F.

v.

FAO

141st Session **Judgment No. 5145**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. C. T. F. against the Food and Agriculture Organization of the United Nations (FAO) on 16 May 2022, the FAO's reply of 5 September 2022, the complainant's rejoinder of 17 October 2022 and the FAO's surrejoinder of 11 January 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 decision to reject his claim that his injury was service-incurred.

The complainant joined the FAO in 1994 under a fixed-term appointment and was granted a continuing appointment in 2000. At the material time, he was appointed the FAO Representative in Cuba. He retired in October 2020.

On 26 September 2017, the complainant submitted a compensation claim for a service-incurred injury alleging exposure to sonic attacks in Cuba while he was interviewed by the press in his capacity as the FAO Representative. During the interview, on 21 May 2016, he felt vertigo and a loss of hearing in his left ear for a few seconds; the following

morning, he could not hear in the left ear, felt nauseous and suffered vertigo again. He saw medical practitioners, but none could establish the cause of the loss of hearing. He subsequently became aware, through the press and an investigation of secret services, of alleged "sonic" or "acoustic attacks" on some diplomats in Cuba. He believed that there was a link between the alleged attacks and the symptoms he had developed.

Following the complainant's enquiries about the status of his compensation claim, the Secretary of the Advisory Committee on Compensation Claims (ACCC) informed him, in April 2018, that based on a preliminary examination of his case, the medical condition he suffered from was not service-incurred because it did not fall within the scope of the FAO Manual paragraph 342.2.13(a). That paragraph provided, at the material time, that the injury or illness of a staff member was attributable to the performance of official duties when it "resulted as a natural incident of performing official duties". The Secretary added that the Health Services found no medical evidence that the symptoms and the condition he suffered in May 2016 were related to work. On 16 April 2018, the complainant submitted a request for reconsideration of that decision.

In June 2019, his case was referred to an independent medical examiner for a third-party review. The medical examiner issued his report on 11 July 2019, specifying that he was asked to assess the "work relatedness of the events reported" against the medical evidence of the reported health outcome, and that the review did not aim at providing a diagnosis. The medical examiner relied on predefined criteria and concluded that these criteria did not support a "causation more likely than not" that the complainant's aggravation of his left ear's hearing loss was attributable to work-related factors, that is to say to the alleged exposure to a sonic/microwave attack. He also noted that the complainant suffered from a pre-existing condition affecting sensorineural hearing loss.

The Office of Human Resources communicated a copy of the report to the complainant on 15 July 2019 indicating that his case would be referred to senior management and that he would be informed of its views in due course.

By a letter of 7 April 2020, the Acting Secretary of the ACCC notified the complainant that the Director-General had endorsed the ACCC's recommendation that the reported incident was not service-incurred. The complainant appealed that decision on 24 April 2020 arguing, in particular, that the reported incident caused him sharp pain at the time and a serious temporary disability, but also an "extremely serious permanent handicap" as he could no longer hear on one side. He added that experts in the relevant fields of medicine should have been consulted stressing that his case was referred to an independent medical examiner who was not specialised in the relevant fields. He further criticised the Organization's "dismissive attitude" and the fact that he had to keep on submitting information as a result of the Organization's "slow action". His appeal to the Director-General was rejected on 22 June 2020, and he lodged an appeal with the Appeals Committee on 21 July 2020 asking that the injury he suffered be recognised as service-incurred, that he be compensated for the material and moral damages he has suffered as a consequence of the injury and of the determination process, and that he be awarded costs.

In its report of 10 August 2021, the Appeals Committee found that, contrary to the complainant's allegation, the ACCC had adequately substantiated its determination that his injury was not service-incurred. It also noted that the complainant was informed of the substance of the ACCC's recommendation and was provided with sufficient elements to understand the reasons for rejecting his claim for compensation and to exercise his right of appeal. The Appeals Committee acknowledged that the complainant's case was complex, but held that the independent medical examiner's finding that "the inconclusive information on the actual cause, its mechanism of injury and the unspecified additional damage does not allow at this stage to establish an evidence-based cause-effect relation between the reported exposure and the natural functions of [the complainant]'s work" was not seriously contradicted.

In any event, it was not competent to replace a qualified medical opinion with its own, and there was no element showing that the examiner's medical conclusions were "abnormal". Regarding the complainant's allegation that the examiner's professional background was not adequate, and that the FAO had the possibility to convene a Medical Board instead, the Appeals Committee noted, first, that the complainant had not contested the decision to refer his case to the examiner at the time, and, second, that the possibility to refer the matter to an independent medical examiner was foreseen by the FAO Manual paragraph 342.7.21. The Appeals Committee nevertheless recommended that the complainant be awarded moral damages for the unreasonable length of time taken by the Organization to consider his request for service-incurred injury. It noted that the complainant had requested the Administration, on 23 September 2019, to take a decision as a matter of urgency as his claim had been pending for two years, and that he had demonstrated in that request distress and frustration attributable, in part, to the unreasonable length of time taken to examine his claim.

By a letter of 14 March 2022, the Director-General informed the complainant that his appeal was rejected. He endorsed the Appeals Committee's recommendation that the reported incident was not service-incurred. However, he rejected the recommendation to award him moral damages explaining that the length of the process was attributable to the nature and complexity of his claim, the procedural steps that it implied and the extensive documentation that he had continuously provided throughout the process, which required additional consideration by the ACCC and consequently delayed the finalisation of its review. This is the impugned decision.

The complainant asks the Tribunal to set aside the decision of 14 March 2022, to recognise that the injury he has suffered was service-incurred, to reimburse the medical expenses that were not covered by the FAO insurance policy, and to award him, with retroactive effect, material damages in the amount envisaged in the FAO's "legal framework". He also claims moral damages for the injury he has suffered and for the inordinate duration "of the following process". Lastly, he seeks an award

of costs for the internal appeal proceedings and for the process before the Tribunal.

The FAO asks the Tribunal to reject the complaint as unfounded.

CONSIDERATIONS

1. The complainant impugns the 14 March 2022 decision whereby the Director-General, endorsing the Appeals Committee's recommendation issued on 10 August 2021, dismissed his internal appeal against the decision of 22 June 2020, whereby the Director-General rejected the complainant's appeal against the 7 April 2020 decision to endorse the ACCC's recommendation that the illness reported by the complainant was not service-incurred.

This process originated from a compensation claim in which the complainant alleged he sustained an ear injury with subsequent hearing loss on his left side, that reportedly occurred between 21 and 22 May 2016, in Havana, Cuba, whilst he was being interviewed by the press, in a hotel, in his capacity as the FAO Representative. In his compensation claim, the complainant asserted that the injury was caused by sonic or acoustic attacks which allegedly occurred in Havana at the relevant time, affecting numerous diplomats in Havana with similar symptoms (the so-called "Havana syndrome").

The complainant presents his arguments under the following five headings:

(i) "Reliable literature refers to 'sonic attacks' or the 'Havana syndrome'";

(ii) "There is a direct link between the performance of official duties and the incident";

(iii) "The decision is not adequately substantiated";

(iv) The FAO has violated its duty to act with care and good faith; and

(v) "The long duration of the process" has caused the complainant "further moral damage".

2. By the arguments presented under the first and second headings listed in consideration 1 above, the complainant alleges that:

– a direct link existed between the performance of his official duties and the incident, citing literature, numerous press articles, and scientific studies on "sonic attacks" and the "Havana syndrome"; he also relies on an ongoing investigation by the Canadian police and a report by a Canadian university;
– his illness meets the definition of service-incurred illness under both the FAO Manual in force in 2016 (the 2016 FAO Manual) when the incident occurred, and the 2018 version of the FAO Manual (the 2018 FAO Manual) that was in force when the contested decision was adopted.

This plea is unfounded.

3. At the outset, it is appropriate to recall the role of the Tribunal in reviewing decisions concerning medical issues, which is not limited to procedural defects. The Tribunal does have full competence to say whether the medical findings show any material mistake or inconsistency, or overlook some essential fact, or plainly misread the evidence (see Judgment 1752, consideration 9). The limit of this review is that, being scientifically based and scientifically relevant, the medical bodies' evaluations should be accepted by the Tribunal unless they are considered clearly unreliable according to current scientific knowledge (see Judgment 2580, consideration 6). The Tribunal will not substitute its own determination for the medical findings upon which that decision was based and can annul decisions based on medical findings if they are affected by misuse of authority, error of law or of fact, or discernible arbitrariness (see Judgment 3745, consideration 4).

It is also appropriate to recall the standard of proof required by the Tribunal in order to establish that an illness is service-incurred, i.e. the balance of probabilities (see Judgments 4709, consideration 9, 3111, consideration 6, and 1971, consideration 15). As the case law sometimes frames it in another manner, it is enough for there to be "a causal link in the legal sense, that is to say, some fairly definite connection" between the diagnosed condition and the alleged occupational origin

for a condition to be accepted as service-incurred (see Judgment 3111, consideration 6).

4. Regarding the applicable rules, the Tribunal notes that when the illness occurred in May 2016, and when the ACCC conducted its preliminary examination in April 2018, the legal framework was the 2016 FAO Manual. The further steps in the process, as from the independent medical examination onwards, were carried out after the FAO Manual modifications entered into force in October 2018.The decisions of 7 April 2020, 22 June 2020, and 14 March 2022 appear to rely on the 2018 FAO Manual.

This aligns with the Tribunal's case law according to which, when addressing a claim, an administrative authority must generally base itself on the provisions in force at the time it takes its decision, and not on those in force at the time the claim was submitted. Only where this approach is clearly excluded by the new provisions, or where it would result in a breach of the requirements of good faith, the non-retroactivity of administrative decisions and the protection of acquired rights, the above rule will not apply (see Judgments 3214, consideration 14, and 3034, consideration 33).

In any event, in the present case, the complainant's illness does not meet the definition of a service-incurred incident/illness under either the former or the new version of the FAO Manual, in light of available scientific evidence, correctly assessed by the ACCC, the independent medical examiner, and the Organization.

The FAO Manual in the version in force before October 2018 (the 2016 FAO Manual), in the relevant part, read:

> "342.2.11 Compensation is awarded to the staff member in the event of injury or illness or, in the case of his death, to his eligible family members (see para. 342.2.2) when the death, injury or illness is attributable to the performance of official duties. [...]
>
> 342.2.13 [...] the death, injury or illness of a staff member is attributable to the performance of official duties when it:
>
> (a) resulted as a natural incident of performing official duties; or

> (b) was directly due to the presence of the staff member, in accordance with an assignment by the Organization, in an area involving special hazards to his health or security, and occurred as the result of such hazards; [...]"

The FAO Manual in the version in force as of October 2018 (the 2018 FAO Manual), in the relevant part, read:

> "342.2.11 Compensation is awarded to the staff member in the event of injury or illness or, in the case of their death, to their eligible family members (see para. 342.2.2) when the death, injury or illness is attributable to the performance of official duties. [...]
>
> 342.2.13 [...] the death, injury or illness of a staff member is attributable to the performance of official duties on behalf of the Organization, in that it occurred when engaged in activities and at a place required for the performance of official duties:
>
> [...]
>
> (d) Incidents that occur when a staff member is [on] official travel or assigned to an area involving special hazards, as documented and addressed by authorized FAO or United Nations Security and Safety officials and the underlying incident occurred as a direct result of such hazards."

Under both versions, an illness/injury is service-incurred when "attributable to the performance of official duties". In both versions, insofar as they are relevant to the present case, injury or illness of a staff member is attributable to the performance of official duties:

> "when it [...] was directly due to the presence of the staff member, in accordance with an assignment by the Organization, in an area involving special hazards to his health or security, and occurred as the result of such hazards" (the 2016 FAO Manual);

or

> "when a staff member is [...] assigned to an area involving special hazards, [...] and the underlying incident occurred as a direct result of such hazards" (the 2018 FAO Manual).

The differences between the two versions of the provision are not relevant to the outcome of the case. Regardless of the phrasing "the result of such hazards" versus "a direct result of such hazards", both versions require evidence of a causal link between the illness/incident and the performance of official duties in an area involving special hazards to the staff's health or security, and the illness/incident must result from such hazards.

5. In the present case, there is only evidence that the complainant suffered from an illness with symptoms beginning between 21 and 22 May 2016 in Havana, during a press interview in his capacity as an international official. However, there is neither sufficient evidence, to the requisite standard of the balance of probabilities, that the ear illness was caused by the performance of his duties, nor evidence that an incident occurred during the performance of his duties in an area involving special hazards. The reported incident, i.e. alleged sonic attacks, remains, to date, unproven. The documentation provided by the complainant – such as press articles, and scientific studies – offers no evidence of sonic attacks that may have occurred in May 2016 in Havana. While these sources propose various hypotheses – including not only sonic attacks but also "microwave stimulation" or neurotoxin exposure due to the high dose of pesticides locally used around the residences of diplomats in Havana – these hypotheses remain mere speculation and, in any case, refer to a time period starting in the autumn of 2016, which is substantially later than the reported date of injury/illness in May 2016.

6. The complainant provided the Tribunal with a medical certificate from his treating doctor, dated 7 May 2019, stating that sonic attacks are a more likely cause of his illness than a virus. However, this medical certificate assumes that there were sonic attacks without proof that they actually occurred, whereas competent investigative authorities have not, to date, proved such attacks.

7. Furthermore, most of the complainant's documentation indicates that the "Havana syndrome" began in late 2016, whereas his illness started earlier, in May 2016. He relies, in this respect, upon an email he received from a Canadian official on 21 May 2019, stating that in Canada there was, at the time this email was written, an ongoing criminal investigation by the Royal Canadian Mounted Police (RCMP), and that the RCMP was investigating "reports which may have occurred prior to May 21, 2016". However, an investigation which had not yet been finalized at the time the impugned decision was adopted does not

amount to evidence that the "Havana syndrome" episodes occurred prior to or on 21 May 2016.

8. The complainant also provided the Tribunal with a "fact sheet" from the United States Federal workers' compensation program, referring to federal employees affected "by Cuba attack and China health incidents".

This document lacks clear reference to the "Havana syndrome", referring, in vague terms to "guidance for employees affected by the health attacks in Cuba and health incidents in China". Moreover, and crucially, it does not exempt staff from the burden of proof (it is stated: "To qualify for [the Federal Employees' Compensation Act] benefits, an employee must submit sufficient evidence and demonstrate cause for [the Office of Workers' Compensation Programs] to proceed with processing and adjudicating a claim. It is the claimant's responsibility to establish the five basic requirements of a claim, known as the 'burden of proof' and these basic elements are described below. The claimant must submit evidence that supports entitlement to compensation"). More importantly, a national government decision to compensate its staff does not, by itself, prove the occurrence of sonic attacks.

9. Based on the evidence in the record, the Tribunal is satisfied that it was open to the Organization to find that the complainant's illness was not service-incurred based on the available scientific evidence. This finding adhered to the requisite standard of proof based on the balance of probabilities. The ACCC, the independent medical examiner, and subsequently the decision-making authority, in determining the causal link between the complainant's working conditions and the onset of his ear illness, did not require this link to be established conclusively. Indeed, as evident from the independent medical examiner's report and the Director-General's impugned decision, they considered that the evidence adduced did not make the link sufficiently probable for the illness in question to be recognised as service-incurred, taking into account other contributing factors (see, in the same vein, Judgment 4709, consideration 9). The impugned decision is not affected by errors of fact or law in this respect.

10. By the arguments presented under the third heading listed in consideration 1 above, the complainant alleges that the contested decision "is not adequately substantiated". He contends that:

– his request for reconsideration was rejected in a succinct way with only generic assurances that the materials he submitted had been thoroughly examined;
– there is no evidence that the FAO duly considered the medical aspects of his case or consulted specialists in the relevant fields of medicine; numerous materials he provided were merely listed in an attachment, without being discussed in the text of the decision;
– the independent medical examiner Dr A.R. is neither "qualified for an analysis into these fields of medicine" nor independent;
– the complainant was not examined in person by the independent medical examiner or other FAO doctors;
– the independent medical examiner's report failed to discuss the diagnoses of specialists who had actually examined the complainant, for example, Dr A.S.; those diagnoses had clearly excluded his pre-existing health condition as the cause of reported symptoms;
– according to the Appeals Committee, he was properly informed of the decision's reasons through the examiner's report. However, the FAO itself did not consider that report decisive;
– a "change of approach" occurred between the 4 April 2018 decision (based on medical grounds), and the decision of 7 April 2020 rejecting his request for reconsideration (focused solely on the nexus between the injury and the complainant's performance). This discrepancy highlights a lack of sound medical substantiation;
– according to the FAO, conveying the ACCC's conclusions without disclosing its "deliberations" was an established practice. If such practice exists, it conflicts with the obligation to provide reasons;
– in any event, he was not even given the "key rationale" for the decision because the ACCC rejected the service-incurred nature of the injury without referring to medical issues; and
– the ACCC should have provided a higher level of detail in its analysis.

11. The above arguments are unfounded.

The opinions and decisions issued by the ACCC, the independent medical examiner, the Appeals Committee, and the Director-General are, in the Tribunal's view, sufficient and exhaustive. The Tribunal recalls that, according to its case law, the reasons for a decision must be sufficiently explicit to enable the person concerned to take an informed decision accordingly; they must also enable the competent review bodies to determine whether the decision is lawful and, in particular, the Tribunal to exercise its power of review. How extensive those reasons need to be will depend on the circumstances (see Judgments 4081, consideration 5, 3617, consideration 5, and 1817, consideration 6).

In the present case, a more in-depth analysis of the documentation submitted by the complainant – consisting mainly of press articles and scientific studies – was not required or necessary, given that these documents merely formulated hypotheses concerning the occurrence of sonic attacks and are inconclusive. As already noted, the medical certificate dated 7 May 2019, stating that sonic attacks are a more likely cause of the complainant's illness than a virus, is not based on scientific evidence. It assumes the occurrence of sonic attacks which, instead, to date, remains unproven. Thus, the independent medical examiner's report is not flawed for not relying on the 7 May 2019 medical certificate's findings. It was open to him to conclude that:

> "In a standard causation analysis, for an exposure to be causally associated with a health effect, the physician must be able to define the effect, thoroughly understand the mechanism of injury linking the exposure to symptoms and be aware of and apply the available epidemiologic evidence for causal association of the entity in question.
>
> In the case of [the complainant] no [National Institute for Occupational Safety and Health] criteria support a causation more likely than not (i.e., 51% certainty) that the alleged outcome (aggravation of his left sensorineural hearing loss) was attributable to work-related factors (indicated as the alleged exposure to a sonic/microwave attack while serving FAO in Cuba).
>
> The inconclusive information on the actual cause, its mechanism of injury and the unspecified additional damage, do not allow at this stage to establish an evidence-based cause-effect relation between the reported exposure and the natural functions of [the complainant]'s work.

> Such determination can be further reconsidered should additional and substantial new evidence becomes available (i.e. the results of the investigations in Canada)."

Moreover, the Tribunal is satisfied that it was open to the independent medical examiner to take into consideration the complainant's pre-existing medical condition, defined in his report as "genetically pre-established condition for which the claimant has been under treatment [for] years before the claimed accident: bilateral hearing loss due to otosclerosis [...]".

Under the Tribunal's case law, "where an illness has several possible causes – which is by definition the case of such a hearing loss, according to the scientific literature cited by the Medical Adviser – and only one or some of those causes are related to the complainant's employment, there is no reason to recognise it as service-incurred unless those causes are shown to be the determining factor" (see Judgments 4709, consideration 10; see also Judgments 3111, considerations 3, 6 and 7, and 1752, consideration 9).

The complainant's arguments questioning the independent medical examiner's qualifications, expertise, and independence are too vague to be entertained. The mere fact that Dr A.R. was the Director, Wellness Division at the World Food Programme (WFP) does not *per se* affect his impartiality. In any event, the complainant accepted Dr A.R. as the independent medical examiner without raising any issues about his WFP position.

An in-person examination of the complainant was not necessary, as his illness was undisputed, and the sole issue was the existence of a causal link between the performance of his official duties and his illness. An in-person examination would not have been useful for evaluating this causal link.

The alleged "change of approach" does not establish any legal flaw in the process. As already noted, there was no need to dwell on uncontroverted medical issues. Thus, the reconsideration process correctly focused essentially on the nexus between the injury and the performance of the complainant's duties.

Regarding the alleged failure to disclose some documentation, while it is noted that the complainant did not receive internal documentation, he was informed of the ACCC's recommendation. The Tribunal is satisfied that there was no breach of his rights, as it was sufficient to provide the complainant with the ACCC's recommendation. The complainant received sufficient information to understand the reasoning for rejecting his claim and to exercise his right of appeal (see Judgment 4228, consideration 6).

12. By further arguments presented under the third heading listed in consideration 1 above, the complainant alleges a procedural error, as the Organization failed to convene a Medical Board. The Organization proposed to refer the matter to an independent medical examiner and he agreed, but he later found out that pursuant to the 2016 FAO Manual, which in his view was the applicable framework, resorting to a Medical Board was the only available option.

This plea is unfounded.

According to the 2016 version of the FAO Manual:

> "342.7.21 If reconsideration is requested because of disagreement with the medical basis for the initial determination, a medical board is convened to consider and to report to the ACCC on the medical aspects of the request for reconsideration. Such requests must be accompanied by the name of the medical practitioner chosen by the staff member to represent him on the medical board as provided in [paragraph] 342.7.22."

According to the version of the FAO Manual in force as of 24 October 2018:

> "342.7.21 If reconsideration is requested because of disagreement with the medical basis for the initial determination, the Chief [of the Health Services] following a preliminary agreement with the claimant, can refer the case to an Independent Medical Examiner to consider and to report to the ACCC on the medical aspects of the request for reconsideration.
>
> 342.7.22 The findings of the Independent Medical Examination, are communicated to the claimant and the ACCC by the Chief [of the Health Services] for the ACCC to take a final decision on the request for reconsideration.

342.7.3 Medical Board

342.7.31 Alternatively, if reconsideration is requested because of disagreement with the medical basis for the initial determination, a medical board can be convened to consider and to report to the ACCC on the medical aspects of the request for reconsideration. Such requests must be accompanied by the name of the medical practitioner chosen by the staff member to represent him on the Medical Board as provided in [paragraph] 342.7.22."

As already stated in consideration 2 above, the Organization applied the FAO Manual in the version in force as of October 2018, and this aligned with the Tribunal's case law requiring an administrative authority to base its decisions on provisions in force at the time of the decision, and not on those in force when the claim was submitted.

While it is noted that the complainant submitted his request for reconsideration on 16 April 2018, that is when the 2016 version of the FAO Manual was still into force, nonetheless he did not include the name of the medical practitioner chosen to represent him on the Medical Board, as he should have done in keeping with the FAO Manual paragraph 342.7.21 in the version in force in April 2016. Further to that, there were ongoing exchanges between the parties, and the complainant submitted additional documentation. By the time his request for reconsideration was examined, the new version of the FAO Manual had entered into force. Therefore, the Organization correctly relied on it and proposed referring the case to an independent medical examiner. As an international official, the complainant is expected to know the FAO Manual, and, thus, he could not ignore that he had an option between the referral of his case to a Medical Board or an independent medical examiner. He did agree to refer his case to an independent medical examiner, even though he had the option to request that a Medical Board be convened, which he never did, neither in April 2018 nor later. Thus, contrary to his contention, he was not unfairly deprived of the opportunity to request a Medical Board. He did have this opportunity under both the former and current FAO Manual versions. Consequently, applying the 2018 FAO Manual version rather than the 2016 one, was not detrimental to him. On the contrary, the application of the 2018 FAO Manual was more favourable, as it offered him two options (the

independent medical examiner or the Medical Board) rather than only one (the Medical Board).

13. By the arguments presented under the fourth heading listed in consideration 1 above, and further developed in his rejoinder, the complainant alleges that:

– the FAO violated its duty of care and good faith;
– the FAO failed to consider decisions by national authorities on compensation granted to their nationals affected by sonic attacks;
– the FAO minimised the serious incident to avoid jeopardizing its own relations with Cuba;
– the FAO denied him the protection due to staff posted in "hazardous situations", and such "dismissive treatment" caused him significant moral damages;
– he informed the medical unit immediately after the incident but received no reply; and
– it cannot be excluded that "the rules for demonstrating a service-related injury were intentionally made more stringent by the Organization in the new rules in October 2018 [...] due to [the] exceptional nature and significance of his claim".

These arguments are unfounded.

The allegation that national authorities compensated their diplomats affected by the "Havana syndrome" is not sufficiently substantiated. Moreover, even if it were proven that they did so, compliant with their national legal frameworks, this fact would not *per se* prove that sonic attacks (or other alleged possible events like "microwave stimulation" or pesticide exposure) occurred, or that a causal link exists between sonic attacks and the "Havana syndrome". Indeed, national authorities may have the discretion to grant compensation to affected staff irrespective of the evidence of a causal link between the alleged incident and their illness/injury.

Moreover, and crucially, national decisions, even if they exist, do not constitute binding precedent for the FAO, which is bound by its own rules, requiring staff to discharge the burden of proving the causal link.

There is no evidence that the FAO downplayed the complainant's incident to avoid harming its relations with Cuba.

Nor is there evidence of dismissive treatment. Indeed, the FAO thoroughly and carefully examined his claim, following the applicable procedures. The FAO even exceptionally accepted the claim despite it being filed beyond the statutory 4-month deadline as of the onset of the illness, established in the FAO Manual paragraph 342.6.21 in force in 2016 when the claim was lodged.

The allegation submitted in the complainant's rejoinder, that it cannot be excluded that "the rules for demonstrating a service-related injury were intentionally made more stringent by the Organization in the new rules in October 2018 [...] due to [the] exceptional nature and significance of his claim", introduces a suspicion of bad faith that requires supporting evidence. In the absence of any evidence whatsoever, this allegation is an unsubstantiated assumption based on mere speculation. In any case, this allegation is immaterial to the outcome of the case since the Tribunal has noted that the complainant's illness does not meet the requirement of service-incurred injury/illness even under the "old rules".

14. By the arguments presented under the fifth heading listed in consideration 1 above, the complainant alleges undue delay in processing his case:

– he submitted his claim in September 2017, and the first decision was issued on 7 April 2020; and
– the internal appeal process also took a long time, commencing on 21 July 2020 and concluding with the final decision on 14 March 2022.

This plea is unfounded.

Having regard to the specific circumstances of the case, the finding in the impugned decision that there was no undue delay is reasonable. The time taken resulted from the nature and complexity of the claim, the numerous procedural steps involved, and the extensive documentation the complainant provided on a continuous basis throughout the process.

Even during the appeal process, the complainant submitted information after the pleadings before the Appeals Committee were closed, which delayed the Appeals Committee's consideration of his case.

Therefore, the complainant is not entitled to moral damages for the length of the procedure.

15. As the complaint fails on the main claims, the complainant is not entitled to material damages, reimbursement of medical expenses, or costs.

16. In conclusion, all pleas being unfounded, the claims are rejected, and the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 November 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.