Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R. (No. 20)

v.

IAEA

139th Session **Judgment No. 4952**

THE ADMINISTRATIVE TRIBUNAL,

Considering the twentieth complaint filed by Mr R. R. against the International Atomic Energy Agency (IAEA) on 30 April 2019 and corrected on 7 June 2019, the IAEA's reply of 28 October 2019, the complainant's rejoinder of 19 February 2020 and the IAEA's surrejoinder of 29 May 2020;

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 challenges the IAEA's decision not to award him moral damages for its alleged mishandling of his Appendix D claim, namely his claim to have his illnesses recognised as service-incurred.

The complainant joined the IAEA in 2013. He was placed on certified sick leave in February 2017 and remained on sick leave until his separation from service on 31 May 2018, upon the expiry of his fixed-term appointment.

By a memorandum of 14 June 2017, he submitted a claim for compensation under the "Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official

Duties", contained in Appendix D to the IAEA Staff Regulations and Staff Rules ("Appendix D").

By a letter of 5 December 2018, the Temporary Chairperson of the Joint Advisory Board on Compensation Claims (JABCC) informed him that, on recommendation of the JABCC, the Director General had decided that his illness(es) would not be recognized as service-incurred under Appendix D.

By a letter of 24 December 2018, the complainant requested, pursuant to Article 40 of Appendix D, a reconsideration by the Director General of the determination of his Appendix D claim and the award of 4,000 euros in compensation for moral injury resulting from the mishandling of his Appendix D claim, due to the failure to state, in the 5 December 2018 letter, the reasons for the Director General's decision to reject his Appendix D claim and to provide him with the JABCC's recommendation underpinning that decision.

By a letter of 30 January 2019, the Director General informed the complainant that a medical board would be established, according to Article 41 of Appendix D, to consider and to report to the JABCC on the medical aspects of his Appendix D claim and that he would be notified of the final decision on his request for reconsideration once this process was completed. In the same letter, the Director General rejected the complainant's request for compensation in the amount of 4,000 euros for the moral injury, allegedly sustained due to the IAEA's handling of his claim, on the basis that the IAEA had acted in accordance with applicable rules and procedures. This is the decision impugned in the present complaint, filed with the Tribunal on 30 April 2019.

The complainant asks the Tribunal to set aside the impugned decision and to award him 5,000 euros in material damages, 4,000 euros in moral damages, 8,000 euros, plus interest, in consequential damages for moral injury resulting from the breach of due process and the duty of care owed to him, 5,000 euros, plus interest, in exemplary damages for the institutional harassment he suffered. He seeks costs in the amount of 2,000 euros and interest at the rate of 8 per cent per annum on all amounts claimed from 30 January 2019 (date of the impugned decision) up to the date all such amounts have been fully paid.

The IAEA submits that the complaint is premature and thus irreceivable, because the decision impugned by the complainant is not a final decision.

CONSIDERATIONS

1. Article VII, paragraph 1, of the Statute of the Tribunal stipulates that "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations".

2. In this connection, it is well established in the Tribunal's case law that often the process involved in reaching a final, impugnable decision may include many steps but those steps cannot be challenged separately (see, for example, Judgments 4632, consideration 4, and 3961, consideration 4). This is not to say that such steps cannot be subject to judicial scrutiny but, rather, that they cannot be impugned independently from a final administrative decision. As repeatedly stated by the Tribunal, "[o]rdinarily, the process of decision-making involves a series of steps or findings which lead to a final decision. Those steps or findings do not constitute a decision, much less a final one. They may not be attacked directly before the Tribunal, but they may be impugned as part of a challenge to the final decision" (see Judgment 4475, consideration 6, and the case law cited therein).

3. The decision impugned in the present case, as clearly identified in the complaint, is the Director General's 30 January 2019 decision, by which the complainant was denied the redress he sought in connection with the IAEA's alleged mishandling of his compensation claim under Appendix D to the IAEA Staff Regulations and Staff Rules ("Appendix D"), as per his 24 December 2018 letter to the Director General.

Appendix D, entitled "Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties", is the set of rules governing compensation for, inter alia, service-incurred illness. It provides in relevant part:

> "**Joint Advisory Board on Compensation Claims**
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> ARTICLE 38
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> A Joint Advisory Board on Compensation Claims shall be established to make recommendations to the Director General concerning claims for compensation under these rules. It may also be consulted by the Director General on any matter connected with the implementation and administration of these rules.
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> ARTICLE 39
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> The Joint Advisory Board may decide on such procedures as it may consider necessary for the purpose of discharging its responsibilities under the provisions of these rules. [...]
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> **Appeals in case of injury or illness**
>
> ARTICLE 40
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> Reconsideration of the determination by the Director General of the existence of an injury or illness attributable to the performance of official duties [...] may be requested within thirty days of notice of the decision [...] The request for reconsideration shall be accompanied by the name of the medical practitioner chosen by the staff member to represent him on the medical board provided for under Article 41.
>
> ARTICLE 41
>
> A medical board shall be convened to consider and to report to the Joint Advisory Board on Compensation Claims on the medical aspects of the appeal. [...]
>
> ARTICLE 42
>
> The Joint Advisory Board on Compensation Claims shall transmit its recommendations together with the report of the medical board to the Director General, who shall make the final determination."

The complainant submitted a claim for compensation under Appendix D on 14 June 2017. By a letter of 5 December 2018, he was informed that the Director General had decided not to recognize his illnesses as service-incurred. On 24 December 2018, the complainant requested a reconsideration of the Director General's determination regarding his illness pursuant to Article 40 of Appendix D, following

which the Director General informed him, by a letter of 30 January 2019, that a medical board would be established, according to Article 41 of Appendix D, to consider and to report to the Joint Advisory Board on Compensation Claims (JABCC) on the medical aspects of his Appendix D claim and that he would be notified of the final decision on his request for reconsideration once this process was completed. There is no doubt that this process was still ongoing on 30 April 2019, the time of the filing of the present complaint, and the complainant was aware of this fact, as shown by his 10 August 2019 letter to the Administration seeking information on the status of his request for reconsideration of the Director General's determination regarding his Appendix D claim.

4. In Judgment 3910, considerations 2 and 3, confirming Judgment 2753, the Tribunal ruled that the process before a medical board and the JABCC, as set forth in Articles 40 and 41 of Appendix D, is a distinct appeal process that runs parallel to the general appeal process and, therefore, the decision taken by the Director General on the medical board's report and the JABCC's recommendations – which decision is described in Article 42 of Appendix D, cited above, as the "final determination" – constitutes a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. Yet, in the present case, the stage of the final determination by the Director General had not been reached when the complainant filed this complaint with the Tribunal. Consequently, the complaint is premature inasmuch as it is not directed against a final administrative decision but, rather, against a mere step in the process.

5. Relying on Judgments 4117, consideration 5, and 2787, consideration 3, the complainant argues that in respect of decisions on a claim for service-incurred illness or injury, a distinction is to be made between procedural and medical aspects of a case, and argues that the present complaint concerns only the procedural aspects of the IAEA's handling of his Appendix D claim, in particular the failure to state the reasons for the decision to reject his claim and to disclose the JABCC's recommendation underpinning this decision. However, the Tribunal

notes, first, that the aforementioned judgments concerned a different organisation with a set of rules different from that of the IAEA and, second, that the receivability issues raised in the aforementioned judgments were different from those raised in the present complaint. Specifically, Judgment 2787 raised the issue of whether a decision taken after consultation of the Medical Committee was final, and Judgment 4171 the issue of whether an opinion of the Medical Committee constituted a final decision. It is, to say the least, questionable that the Tribunal's rulings in the aforementioned judgments afford any basis to consider a complaint filed against a perceived procedural flaw receivable in the absence of a final decision. In any event, Judgment 4117, consideration 5, clarified that, even if a distinction, such as the one put forward by the complainant, should be applied (which it expressly doubted), "there is no bright line between an opinion of a Medical Committee on procedural aspects and an opinion on medical aspects", noting that "an opinion of the Medical Committee may have both procedural and medical characteristics". Therefore, the complainant's argument regarding a distinction between the procedural and medical aspects of his case cannot stand.

6. The complainant further argues that the IAEA is precluded from objecting to the receivability of his complaint before the Tribunal, as it did not raise any issues of receivability in the impugned decision. In this respect, it is worth stressing that the complainant's 24 December 2018 request for reconsideration was aimed at the Director General's initial determination of 5 December 2018 that his illness was not service-incurred, not the refusal to pay him compensation specifically for the handling of his Appendix D claim. As a matter of fact, this particular request had never been formulated by the complainant prior to his 24 December 2018 request for reconsideration; it appears to have been made by the complainant as part of the relief he sought in contesting the Director General's initial determination, and rejection, of his Appendix D claim. It is thus unclear how the Director General could have been expected to raise, in his 30 January 2019 decision, receivability issues with respect to a matter that had not been put to him

for reconsideration and on which he had not (and could not have) taken position before.

In addition, and regardless of the foregoing, consistent precedent has it that the issue of receivability of a complaint can be raised by the Tribunal of its own motion, even if it has not been raised by the organisation, when irreceivability is clearly apparent from the evidence submitted (see Judgments 4758, consideration 3, 4757, consideration 3, 3139, consideration 3, 2567, consideration 6, 1095, consideration 18, and 60, consideration 1).

7. The Tribunal is satisfied that no final decision had been made at the time the present complaint was filed with the Tribunal. Consequently, it is premature and must, therefore, be dismissed as irreceivable pursuant to Article VII, paragraph 1, of the Statute of the Tribunal.

When a final decision is made on the complainant's Appendix D claim and the complainant wishes to challenge that decision, or any aspect of it, he can then raise all substantive issues concerning that final decision as well as all ancillary issues arising from the manner in which his Appendix D claim was processed.

Since the complaint is irreceivable in its entirety, the Tribunal finds it unnecessary to examine whether the complainant's plea of institutional harassment is receivable, all the more so having determined that, in fact, no final, thus challengeable, administrative decision has even been rendered on the complainant's Appendix D claim. For the same reason, the Tribunal finds it unnecessary to examine the complainant's request for the disclosure of documents.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, 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.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER