
ADMINISTRATIVE TRIBUNAL

Judgement No. 435

Case No. 464: GOODCHILD

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestine Refugees
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, President; Mr. Arnold Kean,
Vice-President; Mr. Jerome Ackerman;

Whereas at the request of Raymond C.R. Goodchild, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of an application until 2 May 1988;

Whereas, on 22 April 1988, the Applicant filed an application, the pleas of which read as follows:

"(a) Preliminary Plea. The Applicant respectfully requests the production of the Draft Report prepared by Dr. M.H.K. Irwin [Director, UN Medical Service] for the Medical Board (...) which was rejected by the other members of the Medical Board. The Applicant further requests production of the ABCC's [Advisory Board on Compensation Claims] minutes of their 291st meeting held on 26 March 1985.

(b) The Tribunal is requested to rescind the recommen-

dation of the Advisory Board on Compensation Claims (ABCC) made at its 307th Meeting on 31 March 1987 (...), which rejected the Applicant's Claim for compensation from the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) in respect of the Applicant's permanent physical illness (solar Keratosis and Basal Cell Carcinoma) attributable to his employment as UNRWA Staff member in Beirut, Lebanon, in the years 1952-1962. The Tribunal is requested to declare that the Applicant's permanent illness is 'attributable to the performance of official duties' within the meaning of section II, article 2(b) of the Rules Governing Compensation to Staff Members In the Event of Death, Injury of Illness Attributable To The Performance of Official Duties On Behalf of the Agency, Appendix A (hereinafter 'Staff Rules') (...).

(c) The Tribunal is further requested to award the Applicant compensation for permanent disfigurement in accordance with article 11.3(a) and (c) of the Staff Rules, having regard to the permanence and seriousness of the illness. (...). The Applicant requests that he be awarded twenty percent (20%) of 'twice the annual amount of the pensionable remuneration at grade P-4, step V,' in accordance with article 11.3(a) and (c) of the Staff Rules and the evidence summarized in ... below, and such other relief as this honorable Tribunal may deem that justice requires."

Whereas the Respondent filed his answer on 11 July 1988;

Whereas the Applicant filed written observations on 15 September 1988;

Whereas, on 27 September 1988, the Respondent submitted additional comments and documents;

Whereas, on 7 October 1988, the Applicant commented on the Respondent's most recent submission;

Whereas the facts in the case are as follows:

Raymond C.R. Goodchild was initially recruited by UNRWA on 1 January 1952. He served as Secretary to the Advisory Commission until July 1962. During the course of his employment with UNRWA, he was stationed at UNRWA Headquarters in Beirut, Lebanon.

On 10 January 1983, the Applicant sent a letter to UNRWA, forwarding a certificate dated 10 November 1982, from Dr. P.W.A. Cottrell, stating inter alia that Mr. Goodchild "suffers from solar keratosis for which he has seen a Consultant Dermatologist and has started cryotherapy for the lesions. This therapy began in June 1981". In another certificate, dated 12 September 1984, another doctor, Dr. C.J.W. Guerrier, explained:

"I presume they [the tumors] are arising on Mr. Goodchild's skin as a result of prolonged exposure to sunshine in tropical climates, being one of the risks encountered when exposing pale European skin to intense ultra violet light. Often many years elapse between the time of exposure and the development of the tumours..."

In a letter dated 10 January 1983, the Applicant informed the Director, Personnel Administration, of his medical condition, and requested his assistance and guidance on the procedures he should follow to file a claim for compensation on this account. In a reply dated 20 June 1983, the Chief, Personnel Services Division, informed the Applicant that the "unanimous advice of all consulted" including the UN Medical Director and the Secretary of the Advisory Board on Compensation Claims (ABCC), was that his condition could not be attributed to his official functions and that a claim made more than 20 years after his separation from UNRWA could not be entertained.

On 8 December 1983, the Applicant's counsel sent a letter to the Legal Advisor, UNRWA, stating, among other matters that:

"...based on [the Applicant's] medical advice that his condition, which has caused serious disfigurement, arose directly from his service in Beirut with UNRWA and that this condition was incipient and therefore could not be detected until it manifested itself, we do now wish to present a claim on Mr. Goodchild's behalf."

The ABCC considered the claim at its 286th meeting held on

28 June 1984. The Board recommended to the Commissioner-General to reject the claim, noting that there was:

"... no exceptional circumstance for the 20-year delay in the submission of the claim, as the contention that the condition for which compensation [was] asked did not manifest itself earlier [was] untenable on the basis of medical evidence supplied."

On 9 October 1984, the Senior Legal Advisor, UNRWA, informed the Applicant that the Commissioner-General had decided to accept the Board's recommendation.

The ABCC reconsidered the Applicant's claim at its 291st meeting held on 6 March 1985. After examining the additional material submitted by the Applicant in support of his claim under article 9 of appendix A to the UNRWA International Staff Regulations and Rules (hereinafter referred to as appendix A), the Board decided to maintain its previous recommendation to reject the claim. On 25 March 1985, the Applicant was informed that the Commissioner-General accepted the Board's recommendation. The Applicant was also advised that under article 17 of appendix A, he could, if he wished, request within 30 days of notice of the decision a reconsideration of the Commissioner General's determination that the Applicant's illness was not attributable to the performance of his official duties. A medical board would then be convened under article 17(b) to consider and to report to the ABCC on the medical aspects of the appeal. If the original decision was sustained, the Applicant would have to bear the medical fees and incidental expenses of the medical practitioner whom he selected, and half of the medical fees and expenses of the third medical practitioner on the medical board.

An exchange of correspondence ensued between the Applicant's counsel and the Administration of UNRWA concerning the modalities and costs of the medical board. Initially, the Applicant was not receptive to invoking the article 17 procedure, mainly on the

grounds that the decision he was appealing was unfair; that he did not know what medical advice the Board would receive, and that since he was not aware on what grounds the ABCC had rejected his claim, he did not know what medical arguments he would be appealing against. He repeatedly requested the Commissioner-General to decide the case himself, by-passing the medical board procedure.

On 24 March 1986, the Applicant requested the Commissioner-General to "investigate, independently and impartially [the] procedural handling by UNRWA" of his claim. In a reply dated 4 June 1986, the Chairman of the ABCC informed the Applicant that the Commissioner-General had approved the ABCC's recommendation that the Applicant's claim be denied "because the evidence he submitted, medical and other, did not establish that Mr. Goodchild's illness was attributable to service." It was up to the Applicant to decide if he wished to have the medical evidence reviewed by a medical board, and he had "been so advised repeatedly by UNRWA."

On 13 October 1986, the Applicant informed the Commissioner-General that he had decided to appeal under article 17(a) of appendix A and thereby requested that a medical board be convened. In his letter, the Applicant selected Dr. Joseph Boyle to represent him. In a reply dated 3 November 1986, the Director of Personnel, UNRWA, informed him that the Commissioner-General had decided to waive the 30 day time-limit provided by article 17 of appendix A and to accept his request. The UNRWA Administration designated Dr. Michael H.K. Irwin, the Director of the UN Medical Service at Headquarters, to act on their behalf. Dr. Boyle and Dr. Irwin selected the third member of the board, Dr. John Hawk. The Board met on 13 December 1986 and concluded that:

"... Mr. Goodchild's outdoor activities in Northern Europe, India, Lebanon and in Cyprus have caused his dermatological lesions. However, it must be said that Mr. Goodchild's presence in the sun, in Lebanon, from 1952 to 1962, for

working and recreational reasons, was the main reason for the appearance of his solar keratoses from 1981, although the amount of sunlight during those ten years is only part, but a major part, of the total to which he has been exposed so far during his life."

At the request of the ABCC, the Medical Board provided an addendum to their previous report in which the members of the Board stated that:

"... [the] 10 1/2 years' exposure to sunlight which Mr. Goodchild experienced, when he lived in Beirut from 1952 to 1962, could be considered as being about 60% responsible for the appearance of his solar keratoses from 1981."

and that:

"... the disfigurement which has resulted so far, from the treatment Mr. Goodchild has already received for the solar keratoses, has caused an impairment which is equivalent to about 5% of the whole person."

The ABCC reviewed the Applicant's claim on 31 March 1987, at its 307th meeting, and concluded that the Applicant's illness "could not be deemed attributable to the performance of official duties on behalf of the United Nations." In a letter dated 13 July 1987, the Director of Personnel, UNRWA, informed the Applicant of this decision and also explained the grounds on which the decision was based.

On 22 April 1988, the Applicant filed an appeal to the Tribunal.

On 9 June 1988, the ABCC reconsidered the Applicant's claim and recommended to the Commissioner-General:

"... on an exceptional basis and in the special if not unique circumstances of the case, to accept the report of the Medical Board and that:

(i) The claimant's illness (Solar keratoses) be

considered as attributable to the performance of official duties on behalf of the United Nations; and

(ii) The claimant be compensated for a five (5) per cent permanent disfigurement of the whole person in the amount of \$5,080."

The Commissioner-General accepted this recommendation on 5 July 1988.

Whereas the Applicant's principal contentions are:

1. The Applicant is entitled to compensation based on a 20 % impairment.

2. The Medical Board's supplementary report must be stricken from the record as it is without foundation and it was procured without consultation among the members of the Medical Board.

3. It is unnecessary to remand the case for another Medical Board pursuant to article 9(2) of the Tribunal's Statute.

Whereas the Respondent's principal contentions are:

1. The Respondent would have no objection if the Tribunal were to order, pursuant to article 9(2) of its Statute, that the Secretary of the ABCC arrange another Medical Board to advise on the extent of the Applicant's impairment.

2. The Applicant shares responsibility for the delay by the Respondent in adjudicating his claim and this fact should be taken into account by the Tribunal in assessing his claim.

The Tribunal, having deliberated from 18 October 1988 to 9 November 1988, now pronounces the following judgement:

I. The Applicant bases his claim on the grounds that the consultation undertaken by the Medical Board was improper and

therefore invalid, and that the impairment of his condition should be determined at 20 per cent according to the "Guide to the Evaluation of Permanent Impairment" published by the American Medical Association (AMA). Before dealing further with the Applicant's claim, the Tribunal wishes to express its concern with the manner in which the Applicant's complaint was handled by both parties. Fortunately, the earlier complications are not presently before the Tribunal.

II. The Applicant filed his complaint to the Tribunal on 22 April 1988, without going through the JAB, following the practice that in cases involving appeals concerning recommendations by the ABCC, the Respondent tacitly accepts a direct reference to the Tribunal. The ABCC asked the Medical Board to re-examine the case in the light of new information submitted by the Applicant. The Tribunal has not been provided with all of the details regarding these developments, but has before it the Medical Board's finding that the physical impairment suffered by the Applicant was assessed at 5 per cent, which according to the scale established in article 11.3 of appendix A, entitled him to about \$5,000 in compensation. The Applicant refused to accept this amount on the plea that it should be more.

III. The Applicant adduces evidence from his doctor (Dr. Boyle) on the Medical Board, that Dr. Boyle had never seen the AMA "Guide" and was not advised "that there were standards or guidelines applicable to the determination of impairment". Dr. Boyle was apparently not clear, the Applicant claims, that by signing the joint and unanimous report of the Medical Board he was, through lack of knowledge of the AMA Guide, reducing the claim of the Applicant. Nonetheless, Dr. Boyle did sign it and later, on 21 March 1988, issued a certificate classifying the Applicant as falling under Class 2 for

the impairment of his skin.

The relevant part of the AMA Guide reads:

"Class 2 - Impairment of the Whole Person, 10-20%:

A patient belongs in Class 2 when (a) signs and symptoms of skin disorder are present; AND (b) intermittent treatment is required; and (c) there is limitation in the performance of some of the activities of daily living".

Thus, the AMA applies the guide to suggest that Class 2 impairment may range from 10 to 20 per cent and the Applicant claims that he is entitled to 20 per cent as his case is similar, in his view, to example No. 3 given in the provisions under Class 2 impairment.

IV. On purely legal grounds, the Respondent could plead for the disposal of the case by the Tribunal at this stage, but apparently does not wish to do so because of his presumed concern, rightly or wrongly, about the date when the Applicant was informed of the Medical Board recommendation regarding the 5 per cent impairment. For this reason, he has suggested another Medical Board. The Applicant opposes the suggestion, but with much reluctance would accept it on certain conditions, including disqualification of one of the members of the previous Medical Board. The Tribunal does not accept the conditions put by the Applicant in this case.

V. The Tribunal treats the Respondent's suggestion regarding another Medical Board as an offer to the Applicant to have his claim reviewed by such a Board. The Tribunal considers that there is no compelling reason for it to deal with the merits until this offer is decided upon by the Applicant.

VI. The Tribunal holds that the actual determination of the degree of impairment is primarily a medical matter which the

Tribunal need not address until an administrative decision on this issue has been taken, following a report by another Medical Board, under article 17 of appendix A, if requested by the Applicant. In any event, there is no convincing indication that UNRWA or the ABCC or the Medical Board must abide by the scale suggested by the AMA, even if the Applicant's contention that "the schedule in article 11.3(c) is itself derived from the AMA" is found to be correct. To what extent the Guide of the AMA is relevant and how it is to be applied to the present case are also decisions to be made first by the Medical Board.

VII. Accordingly, the Tribunal orders that:

If within 30 days of his receipt of this judgement the Applicant so requests, another Medical Board, under article 17 of appendix A, should be convened as promptly as possible and the Commissioner-General's decision based on the Medical Board's report should be communicated to the Applicant speedily for such action as he deems appropriate.

The Tribunal finds no reason to accept any departures from the normal procedures set forth in article 17 of appendix A.

If the Applicant elects not to request another Medical Board, the case will remain on the Tribunal's list for 1989.

(Signatures)

Samar SEN
President

Arnold KEAN
Vice-President

Jerome ACKERMAN
Member

New York, 9 November 1988

R. Maria VICIEN-MILBURN
Executive Secretary