



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1074



**Patsy Bello
(Appellant)**
v.
**Secretary-General
of the International Maritime Organization
(Respondent)**

JUDGMENT

Before: Judge John Raymond Murphy, Presiding
Judge Jean-François Neven
Judge Kanwaldeep Sandhu

Case No.: 2020-1379

Date: 30 October 2020

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Dorota Lost-Sieminska

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Patsy Bello appeals against the decision of the Staff Appeals Board (SAB) of the International Maritime Organization (IMO) dismissing her various claims regarding her sick leave and other entitlements related to her absence from work on account of injury. For the reasons that follow we dismiss the appeal and uphold the decision of the SAB.

Facts and Procedure

2. In February 2013, Ms. Bello, a former staff member (a Principal Administrative Assistant) of the IMO, had a fall at the premises of the IMO, as a result of which she suffered injuries. The Advisory Board on Compensation Claims (ABCC) recommended that any resulting absences from this injury should be treated as service-incurred in terms of Article 3.1 of Appendix D to the Staff Rules of the United Nations entitling her to all reasonable medical expenses found by the Medical Services Division to be directly related to a service-incurred injury or illness. This decision was subsequently approved by the Secretary-General and Ms. Bello was advised to submit a claim to the Human Resources Services (HRS), if she incurred reasonable medical expenses directly related to the treatment of her injuries.

3. Ms. Bello was on paid sick leave for most of 2013 and part of 2015 in respect of the service-incurred injury.

4. In January 2016, Ms. Bello suffered a further injury when she attempted to catch a falling box at home. Her second injury which required surgery was not regarded as service-incurred. However, in February 2016, Ms. Bello was approved for telecommuting on medical grounds.

5. More than a year later, in May 2017, Ms. Bello was reviewed by IMO's Medical Adviser to determine her ability to return to full working hours at her desk at the IMO. The Medical Adviser was concerned about Ms. Bello's level of mobility and her fitness to continue working in any capacity (either at home or in the office). He accordingly placed Ms. Bello on sick leave on 9 June 2017 in terms of IMO Staff Rule 106.1(a)(viii) which provides *inter alia* that a staff member may be required at any time to undergo examination by a medical practitioner and (if the Secretary-General is satisfied that it is in the interest of both the IMO and the staff member) to take sick leave to enable proper treatment to be undertaken.

6. Other medical reports subsequently confirmed that Ms. Bello was unfit to return to work. Ms. Bello did not submit any medical evidence indicating that she was fit to return to work. In paragraphs 7.1, 7.7 and 12.4 of her appeal brief, Ms. Bello admits that she is not fit to return to work.

7. IMO Staff Rule 106.1 governs sick leave and provides for three possible entitlements depending on the employment status of the staff member. IMO Staff Rule 106.1(a)(ii) provides that a staff member holding a fixed-term appointment of less than one year or unbroken fixed-term appointments totaling less than one year shall be granted sick leave credit at the rate of two working days a month of contractual service. IMO Staff Rule 106.1(a)(iii) provides that a staff member holding a probationary appointment, a fixed-term appointment of one year or longer or unbroken fixed-term appointments equal to or in excess of one year shall be granted sick leave up to three months on full salary and three months on half salary in any period of 12 consecutive months. IMO Staff Rule 106.1(a)(iv) provides that a staff member holding a permanent or regular appointment, a fixed-term appointment of three years or longer or unbroken fixed-term appointments equal to or in excess of three years shall be granted sick leave up to 18 months in any period of four consecutive years, nine months on full salary and nine months on half salary.

8. It is not clear from the record when Ms. Bello commenced employment with the IMO. She states in her appeal brief that she started working for the United Nations in September 2002 and later became permanent staff. However, there is no evidence precisely clarifying her employment status.

9. On 8 August 2017, two months after being placed on sick leave, Ms. Bello's sick leave was converted to half-pay status, thus suggesting perhaps that the IMO considered her entitlement to be governed by IMO Staff Rule 106.1(a)(iii) rather than by IMO Staff Rule 106.1(a)(iv) – although she seems *prima facie* to have been at least entitled to three months' sick leave on full pay. There is no evidence that Ms. Bello formally challenged this decision at the time it was made.

10. On 18 December 2017, Ms. Bello filed an appeal with the SAB regarding the administrative decision not to recognize various injuries, including injuries suffered in the accident in 2016, as service-incurred. On 10 May 2018, the SAB, acting pursuant to then applicable procedure, adopted a report recommending that the Secretary-General dismiss the appeal, partly because the SAB was not competent to decide on the medical part of the appeal

(Ms. Bello did not appeal the decision not to recognize the 2016 injuries as service-incurred to a Medical Board, but instead to the SAB), and partly because the SAB considered that the ABCC was lawfully conducted. Ms. Bello did not appeal this decision to the Appeals Tribunal within the 90-day time limit under Article 7 of the Appeals Tribunal Rules of Procedure and Article 2(5) of the Agreement contemplated in Article 2(10) of the Appeals Tribunal Statute.

11. In January 2018, Ms. Bello's accrued annual leave was converted to cash to continue with the half pay arrangement, further to exhaustion of sick leave at half pay.

12. On 22 June 2018, Ms. Bello was separated from service.

13. On 15 August 2019, Ms. Bello filed an appeal with the SAB. The record does not include Ms. Bello's Statement of Appeal. However, the report of the SAB intimates that she appealed against the decision to place her on sick leave against her wishes, on the ground that the decision was not taken in compliance with the process set out in IMO Staff Rule 106.1(viii) (applicable at the time); and against the decision to categorize and record sick leave as service incurred or regular sick leave based on two injuries, one she suffered in 2013 which was determined to be service-incurred and the subsequent one in 2016 which was not recognized as service-incurred.

14. In addition, Ms. Bello claimed that the IMO failed to take swift action to facilitate her application to the Pension Fund in a timely fashion, in violation of paragraph 9 of ADMIN/14/88 which provides that HRS shall bring such situation to the attention of the Medical Adviser to determine whether the staff member should be considered for a disability benefit under Article 33(a) of the Pension Fund's Regulations.

15. Ms Bello's appeal brief does not identify the administrative decisions she contested before the SAB with any further specificity or clarity. It merely lists a number of unrelated or inconsequential factual assertions without drawing any appropriate conclusions and annexes an array of unexplained and mostly irrelevant documents. However, it seems that in the SAB proceedings Ms. Bello contended that the 2016 condition was linked to the original 2013 injury. She requested that: sick leave from 9 June 2017 onwards be considered as service-incurred; her regular sick leave be restored; all salary deducted while on sick leave at half pay be fully reimbursed; all annual leave days used as cash in lieu of full pay be restored; and any other remedy the SAB deemed fit.

16. On 17 January 2020, a second SAB took the decision, communicated to Ms. Bello on 21 January 2020, that her claim was without merit and that the Organization exercised due diligence and acted in accordance and in full compliance with the Organization's policies.¹

17. In reviewing the steps followed by the IMO in placing Ms. Bello on sick leave, the SAB considered e-mail exchanges between the IMO Medical Adviser, HRS, the Director of AD and Ms. Bello regarding the process and the conclusions arrived at based on medical examinations and other communications with her. It considered IMO Staff Rule 106.1(viii) and concluded that the IMO had fully complied with the rule as it was in 2017. It held that the decision of the IMO Medical Adviser, acting on behalf of the Secretary-General, to place Ms. Bello on sick leave was in the best interest of both her and the Organization, and thus was essentially lawful and reasonable. The SAB concluded that the IMO exercised "appropriate due diligence" and acted in full compliance with the relevant policies.

18. As for the categorization of the sick leave, the SAB noted that according to the IMO's policy, service-incurred sick leave is granted for a period of one calendar year from the first date of absence following the recognition of an injury as service-incurred. Further to the decision by the ABCC that the 2013 injury was service-incurred, Ms. Bello had enjoyed service-incurred sick leave throughout 2013. Additional service-incurred sick leave was granted in 2015, as a matter of good will, owing to the fact that not all the allowable service-incurred sick leave had been taken in 2013. The subsequent 2016 injury was never considered to be service-incurred, Ms. Bello was therefore not eligible for service-incurred sick leave. Taking into account the assertions made in the complaint, together with the information set out above, the SAB reviewed the sick leave reports from 2013 onwards and concluded that all other sick leave was properly recorded, summarized and calculated.

19. As to the alleged delay by the Organization in providing information on an application to the Pension Fund for the purposes of a medical pension, the SAB found, based on the e-mail exchanges between both the Head, HRS and the Director, AD with Ms. Bello that these allegations were unfounded and that Ms. Bello was indeed provided with relevant information on this matter initially during a meeting in December 2017

¹ The IMO, mindful of the decision of this Tribunal in Judgment No. 2019-UNAT-957, *Spinardi v. Secretary-General of the IMO*, has changed its procedure to ensure compliance with Article 2(10) of the Appeals Tribunal Statute. The SAB no longer merely makes a recommendation. It acts as neutral first instance body and takes a decision providing reasons and making findings of fact and law.

and subsequently in an e-mail on 28 June 2018, well before the exhaustion of her sick leave.

20. The SAB concluded that Ms. Bello's claims were without merit and dismissed them in their entirety.

21. On 22 May 2020, Ms. Bello filed her appeal and the Secretary-General filed his timely answer on 28 July 2020.

Submissions

Ms. Bello's Appeal

22. Ms. Bello's claims range far and wide. She submits that the loss of function of her injured body parts is compensable under IMO Staff Rule 106.3 and Appendix D, Article 11.3(a).

23. Ms. Bello also claims she is entitled to future partial loss of earnings capacity under IMO Staff Rule 106.3 and Appendix D, Articles 11.1 (c) or 11.2 (d).

24. She seeks compensation for the termination of her employment. In 2013 and 2016, the Medical Adviser received recommendations from her doctors to adjust her work station but no changes were implemented. The IMO should have exercised due care by ensuring regular reviews of her workstation were performed. But for this, Ms. Bello would not have been unfairly separated as continuing to work should not have "hindered recovery".

25. She maintains further that on receipt of the report from Ms. Bello's doctor on 17 July 2017, the IMO delayed her application to the Pension Fund. Ms. Bello's hardship and suffering following loss of income could have been prevented had the Pension Fund process been initiated in a timely manner.

26. Ms. Bello further submits that she was "unjustly placed on half salary".

27. Ms. Bello seeks an award of costs under Article 9(2) of the Appeals Tribunal Statute.

Answer of the IMO Secretary-General

28. The Secretary-General requests that the Appeals Tribunal find the appeal not receivable on the ground that it in part deals with claims that relate to the non-recognition of some of Ms. Bello's injuries as service-incurred. Those claims were the subject of consideration and proceedings by the first SAB (report of 10 May 2018). Ms. Bello did not appeal the Secretary-General's decision taken upon the recommendation of that SAB within the allowed time limits.

29. The appeal against the decision of the second SAB is not receivable because no arguments of erroneous facts, law or procedure have been raised. Ms. Bello did not present any issues with the SAB decision of 17 January 2020 that would justify judicial review by the Appeals Tribunal.

30. Should the Appeals Tribunal find the appeal receivable, the case should be dismissed, because the SAB did not make any errors of fact, law or procedure.

31. Finally, the Secretary-General requests that the Appeals Tribunal award costs against Ms. Bello on the ground that she manifestly abused the appeals process and that the appeal is frivolous.

Considerations

32. The Secretary-General's submission that part of the appeal is not receivable is correct. Ms. Bello's separation resulted from the fact that she was considered to have exhausted all her entitlements to full and half paid sick leave. Ms. Bello did not contest the decision to separate her from the Organization, thus the SAB was not seized with her separation and her appeal on this issue to this Tribunal is not receivable.

33. Likewise, Ms. Bello's claims for compensation for pain, suffering and loss of amenities, medical expenses and therapies were the subject of the proceedings in the first SAB established to review the decision not to recognize some of her claims as service-incurred. She did not appeal the Secretary-General's decision taken on the recommendation of the first SAB to this Tribunal. The second SAB, established in the present case, did not consider the issue of compensation for pain or costs of medical expenses. As such, her claims in that regard go beyond the scope of the present case and are also not receivable.

34. Ms. Bello's claim that the decision of the Secretary-General to place her on sick leave was unreasonable is equally not sustainable. The decision was taken on the basis of sound medical evidence available at the time which was not rebutted despite Ms. Bello being given an opportunity to obtain independent medical reports indicating otherwise. She did not present any medical or other evidence showing that she was fit for work. In any event, on appeal Ms. Bello admits that she is unfit for work. There is accordingly no basis to set aside the decision to put her on sick leave.

35. Ms. Bello's claim that she was unjustly put on half pay is not straightforward. Ms. Bello's leave for service-incurred injury ran during 2013 and part of 2015. The first SAB held that the injury incurred in 2016 was not service-incurred. As explained, Ms. Bello did not appeal to this Tribunal against the decision of the Secretary-General accepting the recommendation of the SAB. There is accordingly no basis for this Tribunal to re-visit the issue of whether the 2016 injury was service-incurred and if Ms. Bello was denied any due entitlements for that injury.

36. Although the pleadings are poorly formulated and the issues inadequately identified, it is clear that Ms. Bello was further aggrieved by the decision to place her on half pay. The record does not show whether Ms. Bello was entitled to sick leave in terms of IMO Staff Rule 106.1(a)(iii) or in terms of IMO Staff Rule 106.1(a)(iv). Ms. Bello somewhat cryptically states that she held a permanent appointment. If that is true, she was possibly entitled to 18 months' sick leave, nine months on full pay and nine months on half pay, as she notes in paragraph 5.1 of her appeal brief. In which case, the IMO may have erred in converting her sick leave to half pay on 8 August 2017. However, once again, any claim in this regard is not receivable *ratione materiae*. The then applicable IMO Staff Rule 111.2(a) provided that a staff member who wished to appeal against an administrative decision was obliged to address a letter to the Secretary-General contesting the decision within six weeks of being notified of the decision. There is no evidence that Ms. Bello complied with IMO Staff Rule 111.2(a).

37. With regard to Ms. Bello's allegation that the IMO was in breach of duty by delaying in providing her information regarding an application to the United Nations Joint Staff Pension Fund (UNJSPF), the SAB held that relevant information was provided to Ms. Bello in a meeting in December 2017 and in an e-mail on 28 June 2018 and that the IMO accordingly complied with its duty towards her. Ms. Bello does not challenge that finding in

her appeal brief. She merely reiterates her claim that the IMO delayed in making a claim to the UNJSPF. She fails to take issue with the finding of the SAB that the IMO had fulfilled its duty by providing her with the relevant information on two occasions. She points to no error of law or fact by the SAB in relation to this finding. There is accordingly no basis to grant her relief in respect of this claim.

38. Both parties seek an award of costs. Article 9(2) of the Appeals Tribunal Statute provides for awards of costs only where a party has manifestly abused the appeals process. This matter was one that legitimately required consideration and determination on appeal. There is no evidence that either party manifestly abused the appeals process. Accordingly, we make no order as to costs.

Judgment

39. The appeal is dismissed and the decision of the SAB is affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2020.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Neven
Brussels, Belgium

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 21st day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar