



Administrative Tribunal

Distr.
LIMITED

AT/DEC/1097
30 January 2003

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1097

Case No. 1173: AOUALI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Mr. Julio Barboza, Vice-President;
Ms. Brigitte Stern;

Whereas, on 27 February 2002, M'Hamed Aouali, a former staff member of the United Nations, filed an Application containing pleas which read, in part, as follows:

"II Pleas

6. ... *[The Applicant] asks the Tribunal to order the production and communication to him of the document containing the view expressed by the Medical Service ...*

...

8. On the **merits**, the Applicant *requests the Tribunal:*

(a) *[T]o hold that the Applicant is incapacitated for work as a result of an accident that occurred on 7 March 1999 in the course of and attributable to the performance of his official duties and that he is therefore entitled to the benefits provided for in article 11 of Appendix D to the Staff Rules;*

(b) *[T]o rescind the decision of the Secretary-General of 7 June 2000 denying the Applicant's claim for compensation under Appendix D ...;*

(c) *[T]o order the Respondent to pay to the Applicant the benefits ... with interest on all arrears at the rate of 8 per cent per annum;*

(d) *[T]o hold that ... the Respondent repeatedly disregarded the requirements of due process and ... failed to examine the claim with due diligence;*

(e) *[T]o order the Respondent to pay ... by way of compensation for moral injury... such an amount as the Tribunal may deem fair and equitable;*

(f) *[T]o order the Respondent to pay ... the sum of six thousand Swiss francs in respect of legal costs and expenses."*

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 30 August 2001 and periodically thereafter until 31 March 2002;

Whereas the Respondent filed his Answer on 28 March 2002;

Whereas the facts in the case are as follows:

The Applicant served at the United Nations Office in Geneva (UNOG) under a series of short-term appointments from 17 June 1991 until 6 August 1999. At the material time, he served as a mail clerk at the G-2 level in the Documents Distribution Group of the Publications Service.

According to the records, on 18 March and on 2 April 1996, the Applicant visited the Joint Medical Service, UNOG, (JMS) complaining of pain in his left shoulder, and was seen by Dr. Celton and by Dr. Lyonnet, JMS.

In the afternoon of 17 March 1999, the Applicant went to the JMS, complaining of pain in his left shoulder. He claimed that he had had an accident during the exercise of his official functions, early that morning, and that he had injured himself while he was clearing shelves in the storage area of the Publications Service. He stated that, while he was attempting to lift a cardboard box from a high shelf, the box fell and hit him on the left shoulder. Clinical examination found no redness or bruising on his left shoulder or left shoulder blade. The Applicant was given a prescription for anti-inflammatory medication and infrared treatment and advised to consult his own doctor if the pain persisted. Subsequently, the Applicant took sick leave.

On 26 March 1999, the Applicant submitted a claim for compensation for a service-incurred injury, pursuant to appendix D of the Staff Rules. He also filled out an accident report form and attached a witness statement from a colleague, Mr. Benhamou. On 16 April, the Applicant was advised that, pursuant to appendix D of the Staff Rules, his case would be referred to the Advisory Board on Compensation Claims (ABCC) in New York for consideration, and was requested to submit further documentation on the accident.

On 19 April 1999, the Applicant resumed his work, but stopped after only three days "because of the intense pain suffered". On 31 May 1999, the Applicant's private orthopedic surgeon advised Dr. Celton, JMS, that the Applicant's "incapacity of work" was 100 per cent as of 22 April 1999, for an indeterminate period.

On 3 June 1999, Dr. Celton, JMS, prepared a medical report for the ABCC, stating that the Applicant's symptoms after 22 April appeared to be consistent with his earlier symptoms dating back to 1996, but that they were not necessarily attributable to the incident of 17 March. On 7 June, the Applicant was informed that, pursuant to the recommendation made by the JMS, only medical expenses incurred between 17 March and 21 April 1999 would be considered in connection with his claim at this juncture. On 14 June, the Applicant contested this decision. Applicant also asked for a copy of his medical files.

On 18 June 1999, the Applicant was informed that, by 7 July, he would have exhausted all of his rights to sick leave and annual leave and that, therefore, his contract would not be renewed after that date.

On 15 July 1999, at the request of the JMS, Dr. Denis Dupont, an independent outside practitioner, examined the Applicant. In his report of 29 July, Dr. Dupont concluded that, as of 15 July 1999, the Applicant's capacity to work at his job was 100 per cent and that there was no causal link between the alleged accident of 17 March and the symptoms that the Applicant was presenting. On 26 July, the Applicant was informed that he was being placed on special leave with full pay on a temporary basis until a decision could be taken on his case. On 6 August, the Medical Services Division, Office of Human Resources Management, (MSD) informed the Secretary, ABCC, that "based on the review of the submitted documents, the illness presented by [the Applicant] does not appear to be related to the incident of 17 March 1999".

On 9 August 1999, the Applicant was informed that the MSD had determined that he was 100 per cent fit to carry out his duties and, therefore, his special leave with full pay had been

discontinued at the expiry of his contract on 6 August. He was offered a new short-term contract in the same post with the Publications Service, which would start on 23 August 1999. On 31 August, the Applicant replied that, due to his injury caused by the accident of 17 March, he was unable to work and therefore, he could not accept the offer of a new contract.

On 30 September 1999, the Applicant wrote to the Secretary-General asking for a review of his case pursuant to staff rule 111.2 (a).

On 11 October 1999, the Applicant examined his medical files in the office of the JMS, Geneva.

On 16 October 1999, the Applicant again wrote to the Secretary-General, attaching additional documents on his case.

On 21 December 1999, the Chief of the Security and Safety Section, UNOG, forwarded a Security and Safety Service report of the same date to the ABCC, containing an additional deposition by Mr. Benhamou dated 16 December: at the time of the accident, Mr. Benhamou was in row IIF from which he could not see what was happening in row IIE, where the Applicant was; he heard the Applicant cry out, went over to him; the latter alleged that he had injured himself while moving a box, however, there was no box on the floor near the Applicant. In view of this statement, which contradicted the Applicant's statement to the effect that "he dropped the box on the floor during the accident", the Security and Safety Section was not in a position to determine the exact causes and circumstances of the Applicant's accident.

The Applicant's case was considered at the 396th meeting of the ABCC, on 28 January 2000. In view of the evidence given by Mr. Benhamou on 16 December 1999, the ABCC was "unable to make a recommendation due to the contradictory nature of the documentation". The ABCC, therefore, requested the Chief, Security and Safety Section, UNOG, to conduct an in-depth investigation into the matter. The ABCC would reconsider the case once this investigation was completed.

On 8 and 9 March 2000, the Security and Safety Section, UNOG, carried out two re-enactments of the alleged accident. They also interviewed witnesses and they produced a report on 23 March.

On 19 May 2000, at its 398th meeting, the ABCC recommended to the Secretary-General to deny the claim for compensation under Appendix D to the Staff Rules. The Secretary-General approved this recommendation on 7 June.

On 12 July 2000, the Applicant wrote to the Secretary-General alleging breaches of due process with regard to the investigation by the Security and Safety Section and asking for reconsideration of his decision.

On 27 February 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. As the Applicant is incapacitated for work due to an incident that occurred in the course and on account of his employment, he is entitled to compensation in accordance with Appendix D to the Staff Rules.

2. Even if it were established that there was a pre-existing condition as a result of which the consequences of the accident were aggravated, that would not invalidate the preceding conclusion.

3. The Respondent repeatedly disregarded the requirements of due process and did not examine the Applicant's claim for compensation with due diligence.

Whereas the Respondent's principal contentions are:

1. The Security and Safety Section reports do not support the Applicant's description of the alleged accident.

2. The medical evidence does not support the Applicant's description of the alleged accident.

3. There was no delay in the proceedings.

4. The Applicant was accorded due process.

The Tribunal, having deliberated from 11 to 25 November 2002, now pronounces the following Judgement:

I. The Applicant appeals the decision of the Secretary-General of 7 June 2000 denying his claim for compensation under Appendix D. He bases his claim on an alleged accident that took place on 17 March 1999: while handling a carton full of papers weighing 40-45 kilos (actually, the Security and Safety Section determined that the carton weighed about 27 kilos) from a shelf

with a height of 1.86 meters, he dropped the carton which hit him on the left shoulder, causing injury. He claims that the accident was service-incurred. (Cf. Judgement No. 1065, *Massi* (2002).) Unlike *Massi*, however, the Tribunal is not convinced the Applicant was injured during the exercise of his official functions.

II. Subsequent investigations cast doubts on the occurrence of the accident. There was only one witness, who claims that when he arrived at the place of the alleged accident alerted by the Applicant's cry, he did not see or hear a carton falling. He added that he did not see a carton on the floor: all he saw was the Applicant, holding his left shoulder with one arm and giving signs of having been hurt by something.

III. When the Security and Safety Section tried (twice) to re-enact the accident, it proved to be impossible to do so in accordance with the descriptions made by the Applicant: the Applicant could not have removed the carton in the way he said he had done as there was a neon light cover that required a certain manoeuvre which made it difficult to pull the carton out; the carton - identified by the Applicant to be the one that fell on his shoulder - was later found to be located in a lower stack and none of the other staff members interviewed admitted to having moved it there or found it on the floor; placing a carton of such weight on upper stacks would have implied a violation of the storage system in that area as explained by those staff members; and, the carton did not show any signs of a fall. The Security and Safety Service also reached the conclusion that it was virtually impossible to place and remove the carton without assistance from the spot on the shelf in the storage area where the Applicant claimed the carton was located.

The Applicant contends that his due process rights were violated because he was not present at the second re-enactment. However, the Tribunal is satisfied that the results of the first re-enactment were sufficient to cast severe doubts on the verisimilitude of the Applicant's narrative of the alleged accident. Moreover, the Tribunal notes that while the alleged accident took place at about 9 a.m., the Applicant only went to the JMS to see a doctor about 4 p.m., which does not seem to be compatible with the gravity of the injury claimed by the Applicant. Subsequently, the Applicant took sick leave, and on 31 May 1999, the Applicant's private orthopaedic surgeon advised the JMS that the Applicant was 100 per cent incapacitated for work, for an indeterminate period.

IV. On 3 June 1999, Dr. Celton, JMS, prepared a medical report for the ABCC, stating that the Applicant's symptoms appeared to be consistent with earlier symptoms dating back to 18 March 1996 (that is, three years earlier), when he had visited the JMS complaining of pain in the same place that he claimed had been hurt by the falling carton (three years later), namely his left shoulder and shoulder blade. Dr. Lyonnet, JMS, confirms that the Applicant had consulted him on 2 April 1996, for identical symptoms. The Applicant alleges that he does not remember having done so. According to both Dr. Celton and Dr. Lyonnet, the Applicant's symptoms were not attributable to the alleged accident of 17 March 1999. This sentiment was shared by an independent outside practitioner, Dr. Dupont, who concluded that, as of 15 July 1999, the Applicant's capacity to work at his job was 100 per cent and that there was no causal link between the alleged accident of 17 March 1999 and the symptoms that the Applicant was presenting.

In August 1999, the MSD determined that the Applicant was 100 per cent fit to carry out his duties. The Applicant produced three additional medical reports dated 31 May, 29 June and 29 July 1999, from orthopaedic specialists, to establish that his ailment was real and to counter the determination by the JMS and the MSD as to his ability to work. However, the Tribunal finds that there is nothing in those reports that counters the statements of the United Nations medical services that he had a pre-existing condition, and concludes that he did not suffer any new or additional injury in the exercise of his official functions as claimed, on 17 March 1999: the Applicant's contention that his injury was solely due to the carton falling on his shoulder is just not credible.

V. The Tribunal is satisfied that the Applicant has not proven with any degree of certainty that the accident of 17 March actually took place or that it is the cause of his current complaints. On the contrary, it finds that there is ample evidence that these complaints are due to symptoms that existed long before the alleged accident occurred. Thus, it finds that the Applicant's claim that he should not have been denied compensation under Appendix D of the Staff Regulations and Rules must fail.

VI. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Mayer GABAY
President

Julio BARBOZA
Vice-President

Brigitte STERN
Member

New York, 25 November 2002

Maritza STRUYVENBERG
Executive Secretary