Compensation – A Worker's Story

Mr Maqhashu is 64 years old. He worked for a company that transports asbestos for his whole working life. Neither he nor his workmates knew that asbestos is dangerous to health by causing diseases of the lungs when you breathe it in. Before the union came, the workers had only been screened for TB with the small Xrays called the mini Xrays.

When General Workers' Union organised the transport workers, they told them of the dangers of asbestosis and did a survey of the workers with the Industrial Health Research Group (IHRG) to find out how many workers had asbestos disease of the lungs (asbestosis). Mr Maqhashu was one of the workers who was found to be suffering from asbestosis. A claim was sent in to the Workmen's Compensation Commissioner in October, 1983. A year later Mr Maqhashu was compensated. Rufus Rwexu of the IHRG interviewed Mr Maqhashu:

Rufus: When did you start working for the company?

Mr Maqhashu: I am not sure about the year, but it is the first and last company that I ever worked for since I started working. I might have worked there for more than 28 years.

Rufus: When did you realise that you were handling asbestos?

Mr Maqhashu: Well I really do not know, because nobody ever told us the names of the things that we used to handle. We became aware of asbestos like other things that we used to handle after a long period. Sometimes the supervisors tell us to go and load asbestos. This is how we got to know the name.

We were not even told that asbestos was a health hazard. We were also not aware that there are different Xrays - a mini-Xray for showing only TB, and a big one which shows asbestos. As I am speaking to you now, I am just wondering how many people have been suffering or killed by asbestos but are told that they are suffering from TB. The union brought light to us.

Rufus: How did you get to know that your application for compensation had been approved?

Mr Maqhashu: I got a copy of the letter telling me that my application has been approved by the Workman's Compensation Commissioner. In October 1984, not long after, I received a sum of R3,952.22 paid from the time that I was retrenched in June 1983. I was at the same time told that I would be getting a monthly pension of R254.15.

I was very happy because this money would help me in feeding and educating my children who are now at school.

Rufus: What word of courage can you give to other workers?

Mr Maqhashu: I appeal and encourage them to stand behind their union, because I strongly feel that if I was not a member of a union, I would not have got this money.

(Industrial Health Research Group)

photo: Mr Maqhashu with his family

Workmen's Compensation Procedures: A Backward Step

Historical situation

The procedure has been that the Workman's Compensation Commissioner handles the legal side of establishing the presence of a compensable occupational disease, as well as the medical diagnosis for compensable diseases of systems other than the respiratory system. Medical opinion for the diagnosis of pneumoconioses (respiratory diseases caused by the inhalation of fibrogenic dust), has been handled by the Director of the Medical Bureau of Occupational Diseases. The Medical Bureau for Occupational Diseases was until 1984 under the Department of Minerals but is now under the Department of Health. The Bureau has traditionally been involved in processing claims for compensation for pneumonconiosis cases from the mines. Because there has been no similar service for industry, nor any industrial health service per se, the Bureau has also given opinions for cases from industry.

This arrangement has, however, not been satisfactory. The Workman's Compensation Commissioner is known to be chronically understaffed. This has meant that the processing of claims for compensation for pneumoconiosis has taken between one and two years. The lump sum payment, which serves as backpayment for this period, should the claim be successful, does little to ameliorate the financial and emotional hardship and uncertainty for a worker with a respiratory illness. In this long period of uncertainty, the worker experiences loss of earnings, medical costs, legal and administrative costs, and pain and suffering. The last is not compensable under the Workman's Compensation Act.

The decisions and workings of the Workman's Compensation Commissioner have been relatively inaccessible and not really publically accountable. For instance, there are not even published figures for claims for occupational disease compensated or rejected by the Commisssioner. Historically it has not been easy to communicate with the Medical Bureau for Occupational Diseases about the basis for their decisions. Under this system it appears that the opinion of the Director of the Bureau leads to rejection or acceptance of the claim.

Alternative route

An alternative route became available last year through the joint Medical Bureau for Occupational Diseases/National Centre for Occupational Health panel. This comprised doctors from the Bureau and the Centre. Panel doctors were drawn from a larger group on a rotation basis. The collective readings of this panel provided the basis for medical certification of cases of occupational lung disease seen at the National Centre's occupational diseases clinic in Johannesburg. It was also possible for medical practitioners to refer records of suspected cases of pneumoconiosis from outside the Johannesburg area to the panel for medical certification. Certification by the joint panel appeared to be accepted by the Workman's Compensation Commissioner as diagnosis of an occupationally induced disease, and for compensation, although this was not inevitable.

The diagnosis of pneumoconiosis in terms of legal presumptive standards in South Africa is by Xray. Xray diagnosis is universally recognised to be difficult and subject to considerable individual error (bias) by the Xray reader. In consequence compensation authorities (as in the UK) usually set up panels of experts to provide opinions on the presence or absence of disease. The use of a panel ensures that the claimant benefits from a balanced collective opinion which is more objective by virtue of the minimisation of reader bias.

The joint panel that operated in 1984 included experts from the Medical Bureau for Occupational Diseases, the University of the Witwatersrand Medical School, and the National Centre for Occupational Health - a body which specifically concentrates expertise and knowledge particular to industry, as distinct from the mining sector. It would seem that such an arrangement ensures maximal fairness to the claimant, through participation of people with experience of disease in both mining and industry, and medical academics.

The nature of the panel not only increased the objectivity of the medical opinions by broadening the base of decision-making, but also provided a larger pool of competent doctors for the process of diagnosis, thereby increasing the potential ability to handle claims by the compensation apparatus.

To facilitate the passage of claims for suspect cases which were to be submitted to the Workman's Compensation Commissioner, full occupational and medical histories together with Xrays could be sent to the panel for their expert opinion. As there is no state or other diagnostic facility for occupational diseases outside of Johannesburg, this facility amounted to a welcome decentralisation of the services of the National Centre for Occupational Health.

The fact that this joint panel was open to approaches of outside medical personnel, and provided easy and direct exchange of information, meant that it was possible to build up a relationship of confidence. This type of open relationship is crucial to the independence of a state certifying authority. It also facilitated the important learning process for the referring doctors about occupational diseases.

The referring doctors' perception of the panel as an objective, open, and independent authority meant that its decisions were extremely unlikely to be contested. This obviated loading the Workman's Compensation Commissioner with legal contestations.

If the decision of the panel was negative, the claim would not be submitted to the Workman's Compensation Commissioner, thereby eliminating much unnecessary bureaucratic work for the Workman's Compensation Commissioner and the submitting doctors.

If the decision was positive, a claim for compensation would be submitted together with the other relevant paper work to the Workman's Compensation Commissioner. Using this route the total delay in processing a claim could be decreased from anything up to two years, to as little as two months.

Alternative route closed

In January the panel's functions were redefined at the request of the Workman's Compensation Commissioner. It now only has the authorisation to give opinions concerning those cases that have been personally worked up and investigated at the National Centre, and its opinions on the Xrays and medical reports referred by outside doctors do not have official status with the Commissioner. The patients themselves would

have to be referred to the National Centre for occupational health in Johannesburg for personal examination there, which is obviously impracticable. Only then would the opinion of the panel be officially acceptable, leading to compensation if positive.

Outside practitioners must now revert to the old system of submitting all records and paper work directly to the Workman's Compensation Commissioner, who will then send them to the Director of Medical Bureau for Occupational Diseases for medical certification.

Implications

This step is retrogressive for several reasons:

a) the procedure is once again more secretive and closed to public scrutiny;
b) the basis for making medical decisions about occupational diseases is contracted and bureaucratised. Workers who are exposed to fibrogenic dusts causing diseases that are difficult to diagnose will no longer have the benefit of more independent and objective decision. This disadvantages all parties involved;
c) the only route of appeal against future medical decisions is through the Workman's Compensation Commissioner's court, involving lawyers, inconvenience and expense;
d) bureaucratic delay will again disadvantage workers in obtaining rightful compensation;
e) with access to the panel closed off, an important means of sharing knowledge and learning has been closed for outside practitioners who are concerned to improve their diagnostic skills in the area of occupational diseases, thus again disadvantaging workers. The National Centre for Occupational Health will thereby find it more difficult to pinpoint problematic areas of industry, and there will be adverse consequences for provention;
f) the Centre - a body specifically dealing with occupational health in industry and concentrating much expertise and knowledge in this field - is now excluded from diagnosing occupational disease in the very area for which it is responsible - general industry. It will also be prevented *from extending its services and facilities to outside* practitioners operating in the field of occupational

health. Geographical areas outside of Johannesburg will be cut off from these services and facilities. What could have been a decentralised function at little or no cost to the state has now been withdrawn. This runs counter to the legislation introduced last year - particularly the intentions behind the Occupational Medicine Bill;

g) in the current economic climate bureaucratic handling costs are likely to be increased for the Compensation apparatus.

During 1984 it would seem that about 150 or so cases of suspected occupational lung disease were submitted, using the alternative route. These were workers exposed to asbestos, silica dust and cotton dust. About 45 of these cases sent to the joint panel have now been returned to the submitting doctors for resubmission directly to the Workman's Compensation Commissioner. In addition the progress of some claims submitted to the Commissioner, which had been diagnosed by the joint panel as suffering from an occupational disease, has been halted. The Commissioner has recalled the medical evidence on which the Centre's diagnosis had been based, presumably for re-evaluation in the wake of the abolition of the joint panel.

The number of claims resulting from cases certified by the joint panel would appear to have overloaded the Commissioner. The problem is that figures for cases submitted, compensated or turned down by the Commissioner are not published, and so the true situation remains obscure. It is however highly likely that these cases represented a substantial proportion of claims for compensation for occupational disease in 1984.

The discovery of occupational diseases in workers has long been very poor indeed, especially for black workers. Since the advent of trade unions representing the interests of black workers, there has therefore been a sharp increase in compensation claims upon the Workman's Compensation Commissioner. These claims have arisen from surveys commissioned by the trade unions to determine the extent of the occupational disease problem in several industries. This is likely to increase in the future. Occupational disease is at present an uncharted territory. It is clear that there are many undiscovered cases in many industries, some of which are for the first time beginning to surface.

It does not seem rational that the response of the authorities should be to make claim processing more difficult in the face of the increasing ascertainment of occupational diseases. This response can only be interpreted as being an attempt by the Workman's Compensation Commissioner to block or retard this process by making things more bureaucratic, complicated and inaccessible. This runs counter to the legislation introduced last year, and is likely to increase bureaucratic costs to the Compensation Commissioner while reducing compensation benefits to deserving workers.

The new arrangement constitutes a blow to occupationally ill workers and their organisations. It is important for trade unions to take a stand on this issue and to think about ways in which the interests of their members could be protected.

Some possibilities for action are:

a) to have the reasons for the closure of the joint panel to outside doctors made public;
b) to seek to open the Workman's Compensation Commission to public scrutiny about past performances in terms of claims success and rejection statistics, and current diagnostic and certification practices;
c) to pressurise both employers and the state for a return to the more objective joint panel certification process that would inspire public confidence, and generate a reputation for fairness;
d) to have independent trade unions represented on the Workman's Compensation board of assessors.

(Johannesburg correspondent, May 1985)