

SEVENTY-FOURTH SESSION

***In re* GREENE-CHAMBERLAIN**

Judgment 1233

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Lillian Greene-Chamberlain against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 14 August 1991 and corrected on 12 November, UNESCO's reply of 27 January 1992, the complainant's rejoinder of 12 May and the Organization's surrejoinder of 17 June 1992;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal, UNESCO Staff Regulation 9.1, Articles 12.3, 12.4, 12.5, 12.6, 12.7, 18.1, 18.2.1, 18.2.2 and 18.2.3 of the Rules of the UNESCO Staff Compensation Plan, paragraphs 7(a) and 7(c) of the Statutes of the UNESCO Appeals Board and Article 33 of the Regulations and Articles H.1 and H.3 of the Administrative Rules of the United Nations Joint Staff Pension Fund;

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a United States citizen born in 1941, joined UNESCO on 1 August 1978 as chief of the Unit of Physical Education and Sport at grade P.4 under a two-year fixed-term contract. She had her appointment extended several times until 31 March 1988, when UNESCO terminated it for reasons of health under Staff Regulation 9.1.

On 12 July 1979 a P.3 official in her unit, Mr. Gromov, struck her and pushed her against furniture. She went to the Organization's medical service, and a doctor there recorded pain in her right breast, arm and shoulder. On the same day she spoke of the incident to the Director of the Division of Structures, Contents, Methods and Techniques of Education (ED/SCM) to which she was assigned. The next day she sent the Director a written protest against the physical assault by Mr. Gromov and his allegedly racist abuse of her and accused him of disobeying her many demands over the past month that he hand over papers in his office, as the Director had ordered.

Her dispute with Mr. Gromov lasted until 21 July 1980, when he was dismissed for dereliction of duty.

On 30 July 1979 the complainant again went to the medical service. It diagnosed hydrarthrosis of the right knee and a cyst at the top of the right shinbone. But she kept on working and travelling abroad on mission.

On 25 July 1980 she had the cyst removed by surgery in New York and underwent treatment for her right leg and shoulder, neck and lower back. On her return to Paris her own doctor prescribed physiotherapy.

The Organization's chief medical officer reported on 18 September 1984 that though bad joints made her permanently incapacitated for sport and other pursuits she was still fit to work at UNESCO; it would be for the Advisory Board on Compensation Claims to determine whether her being unfit for practising sport warranted compensation.

On 10 June 1985 an orthopaedist she had consulted in the United States said that after six years' treatment she was unlikely to get any better. In a letter of 7 November 1985 to the Organization's chief medical officer her doctor said that the condition of her right shoulder was steadily worsening. On 25 July 1986 she underwent surgery on the shoulder.

(a) The Advisory Board on Compensation Claims took up her case on several occasions. In January and February 1981 it recommended regarding the incident of 12 July 1979 as having occurred while she was on duty, meeting her medical and incidental expenses in full and treating any periods off work as special leave with pay, not as sick

leave under the Staff Rules. The secretary of the Board informed her by a memorandum dated 25 March 1981 that the Assistant Director-General in charge of Administration had endorsed those recommendations on the Director-General's behalf.

In October 1985 and in October 1987, when required to determine whether she was suffering from permanent incapacity, the Board recommended appointing an independent expert, to be agreed on by the parties. An expert was duly appointed and reported in April 1989. The report stated that her right shoulder was permanently partially disabled. According to the scale in Article 12.7 of the Rules of the Staff Compensation Plan, that meant 18 per cent incapacity. The Advisory Board endorsed the expert's report on 27 September 1989. It concluded that she was entitled to compensation for permanent partial incapacity resulting from the incident; that such compensation precluded any other award such as payment of an annuity for loss of earning capacity as provided for in Articles 12.3 to 12.6 of the Rules of the Staff Compensation Plan; that the degree of her permanent partial incapacity was 18 per cent on the UNESCO scale; that she was therefore entitled to lump-sum compensation in the amount of 24,166.80 United States dollars.

On 17 January 1990 the acting chief of the Staff Pensions and Insurance Division informed her of the Board's conclusions. By a memorandum of 16 February 1990 she rejected the amount of compensation on the grounds that it had been reckoned on the basis of step 5 of grade P.4, not step 8, which she had reached before leaving the Organization. On 28 May 1990 the acting chief of the Pensions and Insurance Division explained to her how the Administration had worked out the amount.

(b) In the autumn of 1985 the General Conference of UNESCO adopted a plan for the 1986-87 biennium that meant doing away with some 30 posts, including the complainant's, as from 31 December 1985. The Director-General nevertheless continued to approve extensions of her appointment up to 31 March 1988. The letter of termination, which the acting Director of the Bureau of Personnel signed on 16 December 1987, cites Staff Regulation 9.1:

"The Director-General may terminate the appointment of a staff member ... if he is for reasons of health incapacitated for further service."

On 5 February 1988 the complainant protested against the decision under Article 7(a) of the Statutes of the Appeals Board. On 30 March 1989 UNESCO paid her terminal entitlements in the amount of \$31,902.89.

(c) In a memorandum of 15 March 1988 the Bureau of Personnel asked the secretary of the Staff Pension Committee of UNESCO to consider her for a disability pension. That would have given her a yearly income of some \$28,000 from 1 April 1988, the day after her dismissal.

Article 33 of the Regulations of the United Nations Joint Staff Pension Fund reads:

"(a) A disability benefit shall, subject to article 41, be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration.

(b) The benefit shall commence on separation or, if earlier, on the expiration of the paid leave due to the participant and shall continue for as long as the participant remains incapacitated, provided that after age 55 incapacity shall be deemed to be permanent."

Articles H.1 and H.3 of the Administrative Rules of the Fund read:

"H.1 (a) The determination of incapacity for the purpose of disability benefits under article 33(a) and (b) of the Regulations ... shall ... be made in each case by the staff pension committee of the organization by which the participant is employed, subject to the provision that, failing unanimity, a determination with respect to a disability benefit shall be referred to the Standing Committee for decision.

(b) For entitlement to a disability benefit, the incapacity for further service must be found to exist or to have existed on the participant's date of separation.

H.3 A request for a determination by the staff pension committee under article 33(a) of the Regulations shall be made by the organization:

- (a) Whenever during, or on the expiry of, the appointment of a participant there is reason to believe that he may be incapacitated within the meaning of article 33(a); or
- (b) Whenever a participant is placed, or is proposed to be placed, on leave without pay for reasons of health; or
- (c) Whenever the appointment of a participant is terminated, or is proposed to be terminated, for reasons of health."

In a memorandum of 20 November 1989 to the secretary of the Staff Pension Committee the Organization's chief medical officer said that he could not support the application for a disability pension.

The Staff Pension Committee not being unanimous, the matter went to the Standing Committee of the Fund, as the complainant learned from a letter of 8 December 1989. On 20 February 1990 the Standing Committee remanded her case to the Pension Committee and so informed her on 7 March 1990.

On 11 September 1989 she filed an appeal with the Appeals Board claiming a disability pension and compensation under Articles 12.3.1 and 12.7.2 of the Rules of the Staff Compensation Plan; compensation for the delay in paying her terminal entitlement; \$289.86 representing a fifth of the expenses she had paid - the Medical Benefits Fund having refunded the rest - to have removed from her left breast a tumour which she alleges, but the Advisory Board on Compensation Claims denies, had been provoked by the assault in 1979; an annuity amounting to the difference between her pension and the gross salary she would have earned at UNESCO; \$50,000 in moral damages; and interest at the rate of 10 per cent a year on the sums due.

On 25 June 1990 she filed a second appeal with the Appeals Board objecting to her dismissal and claiming full damages for material injury in the form of an annuity equivalent to two-thirds of her final pensionable remuneration, plus \$50,000 in moral damages.

Reporting on both appeals on 4 April 1991, the Appeals Board recommended, as to her first appeal, that the Director-General should (1) ensure that she was granted her full entitlements; (2) order a medical enquiry to determine whether the benign tumour in her left breast had been due to the incident in 1979 and, if so, meet her expenses in full, including the balance of \$289.86. It recommended rejecting her other claims.

As to her second appeal the majority of the Board - three out of its five members - understood her to be asking the Director-General to choose between reinstatement and payment of a benefit on account of total incapacity. The rating of her incapacity at 18 per cent was challengeable under Article 18.1 of the Rules of the Staff Compensation Plan and, in keeping with that provision, she ought first to have gone to the Director-General. Since she had not the Board recommended that the Director-General reject her second appeal as irreceivable.

By a letter dated 16 May 1991 the Director-General told her that he was rejecting both appeals, along with the Board's recommendations (1) and (2) as set out above. That is the decision she is impugning.

B. The complainant gives her own version of the material facts and brings them under three heads: her declining health, her dismissal and the failure to put her case to the Pension Committee.

She points out shifts in the opinions the Organization's doctors took of her health and earning capacity and the degree of her invalidity. In the certificate of 17 September 1987 the chief medical officer confirmed her incapacity for further service; yet on 13 October 1987 and 10 October 1989 he told the Advisory Board on Compensation Claims that her incapacity was only partial. He took the same view again in the memorandum he submitted on 20 November 1989 to the Staff Pension Committee. *Expressio unius exclusio alterius*: either she suffers from total permanent incapacity for work and her dismissal is warranted, or else the degree of her disability is indeed only 18 per cent, and in that case, her dismissal being unlawful, UNESCO should either reinstate her as from 1 April 1988 or pay her fair compensation.

As to the failure to put her case to the Pension Committee, she submits that Article H.3 of the Administrative Rules of the United Nations Joint Staff Pension Fund requires the Organization to take prompt action to secure a pension for her. It did nothing of the sort even though it had reason as early as 1985 to believe that the question of her disability would arise and as a rule brings the Fund in long before dismissing someone for reasons of health. The final decision to dismiss her goes back to December 1987, she protested on 24 February 1988 against the absence of proceedings to get her a disability pension, and the Organization agreed on 15 March that action must be taken

for the purpose. The Pension Committee did not meet until 23 November 1989 and she was not so informed until 2 January 1990. Her case was referred to the Fund's Standing Committee and then remanded to the Staff Pension Committee, which took until July 1991 to look at the matter and reject her claim. That was the decision she appealed against.

A serving or former official is entitled to expect an international organisation to pay heed to his plight, particularly when it is the result of an incident that occurred on its own premises and in the performance of official duties.

Lastly, she accuses the Organization of being negligent and dilatory.

She seeks: (1) the quashing of the decision of 16 May 1991; (2) the refund of costs she has incurred because of the injury to her left breast, or else the holding of a medical enquiry to determine whether such injury was due to the assault of 12 July 1979; (3) the payment of a fair amount in material and moral damages for UNESCO's dilatoriness and mistakes; (4) compensation for the delay in paying her terminal entitlements; alternatively, (5a) the quashing of the decision of 16 December 1987 to dismiss her and her reinstatement as from 1 April 1988 or else payment of a fair amount in damages, or (5b) the quashing of the decision of 17 January 1990 to set the degree of her invalidity, which is total and permanent, at 18 per cent; and (6) costs.

C. In its reply UNESCO submits that claims (2) and (5b) are irreceivable because the complainant has failed to exhaust the available internal remedies and that claims (3) and (4) are without merit.

UNESCO too gives its own version of the facts.

As to receivability it observes that the acting head of the Pension and Insurance Division informed the complainant in the letter of 17 January 1990 that the Director-General had approved the conclusions adopted on 27 September 1989 by the Advisory Board on Compensation Claims. She objected to that decision in a memorandum of 16 February 1990 which, after lengthy correspondence, set off, on 13 February 1991, the procedure provided for in Articles 18.2.1 and 18.2.3 of the Rules of the Staff Compensation Plan. She had a concurrent appeal with the Appeals Board. But proceedings before the two bodies are supposed to be successive, not concurrent. Besides, the letter of 17 January 1990 does not qualify as an administrative decision against which direct appeal lies to the Appeals Board. Article 18.1 of the Rules of the Staff Compensation Plan says:

"A person claiming under these Rules may, within thirty days of receiving notice of the Director-General's decision, apply in writing for a reconsideration of such decision ... The Advisory Board shall examine such request and make appropriate recommendations to the Director-General whose decision shall then be deemed to be an administrative decision for the purposes of appeals under Chapter XI of the Staff Regulations and Rules." The complainant should first have applied under Article 18.1 for reconsideration of the decision and awaited a new decision by the Director-General on a new recommendation by the Advisory Board before starting the appeals procedure laid down in the Staff Rules. Proceedings for compensation are now under way before the Advisory Board, and a panel of doctors is to be set up and to report so that the Board may review her case. Only when the Director-General has taken a decision on the panel's recommendations, and under Article 18.2.2 of the Rules, may the complainant submit a written protest to him in the first instance and then to the Appeals Board, as paragraphs 7(a) and (c) of its Statutes provide.

Since she has failed to exhaust the internal remedies her claim to the quashing of the decision of 17 January 1990 is irreceivable.

Claim 5(a) is to the quashing of her dismissal for reasons of health. Although she put it to the Appeals Board on 25 June 1990 as an "alternative" it is in fact subsidiary. Having expressly waived it in her first appeal, the one of 1 September 1989, she may not now impugn a decision that is no longer open to challenge.

Claim (2) is irreceivable for the same reasons. The pathological condition of her left breast was not one of the reported consequences of the incident of 12 July 1979; so the medical and other costs of treatment may not be refunded in full, though they are covered in part by the Medical Benefits Fund. Again she ought to have followed the procedure in Article 18.1 rather than go straight to the Appeals Board.

On the merits UNESCO submits that since the Director-General took account of all the material issues the complainant has been fully compensated for the injury she sustained. As the Appeals Board pointed out, there was no delay in paying her terminal entitlements and no compensation is due to her under that head.

The dismissal procedure was lawful: her post was abolished for objective budgetary reasons; she had the benefit of all the safeguards applied in the event of abolition of post; and her dismissal came at the end of over two years' continuous special leave on full pay. The decision to dismiss her, which the Director-General took in the exercise of his discretion and in the Organization's interests, shows no flaw. Since UNESCO committed no breach of the rules she is entitled to no award of damages.

D. In her rejoinder the complainant draws attention to the vagueness and incompleteness of UNESCO's reply, which, she submits, does not properly address the merits of her case. The departments she was in touch with never explained what she must do, and there is no doubt about the Administration's dilatoriness. It took nearly two years to acknowledge, on 25 March 1981, that the effects of the assault were service-incurred; a year to pay her terminal entitlements; and almost twelve years to offer her, on 17 January 1990, compensation based on 18 per cent incapacity even though on 17 September 1987 the chief medical officer had described her incapacity for work as total.

As to her dismissal the Director-General, who alone may end her appointment under Regulation 9.1, failed to inform her of the decision. Nor did she have "the benefit of all the safeguards" applicable in the circumstances, since UNESCO never offered her any of the posts which the ad hoc redeployment committee thought suitable.

E. In its surrejoinder the Organization denies that its reply is vague or incomplete. It points out, among other things, that some thirty posts, the complainant's among them, were abolished in January 1986 because the Organization's interests and in particular the withdrawal of member States and a financial crisis so required. The complainant had her appointment extended many times on compassionate grounds.

The alleged delays were either her own fault or due to the state of her health, which for long was regarded as still changing.

CONSIDERATIONS:

1. The complainant used to be a sportswoman of international standing. She joined UNESCO on 1 August 1978 and was put in charge of the Unit of Physical Education and Sport in the Education Sector.

On 12 July 1979 another staff member assaulted her. She was pushed, received a blow on the right shoulder, and as she fell hit her right knee against furniture. On 25 March 1981 UNESCO recognised that the assault had occurred in the performance of her official duties and that she was entitled to compensation for any injury attributable thereto that came under the heads of compensation set out in Article 12 of the Rules of the Staff Compensation Plan.

The state of her health grew steadily worse for several reasons, some of them connected with the assault but others not. By 1985 she felt upset at the long time the procedure for compensation was taking but the answer was that the medical expenses she had incurred had been met and that in any event a medical inquiry was required.

Later that year she found out that her post was to be abolished at 31 December 1985. Another posting was sought for her and she was given short-term appointments that were renewed from time to time, but in the end the Director-General decided to dismiss her for reasons of health at 31 March 1988.

Between 17 October 1985 and 31 March 1988 she was on continuous special leave with full pay. She took many steps to have her case sorted out once and for all by the grant of compensation both for the effects of the assault of 1979 and for her dismissal. More than once she asked for redress for the delay. She put two appeals to the Appeals Board. At her request it joined them and on 4 April 1991 made recommendations to the Director-General. By a decision of 16 May the Director-General adopted them in part, and that is the decision she is impugning.

2. What is in dispute will be clear from a recapitulation of her appeals to the Board, its conclusions, the Director-General's decision and her present claims.

3. In her first appeal she asked the Board to recommend, first, immediate action by the Director-General to get the United Nations Joint Staff Pension Fund to award her a disability benefit and, secondly, payment of the compensation she was entitled to under Articles 12.3.1 and 12.7.2 of the Rules of the Staff Compensation Plan, of the costs of treating her left breast, of damages for delay in paying her dismissal indemnity, of an annuity to make

up the difference between the sums that were due to her and the sums she would have been paid had she stayed on in service, and of compensation under various other heads.

In her second appeal she asked the Board to recommend reversal of the Director-General's decision to limit the degree of her permanent incapacity to 18 per cent and, for the permanent effects of the assault warranting compensation, an award of 24,166.80 United States dollars in damages. She sought compensation for total incapacity, observing that if the degree of her incapacity was only 18 per cent there had been no grounds for dismissing her.

4. On her first appeal the Board held that genuine efforts had been made to get the Pension Fund to deal with her case and it recommended instructing that she be granted what she was entitled to in law. It recommended granting no damages for delay in paying her dismissal indemnity on the grounds that there had been no such delay and rejecting her claims to an annuity and to other sorts of compensation. But it recommended that the Director-General have a medical inquiry carried out to determine whether the benign tumour on her left breast was in any way attributable to the assault and, if it was, to repay the expenses she had incurred on that account.

As to her second appeal the Board treated her claims as alternatives, the Director-General being invited to choose between paying compensation reckoned on the strength of total instead of 18 per cent incapacity and straightforward reinstatement. It recommended dismissing her claims as irreceivable on the grounds that the determination of the degree of her incapacity was not an administrative decision challengeable under Chapter XI of the Staff Regulations and Staff Rules because she had not made the application for "reconsideration" prescribed in Article 18.1 of the Rules of the Staff Compensation Plan.

5. By the impugned decision of 16 May 1991 the Director-General told her that he was endorsing the recommendations for dismissing her claims to an annuity and to various sorts of compensation and rejecting as irreceivable her claim to the determination of the degree of her incapacity. Contrary to the Board's recommendation, however, he confirmed his refusal to have a further approach made to the Pension Fund and he rejected the claim to the costs of treating the tumour on her left breast.

6. The complainant is asking the Tribunal to quash the decision of 16 May 1991, order repayment of the costs of treating her left breast or at least a medical inquiry, and award her damages for the delay and the mistakes UNESCO was guilty of in the proceedings for determining her entitlements to compensation and disability benefit and for the delay in paying her dismissal indemnity. She seeks the quashing of the decision to dismiss her and consequent reinstatement or an award of damages or, "alternatively", the quashing of the decision to determine the degree of her incapacity at only 18 per cent on the grounds that it is total and permanent.

7. The Tribunal disallows the complainant's application for oral proceedings and for the hearing of at least one of her witnesses. Since it has full submissions before it and the witness she most wants it to hear has already supplied evidence in writing, hearings would serve no useful purpose.

8. First comes her claim about the degree of her permanent incapacity. The Organization pleads that it is irreceivable on the grounds that she has failed to exhaust the internal means of redress: the effects of the assault ought to have been assessed beforehand under the procedure in Articles 18.1 and 18.2.1 of the Rules of the Staff Compensation Plan.

The plea is upheld.

Article 18.1 reads:

"A person claiming under these Rules may, within thirty days of receiving notice of the Director-General's decision, apply in writing for a reconsideration of such decision ... The Advisory Board shall examine such request and make appropriate recommendations to the Director-General whose decision shall then be deemed to be an administrative decision for the purposes of appeals under Chapter XI of the Staff Regulations and Rules."

Article 18.2.1 says that where the request is, as here, "based on medical grounds a medical board shall be convened to examine these grounds and to report to the Advisory Board [on Compensation Claims]". The medical board is to be made up of three "medical practitioners", one of them to be "elected by the claimant".

The complainant submits that the procedure was not compulsory because the Advisory Board on Compensation

Claims had already taken up her case in 1981 and 1985 and there had been two medical inquiries, one in 1987 and another in 1988.

She may have believed, as indeed she maintains, that the second inquiry brought the procedure for an award of compensation to a close. But the decision to set the degree of her incapacity at 18 per cent was taken on 17 January 1990, she applied for "reconsideration" under Articles 18.1 and 18.2.1, and on 31 July 1990 she appointed a doctor to the medical board. So she has not exhausted the internal means of redress, and at the present stage in the proceedings her claim under this head is irreceivable.

9. By way of alternative relief she seeks the quashing of her dismissal. The Organization submits that that claim, being subsidiary, must fare as does her main one, which is dismissed in 8 above as irreceivable.

In fact what she means is plain: if she loses her claim about the degree of incapacity she wants a ruling on the lawfulness of her dismissal for reasons of health, which she maintains was wrong unless her incapacity was total. So the Tribunal will reject the Organization's plea and entertain her claim, which is receivable because several times she sought the quashing of her dismissal and put the matter to the Appeals Board. Though she did withdraw several appeals that were before the Board she never expressly waived her objections to dismissal.

10. Although the claim is receivable it is devoid of merit.

First, the decision notified to her by letter of 16 December 1987 did come from the Director-General, and she is mistaken in arguing that it was taken without authority.

Secondly, all the medical certificates and other evidence show that at the time of her dismissal for reasons of health under Staff Regulation 9.1 she was no longer able to carry out her duties and therefore met the conditions in that Regulation. The Organization showed her no hostility and indeed afforded her all the safeguards international civil servants are entitled to. So there was no abuse of authority. As she did not seriously seek to deny at the time, she was unfit for reasons of health to perform her duties. But that does not mean that insofar as her incapacity was attributable to the assault it was total: her health may have grown worse for reasons other than the injuries she then sustained. In any event her claim to the quashing of her dismissal must fail.

11. She objects to the Organization's holding up her dismissal indemnity and other entitlements and to the slowness of the procedure for compensating her for the actionable consequences of the assault. The evidence does reveal unfortunate delay and remarkable dilatoriness in settling the case. But the Organization may not be held liable for any particular negligence warranting an award of special damages under this head. The delay in sorting out the various issues of the case was due to a combination of several factors: procedural complications, the changing nature of the complainant's health, her living far from headquarters, and the need - for her own sake too - for many medical inquiries. Her claim to damages under this head therefore fails.

12. The last issue is whether the lesions in her left breast are attributable to the assault.

The Organization contends that her claim under this head is irreceivable because she has failed to exhaust the internal means of redress provided for in the Rules of the Staff Compensation Plan.

It is mistaken. On 22 January 1987 she put to it a claim to repayment of the costs of a biopsy to be carried out on her left breast after a mammogram had disclosed microcalcification, and a more general claim that all surgery that her condition required should be treated as directly attributable to the assault. She repeated her claims in a memorandum of 13 June 1987 to the secretary of the Advisory Board on Compensation Claims. The Board met on 13 October 1987 and in its report of 18 November found that the injuries attributable to the assault did not include the pathological condition of her left breast. The Organization endorsed that finding but the complainant has continued to challenge it. On 25 February 1988 she asked for a medical inquiry. By a letter of 28 March 1988 she applied for "reconsideration" under Article 18.2.1 of the Rules of the Staff Compensation Plan and asked that if her claim was rejected it should be put to the Appeals Board. For all her pressing demands the Organization failed to process her internal appeals, and it may not properly object that, against her own wishes, the proceedings were not completed before the case was lodged with the Appeals Board on 11 September 1989. The conclusion is that she exhausted the internal means of redress on that score and her claim is receivable.

13. Yet it is again devoid of merit. The evidence shows that at the time of the assault she never mentioned any injury whatever to her left breast. Not until 1987, after the mammogram had revealed microcalcification that later

proved benign, did her own doctor suggest the possibility of a connection between the condition of her left breast and the assault. But there is no reason to suppose that he knew her breast had been uninjured at the time. The record of 18 November 1987 of the Advisory Board's meeting of 13 October reproduces the finding of the Organization's medical officer, which reads: "The present condition of the left breast is not attributable to the assault of 1979". There are also the Board's own findings on the point. The complainant has adduced no evidence to rebut those findings and, there being no need for a medical inquiry, her claim to payment of the costs of treating her left breast cannot be sustained.

14. For the foregoing reasons the complainant's claim to costs also fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner