 50 per cent sick leave, and requested that a medical board be convened to review the Applicant's remaining medical claims.

On 14 December 1995, the Secretary, ABCC, informed the Applicant that before a

Medical Board could be convened, the Applicant was required to submit the medical information previously requested.

On 5 March 1996, the Applicant requested the Secretary-General to review "the administrative decision by the Medical Director and the Legal Affairs Division to deny me due process by refusing to convene a Medical Board to make recommendations on my medical compensation case to the [ABCC]." By another letter of the same date, the Applicant requested the Secretary-General to review "the administrative decision not to release my UN medical file ... nor refer my case before [the JAB concerning release of the file] ... to the United Nations Administrative Tribunal ..."

On 12 March 1996, the Senior Legal Officer, DHRM, informed the Applicant that she was invited to come look at her medical file kept by JMS, and that therefore, her appeal to the JAB was moot.

On 20 May 1996, the Applicant lodged an appeal with the JAB against the failure to convene a Medical Board (the "second appeal").

On 20 June 1996, the Officer-in-Charge, Compensation Claims, informed the Applicant that the Medical Director had designated a trauma specialist to represent the Organization at the upcoming Medical Board and noted that the Applicant had already designated a physician to represent her before the Medical Board. On 16 September 1996, the Applicant's physician wrote to the Personnel Officer, DHRM, asking when the Medical Board would be convened, and informing her of his conclusion that the Applicant "should be

placed on 100% service-incurred disability since her accident injuries have resulted in permanent health defects."

On 23 July 1996, the Applicant wrote to the Secretary, JAB, alleging that documents were missing from her JMS file and that one document in particular had been "doctored". She requested that the missing documents be produced and that the JAB consider her appeal without further delay.

On 14 March 1997, the JAB adopted its report on the first appeal. The merits of the case and its conclusion and recommendation read as follows:

> "**Merits of the case**
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> 49. In her initial request for review, the Appellant sought the release of her medical file. In that respect, the Panel noted that the Appellant consulted her entire medical file on 29 May 1995, and was given a copy of her entire medical file on 26 May 1996. The appeal could have become moot at that stage, but in her comments dated 26 September 1996, the Appellant argued that seven documents were missing from her medical file. The Panel considered the Appellant's complaint regarding these seven documents allegedly missing from her medical file and noted that two of these documents were medical information while the others could be qualified as administrative communications, which were not by nature supposed to be inserted in a medical file. By a memorandum dated 12 February 1997, the Panel requested information from the Respondent, in order to establish if the Appellant had consulted those documents without being authorized to copy them or if the staff member had been precluded from consulting them.
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> 50. Concerning the medical information and in the first place the medical report from Phnom Penh allegedly dated 20 October 1992, the Medical Officer, UNHCR, informed the Panel in a memorandum dated 24 February 1997, that in his hand-written report of 15 October 1993 he was in fact referring to the medical examination of 23 October 1992, whose findings were described in the medical report of 15 December 1992. The Medical Officer, UNHCR, had misquoted the date of said report. Consequently, the Panel noted that there existed no medical report dated 20 October 1992 and that therefore no such report could be considered missing from the medical file. Furthermore, the Panel noted that the relevant medical report dated 15 December 1992 was well known to the Appellant, who provided several copies of it in her JAB file. Regarding the original carbon copy of Dr. Celton's reporting letter to Dr. Laux of November 1993, the Medical Officer informed the Panel that such carbon documents are very flimsy and often have to be replaced by sturdier copies as was done in the Appellant's file. The Medical Officer testified in his memorandum

of 24 February 1997 that the copy consulted by the Appellant was the exact reproduction of the original document.

51. The Panel then examined the Appellant's contention in respect of the other allegedly missing documents. ... In both cases it appears that the Appellant had copies of said documents as she provided them in her statement of appeal.

52. Concerning the letter from the Chief, 'Litigation Unit,' to the JMS dated 17 September 1995, the Medical Officer, UNHCR, explained in his memorandum of 24 February 1997 that in his reply to the Chief, 'Litigation Unit,' on 17 October 1995 he had misquoted the date of the memorandum and referred to 17 September instead of 18 September 1995. The Medical Officer, UNHCR, provided the Panel with a copy of the memorandum of 18 September 1995 which was, however, already included in the JAB file.

53. The Appellant also referred to a memorandum supposedly sent by the Director, JMS to the UNHCR Mediator in reply to the latter's letter of 1 August 1994. It appears that the Director, JMS, never replied in writing to the Mediator's letter. In this respect, the Medical Officer, UNHCR, underlined in his memorandum of 24 February 1997 that the Appellant was provided with a copy of her entire medical file on 14 May 1996 and this before her two witnesses.

54. As requested by the Panel, the Respondent sent a copy of a memorandum of 31 May 1995 from [the Principal Legal Officer, General Legal Division, Office of Legal Affairs] presenting UN guidelines applicable to the consultation of medical files. The Panel noted that medical reports are maintained by the Medical Service in the interest of the Organization and therefore the staff members have no absolute right for the staff member [sic] to consult these files. Nevertheless, in some specific cases the Administration may allow the staff member's physician or attorney as well as internal review panels, to consult this confidential file. In the present case, the Panel noted that the UNHCR Administration authorized the Appellant to consult her medical file in person. Furthermore, she consulted this file before a witness who was not a UN staff member. In this respect, the Panel wishes to recall that according to the opinion of the Principal Legal Officer, General Legal Division, OLA, no UN staff member can consult the medical file of another staff member even if the latter has authorized him/her to do so. Moreover, Appellant was given [a] copy of her entire medical file, which constitutes another serious departure from established legal doctrine. The Panel believes that had the Administration followed established practice regarding consultation of medical files, the present appeal could have been avoided. In this view, the Panel concluded that Appellant had full access to her medical file and that the Administration's wilful intent to delay or withhold the release of her medical file was not established.

...

Conclusion and recommendation

56. The Panel concluded that the Appellant was given access to her entire medical file and received copy thereof.

57. In the light of the above, the Panel makes no recommendation in support of this appeal."

Also on 14 March 1997, the JAB adopted its report on the second appeal. Its consideration, conclusion, recommendation, and special remark read as follows:

"**Consideration of the case**

38. The Panel first examined the receivability *ratione materiae* of the appeal. Indeed, the Appellant had not identified the contested administrative decision. In the light of the elements provided by the file, the Panel came to the conclusion that the staff member was requesting the review of the contents of the memorandum dated 14 December 1995 from the Secretary of the ABCC to the Officer-in-Charge of Compensation Claims, Geneva. The Panel found that the 'contested decision,' which was communicated to the Appellant on 3 January 1996, did not constitute a refusal to convene a Medical Board on her case for compensation but only subjected the convening of the Board to the production by the Appellant of some specific medical documents. Moreover, the panel noted that a meeting of the Medical Board was scheduled on 23 January 1997 but had to be postponed due to the unavailability of the Appellant's representing physician. Hence, as the contested decision could not be interpreted as a unilateral act emanating from the Administration and having a bearing on the staff member's conditions of employment, the Panel concluded that the appeal was not receivable.

Conclusion and recommendation

39. The Panel concluded that the appeal was not receivable.

40. In the light of the above, the Panel makes no recommendation in support of this appeal.

Special remark

41. In view of the complexity of this case, the Panel believes it would be useful to

make some remarks in connection with certain issues raised in this case.

42. In the interest of due process it is essential that both parties, and especially the Respondent, respect the time-limits prescribed by the Staff Rules. In this particular case the Panel noted that the Administration failed to submit its reply in time. Pursuant to staff rule 111.2 (g) 'the designated representative of the Secretary-General shall submit a written reply within two months following the date of receipt of the appeal'. Nevertheless, the Respondent may request an extension of the time-limit under article 20 of the Rules of Procedure and Guidelines of the Geneva JAB. In the present case, the Panel noted with concern that although the Respondent received several reminders, the Administration's reply which was due by 23 July 1996, was only received under cover of a memorandum dated 3 September 1996.

43. As the issue raised in this case hinges on a medical question, the Panel considers that at this stage it would be in the interest both of the Organization and the Appellant to convene a Medical Board with the utmost expediency to allow the examination of the staff member's claim for compensation."

On 18 April 1997, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report in the first appeal and informed her as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's concern that in giving you personal access to your medical file and providing you with a copy of your entire file, the Administration departed from established practice and legal doctrine. He has also taken note of the Board's unanimous conclusion that you had full access to your medical file and received [a] copy thereof and that the Administration's wilful intent to delay or withhold the release of your medical file was not established. Finally, the

> Secretary-General has noted the Board's determination to make no recommendation in support of your appeal, and accordingly, has decided to take no further action in your case."

Also on 18 April 1997, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report in the second appeal and informed her as follows:

> "The Secretary-General has examined your case in the light of the Board's report. He has taken note of the Board's statement that you had not identified the contested administrative decision and of the Board's conclusion that the document you were contesting did not constitute a refusal to convene a Medical Board but only subjected the convening of such Board to the production by you of some specific medical documents. The Secretary-General also took note of the Board's unanimous conclusion that the appeal was not receivable and of the Board's determination to make no recommendation in support of your appeal. The Secretary-General has decided to accept this recommendation.
>
> Moreover, the Secretary-General agrees with the Special Remark of the Board, which, inter alia, states that at this stage it would be in the interest both of the Organization and your interest to convene a Medical Board with the utmost expediency to allow the examination of your claim for compensation. The Secretary-General is thus requesting all concerned to cooperate to this end so that a Board can be convened within six weeks from the date of this letter." (Emphasis in original.)

On 23 January 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent improperly withheld important medical evidence from the Applicant.

2. The Respondent denied the Applicant due process by failing to convene a Medical Board for over five years after the Applicant's service-incurred injury.

3. The Respondent's delays were prejudicial to her case and caused her material

and moral damage.

Whereas the Respondent's principal contentions are:

1. Applicant's rights were not prejudiced in any way with respect to her access to the Organization's medical file concerning her, since she was provided a complete copy of the entire medical file.

2. Applicant's request to convene a medical board to consider her claims for compensation was honored after all relevant medical information was gathered.

The Tribunal, having deliberated from 6 to 23 July 1999, now pronounces the following judgement:

I. The Applicant's pleas raise two principal questions:

(i) Was the Applicant improperly denied access to her medical file?

(ii) Was there undue delay by the Respondent in convening a Medical Board?

II. With regard to the first question raised above, the Tribunal has previously considered the rights of staff to have access to their medical files in the possession of the UN Joint Medical Service. In this regard, the Tribunal recalls its Judgement No. 872, Hjelmqvist, paragraph XVI (1998), in which it stated that "[t]he Tribunal fails to understand the rationale for preventing staff from access to their own medical files [and] ... recommends that this policy be reconsidered and reversed." The Tribunal is of the view that persons who seek access to medical files should be treated with efficiency and compassion, as delays in accommodating them will only serve to compound or magnify their grievances.

III. In the present case, the Applicant requested access to her medical file on 14 December 1994 and again on 19 April 1995, and reviewed the file on 29 May 1995. However, when she sought to return the next day (30 May) to make copies of certain

documents in that file, she was told that she could not do so until the Office of Legal Affairs had been consulted. This exercise caused the Applicant a delay of almost one year. The legal advice given dealt with the general issue of access to files and never addressed the particular circumstances of the Applicant. She was, however, eventually given further access to her medical file on 14 May 1996 and allowed to copy it. Therefore, by the time she appealed to the JAB on 20 May 1996, the issue of whether she was entitled to see her medical file had become moot, because she had received full satisfaction from the Administration prior to filing her appeal. Although the Applicant claims that certain documents were missing from her medical file, the Tribunal is satisfied that the JAB thoroughly examined this issue and properly rejected the allegation. Further, while the Tribunal notes that the Applicant suffered frustration and annoyance by reason of the delay caused by the Respondent, it is not satisfied that the delay was so serious or that the consequences thereof caused such harm as would entitle the Applicant to an award of compensation.

IV. With regard to the second question, the Applicant claims that there was undue delay in convening a Medical Board, causing her injury, for which she should be compensated. The Tribunal notes that the Applicant first requested that her claim be submitted to a Medical Board on 14 December 1994. After numerous exchanges of correspondence and requests by the Administration for more information from the Applicant, a Medical Board was convened in early 1997. Another Medical Board was subsequently convened in 1998. At that time, the Applicant received some reimbursement from the Administration on her claims.

V. The Tribunal notes that there is a disagreement between the Applicant and the Respondent concerning the Administration's efficiency in keeping and filing documents submitted by the Applicant. While this issue cannot be resolved by the Tribunal, it is nonetheless satisfied that the Applicant herself contributed to the delay in having her claims put before a Medical Board because she did not submit certain medical records dating from

before the accident, when requested by the Medical Director to do so. Such records were necessary to determine whether there was a causal connection between the accident and her alleged injuries. In addition, the Tribunal finds that the delay caused the Applicant no serious damage and notes that a Medical Board was eventually convened to review her outstanding claims. In these circumstances, the Tribunal holds that the delay does not warrant monetary compensation. Such compensation would only be warranted if the delay were so serious that it constituted a failure to provide due process, which is not the case here. (Cf. Judgement No. 541, Ibarria (1991)).

VI. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 23 July 1999

Maritza STRUYVENBERG
Executive Secretary