

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**J.**  
**v.**  
**ITU**

**139th Session**

**Judgment No. 4932**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J. J. against the International Telecommunication Union (ITU) on 24 February 2021 and corrected on 8 April 2021 and 24 August 2021, ITU's reply of 23 December 2021, the complainant's rejoinder of 27 February 2022 and ITU's surrejoinder of 29 April 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, a former staff member of ITU, challenges its alleged refusal to take steps to ensure that the organization's insurers would cover his daughter's medical expenses and his own non-medical expenses, as well as the lack of response to his requests for clarifications related to his health care contributions.

Before 2014, ITU provided health insurance coverage to current and former staff members through the Staff Health Insurance Fund (SHIF), which was the joint health insurance fund for ITU and the International Labour Office, the secretariat of the International Labour Organization (ILO). On 30 April 2014, ITU ceased to be affiliated with the SHIF and all current and former staff members of ITU ceased to be

members of the SHIF. By Service Order No. 14/10, issued on 30 April 2014 and revised on 16 December 2014, the organization implemented a new staff health insurance scheme called the Collective Medical Insurance Plan (CMIP) for ITU staff members and retirees and eligible family members. Service Order No. 14/10 provided that any expenses related to a treatment received up to 30 April 2014 would be reimbursed by the SHIF. Under the CMIP, the processing of claims for reimbursement was entrusted to a private insurance company, C., by virtue of a contract between the organization and the company in question. The private insurance company created a separate insurance product called “[C.] Comfort +” which was not a part of its contract with ITU; it was designed as a complementary insurance for those affiliated with the CMIP offering services beyond those listed in Service Order No. 14/10. As of 1 January 2020, ITU joined a new collective insurance scheme, the United Nations Staff Mutual Insurance Society against Sickness and Accident (UNSMIS). The CMIP was brought to an end effective 31 December 2020 and the contract with the private insurance company C. was not renewed.

By letter dated 7 May 2016, the complainant, who had retired in 2009, contacted the organization raising several questions on the social and medical benefits of his daughter. Having received no response, he reiterated his queries on 17 October 2016. On 7 February 2017, further to a phone call with the Social Security Benefits and Well-being Service of the Human Resources Management Department (HRMD), the complainant sent a letter to HRMD stating, inter alia, that as mentioned during the phone call, he had just received a bill from a Swiss hospital for a treatment his daughter had received in January 2014 that he could not pay and requested that HRMD “look into the matter to find a solution”. On 11 July 2017, the complainant sent a memorandum to the Secretary-General seeking assistance “to expedite processing of [his] requests” made in the letters sent to ITU concerning the insurance coverage of his daughter, which had remained unanswered. He received no answer to this memorandum.

On 19 September 2019, the complainant contacted the Social Security Benefits and Well-being Service indicating that the letters he had sent had remained unanswered and requesting that the issues raised therein be examined. Moreover, the complainant pointed out that there was an “anomaly” in the calculation of his “annual deductible” amount from the company C. He reiterated his requests on 21 October 2019 and 10 November 2019.

The Administration responded to the complainant’s correspondence by email dated 14 November 2019. It addressed the complainant’s query concerning the alleged “anomaly” and indicated, concerning his letters sent in 2016 and 2017, that the “legal proceeding[s] for that case [were] closed”.

On 24 June 2020, the complainant lodged an appeal with the Appeal Board challenging ITU’s lack of response to his letters “with respect [to] medical coverage”, as well as clarification “on previous medical-insurance coverage ([...] SHIF) and [insurance company C.] deductions”. In his appeal, the complainant additionally requested clarification concerning the calculation of his “annual contributions for medical expenses” indicated in the “2019 attestation” provided by the organization “for tax purposes”.

The Appeal Board issued its report on 14 October 2020. Although it concluded that the appeal was irreceivable, it examined the merits of several of the complainant’s claims and held that they were unfounded. The Appeal Board recommended that the Secretary-General reject the appeal in its entirety. Aiming to avoid future similar situations, it nevertheless made a general recommendation that the Administration should reply without delay, preferably in writing, to any future request or claim regarding the medical insurance and the calculations relating to medical insurance coverage with the necessary explanations.

On 13 July 2020, the complainant lodged a second appeal requesting the intervention of the organization on his behalf in a dispute with the private insurance company arising from the denial of his claims for reimbursement under the “[C.] Comfort +” coverage pertaining to non-medical aid at home, namely food and mobility expenses. The Appeal Board issued its report on 11 November 2020, in which it

concluded that the appeal was irreceivable and recommended that the Secretary-General reject it in its entirety.

Meanwhile, on 4 September 2020, the Social Security Benefits and Well-being Service sent an email reminding staff members insured under the CMIP that the deadline for submitting claims to the private insurance company relating to medical expenses incurred before 31 December 2019 was 30 September 2020. Noting that, under Swiss law, medical practitioners could issue an invoice up to five years after the date of the treatment, it invited them to contact their practitioners and ensure that they were up to date with their invoices.

Moreover, on 17 September 2020, ITU asked the complainant to submit some documentation in order to provide him with the clarification he sought through his first appeal. On 25 September, having received the requested information from the complainant, ITU provided him with explanations regarding the deductions made from his income.

By a letter of 26 November 2020, the Secretary-General informed the complainant that he had decided to follow the Appeal Board's recommendations and to reject both appeals. That is the impugned decision.

The complainant asks the Tribunal to order ITU to reimburse him the totality of the medical bill from the Swiss hospital, including administrative charges, corresponding to an amount of 11,000 Swiss francs, "plus any unfor[e]seen additional charges which may be dealt with at [an] appropriate time upon closure of the case", as well as the reimbursement of the expenses under the "[C.] Comfort +" coverage in the amount of 8,294 Swiss francs for food expenses, and 6,000 Swiss francs for "transportation costs". He also claims punitive damages including interest. Lastly, in his rejoinder, the complainant requests to be awarded costs.

ITU notes that the present complaint concerns a decision made by a private company, in which it had no involvement nor responsibility, and, as such, it is not an administrative decision open to challenge pursuant to the Tribunal's Statute. It further notes that the complainant also seeks to challenge the alleged failure to address his requests for clarifications, which does not constitute an administrative decision and

therefore does not fall within the scope of the Tribunal's mandate. Furthermore, it contends that the complainant failed to submit a request for reconsideration with respect to any of the matters raised and that his appeals are, in any event, irreceivable *ratione temporis*. Consequently, ITU asks the Tribunal to dismiss the complaint as irreceivable and unfounded in its entirety.

### CONSIDERATIONS

1. The following discussion proceeds against the background already set out in the facts described above.

In essence, the complainant seeks to challenge the alleged refusal of ITU to take steps to ensure that the organization's insurers would cover his daughter's medical expenses and his non-medical expenses, as well as the lack of response to his requests for clarifications related to his health care contributions.

2. It is useful to recall, as to the medical insurance scheme for ITU staff and retirees, that:

- (i) Until 2014, ITU provided health insurance coverage to current and former staff members through the Staff Health Insurance Fund (SHIF);
- (ii) By Service Order No. 14/10, issued on 30 April 2014, and reviewed on 16 December 2014, ITU established a new staff health insurance scheme called the Collective Medical Insurance Plan (CMIP) for ITU staff members and retirees and eligible family members. Under the CMIP, the processing of claims for reimbursement was entrusted to a private insurance company, by virtue of a contract between ITU and the company in question. The company competitively selected to this end was the private insurance company C.;
- (iii) During the time the CMIP was in effect, company C. created a separate insurance product that had been designed as a complementary insurance for those affiliated with the CMIP. This product was called "C. Comfort +". It offered services beyond those clearly listed in Service Order No. 14/10. "C. Comfort +"

was not part of the contract between ITU and company C. Instead, ITU staff (and retirees) were free to adhere or not to this additional product and if they chose to do so, they subscribed to a specific contract with company C., without any participation from ITU; and

- (iv) As of 1 January 2020, ITU joined a new collective insurance scheme, named the United Nations Staff Mutual Insurance Society against Sickness and Accident (UNSMIS). The CMIP was brought to an end effective 31 December 2020 and the contract with company C. was not renewed.

3. The complainant seeks the reimbursement of the following medical expenses and non-medical expenses for aid at home:

- 9,906 Swiss francs for medical services received by the complainant’s daughter from 13 to 31 January 2014, in keeping with the bill issued on 6 January 2017 by a Swiss hospital, plus administrative charges, amounting in total to 11,000 Swiss francs;
- 8,294 Swiss francs and 6,000 Swiss francs for non-medical aid at home, namely for food and mobility expenses; he requested the reimbursement of 8,294 Swiss francs for daily home-delivered meals from a restaurant from June to December 2019, and 6,000 Swiss francs for “transportation costs for June-December 2019”.

With regard to the medical expenses, he alleges that:

- ITU did not respond promptly and properly to his requests;
- in keeping with Swiss law, the Swiss hospital was entitled to issue a bill within five years, as it did in the present case; he relies, in this respect, on the email of 4 September 2020 issued by the Social Security Benefits and Well-being Service of the Human Resources Management Department (HRMD); and
- thus, he was entitled to the reimbursement of the Swiss hospital bill in light of the insurance scheme applicable at the relevant time.

With regard to the non-medical expenses, he alleges that ITU failed to intervene in his favour with company C.; he was assured that, “through ITU, [company C.] would comply with a decis[i]on of the ILO Tribunal”.

He further contends that ITU denied him full access to complete and detailed calculations of his annual income and his health care contributions.

4. It is appropriate to recall the Tribunal’s case law on the role of international organizations with regard to disputes between staff members and insurance companies chosen by the organizations within the framework of collective insurance plans. In a case where an international organization submitted that a dispute between the staff member and the insurance company did not concern the organization itself, the Tribunal held that international civil servants’ social protection forms an integral part of their terms of employment, which are the responsibility of the organization for which they work. For this reason, where an organization entrusts the responsibility for providing social protection to a private insurance company, as was the case when ITU implemented the CMIP, the organization has a duty to ensure that the insurer correctly processes the claims submitted by the insured persons. In this situation, the organization is in fact liable for the acts of its insurer (see Judgment 3506, consideration 9; see also Judgments 3031, considerations 14, 18 and 19, and 2063, consideration 8). In such a case, the matter raised by the complainant is not a dispute between the complainant and the insurance company, but between the complainant and the organization itself, and it concerns precisely the latter’s compliance with its duty to ensure the proper examination of a claim for the reimbursement of medical expenses. This matter does fall within the Tribunal’s competence (see Judgments 3506, consideration 9, 3030 and 2249). When an organization is liable for the acts of its insurer, the organization itself must be ordered to reimburse the disputed expenses, which it may then seek to recover from the insurance company (see Judgment 3506, consideration 19).

5. The bill issued by the Swiss hospital on 6 January 2017 concerned medical services received by the complainant's daughter from 13 to 31 January 2014.

As mentioned above, until 2014, the health insurance coverage for ITU staff and retirees was provided through the SHIF. By Service Order No. 14/10, the ITU's collective insurance scheme was changed from the SHIF to the CMIP. Paragraph 2.4. of Service Order No. 14/10 provided for transitional measures, stipulating that "[a]ny expenses relative to a treatment (or part thereof) received up to 30 April 2014 inclusive, will be reimbursed by the SHIF".

Thus, ITU did foresee the hypothesis of its insured staff charged with bills corresponding to treatments received before the 2014 change in insurance coverage and took adequate transitional measures.

In addition, paragraph 9.1 of the Service Order provided:

**"Submission of Claims:**

1. With respect to all expenses for medical care incurred prior to or on 30 April 2014 at GMT +1 (00.00), insured persons shall submit all claims for the reimbursement of such expenses only to, and such claims shall be payable only from, the Fund (and not the Scheme); but under no circumstances shall any submission of such claims occur later than 1 January 2015.

2. The claims for benefit described under paragraph 1 above shall be submitted to the Fund by no later than 1 January 2015. Any such claims submitted after such date shall not be eligible for or entitled to any payment or reimbursement of benefits, whether under the Fund, under the Scheme, by ITU or otherwise."

Thus, the complainant's request for reimbursement of medical expenses incurred in January 2014 should have been submitted to the SHIF no later than 1 January 2015.

Even if the claim for reimbursement was governed by the SHIF Regulations and Administrative Rules, as the organization contends, and not by the transitional measure provided for by the Service Order, the claim would nevertheless be time-barred.

Accepting that the Swiss hospital bill concerned a medical treatment undergone from 13 to 31 January 2014, and that it had to be reimbursed in keeping with the SHIF, Article 2.10, paragraph 3, of the

SHIF Regulations and Administrative Rules would be applicable. It provided that:

“Bills sent to the Fund more than 21 months after the date when they were made out or more than 27 months after the completion of the treatment to which they refer shall not entitle the insured person to receive benefits from the Fund. [...]”

Thus, a bill for a treatment undergone in January 2014 should have been submitted at the latest by 30 April 2016. There is no evidence on file that the complainant submitted a request for reimbursement either to the SHIF or any other unit of the organization within the time limit of 30 April 2016. The complainant’s letter of 7 May 2016 does not mention the Swiss hospital bill. In any event, even if it were to be assumed that the 7 May 2016 request concerned the medical treatment dating back to January 2014, the request was time-barred because it was lodged beyond the deadline of 30 April 2016. The same consideration applies to the 7 February 2017 request, which was time-barred as well.

The complainant’s reliance on the email of 4 September 2020 issued by HRMD is misconceived. By this email, staff were reminded that:

- the deadline for the submission to company C. of claims in relation to medical expenses incurred before 31 December 2019 would expire on 30 September 2020;
- after this date, it would no longer have been possible to submit claims in the system;
- in Switzerland, medical practitioners may legally invoice up to five years after the date of treatment, therefore staff were to contact their practitioners and ensure they were up to date with their invoices.

This email was issued in view of the fact that the CMIP would come to an end on 31 December 2020. It only concerned the time limit for submitting medical expenses governed by the CMIP. Accordingly, this email did not modify the rules contained in Service Order No. 14/10 concerning the time limit for submitting requests for reimbursement of medical expenses incurred until 30 April 2014, which were governed by the SHIF.

The reference, contained in this email, to the fact that in Switzerland medical practitioners may legally invoice up to five years after the date of treatment was intended to remind the staff that they had to respect the deadline of 30 September 2020 for submitting to company C. medical expenses incurred before 31 December 2019, irrespective of the fact that under Swiss law, the invoices for medical expenses could legally be issued within five years. ITU was not bound by Swiss law. The fact that in Switzerland medical practitioners are allowed to issue their invoices within five years as from the date of treatment did not exempt staff affiliated with the SHIF or the CMIP from observing the time limits provided for therein for submitting requests for reimbursement of medical expenses.

The complainant has not proven if and when he submitted his claim to the SHIF or to any other unit of the organization. In addition, he was duly informed by ITU that his request filed after the time limit of 27 months was time-barred. Accordingly, the complainant's pleas concerning his claim for reimbursement of his daughter's medical expenses are unfounded.

6. In the present consideration, the Tribunal will address the complainant's claim concerning the reimbursement of non-medical expenses for aid at home. In light of the Tribunal's case law quoted in consideration 4 above, the Tribunal notes that an organization must be held responsible for the acts of its private insurer within the framework of the collective insurance plan/fund/scheme, whilst it cannot be held responsible for additional services offered by the insurer to staff on an optional basis. These additional services stem from individual contracts and in this respect a dispute between a staff member (or a former staff member) and the insurance company is a private dispute which is outside the purview of the organization and of the Tribunal.

In the present case, the collective insurance plan in force at the material time (CMIP) did not cover non-medical expenses for aid at home. It covered 80 per cent of medical expenses, for staff members (and former staff members) and their covered family members (Service Order No. 14/10, Annex 2). The non-medical expenses were covered,

under the agreed conditions, by the complementary insurance product called “[C.] Comfort +”, which was not part of the contract between ITU and company C.. Any issue related to the interpretation of the contractual proviso concerning non-medical aid and its ambit is governed, as per “C. Comfort+” Guide, by the UNIDROIT Principles of International Commercial Contracts and not by ITU’s Staff Rules and Regulations; any related dispute must be solved through the dispute resolution system provided for in the “[C.] Comfort+” scheme. Accordingly, ITU was not in a position to intervene with the insurance company C. to solve the dispute between the latter and the complainant, and it cannot be held responsible for the non-reimbursement by company C. of the non-medical expenses for food and transportation. Based on the same ground, the issues raised by the complainant do not fall under the competence of the Tribunal.

7. The complainant’s contention that ITU refused to respond to his requests for clarifications concerning his health care contributions is unfounded in part, and irreceivable in the remainder, and in any event, moot. The organization provided him with the requested information by email of 14 November 2019, and by letter dated 25 September 2020 after the lodging of both of his internal appeals (filed on 24 June 2020 and on 13 July 2020). The 25 September 2020 communication, even if it were to be accepted that it is an administrative decision, has not been impugned by means of an internal appeal. Accordingly, it cannot be challenged before the Tribunal, for failure to exhaust the internal means of redress (Article VII, paragraph 1, of the Tribunal’s Statute). In any event, the 25 September 2020 communication provided the complainant with the criteria which the organization applied for the contributions, and the complainant does not clarify which flaws would affect this communication. Since he received information about the criteria for the calculation of his annual income and of his health care contributions, the request to be provided with such information is, in any event, moot.

8. The complainant has not provided any evidence or analysis to establish that there was bias, ill will, malice, bad faith or other improper purpose on which to base an award of punitive damages (see, for example, Judgments 4756, consideration 11, 4286, consideration 19, and 3419, consideration 8). Accordingly, the request for punitive damages has no grounds and will be dismissed.

9. As the complaint fails, the complainant is not entitled to costs of the present proceedings.

10. As the complaint fails on the merits, there is no need to address the receivability issues raised by ITU, other than those specifically addressed by the Tribunal in considerations 6 and 7 above.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2024, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER