

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**N.**  
**v.**  
**CERN**

**140th Session**

**Judgment No. 5004**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms K. O. N. against the European Organization for Nuclear Research (CERN) on 22 September 2022 and corrected on 9 January 2023, CERN's reply of 6 April 2023, the rejoinder of the complainant's successor-in-title of 20 September 2023, corrected on 25 September 2023, and CERN's surrejoinder of 20 December 2023;

Considering the documents certifying the complainant's death on 9 January 2023 and notifying the Tribunal of the continuation of the complaint by her daughter in her capacity as heir, and the documents produced on her behalf offering proof of that capacity;

Considering the request for further information made by the President of the Tribunal on 28 February 2025, CERN's response of 18 March 2025 and the response of the complainant's daughter of 26 March 2025;

Considering Articles II, paragraphs 4, 5 and 6, and VII of the Statute of the Tribunal;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to refuse her an exceptional payment to reimburse the costs of medical and paramedical care.

The complainant, the separated wife of a retired CERN staff member, was covered by the CERN Health Insurance Scheme (CHIS) as a “subsidiary member” under Articles II 1.01 and II 1.02 of the Rules of that scheme (hereinafter “the CHIS Rules”). In November 2020 she contracted a serious illness that required ongoing high-intensity care until her death. She was admitted to hospital to undergo various operations, then placed in a specialist institution for treatment and rehabilitation from March 2021, and finally received home care from June 2021. Due to her extremely poor health, she received daily nursing care at home, administered by a paramedical healthcare provider. That situation continued until after the present complaint was filed. After returning to hospital in November 2022, the complainant died there on 9 January 2023.

On 18 August 2021, in order to be able to exceed the usual reimbursement ceiling set by the CHIS Rules, the private company appointed by the Director-General of CERN to operate the CHIS as Third-Party Administrator (hereinafter “the Third-Party Administrator”) granted the complainant “*ex gratia* payments” at the reimbursement rate set by the Rules, on account of the particular medical circumstances and “on a voluntary and exceptional basis [without constituting] a commitment as to renewal”\*. According to the complainant, that payment allowed all medical expenses to be covered.

On 1 December 2021 the Third-Party Administrator recognised, with retroactive effect, that the complainant was in a situation of low-level dependence and therefore granted her a daily allowance (“long-term care allowance”) and increased the reimbursement ceiling for paramedical services to cover paramedical care provided by medical auxiliaries. Subsequently, on 24 March 2022 and retroactively, the Third-Party Administrator recognised high-level dependence, which allowed the amount of the daily long-term care allowance and the ceiling for reimbursable paramedical services to be increased. Between February and September 2022, the care delivered by the home healthcare provider was partially reimbursed in several instalments by

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\* Registry’s translation.

the Third-Party Administrator, who classified it as paramedical services subject to a ceiling.

However, on 8 April 2022 the Third-Party Administrator refused the complainant's request for reimbursement of a consultation with a paramedical specialist in connection with her illness, considering that this was a "cost not covered by the CHIS"\* and explaining that the complainant's paramedical ceiling had been exceeded.

On 28 April 2022, following a suggestion to that effect in an email from the Third-Party Administrator dated 14 April 2022, the complainant's daughter, acting on her mother's behalf, submitted a new claim to the Third-Party Administrator for an "*ex gratia* payment" with retroactive effect from 1 January 2022, in respect of paramedical expenses not covered in 2022 by the CHIS. However, this claim was refused by letter of 17 June 2022.

On 30 July 2022 the complainant submitted a request for review of the latter decision on the grounds that essential facts had not been taken into account. She argued that the care in question was not auxiliary care but essential nursing care, and enclosed a certificate from her medical practitioner to that effect.

On 2 September 2022 CERN's Director for Finance and Human Resources rejected the request for review as irreceivable pursuant to Article VI 6.02, paragraph 2, of the CHIS Rules. He recalled that the term "auxiliary" corresponded to a precise terminology laid down in Article II 3.09 of the Rules and therefore had no bearing on whether the care was essential or not. He added that the medical certificate submitted did not constitute an essential fact that had been omitted by the CHIS Administrator in her refusal to grant the "*ex gratia* payments", since the evidence provided by the claimant already attested to the "essential nature of these actions performed by medical auxiliaries"\*. He concluded that the refusal of the request for an "*ex gratia* payment" had therefore been made on the basis of all the necessary facts. That is the impugned decision.

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\* Registry's translation.

The complainant asks the Tribunal to order reimbursement in full of the invoices for 2022 issued by the home healthcare provider and the dietician as at 31 August 2022, the date on which the complaint was filed, totalling 17,926 Swiss francs and to guarantee reimbursement in full of the invoices sent to the complainant in the second part of 2022 and in the following years, as well as of the other current or future care-related costs. She also claims 30,000 Swiss francs in damages for the moral injury she alleges to have suffered, as well as “financial compensation” of 10,000 Swiss francs for the material injury suffered as a result of the time spent preparing the submissions and for the costs incurred in the internal proceedings. Lastly, she seeks an award of costs.

CERN asks the Tribunal to dismiss the complaint in its entirety, as it considers that it has become moot given that the Organization ultimately covered the costs for which reimbursement had been sought. Failing that, it asks the Tribunal to dismiss the complaint as unfounded. Lastly, it asks the Tribunal to charge the complainant’s daughter with all the costs of the proceedings before the Tribunal and to order her to pay the Organization the sum of 25,000 Swiss francs by way of partial compensation for the costs arising from the continuation of the complaint, which, in its view, constitutes a vexatious action on her part.

#### CONSIDERATIONS

1. The Tribunal notes at the outset that the present dispute originally concerned coverage by the CHIS of various expenses incurred by the complainant following a hospitalisation. However, it is clear from the file that all the sums in question were reimbursed by CERN in the course of the proceedings, which the complainant acknowledged in her rejoinder. Consequently, the Tribunal, without prejudice to its findings below, considers it necessary to find that the present dispute now relates solely to the claims for moral and material damages, as well as coverage of the costs incurred in the internal proceedings and reimbursement of the costs of the present proceedings.

2. Before examining the receivability and merits of the complaint, the Tribunal must, of its own motion, rule on its jurisdiction to settle the present dispute.

It should be recalled that, as the Tribunal has always made clear since its earliest judgments, its jurisdiction is limited and, as such, it is “bound to apply the mandatory provisions governing its competence” (see, in particular, Judgments 4857, consideration 8, 4540, consideration 4, 4458, consideration 12, 2657, consideration 5, and 67, consideration 3). It follows that the Tribunal cannot rule on a complaint before it unless its competence to hear it has been clearly established (see, to that effect, Judgment 4857, consideration 8).

3. The relevant provisions of the Statute of the Tribunal read as follows:

“Article II

1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case.

[...]

4. The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution.

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules, and which is approved by the Governing Body. Any such organization may withdraw its declaration recognizing the jurisdiction of the Tribunal under the procedure set out in the Annex.

6. The Tribunal shall be open:

(a) to the official, even if her or his employment has ceased, and to any person on whom the official’s rights have devolved on her or his death;

(b) to any other person who can show that she or he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely.”

4. In the present case, the complainant had never been a staff member of CERN, but acted as the separated wife of a former staff member of the Organization. As a result, she could not rely on Article II, paragraph 5, of the Statute of the Tribunal. In this regard, there can be no question of treating her as a CERN staff member in the context of her membership of the CHIS. The Tribunal has recalled on several occasions that its competence does not extend to complaints filed by individuals who do not have the status of officials in organisations that have recognised its jurisdiction (see, in particular, Judgments 4857, consideration 3, 4652, consideration 11, 4646, consideration 3, 3705, consideration 4, 3551, consideration 3, and 3049, consideration 4).

5. When asked about this matter in a request for further submissions, the Organization explained that the complainant, as a family member (“subsidiary member” for the purposes of the CHIS Rules) of a CERN pensioner, himself a “post-compulsory main member”, was able to remain affiliated to the CHIS even after the spouses separated, in accordance with Articles II 1.01, paragraph b, and II 1.02, paragraph b, of the CHIS Rules. Similarly, under Implementing Directive CHIS/D/03, the complainant was able to receive CHIS payments owing to her directly into her own bank account. The Organization infers that, in that capacity, the complainant could file a complaint with the Tribunal against the final decision taken by the Director-General of CERN in her respect pursuant to Articles XIV 3.10 and XIV 3.11 of the CHIS Rules. According to the Organization, as the spouse of a CERN pensioner, the complainant had direct access to the Tribunal under the combined application of the abovementioned articles of the CHIS Rules and Article II, paragraph 6(b), of the Statute of the Tribunal.

6. However, the Tribunal notes that, in so doing, the Organization has confused the provisions of the Statute of the Tribunal concerning its jurisdiction, namely Article II, paragraphs 1 to 5, with those relating

to standing to bring proceedings before the Tribunal, namely Article II, paragraph 6.

However, the provisions relating to standing cannot, in themselves, provide a basis for the Tribunal's jurisdiction to hear a complaint. Furthermore, the complainant could not rely on Article II, paragraph 6(a), of the Statute of the Tribunal, since she was acting on her own behalf and not as a "person on whom the official's rights have devolved on her or his death", nor on Article II, paragraph 6(b), referring to "any other person who can show that she or he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely", since her spouse had not died when her complaint was filed with the Tribunal.

7. Lastly, Article II, paragraph 4, of the Statute of the Tribunal is also not applicable in the present case, since the rights which the complainant derived from her CHIS membership, in her capacity as the spouse of a CERN staff member or former staff member, do not arise from the provisions of a binding contract between her and the Organization that would confer jurisdiction on the Tribunal in the event of a dispute concerning its execution.

8. It should be recalled that the Tribunal's jurisdiction is governed solely by its own Statute (see, in particular, Judgments 4822, consideration 6, 3247, consideration 19, 2312, consideration 3, and 1509, consideration 14). Although the complainant, as a "subsidiary member" of the CHIS, was entitled to use the internal means of redress provided for in Chapter XIV of the CHIS Rules, relating to the settlement of disputes, she did not have access to the Tribunal. This is so even though Article XIV 1.01, paragraph 1(b), of that chapter expressly provides for the possibility of filing a complaint with the Tribunal "when the review and appeal procedures have been exhausted". An organisation cannot, through its own statutory provisions, derogate from the jurisdiction rules set out by the Statute of the Tribunal.

9. It follows from the foregoing that the Tribunal must find that it does not have jurisdiction to hear the present complaint or the Organization's counterclaim.

10. The complainant requested oral proceedings, which, according to her wish, would have included the hearing of five witnesses. However, in view of the Tribunal's lack of jurisdiction as stated above, which could not, in this case, be effectively challenged in such proceedings and renders pointless any discussion on the merits of the complaint, this request must be dismissed as moot.

#### DECISION

For the above reasons,

The complaint is dismissed, as is CERN's counterclaim.

In witness of this judgment, adopted on 22 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

RENÉ M. VARGAS M.