

D. A.

v.

ILO

141st Session

Judgment No. 5104

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms P. D. A. against the International Labour Organization (ILO) on 5 September 2022 and corrected on 29 November 2022 and 12 December 2022, the ILO's reply of 5 January 2023, the complainant's rejoinder of 20 February 2023 and the ILO's surrejoinder of 20 March 2023;

Considering Articles II, paragraph 1, 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 contests the decision to reject as time-barred her compensation claim for illness attributable to the performance of official duties.

The complainant is an official of the International Labour Office, the ILO's secretariat.

On 18 April 2019, the ILO Medical Adviser received from Dr K., the complainant's then treating doctor, a medical report on the complainant's state of health since April 2018 when the complainant had consulted Dr K. because of "physical exhaustion that she attributed to working over time [...] in a stressful work environment". In that report, Dr K. indicated that the complainant "present[ed] with symptoms of

depression and anxiety which ha[d] been progressively worsening over the 7 last months” and that he recommended therapy. As from April 2018, the complainant was repeatedly placed on sick leave.

Between July and December 2019, the complainant complained on several occasions to the Medical Adviser, her supervisors, Human Resources Development Department (HRD), and the Staff Union about the continuing and unresolved workload situation in her Unit and the fact she had not received any support. On 4 and 6 December 2019, she consulted Dr L., a dermatologist, who confirmed that her symptoms were caused by severe stress conditions (“stress +++”).

On 7 May 2020, Dr P., the complainant’s new treating doctor, provided the Office with a medical report, stating that the complainant presented symptoms of chronic depression and anxiety following a workplace burnout. In addition to recommending specific measures to ease the complainant’s stress linked to the heavy workload, Dr P. considered that an extended period of sick leave was necessary in order for the complainant to gradually regain her physical and mental health. Dr P. recommended the complainant’s return to work on a part-time basis as of 16 June 2020, with a gradual increase in working time based on the evolution of her condition.

On 18 May 2020, the complainant submitted a claim for compensation in respect of illness attributable to the performance of official duties, pursuant to Article 8.3 of the Staff Regulations, Annex II thereto, and Circular No. 42 (Rev. 4). In the claim form, she identified her illness as “Depression and anxiety due to chronic workplace stress that ha[d] not been successfully managed (‘work-place burnout’)”, that was first diagnosed on 18 February 2020. In an attachment to the claim, she also submitted a timeline of the events that had precipitated her illness and its progression since early 2017.

On 20 May 2020, the Secretary to the Compensation Committee acknowledged receipt of the complainant’s claim. Having requested and obtained medical information from the complainant and her treating doctor, the Medical Adviser submitted to the Compensation Secretariat the medical summary of the case on 2 December 2020. That same day, the file was forwarded to the Office of the Legal Adviser (JUR) for

examination. On 7 January 2021, JUR submitted written observations and recommended the complainant be asked to submit additional elements of proof in support of the factual aspects of her claim. On 13 January 2021, the Secretary to the Compensation Committee requested additional elements of proof from the complainant. The complainant responded to this request by submitting additional documents on 25 January 2021.

The Compensation Committee submitted its report on 16 February 2021 concluding that, based on the available medical evidence, the complainant's illness was fully diagnosed on 18 April 2019 at the latest. The Committee noted that the complainant had made her compensation claim more than a year after the first known diagnosis of the illness, with some of the underlying symptoms appearing even earlier and, although she had attributed these symptoms to her work, once she was provided with a diagnosis by her treating doctor in April 2019, it was not unreasonable to expect her to make a compensation claim within the statutory six-month deadline. As she had no valid reason for the late submission of her claim, the Committee could not recommend that the case be accepted for consideration despite the late filing. The Committee therefore unanimously recommended that the compensation claim be rejected as time-barred, insofar as the complainant had not submitted her claim within the six-month deadline of the first diagnosis of her illness provided by her treating doctor in April 2019. On 25 May 2021, the Director, HRD, informed the complainant of the Director-General's decision to endorse the Compensation Committee's recommendation and provided the complainant with a copy of the Compensation Committee's report.

On 25 June 2021, the complainant submitted a grievance to the Joint Advisory Appeals Board (JAAB) against the 25 May 2021 decision. In its report of 15 February 2022, the JAAB found that the Office had erred in rejecting the complainant's compensation claim as time-barred based on the 18 April 2019 medical report, as this was established under confidential cover by the complainant's then treating doctor, Dr K., to the Medical Adviser for sick leave certification purposes and was possibly not even disclosed to the complainant at the material time. The JAAB recommended that the complainant's compensation claim be

reconsidered by the Compensation Committee on the basis that: the medical report of 18 April 2019 could not validly serve as a basis for establishing a first diagnosis of the complainant's illness of anxiety and depression and should be disregarded; the diagnosis made by the dermatologist in December 2019 could serve as a starting point for the timeframe for the filing of the compensation claim, hence the compensation claim submitted on 18 May 2020 was receivable as it was filed within six months of the diagnosis made in December 2019; the Office ought to give the complainant the opportunity to consult a fully-fledged medical specialist, for instance her psychotherapist, with a view to further documenting her illness and describing her symptoms in the documents to be sent to the Compensation Committee.

By a letter of 9 March 2022, the complainant was informed that the Director-General had decided to accept the JAAB's recommendation. He had thus set aside the 25 May 2021 decision and had referred her compensation claim to the Compensation Committee for a new examination and a new recommendation to be submitted no later than 8 June 2022, subject to the timely response of her treating doctor(s) as may be necessary. On 10 March 2022, the Secretary to the Compensation Committee forwarded to JUR all background information on the complainant's compensation claim submitted to the Compensation Committee the first time, inviting it to prepare a new analysis to be submitted to the newly constituted Compensation Committee.

In a Minute of 11 March 2022 to the Compensation Committee, JUR advised, as regards the receivability of the claim for compensation, that a new consideration involved re-examining the question of receivability.

On 17 March 2022, the Secretary to the Compensation Committee wrote to the complainant to seek her permission for the Medical Adviser to contact Dr K., her treating doctor between April 2018 and February 2020, with a view to identifying the date she had first diagnosed the complainant's illness of anxiety and depression and had informed her of this diagnosis. In a letter of 13 April 2022 to the Secretary to the Compensation Committee, the complainant's representative strongly objected to a re-examination of the question of the receivability of the

complainant's compensation claim, asserting it was contrary to the JAAB's recommendation and the Director-General's decision. Noting that the issue of receivability had been settled, the complainant's representative requested that the Compensation Committee proceed without further delay to the examination of the merits of the complainant's compensation claim.

The Secretary to the Compensation Committee responded on 21 April 2022, noting that the fact that the complainant's compensation claim was remitted to the Compensation Committee for a new consideration and a new decision by the Director-General following a JAAB procedure did not have the effect of rendering the relevant legal provisions inapplicable to the consideration of the claim. He added that the terms of the Director-General's final decision did not limit the new consideration of the complainant's claim solely to certain aspects thereof and, thus, the claim had to be reconsidered in its entirety with a view to determining any entitlement to compensation. The Secretary to the Compensation Committee invited once again the complainant to indicate whether the ILO Medical Adviser could contact Dr K., noting that should she withhold her permission, the Compensation Committee would proceed with its examination and make a recommendation to the Director-General, in accordance with the mandate set forth in the letter of 9 March 2022.

On 26 April 2022, the complainant wrote to the members of the Compensation Committee to clarify that she had not denied access to Dr K., her former treating doctor, but that the Director-General's decision was clear that the case needed to be re-examined, as the decision to consider it time-barred had been cancelled, and now that this had been resolved following the JAAB report, the Committee needed to examine the claim. The complainant added that the Medical Adviser had contacted Dr K. in the past and the information was on the form completed by that doctor.

The Compensation Committee submitted its new report on 30 May 2022. The majority of the Committee members noted that the complainant had not granted her permission for the Medical Adviser to contact Dr K., her former treating doctor who, in the informed opinion of the

Medical Adviser, would have been able to provide essential information for the new consideration of her compensation claim and would have enabled the Committee to reach objective conclusions as to the question of receivability of her claim. Therefore, the majority of the Committee members found that, contrary to her obligation under the Staff Regulations, the complainant had failed to provide necessary evidence in support of her claim. The majority of the Committee members further concluded that it had been clearly established that the complainant had had multiple consultations with Dr K. between April 2018 and February 2020. Given that specialized treatment (medication, therapy) as well as extended periods of sick leave had been prescribed in the early stages of this long period, the majority considered that on the balance of probabilities, it was more likely than not that a diagnosis had been established around that time. Accordingly, the majority recommended that the complainant's compensation claim be rejected. A dissenting member recommended that the compensation claim should be considered receivable and examined on its merits, that the report of 7 July 2020 should be considered as evidence of the diagnosis of the illness, and that should the Committee require any further information on the receivability of the claim, it should request it directly from the complainant.

The Director-General decided to accept the majority recommendation of the Compensation Committee. The complainant was relevantly informed by a letter of 7 June 2022. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to find that her compensation claim was receivable *ratione temporis*, and to remit the case to the ILO for the Compensation Committee to examine it on the merits with a view to allowing the Director-General to take a new final decision. She also asks the Tribunal to award her moral damages and costs, and to order any measure suitable to fully remedy the situation and make her whole.

The ILO asks the Tribunal to dismiss the complaint as entirely devoid of merit.

CONSIDERATIONS

1. This complaint has several unusual features. One is that differing conclusions were reached by different administrative bodies about whether the complainant's claim for compensation under Article 8.3 of the Staff Regulations, Annex II thereto, and Circular No. 42 (Rev. 4) was made within the time prescribed by paragraph 23(b) of Annex II. That is, within six months of the manifestation and diagnosis of the relevant illness.

2. Another is that the operative conclusion concerning the time limit informing the ultimate decision of the Director-General to reject the claim in the impugned decision of 7 June 2022 was the conclusion of the Compensation Committee, reflecting the views of the majority, in its report of 30 May 2022. That conclusion was based, not on any report produced by a medical practitioner, but on an inference drawn, on the balance of probabilities, by the Compensation Committee that it was more likely than not that a first diagnosis of the complainant's illness had been established between April 2018 and February 2020. Effectively they were saying that, having regard to the complainant's extended periods of sick leave and the treatment provided to her in the early stages of the aforementioned period, there must have been an antecedent or contemporaneous diagnosis. The Compensation Committee eschewed the notion that a diagnosis necessarily had to take the form of a written report.

3. Another unusual feature is that the ILO did not defend the impugned decision in its pleas in the Tribunal by reference to the reasoning of the Compensation Committee, whose recommendation the Director-General accepted. Rather, it argued the complainant's illness was diagnosed no later than 18 April 2019 based on a written medical report from her treating doctor at the time.

4. The Compensation Committee was advised by JUR, in its new consideration of the complainant's compensation claim further to the JAAB recommendation, that it had to re-examine the question of

receivability, that is whether the claim had been duly submitted within the applicable time limit. Having regard to the prior conclusion of the JAAB that it had been submitted within the prescribed time limit, JUR's view is contestable.

5. However, this and a number of other legal issues need not be addressed in this judgment. That is because it is clear that in its recommendation the majority of the Compensation Committee erred in failing to give any weight to the JAAB's conclusion and recommendation, notwithstanding that the Director-General had accepted them in his 9 March 2022 decision referring the complainant's claim for a new consideration by the Committee. In its report of 30 May 2022, the Compensation Committee noted that in a dissenting opinion, one of its members considered that the recommendation of the JAAB included an implicit conclusion regarding the fact that the complainant's compensation claim should be considered receivable. It is unnecessary to determine whether this conclusion is correct. What is important is that in his decision of 9 March 2022, the Director-General accepted the unanimous recommendation made by the JAAB in its report of 15 February 2022 and, therefore, the views of the JAAB should have been considered by the Compensation Committee in its new consideration of the complainant's compensation claim, but they were not. The JAAB's detailed reasoning on what was the starting point for calculating the six-month time limit for the submission of her compensation claim spanned a little over three pages of factual and legal analysis. It culminated with a conclusion that a diagnosis made by the dermatologist in December 2019 could serve as a starting point for the timeframe for the complainant filing a compensation claim. Given the history of the matter, it was clearly incumbent on the majority of the members of the Compensation Committee to explain why they did not accept, and, in fact, rejected, the JAAB's analysis or, at least, why it was open to them to draw the unfavourable inference they did, in the face of the JAAB's analysis.

6. The impugned decision of 7 June 2022 will be set aside as will the report of the Compensation Committee of 30 May 2022. The complainant's compensation claim will be remitted to the Compensation Committee to be considered afresh. If the ILO does not raise time limits as an issue, the Compensation Committee can determine the claim on its merits. The complainant is entitled to moral damages for the manner in which the ILO dealt with her compensation claim which the Tribunal sets at 15,000 euros. The complainant is also entitled to costs. As she was represented by the Lawyer and Legal Consultant for the ILO Staff Union, she will be awarded 1,000 euros.

DECISION

For the above reasons,

1. The impugned decision of 7 June 2022 is set aside.
2. The report of the Compensation Committee of 30 May 2022 is set aside.
3. The complainant's compensation claim is remitted to the Compensation Committee to be considered afresh according to considerations 5 and 6 of this judgment.
4. The ILO shall pay the complainant moral damages in the sum of 15,000 euros.
5. The ILO shall also pay the complainant costs in the sum of 1,000 euros.
6. All other claims are dismissed.

In witness of this judgment, adopted on 31 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.