

SEVENTIETH SESSION

***In re* ALBERTINI, CALOO,
HAINES, PIERI, ROUMAJON,
ROUSEE, RUNACRES, SONDT
and WILLOX**

Judgment 1081

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr. Antoine Albertini, Mr. Georges Roumajon and Mr. Emile Rousée against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 16 March 1990, Eurocontrol's replies of 17 May, the complainants' rejoinders of 16 July and the Organisation's surrejoinders of 4 October 1990;

Considering the complaints filed by Miss Françoise Caloo, Mr. John Haines and Mr. Barry John Runacres against Eurocontrol on 3 November 1989, Eurocontrol's replies of 18 January 1990, the complainants' rejoinders of 16 March and the Organisation's surrejoinders of 7 June 1990;.

Considering the complaints filed by Mr. Jean-François Pieri, Mr. Jean Sondt and Mr. Jean-Pierre Willox against Eurocontrol on 31 January 1990 and corrected on 7 March, Eurocontrol's replies of 17 May, the complainants' rejoinders of 16 July and the Organisation's surrejoinders of 4 October 1990;

Considering the applications to intervene filed by:

E. Abel

J. Abramowski

A. Abts

D. Aelvoet

K. Albert

H-R. Altmann

J. Andriese

R. Angermeyer

H. Ansorge

L. Aridjis

F. Arrasse

B. Bams

A. Barnby

S. Basu

B. Baudier

M. Baudot-Zimmer

J. Beaufils

H-W. Becker

J. Beckers

B. Bedetti

V. Begault

P. Behier

J. Beishuizen

D. Bell

B. Bercq

H. Bergevoet

G. Bernard

J. Berthommier

M. Besson

J. Beyer

M. Biardeau

F. Bidaud

N. Bisdorff

R. Blau

L. Bleyens

B. Bocquillon

J. Bodar

B. Boerrigter

P. Boland

H-J. Bolz

C. Bonadio

A. Bonne

H. Bons

F. Bontems

J. Boots

A. Booy

R. Borré

M. Borsu

A. Bos

J. Bouillier-Oudot

J. Bralet

R. Braun

C. Breeman

C. Breeschoten

M. Bremmers

T. Brennan

O. Brentener

V. Brown

L. Brozat

M-N. Brun

H. Buck

W. Buckschewski

A. Bulfon

H. Burgbacher

M. Campion

R. Carmienke

F. Carrara

F. Carson

B. Cassaignau

L. Cassart

M. Castenmiller

R. Celis

L. Charon

R. Charpantier

C. Chauveau

M. Chauvet

N. Chichizola

P. Chudant

A. Claes

W. Claessens

L. Clarke

N. Clarke

G. Coatleven

C. Collignon

J. Collignon

M. Coolen

E. Corsius

J-M. Cosyns

B. Cox

P. Cracco

P. Crick

A. Cuveliers

H. Czech

P. D'Haese

M. Da Silva

C. Dagneau

F. Dahlbuedding

F. Daly

D. Danaux

L. Danby

H. Dander

B. Darke

H. David

P. David

A. Davister

V. Day

J. De Beurs

W. De Boer

J-M. De Boever

P. De Groot

J. De Keukelaere Meyer

P. De La Haye

J. De Lange

M. De Ligne

W. De Love

A. De Monte

J. De Poorter

I. De Riemaeker Luppens

L. De Schepper

A. De Vos

J. De Winter

P. De Zeeuw

J-M. Debouny

G. Debruyn

J. Decarnière

J-M. Dechelle

C. Degenaar

J. Degrand

R. Dehouwer

H. Delachaux

J. Delwarte

P. Demelinne

J. Demesmaeker

W. Depouillon

J. Dessart

E-M. Deter

F. Detienne

F. Devillières
H. Devry
V. Dick
J. Dickmann
K. Dittmar
D. Doerr
P. Domogala
J. Dos Santos
J. Douplat
J. Doyle
L. Driessen
G. Drost
E. Dubiel
S. Dubuisson
D. Dugailliez
F. Dufier
F. Dupont
M. Durasse
R. Ebs
U. Eckert
C. Edeb
D. Edgerton
P. Emering
R. Engels
H. Englmeier
A. Enright
R. Erdmann
C. Esslemont-Richez
I. Evans
R. Evans
H. Evers

H-J. Exner
T. Fagulha
G. Fairfax Jones
M. Falk
G. Falkenstein
J. Falkingham
Y. Fauchot
F. Faurens
U. Feldner
A. Feyder
R. Feyens
J. Fiers
R. Fisch
J-L. Flament
P. Flick
J-P. Florent
B. Flynn
M. Fontaine
G. Fortin
J. Fortin
J-P. François
Y. François
G. Frank
G. Frost
J. Frusch
C. Fuchter
G. Gabas
C. Galeazzi (Goetz)
M-T. Garzend
G. Gaveau

G. Gaydoul
F. Gehl
O. Geigner
A. Geirnaert
R. Geldhof
M. Gérard
M. Germans
L. Geurten
M-T. Gilles
R. Gillis
K. Glover
J. Godde
H. Goettling
W. Goettlinger
I-D. Goossens
D. Gordon
W. Gorlier
L. Gotting
M-J. Graas
M. Grebien
W. Gribnau
R. Grimmer
E. Groschel
A. Gruenewaelder
M-T. Guérin
I. Guild
T. Guldemont
B. Gundermann
A. Guyot
K. Haage
W. Haarmann

E. Haas
H-J. Habel
J. Haine
W. Handke
J. Handschuh
C. Hantz
G. Harel
H. Hauer
D. Hedley
H. Heepke
J. Hein
G. Heinz
J. Heller
G. Hembise
G. Henot
G. Hepke
E. Heppner
H. Herbert
H. Hering
H-J. Hermanns
M. Hervot (Hoss)
R. Hess
M. Hitchcock
E. Hochstein
G. Hody
H-J. Hoeld
E. Hofmann
W. Holtmann
G. Horsman
G. Hostyn

J. Hougardy
E. Huebsch
H. Huizer
P. Hunt
Marcel Jacobs
Matheus Jacobs
W. Jagemann
E. Jamez
R. Janssens
S. Janssens-Verreth
R. Jenyns
M. Jenz
R. Johnson
F. Joris
A. Jourdain
K-D. Jung
P. Kaisin
A. Kalkhoven
H. Kaltenhauser
G. Karran
L. Kelly
N. Kieffer
W. Klaes
G. Klawitter
H. Klos
U. Kluvetasch
T. Knauss
J. Koch
H. Koot
W. Koper
F. Krella

L. Kroll
J. Kuijper
H. Kunicke
M. Laine
G. Lambert
L. Lambrechts
L. Lang
P. Lascar
D. Laurent
G. Lauter
F. Le Noble
C. Leclerc
J. Leclère
M-C. Leduc
P. Lefebvre
Y. Lefèbvre
F. Legrand
W. Leistico
E. Lejeune-Dirichlet
L. Lelarge
W. Lembach
M. Lenaerts
C. Lenfant
M. Lenglez
J. Lenzi
Y. Leroux
C. Licker
D. Liesert
A. Lieuwen
H. Liss

W. Lockner
L. Loeser
R. Lucas
W. Lumpe
H. Maas
J. Maes
Philip Maes
Pierre Maes
J. Mager
S. Mahony
D. Maillet
J-P. Majerus
R. Maloney
B. Marschner
T. Martens
C. Martens-Servaes
J. Martin
J. Martins dos Santos
C. Massie
C. Massinon
G. Mathieu
M. Mathieu
D. Mauge
P. Maurus
P. Meenhorst
N. Mehtens
C. Meier
A. Meloen
J. Mercier
J. Meredith
E. Merklinger

H. Mertz

W. Mesman

E. Meyenberg

B. Meyer

B. Michaux

M. Minner

F. Moitier

M. Mommers

P. Montenez

A. More

A. Mounier

R. Muehlstroh

G. McAuley

E. McCluskey

J. McNeill

F. Nauta

B. Neher

C. Nelissen

H. Neumann

M. Nicolay

C. Niesing

A-M. Nieuweling

J. Nijpels

A-M. Nouvel

J. Nuyt

L. Olivier

G. Ostertag

J. Oury

H. Pannenberg

H. Parvais

K-U. Pawlicz

G. Peerbooms

B. Peeters

P. Peeters

R. Peiffer

R. Perry

J. Pessus

M. Pesty

C. Petit

E. Petit

P. Petit

P. Petitfils

W. Petter

A. Peyrat

V. Pfeiffer

P. Philips

E. Phillips

M. Picard

R. Pierrard

C. Poinot

J-M. Pomeret

M. Pommez

P. Praet

J. Prevoo

V. Priplata

J. Prochasson

C. Prosser

M. Prosser

H. Purvis

C. Pusch

B. Puthiers

L. Putz
L. Rabozée
J. Raes
M-C. Ragot
H. Rakete
M. Reck
J-L. Renteux
J-J. Richer
J-M. Rigolle
A. Ritchie
G. Riu
C. Robijns
M. Roebroek
J. Roelofsen
J. Ronk
G. Rossignol
F. Roth
J. Roulleaux
J-M. Roussot
J-P. Rue
Alain Rutherford
Alexander Rutherford
J-C. Salard
R. Sampoux
M. Sanchez Fagulha
P. Sargent
J.J. Sauvage
J. Sawtell
G. Scheltien
J. Scheu

J. Schiettekatte

P. Schmutz

G. Schneider

H. Schneider

P. Schneider

U. Schoeke

G. Schoeling

M. Schoeling-Veys

K. Scholts

J. Schraa

N. Schreurs

H. Schroeter

A. Schuh

J. Schuller

M. Schwaller

K. Seipke

A. Sena

M. Severac

K. Seybold

W. Sieg

L. Sillard

W. Sillevis

G. Sizun

F. Skerhut

P. Slingerland

P. Smith

L. Smulders

M. Sneyers

E. Snijders

E. Soehnle

D. Spragg

S. Starlander
B. Stefens
F. Steijns
E. Steiner
W. Steiner
W. Stijns
A. Stickland
Jan Storms
Joseph Storms
E. Stuhlsatz
A. Sunnen
B. Swinnen-Stappaerts
N. Szewczuk
A. Talboom
E. Talboom
E. Tant
E. Taylor
R. Thacker
G. Theeten
J. Thiecke
J-P. Thiel
A. Thill
G. Thorel
R. Tielemans
H. Tielker
J. Timmermans
C. Tovy
J-C. Tumelin
M. Turcan
R. Ueberhofen

J. Uhl
A. Urlings
V. Vachiery
B. Valdenaire
J. Van Belle
P. Van Berckel
G. Van Campenhout
R. Van Cauwelaert
H. Van De Vorst
A. Van Den Broeck
E. Van Den Heuvel
C. Van Der Flier
M. Van Der Sluis
G. Van Dijk
A. Van Dooren
S. Van Dronkelaar
J. Van Eck
E. Van Eupen
H. Van Everdingen
P. Van Grieken
T. Van Hal
M. Van Hemelrijck
F. Van Landuyt
W. Van Leeuwen
R. Van Lierde
J. Van Raayen
J. Van Riemsdijk
J. Van Tilburg
T. Vandamme
H. Vanden Bosch
C. Vandenbergh

B. Vandenberghe-Vaury

J-P. Vanderspikken

D. Vanderstraeten

E. Vanschoenwinkel

M. Vatinel

K. Vent

P. Vercuijsse

P. Vergauts

F. Vergne

J. Verlinden

H. Vermaesen

F. Vermoesen

M. Verschaffel

M. Verschelden

L. Verwilt

W. Viertelhauzen

Y. Viroux

P. Visser

C. Vodak

J-C. Vollant

N. Vrancken

E. Vreede

F. Wagner

W. Warner

E. Watkins

J. Watson

H. Weis

G. Wendling

F. Werthmann

P. Wildey

M. Wildner
R. Wilkening
R. Williams
D. Winkler
F. Wissink
W. Withofs
J. Wolynski
P. Wood
M. Woods
R. Xhrouet
D. Young
J. Zabka
H. Zandvliet
W. Zieger
J. Zipp
R. Zoellner

Considering Articles II, paragraph 5, and VII, of the Statute of the Tribunal and Article 92(1) and (2) of the Staff Regulations governing officials of the Agency;

Having examined the written evidence and decided not to order oral proceedings, which none of the parties has applied for;

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

A. At its 62nd Session, on 7 July 1983, the Permanent Commission of Eurocontrol decided to bring in a 5 per cent differential in net pay between the European Communities and Eurocontrol by gradually reducing net pay at Eurocontrol. The International Convention on Co-operation for the Safety of Air Navigation was amended for the purpose from 1 January 1986.

Cost-of-living weightings are applied to the pay of Eurocontrol staff, the aim being to give everyone the same purchasing power whatever his duty station.

In a working paper of 19 January 1989 the Director General submitted to Eurocontrol's Committee of Management for adoption with retroactive effect from 1 January 1981 a set of revised weightings that had been published by the European Communities on 27 October 1988. The paper explained that the new weightings would not apply to all duty stations and could not be taken into account for the purpose of adjusting net pay differentials.

The complainants are members of the staff of Eurocontrol. They submitted to the Director General requests under Article 92(1) of the Staff Regulations. They did so in January and February 1989: though the dates are not on the copies filed with the Tribunal they are not at issue. In their requests they asked the Director General to apply to their salaries the new weightings published by the European Communities, in full as from 1 January 1981, and whether or not any reduction in their pay was lawful; to take account of the weightings in recalculating the successive reductions made in their pay; and to repay to them any sums wrongfully withheld.

By office notice 6/89 of 21 March 1989 the Director of Personnel and Finance informed the staff that at its 158th Session the Organisation's Committee of Management had approved the new weightings for several duty stations as from 1 January 1981 and that the amount of arrears would be worked out as soon as possible.

By decisions of 30 May 1989 the Director General rejected the complainants' requests on the grounds that there was no cause of action: the procedure for adoption of the new weightings had already begun by the date of their requests; office notice 6/89 had explained that it would take time to apply them in each case; and insofar as the requests foreshadowed internal appeals they were irreceivable since the appointing authority had not yet notified individual decisions adversely affecting the staff nor had the Permanent Commission of the Organisation yet approved the new salary scales to be applied from 1 July 1988.

In August 1989 - again the dates do not appear on the texts filed but are not contested - the complainants each lodged an internal "complaint" under Article 92(2) against the rejection of their requests. They contended that their requests had not foreshadowed appeals and had shown a cause of action inasmuch as the Director General's working paper had already made it plain that there was to be no provision for recalculating the margins used to apply the reductions in pay in furtherance of the Permanent Commission's decision to make pay 5 per cent lower at Eurocontrol than in the European Communities.

Office notice 14/89 of 23 August 1989 announced adjustments as from 1 July 1988 in pensions and salary that took account of the new weightings.

On 3 November 1989 Miss Caloo, Mr. Haines and Mr. Runacres filed complaints with the Tribunal impugning the implied rejection of their 92(2) complaints.

By letters of 14 December 1989, the decisions impugned by the other complainants, the Director of Personnel and Finance rejected their 92(2) complaints as irreceivable on the grounds that they were not challenging decisions adversely affecting them, such as the pay slips issued in late August and in September 1989 or the office notice of 23 August 1989. The Director added that in any event their claims were devoid of merit.

B. Miss Caloo, Mr. Haines and Mr. Runacres contend that their complaints are receivable, having been filed, as Article VII(3) of the Tribunal's Statute requires, not later than 150 days from the date of notification of their 92(2) complaints.

The other complainants also submit that they duly filed not later than 90 days from the date at which they had got the letters of 14 December 1989 from the Director of Personnel and Finance.

All the complainants contend on the merits that so long as they get no increase in net pay there are no grounds for making the reduction the Permanent Commission approved in 1983.

Whenever the weighting for a duty station threatens to bring net pay down there is a safeguard against a fall: the figure is kept up by letting any increments due accrue until the decline has been offset.

The figures given in the working paper of 19 January 1989 show that some of the weightings, for example the one applicable to the Netherlands, had gone down appreciably. By the complainants' reckoning there would have been no reason to go ahead with the first stage of the reduction in pay had the weightings been known at the time. A rise in net pay must be taken over the whole period in which the figure fell back, the relevant level being that which immediately preceded the first decline. For the Netherlands 1 July 1985 was the last date before the revised weightings brought down net pay. So the salaries of officials stationed in that country and affected by the fall should be frozen until rises have made up the amounts wrongfully withheld. That would leave no room for any reduction in pay up to now.

Since the rule is that staff at different duty stations must have the same purchasing power, making no salary reduction in one country means making none in any other.

The complainants invite the Tribunal to quash the decisions to reject their internal "complaints". They want to have the revised weightings retroactively taken into account for the purpose of determining the rates at which the stages of the reduction in Eurocontrol pay occur (which would wipe out the reductions). They claim the refund of the sums wrongfully withheld and awards of costs.

C. Eurocontrol replies that the complaints are irreceivable and submit that the complainants have acted in breach of the spirit of the internal appeals procedure. Their letters of January and February 1989, which were in standard form and run off in hundreds of copies, were more like a petition calculated to put the Organisation under pressure than Article 92 requests. Besides, the complainants were aware of the efforts then being made to update the weightings and knew that there would eventually be individual challengeable decisions. Their requests showed no cause of action.

The complaints filed by Miss Caloo, Mr. Haines and Mr. Runacres are also premature. Rejection was not implied, according to Article 92 of the Staff Regulations, until four months after they had notified their 92(2) complaints, and they have therefore failed to exhaust the internal means of redress.

In subsidiary submissions on the merits the Organisation contends that it is the actual increase in net pay, not the weightings, that count. The complainants' reasoning is unsound because it makes two mistaken assumptions. For one thing, the rate at which salaries are adjusted depends on pay levels, not at 1 July 1985, but at 1 January 1986, since the initial adjustment that took effect on 1 July 1986 was based on data relating to the period beginning on 1 January 1986. For another thing, there is no reason to challenge the adjustments already brought in since the value of the factors they are based on has never gone down; net pay has consistently risen since 1 January 1986, even in the Netherlands and the Federal Republic of Germany, where it is still disproportionately high.

The real bone of contention is the "restraint" on pay rises, an issue the Tribunal has already ruled on.

D. In their rejoinders the complainants observe that by using the term "restraint" instead of "reduction" Eurocontrol has altered the terms of the decision the Permanent Commission took in 1983. They have never challenged reduction as a matter of principle and have indeed said quite explicitly that their suit has no bearing on the lawfulness of the reduction.

They maintain that their complaints are receivable: their letters requesting a decision were not a "petition" and under Article 92 the rejection of a request constitutes in itself an act adversely affecting the individual who made it.

Miss Caloo, Mr. Haines and Mr. Runacres further submit that in matters of procedure they have to comply with the shortest time limit, the one set in the Tribunal's Statute, and that there is therefore nothing premature about their complaints.

As to the merits, they reject the Organisation's figures. They submit that the weightings have a direct impact on net pay and, especially in the Netherlands, the lower weightings make for a cut in net pay. If the new weightings had been known before 7 July 1987 there would have been no cause whatever for adjustment since pay levels in the Netherlands would have been frozen at their 1985 level. Being unwarranted, the reductions cannot stand.

E. In its surrejoinders Eurocontrol confirms that the impugned decisions are about adjustment of an increase, not about reduction in pay below levels in the European Communities. It maintains that the complaints are irreceivable because they disclose no cause of action and are premature. The complainants' submissions rest on mistaken assumptions.

CONSIDERATIONS:

Joinder

1. The material issues being common, the complaints are joined to form the subject of a single ruling.

Receivability

2. By letters of which the copies put to the Tribunal bear no date but which the Organisation does not deny having received the complainants submitted to the Director General of Eurocontrol "requests" under Article 92(1) of the Staff Regulations that a decision be taken. They referred in their letters to a working paper that was to be put to the Committee of Management at a forthcoming meeting about "adjustment with retroactive effect from 1 January 1981 of the weighting coefficients to be applied at Eurocontrol duty stations". They said that the paper prescribed a new factor for the reckoning of salary and they asked for a decision to apply the new weightings in full and, in particular, to take account of them for the purpose of recalculating the amounts of the gradual reductions in pay.

The Director of Personnel and Finance answered on the Director General's behalf in letters of 30 May 1989 which explained Eurocontrol policy on the matter; reminded the complainants that an office notice had informed them that time was needed to apply the weightings to each staff member; and pointed out that the upward adjustment of basic salary and the weightings for the purpose of the third stage had not yet been approved.

Being dissatisfied with those answers, the complainants submitted to the Director General, again at some unknown date, "complaints" under Article 92(2) of the Staff Regulations putting forward the same pleas but not mentioning any individual decisions. Decisions of 14 December 1989 signed by the Director of Personnel and Finance rejected the 92(2) complaints. Those are the decisions challenged by Mr. Albertini, Mr. Pieri, Mr. Roumajon, Mr. Rousée, Mr. Sondt and Mr. Willox. Miss Caloo, Mr. Haines and Mr. Runacres, who filed their complaints on 3 November 1989 before notification of the decisions, are challenging the rejection they infer from the Organisation's failure to reply.

In the decisions of 14 December 1989 the Director said, among other things, that the complaints were irreceivable because they failed to challenge any "decision by the appointing authority" adversely affecting the complainants, such as the pay slips issued at the end of August and in September 1989 or, in the case of those who had not been granted relief for the period from 1 July 1986 to 30 June 1988, office notice 14/89 of 23 August 1989. He applied that reasoning to all of the complainants.

3. The complaints may be declared irreceivable on several counts. One possible objection to receivability is that at the outset the complainants were challenging decisions that had not even been taken and their internal appeals were therefore premature.

4. But the grounds on which the Tribunal prefers to base its ruling are that there was breach of Article VII(1) of its Statute. It is true that the measure under challenge affects several groups of staff and is therefore general in purport. But that does not in itself make the complaints irreceivable: decisions do not need to be individual to be challengeable before the Tribunal. As Article VII(2) of the Tribunal's Statute makes plain, a general decision too is challengeable. That article sets the time limit for filing a complaint against "a decision affecting a class of officials", in other words a general decision.

Yet that does not mean that a complaint challenging any sort of general decision will necessarily be receivable: there is also the rule in VII(1) that the internal means of redress must have been exhausted.

Article VII(1) reads: "A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". Although VII(1) will apply mainly where the impugned decision might have been directly challenged within the Organisation, it will be fatal to a complaint against a general decision if that decision, though not subject to direct internal appeal, must ordinarily be followed by an individual one against which appeal does lie. That construction of the article precludes entertaining an appeal against a general decision where the arrangements for giving it effect may be unknown. Moreover, it is not certain that the general rules to be applied had become final by the time at which the impugned decisions were taken.

The impugned decisions do not put figures on the entitlements of each of the complainants it applies to. The figures will be known only when individual decisions have been taken, and the competent administrative authority or a subordinate will presumably take them on the strength of the general decision. In the circumstances the complainants may not now challenge the validity of the general decision they are objecting to. Before they come to the Tribunal they must be able to cite individual decisions.

The complaints being irreceivable, there is no need to entertain the Organisation's further objection that some of the complainants failed to observe the time limits for appeal.

DECISION:

For the above reasons,

The complaints are dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President,

and Miss Mella Carroll, Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.