

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C.
v.
IOM

141st Session

Judgment No. 5131

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. G. C. against the International Organization for Migration (IOM) on 11 May 2022, IOM's reply of 6 September 2022, the complainant's rejoinder of 20 March 2023, IOM's surrejoinder of 13 June 2023, the complainant's additional submissions of 18 September 2023 and IOM's final comments of 18 December 2023;

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 decisions to place him on special leave with full pay (SLWFP) and subsequently on sick leave pending a reassessment of his state of health.

The complainant is a staff member of IOM who, at the material time, was serving in Algiers as Chief of Mission, IOM Algeria. On 3 April 2020 the Director of IOM's Regional Office for Middle East and Northern Africa ("the Regional Director") wrote to the Chief of Staff expressing concerns about the complainant's behaviour and performance which, she feared, could have serious consequences for IOM Algeria. She stated that, although she considered the complainant

to be “a nice colleague and a good professional”, she had “many difficulties with his management style at all levels”, and complaints had been received from several staff members, including another Chief of Mission. She had spoken to the complainant numerous times, recommending “more reflection, better control of anger and avoiding shouting at people and then apologizing”, but there had been a further incident on 2 April 2020 and she now sought the advice of the Chief of Staff as to how to deal with the situation.

On 25 April 2020 Dr P., a member of the Occupational Health Unit (OHU), sent the complainant an email entitled “Health Status Follow Up” in which she enquired whether he felt that the stressful situation generated by the ongoing COVID-19 pandemic was affecting him. She noted that the complainant had been treated for a mental health condition in 2018 and she encouraged him to respond so that support could be provided if needed. The complainant sent a lengthy reply on 27 April 2020, referring to his recent medical history, amongst other things, and indicating that he was not suffering from any of the specific symptoms mentioned by Dr P. in her email of 3 April 2020.

On 19 May 2020 the Staff Welfare Officer wrote to the complainant to arrange a discussion with him. She said that the Director of the Human Resources Management Division (HRM) had asked her to contact him (the complainant) “to discuss certain issues in terms of support”. That same day, the Director of HRM also spoke to the complainant directly by phone, after which the complainant wrote to thank him for being, “as always, frank and transparent”.

After a phone call with the complainant on 21 May 2020, the Staff Welfare Officer sent him an email on 22 May 2020 in which she thanked him for his “willingness to listen to the recommendations to help and support [him]” and noted that, to enable support to be provided, he had agreed to hand over his responsibilities “for the time being”. The Staff Welfare Officer then stated that “[i]t would be best for [him] to have a face to face psychiatric re-assessment to review [his] diagnosis and medication, ideally in Algeria”. This email was copied to the Director of HRM, to the Regional Director, to Dr P. and to the Chief Medical Officer. The complainant responded that same day, saying that

he greatly appreciated their concerns for his well-being, but that in order for him to “hand over and go on medical leave”, a certificate from a medical professional should first be obtained. He suggested that the first step should therefore be “to proceed swiftly with the face to face psychiatric re-assessment”.

By an email of 4 June 2020, the Chief Medical Officer asked the complainant to take sick leave immediately, by asking his doctor to prescribe it, because, according to her, “[he] need[ed] some time off to take care of [his] health”. She told him that OHU and the Staff Welfare Officer had significant concerns about his mental health, based on discussions between him and the Staff Welfare Officer as well as emails and reports received by OHU and the Staff Welfare Office (SWO). In order to help him, OHU would need to receive from his doctors in Algiers “a report indicating diagnosis [...], interventions to date and clinical evolution”. However, given the seriousness of the situation, OHU recommended that he return to Italy (his home country) for a reassessment by Dr D., who had known him for several years. The Chief Medical Officer asked the complainant to authorise OHU and SWO to contact his doctors so that they could work together to identify “the most adequate care and work options” for him. The complainant replied on 7 June 2020 that he would ask a doctor in Algiers to prescribe sick leave, once the Chief Medical Officer had confirmed that his understanding of her instructions was correct. He also authorised OHU and SWO to contact Dr D. and another doctor in Italy.

At the request of the Chief Medical Officer, the Regional Director provided further details of the incidents on which her concerns about the complainant’s behaviour were based in an email of 9 June 2020. The following day, the Chief Medical Officer wrote to Dr D., explaining her concerns about the complainant’s health and asking him to provide his conclusions and recommendations after a reassessment. She also shared with Dr D. some of the information she had received from the Regional Director.

In an email of 16 June 2020, the Chief Medical Officer informed the complainant that she had contacted Dr D. and she urged the complainant to submit a medical certificate from his doctor in Algiers

without delay. She indicated that, if she had received no answer from the complainant or from Dr D. by the end of the week, she would have to request that an independent medical expertise (IME) be conducted in Geneva, Switzerland. The complainant, however, asked to be provided with an official letter bearing the Organization's stamp and confirming the request for him to take sick leave, as he assumed that this would be required by his local doctor.

On 18 June 2020, after having reiterated her request for a medical certificate, the Chief Medical Officer informed the complainant that as it would be complicated to organise his travel to Italy before 1 July 2020, HRM, the Regional Director and OHU had agreed to place him on SLWFP from 19 June 2020 until he was able to see his doctor in Italy, who would then be able to assess whether sick leave was needed.

By a memorandum of 19 June 2020 addressed to the complainant, the Director of HRM confirmed the decision to place him on SLWFP with immediate effect until further notice. The Director explained that "the Administration ha[d] reasons to believe that the behavior [he] ha[d] been displaying in the recent past [was] concerning, not only with regard to [his] health [...] but also in the light of IOM's duty to provide all staff with a safe working environment". He also reminded the complainant of his duty, under Staff Regulation 9.3, to comply with any request to undergo a medical examination by a physician designated by IOM. That same day, the Chief Medical Officer wrote to a Geneva-based psychiatrist, Dr N., explaining her concerns about the complainant's health and asking him to conduct an IME.

On 20 June 2020 the complainant sent an email to the Chief Medical Officer informing her that he had spoken to Dr D. and had asked him to provide a psychiatric assessment. He attached a medical report from Dr D., dated 19 June 2020, detailing the treatment the complainant had been receiving for the past few years and concluding that he currently presented "excellent overall functionality".

The complainant wrote to the Director of HRM on 21 June 2020, asking him to withdraw the decision to place him on SLWFP. He pointed out that his doctor considered that sick leave was not needed, and he asked the Director to clarify the basis for the Administration's

concerns about his behaviour. The Director replied on 22 June 2020, reiterating that the decision was “based on the concerns expressed by OHU regarding [his] health as well as [...] a couple of concerning reports received at [Headquarters]”. He added that the reports concerning his behaviour would not be shared with him, as they had not been submitted within the framework for reporting misconduct, and that the SLWFP was not a punitive or disciplinary measure, but stemmed from IOM’s duty of care and diligence towards its staff, including him.

In an email of 24 June 2020, the Chief Medical Officer told the complainant that Dr D.’s medical report was not sufficient to confirm his fitness for work, as it was merely a summary of the care he had been receiving, and Dr D. had not actually seen him. She informed the complainant that an appointment had been scheduled with Dr N. in Geneva on 2 July 2020 and that the necessary travel arrangements had been made.

Dr D. sent a second medical report to the Chief Medical Officer on 30 June 2020, certifying that the complainant was fit for work. On 2 July 2020 the complainant was examined by Dr N. in Geneva. Dr N. sent his report to the Chief Medical Officer on 7 July 2020. He concluded that the complainant was 100 per cent unfit for work, but that if suitable treatment commenced rapidly, a gradual return to work might be possible within two to three months. The Chief Medical Officer sent the complainant a copy of Dr N.’s report on 21 July 2020. That same day the complainant was notified that his SLWFP had been converted to certified sick leave with retroactive effect from the date of Dr N.’s report, that is, 7 July 2020, for an initial period of one month.

On 25 July 2020 the Chief Medical Officer sent the complainant the contact details of two doctors in Algiers who might be able to put in place the treatment recommended by Dr N., and she asked him to contact them. During the next few weeks, OHU sent him several follow-up messages, enquiring whether he had been able to make suitable arrangements for treatment in Algiers, as recommended by Dr N.

On 28 July 2020 the complainant informed IOM that he had undergone surgery on 27 July 2020 and that the surgeon had prescribed sick leave until 28 August 2020. This sick leave was duly validated by

IOM. On 1 August 2020 he had an appointment with Dr S., a psychiatrist based in Algiers, who issued a report certifying that he was fit for work. The complainant also submitted a third report from Dr D., dated 17 August 2020, likewise certifying his fitness for work. On 21 August 2020 he wrote to the Chief Medical Officer asking her to acknowledge receipt of these medical reports and to confirm that he could resume his functions as Chief of Mission as from 28 August 2020, when his sick leave was due to expire. The Chief Medical Officer replied that the medical reports of Dr S. and Dr D. were not sufficient to establish his fitness for work. She urged him to implement Dr N.'s recommendations and to consult the psychiatrist of his choice in Algiers without delay.

Meanwhile, on 18 August 2020, the complainant lodged a request for review of the decision to place him on SLWFP.

On 1 September 2020 the complainant was notified that his sick leave had been extended for a further 30 days, until 28 September 2020. On 11 September 2020 he lodged a request for review of the decision of 28 July 2020 to place him on certified sick leave, as well as the decision of 1 September 2020 extending his sick leave. At the end of September, he submitted a medical report from Dr S., who confirmed that the complainant was receiving regular follow-up care and that he was fit for work. On the basis of this report, IOM authorised the complainant to resume work on 29 September 2020.

The complainant's request for review concerning his placement on SLWFP was rejected by the Director of HRM by a decision of 19 October 2020, against which he lodged an appeal with the Joint Administrative Review Board (JARB) on 17 November 2020. His request for review concerning his sick leave and the extension thereof was rejected by a decision of 10 November 2020. A second appeal was lodged with the JARB on 30 November 2020. The JARB dealt with the two appeals together and issued a first report on 7 July 2021, concluding that it was not competent to examine them because the case involved medical determinations. However, both parties considered that this analysis by the JARB was incorrect. After an unsuccessful attempt to

reach a settlement, IOM remitted the case to the JARB for an opinion on the merits.

The JARB issued a second report on 15 January 2022, unanimously recommending that the appeals be rejected. In his final decision dated 11 February 2022, the Director General accepted that recommendation. He considered that the decision to place the complainant on SLWFP had been taken on the basis of genuine concerns about his health, later confirmed by an IME which resulted in his being placed on sick leave. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order IOM to remove Dr N.'s independent medical expertise report from his medical record. He claims moral damages in an amount equal to at least one year's salary on the basis that IOM questioned his mental health "without substantiated evidence and medical grounds", failed to protect him against false allegations and breached its duty of care. He also claims 30,000 euros in moral damages for breach of the right to due process and of his fundamental right to privacy and medical secrecy; 15,000 euros in moral damages for injury to his dignity, reputation and career; 10,000 euros in moral damages for the "mental harm caused [...] by the [d]efendant's failure to act with due diligence and prevent the sustained harassment"; exemplary damages in the amount of 3,000 euros for "blatant bad faith" and for depriving him of a fair remedy; and 2,000 euros in damages for the excessive duration of the procedure. Lastly, the complainant claims costs.

IOM asks the Tribunal to dismiss the complaint in its entirety as without merit.

CONSIDERATIONS

1. Before discussing the relief sought by the complainant, who is a member of staff of IOM, it is convenient to identify several principles which inform the Tribunal's consideration of this complaint.

2. An international organization has a duty of care to provide for staff members who are ill as well as protect the staff with whom they work (see, for example, Judgments 4239, consideration 21, and 3689, consideration 5). That duty of care may require the organization to provide leave to a staff member whose health is in question and to provide sick leave if it has been determined the staff member is ill and consequently incapable of working. This obligation is subject to the applicable staff rules concerning leave and sick leave. The granting of either form of leave would usually be on a consensual basis. But rare and unusual occasions could arise where an organisation, in order to meet the duty presently being discussed both in relation to the ill staff member and other staff members working with her or him, would have to require a staff member to take leave unless expressly prohibited by the applicable staff rules. This is such a case.

3. An organisation can reasonably rely on medical opinions which, on their face, are balanced and from an expert in the relevant field of medicine. If there are conflicting medical opinions the organisation is entitled to act on one of them if they satisfy the criterion just referred to and is not bound to act on medical advice furnished by the staff member (see, for example, Judgment 1180, consideration 4).

4. The last principle, more of general application, is that moral damages are awarded when the complainant proves she or he has suffered a moral injury and also proves a causal link between the moral injury suffered and the unlawful conduct of the organization (see, for example, Judgments 5085, consideration 3, and 4522, consideration 17).

5. The following is the relief sought by the complainant:

- (i) quashing the impugned decision of 11 February 2022 as being unlawful, and drawing all the consequences, including removing the contested IME report from the complainant's medical record;
- (ii) an award of moral damages in an amount equal to at least one year's salary for "questioning his mental health without substantiated evidence and medical grounds and therefore by

- failing to protect [him] against false allegations” and breaching the duty of care;
- (iii) an award of moral damages in the amount of 30,000 euros for breach of the right to due process and of his fundamental right to privacy and medical secrecy;
 - (iv) an award of moral damages in the amount of 15,000 euros for injury to his dignity, reputation and career;
 - (v) an award of moral damages in the amount of 10,000 euros for the “mental harm caused [...] by the [d]efendant’s failure to act with due diligence and prevent the sustained harassment”;
 - (vi) an award of exemplary damages in the amount of 3,000 euros for “blatant bad faith” and depriving the complainant of a fair remedy;
 - (vii) an award of damages of 2,000 euros for the excessive length of the procedure;
 - (viii) costs.

6. The relief sought in (ii) above is based on a false premise, namely there was no substantiated evidence and medical grounds to question the complainant’s mental health and the allegations against him were false. Dr N.’s report of 7 July 2020 provided that evidence and support. It cannot be said the allegations made against him were false.

7. In relation to the relief sought in (iii) above, the complainant argues that the reasons given to place him on SLWFP were vague and unsubstantiated. IOM argues, correctly, that the complainant acknowledged the two key incidents linked to the decision to place him on SLWFP and they were both amply documented. Another aspect of the allegation that the complainant’s right to due process was breached was a complaint he made about the timing of giving him access to his medical file. The complainant treats this as analogous to due process in disciplinary proceedings. As IOM correctly points out, these were not disciplinary proceedings, but steps taken by the Organization to deal with what they perceived as a medical matter. Additionally, the

complainant argues there was a breach of medical secrecy and his fundamental right to privacy. Insofar as this concerns the provision of information to Dr N., that was unexceptionable. More generally, it is not proven that the complainant suffered a moral injury as a result of anything the Organization did in this respect.

8. In relation to the relief sought in (iv) and (v), it may well be that the complainant believed, in all the circumstances of this case, his dignity, reputation and career had been damaged and that he had suffered mental harm. But proof of those matters is only an element of establishing liability on the part of IOM. It must be established that the Organization acted unlawfully and that its conduct caused that damage and that harm. It has not, to the satisfaction of the Tribunal, been proved.

9. In relation to the relief sought in (vi) above, this is not a case warranting exemplary damages even if bad faith was established, which it was not. It must be proven and not assumed (see, for example, Judgments 5082, consideration 7, and 4505, consideration 9).

10. To this point, the Tribunal considers that the relief sought and discussed should not be granted and, as a consequence, the complaint should be dismissed. However there remains for consideration the question of whether the first order sought, namely the quashing of the impugned decision of 11 February 2022, should be made on the basis that it was tainted by illegality.

11. The complainant's pleas in his brief span 82 pages and his rejoinder spans 15 pages together with additional submissions of 4 pages. The complaint in these proceedings was filed relatively shortly before Annex 1 to the Rules of the Tribunal was adopted, imposing page limits on the pleas. In the present case, the complainant's pleas traverse a multiplicity of issues. Even if any of the points raised by the complainant cast doubt on the lawfulness of the impugned decision, it does not necessarily follow that it should be set aside, having regard to the provisions of Article VIII of the Statute of the Tribunal. In its report

on 15 January 2022 the JARB was critical of the sick leave provisions applicable to staff of IOM. Nonetheless it said in relation to the Administration's decision to place the complainant on SLWFP:

“In relation to the nature of the Administration's concern in relation to the [complainant]'s health, the Board finds that the Administration had a genuine reason, namely in the interest of the Staff Member, other Staff Members as well as the workplace at large, to place the [complainant] on [SLWFP].

The Board does not find any administrative omissions based on the existing regulations of placing the [complainant] on SLWFP.”

12. As to placing the complainant on sick leave, the JARB said:

“In relation to the decision and procedure to place the [complainant] on Sick Leave, as well as extended Sick Leave, the Board finds that the decisions taken were in accordance with the administrative procedures at hand at the time of the decision. It was, further, evident to the Board that the Administration acted under the impression that the [complainant] was in imminent danger and the welfare of other staff was equally at risk, and therefore went to some lengths to accommodate the [complainant]'s perceived needs.”

13. The Tribunal is entitled to, and does, rely on those findings and conclusions (see Judgment 4953, consideration 23, and the case law cited therein). Accordingly, no basis is established for quashing the impugned decision.

14. The Tribunal is not satisfied there has been excessive delay warranting the grant of moral damages.

15. In the result, the complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.