



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 417

Case No. 437: CAMPO

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, Vice-President, presiding; Mr. Ahmed Osman; Mr. Ioan Voicu;

Whereas at the request of Julieta Campo, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit for the filing of an application until 19 May 1987; 30 June 1987 and 31 July 1987;

Whereas, on 29 July 1987 the Applicant filed an application, the pleas of which read as follows:

"II. PLEAS

10. With regard to its competence and to procedure, the Applicant respectfully requests the Tribunal:

(a) to find that it is competent to hear and pass judgement upon the present application under Article 2 of its Statute;

(b) to find that the present application is receivable under Article 7 of its Statute;

11. On the merits, the Applicant respectfully requests the Tribunal:

(a) to order that all evidence maintained by the Organization as to why her claim was denied be made available to her.

(b) to find that the decision of the Advisory Board on Compensation Claims of 15 November 1985 (case number 1720) lacked fundamental tenets of due process as provided for in Appendix D, Article 17.

(c) to examine the evidence which is available and to find that the Applicant's disability is the direct consequence of a service-incurred injury which occurred on 21 March 1969; and thus

(d) to order that under Article 11.1 (a) of Appendix D to the Staff Regulations, the United Nations pay all reasonable medical, hospital and directly related costs incurred by the Applicant as a consequence of the service-incurred injury sustained by her on 21 March 1969, including the amount billed the Applicant for costs of the medical board.

(e) to order that under Article 11.4 (a) of Appendix D to the Staff Regulations, the Applicant be paid additional compensation to cover the expenses caused by the constant or occasional attendance of another person she has required and may require for her essential personal needs, at present and in the future.

(f) to order that as a result of this service-incurred injury and the lack of due process on the part of the board convened to investigate the consequences of this injury, the Applicant be awarded compensation in an amount that would correspond to one year's salary at the level and step she had when she accepted termination of her contract in 1985 or such remuneration the Tribunal deems appropriate."

Whereas the Respondent filed his answer on 19 October 1987;

Whereas the Applicant filed written observations on 18 November 1987;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 28 October 1965. She served at the Dag Hammarskjöld Library from 2 February 1966 until 15 January 1985, the date of her separation from the service of the United Nations. Having been deemed to be incapacitated for further service by the Medical Director of the United Nations, the Applicant's permanent appointment was terminated for reasons of health under staff regulation 9.1(e). On 16 January 1985 the Applicant became the recipient of a disability benefit from the United Nations Joint Staff Pension Fund.

During the course of her employment with the United Nations the Applicant was involved in two accidents at the United Nations Headquarters. The first accident occurred on 21 March 1969, while the Applicant was on duty at the Loan Desk in the Library. As a result of this accident, the Applicant suffered a fracture of the tip of her eleventh rib. On 20 May 1969 the Applicant filed a claim under Appendix D to the Staff Rules with the Secretary of the Advisory Board on Compensation Claims (ABCC). She claimed reimbursement for expenses she had incurred and "expressly reserve[d] all rights to future claims of any kind arising from [the] accident". The Secretary of the Board, under the authority delegated to him by the Secretary-General in accordance with the provisions of Appendix D, authorized payment of the sum of US\$78.25 which included doctor's fees, taxi fares and drugs. He expressly stated that these payments were based only on a preliminary examination of the claim and would not establish any entitlements to compensation or reimbursement of any additional expenses.

The Applicant made no further claims under Appendix D.

The second accident took place on 21 December 1979. The Applicant was returning to work after lunch and fell on the pavement, outside the entrance gate to the United Nations. As a result of this accident, she suffered a fracture of the fifth metatarsal bone of the left foot. The Applicant made no claims under Appendix D in connexion with this accident.

In a medical certificate dated 1 October 1981, the Applicant's doctor certified that "... due to the injuries sustained in a service-incurred accident on March 1969, my patient Mrs. Julieta Campo is suffering of an acute neurological disfunction ... I strongly recommend that she should be limited in her activities ...".

On 15 June 1984 the Applicant filed a claim for compensation under Appendix D to the Staff Rules. In her statement, the Applicant described the progressive deterioration of her health since the accident in the Dag Hammarskjöld Library and asserted that she now "... suffered from a chronic low back derangement caused by the multiple injuries sustained in the service incurred accidents on 21 March 1969 and 21 December 1979".

The ABCC examined her claim at its 288th meeting held on 26 September 1984. According to the minutes of the meeting, the Board "... agreed that there was no evidence to indicate that the claimant's present medical condition was a result of her 1969 accident, and recommended that the claim be denied". The Secretary-General approved the recommendation on 5 October 1984 and the decision was communicated to the Applicant on 31 October 1984.

In a letter dated 14 December 1984 the Applicant requested the Secretary-General to reconsider his decision, under article 17 of Appendix D to the Staff Rules. At its 293rd meeting, held on 29 May 1985, the Board recommended that a medical board be convened as provided in article 17(b) of Appendix D to the Staff Rules. The Secretary-General approved the recommendation on 11 June 1985.

The UN Medical Director, at the request of the Secretary of the ABCC, who anticipated that the ABCC would recommend the constitution of a medical board, had convened in January 1985 a medical board to consider and to report to the ABCC on the medical aspects of the appeal. The composition of the medical board was as follows: Dr. Gereade, designated by the Medical Director of the United Nations Medical Service; Dr. Ralph Squitieri, selected by the Applicant, and Dr. Fred Hochberg an orthopedist, who was not a medical officer of the United Nations, selected by the first two.

Pursuant to article 17(b) of Appendix D, the Applicant's doctor and the Acting UN Medical Director selected the third member of the board. According to the contemporaneous records of the UN Medical Service, when Dr. Gereade telephoned Dr. Squitieri concerning the choice of the third member, Dr. Squitieri agreed to the selection of Dr. Hochberg. A meeting of the three doctors constituting the board was convened for 5 p.m. on 30 January 1985 at Dr. Hochberg's office. After waiting for forty minutes by which time the Applicant's doctor had not arrived, Dr. Gereade and Dr. Hochberg left. The meeting was rescheduled and according to the records of the UN Medical Service, the board met on 13 March 1985 at Dr. Hochberg's office. The report dated 25 July 1985 prepared by Dr. Hochberg reads as follows:

"The following is a summary of my meetings with Dr. Gereade at my office, discussion of [the Applicant's] case, review of various medical records. Dr. Gereade,

Dr. Scuteri[sic] and myself are all in agreement with regard to our conclusions and they follow closely the conclusion as previously indicated of Dr. Irwin [Director UN Medical Service].

In sum and substance we concluded that it is very difficult to ascertain whether Mrs. Campo's recent disc problem was result of her accident at the United Nations in 1969. Certainly we do not feel it plays the sole or major role in her current problem. It may have contributed to her overall problem but it is felt that perhaps the automobile accident in 1974 [while the Applicant was visiting her native country Guatemala] as well as variety of other reasons such as progressive degenerative changes may be a factor. In any event, the injury of 1969 at most can only have been partially responsible for her disc problem many years later."

The Board considered the medical board's report at its 298th meeting held on 7 October 1985. It noted that "... the medical board confirmed that it was very difficult to ascertain whether the claimant's recent disc problem was the result of her accident at the United Nations on 21 March 1969 ...", and recommended to the Secretary-General that he uphold his previous decision to deny the claim. On 25 November 1985 the Secretary of the Board informed the Applicant that the Secretary-General had decided to maintain his decision on the following grounds:

"...

The Secretary-General considered that the burden of proving the existence of a causal relationship between your service and your disc problem had not been established, taking note of the medical board's findings that it was very difficult to ascertain whether your recent disc problem was the result of your accident at the United Nations in 1969. He noted further that in the view of the medical board the accident of 21 March 1969 did not play the sole or major role in your current problem, and that the injury resulting from that accident could at most only have been partially responsible for your disc problem many years later, a variety of other reasons such as progressive degenerative changes having been a possible factor.

..."

On 4 February 1986 the Applicant asked the Secretary-General to review the administrative decision taken by him in her case upon the recommendation of the ABCC. If he should decide to maintain the contested decision, the Applicant asked for his agreement to file an appeal directly with the Tribunal. On 19 November 1986 the Chief, Administrative Review Unit informed the Applicant that the Secretary-General had agreed to direct submission of her appeal to the Tribunal.

In a medical certificate dated 22 April 1986, Dr. Squitieri raised questions concerning the composition and conclusions of the medical board. He stated that "... in the end however ... [he] agreed to sign ... because, of course, one can rarely be scientifically 100% certain as to medical cause and effect ...".

On 29 July 1987 the Applicant filed the application referred to above.

Whereas the Applicant's principal contentions are:

1. In 1969 the Applicant sustained a service-incurred injury that had progressive degenerative sequelae forcing her to leave the Organization for reasons of health.

2. An immediate claim was made under Appendix D and awards were made of initial small-scale costs. Continuous records were maintained by the Organization in connexion with this situation. Steadily increasing periods of sick leave, culminated in major disability and eventually in separation for reasons of health.

3. The assessment by her doctor, Dr. Squitieri, who has been in that role from 1969 onward, and who has been able to observe and document the Applicant's condition for the past 18 years, has been corroborated by other medical experts.

4. No evidence of any kind has been advanced to justify the denial of the claim.

5. The Applicant was denied due process when the medical board met in connexion with her last request for compensation to the ABCC.

Whereas the Respondent's principal contentions are:

1. The Respondent is prepared to make available to the Applicant the reports relevant to her case.
2. The Applicant's medical expert was consulted on the selection of the medical board's third member.
3. There has been no secret meeting of two medical board members prior to the board's meeting on 13 March 1985.
4. The Administrative Tribunal is not competent to make an assessment of the case's medical issue.
5. The Applicant was accorded due process by both the medical board and the ABCC.

The Tribunal, having deliberated from 2 May 1988 to 24 May 1988, now pronounces the following judgement:

I. The Applicant requests as preliminary measures that all evidence maintained by the Organization as to why her claim was denied be made available to her.

The Tribunal observes that the Respondent provided a copy of the recommendation of the Advisory Board on Compensation Claims (ABCC) in her case and of the report of the medical board.

II. In her substantive claims the Applicant requests the Tribunal to find:

- (i) that she was denied due process in the establishment and the deliberations of the medical board; and
- (ii) that the service-incurred injury of 21 March 1969 is the direct cause of her disability, thereby entitling her to compensation under Appendix D to the Staff Rules.

The Tribunal will consider these claims in turn.

III. On 16 November 1987 after the application had been filed, Dr. Squitieri, the Applicant's medical doctor, wrote to the Tribunal and stated that he had delayed signing the medical board report "... because the

entire procedure did not seem fair, nor did it represent [his] feelings in the matter". He added "In the end, however, I signed the letter as I was under the impression that my bill would not have been otherwise paid". The Tribunal notes that the evidence contained in the record shows that the Applicant's medical doctor was consulted on the selection of the medical board's third member as required by article 17(b) of Appendix D. The letters written by the Applicant's medical expert on 22 April 1986 and 16 November 1987 cannot be considered by the Tribunal as persuasive documents against the medical report sent on 25 July 1985 to the ABCC by the medical board. The Tribunal finds that the medical conclusions are duly signed, without reservations, by all three members of the medical board, including the Applicant's medical doctor.

IV. The Tribunal observes that the recommendation of the ABCC dated 8 November 1985, that the Secretary-General should maintain his previous decision to deny the Applicant's claim, was well founded. Pursuant to article 17(c) of Appendix D, both the medical board's report and the ABCC recommendation were transmitted to the Secretary-General who decided to maintain his earlier denial of the claim and informed the Applicant accordingly in a letter dated 25 November 1985.

V. The Tribunal finds that the unanimous medical report of 25 July 1985 has more persuasive value than the statements made much later by one of its signatories who unilaterally dissociated himself from the medical board's unanimous conclusions, only after the rejection of the Applicant's claim by the Secretary-General. The record of the case does not contain any evidence of any disagreement by the Applicant's medical doctor on the medical board as to its establishment, deliberations and conclusions prior to the Secretary-General's final decision. Moreover, the Tribunal notes that the Applicant's medical doctor had been her personal physician for many years. If he had any objections to the report of the medical board he had a high moral duty to voice his reservations at the time of the preparation of the report and he had also the right to submit a dissenting opinion, which he

failed to do. Much later, in a somewhat extraordinary written statement dated 16 November 1987, the Applicant's medical doctor stated himself that he signed the report because he was under the impression that his bill would not otherwise have been paid.

VI. The Tribunal notes that the Respondent applied the procedures laid down in Appendix D and that his final decision was based on the recommendation of the ABCC which, in its turn, was based on the unanimous report of the medical board.

Consequently, the Tribunal considers that the Applicant has been accorded due process by the medical board, the ABCC and the Secretary-General.

VII. It is the consistent view of the Tribunal as stated in Judgement No. 69 (Coutsis), 1957, that it "... could not regard itself as a body competent to express views on the accuracy of the diagnoses or conclusions of the medical profession". The Tribunal therefore considers that it is not competent to examine and compare the weight of the conclusions reached unanimously by the members of the medical board regarding the Applicant's condition with the weight of statements made later by the Applicant's personal doctor.

VIII. The Tribunal observes, however, that the medical report contains some ambiguous language concerning the Applicant's condition, stating inter alia that "in any event, the injury of 1969 at most can only have been partially responsible for her disc problem many years later". Nevertheless, all three members of the medical board concurred with the statement that "certainly we do not feel [the 1969 accident] plays the sole or major role in her current problem".

Consequently, the Tribunal does not believe that the information contained in the medical report could be construed as proving that the Applicant's current disability is attributable to the service-incurred injury which occurred on 21 March 1969.

IX. The Tribunal finds no prejudice or improper motivation in the decision taken by the Secretary-General.

X. For these reasons, the Tribunal rejects the application in its entirety.

(Signatures)

Arnold KEAN
Vice-President

Ahmed OSMAN
Member

Ioan VOICU
Member

Geneva, 24 May 1988

R. Maria VICIEN-MILBURN
Executive Secretary