

## EIGHTY-EIGHTH SESSION

### *In re* Salard (No. 5)

#### Judgment 1893

The Administrative Tribunal,

Considering the fifth complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr Jean-Claude Salard on 18 May 1999, Eurocontrol's reply of 30 July, the complainant's rejoinder of 10 August and Eurocontrol's surrejoinder of 15 October 1999;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. Facts relevant to this case are set out in Judgment 1814 delivered on 28 January 1999 on Mr Salard's second and third complaints.

By a letter of 5 February 1999, the complainant asked the Director General to have his mother treated as his dependant as from 1 December 1997 in accordance, he claims, with Rule of Application No. 7 and Judgment 1814. In addition he asked that this dependent status be renewed from 1 December 1998 to 30 November 1999. Following a telephone conversation, the Director of Human Resources informed the complainant by a letter of 30 March 1999, that office notice 41/72 "on which the Tribunal had based its judgment" had been revoked and that his request of 1 December 1997 would be examined in the light of office notice 15/97 of 15 September 1997. He added that "as for the actual execution of Judgment 1814, it shall remain virtual" and said that the internal complaint filed by Mr Salard on 3 June 1997 would be sent back to the Joint Committee for Disputes for a recommendation. However, the Committee had already met on 23 March 1999. In its report of 21 April, it recommended unanimously rejecting his request to have his mother treated as his dependant. In a letter of 5 May 1999, the impugned decision, the Director of Human Resources informed the complainant on the Director General's behalf that he had endorsed the Committee's recommendation.

B. The complainant submits that the Joint Committee for Disputes had met "in virtual secrecy" without having been properly convened and without hearing him. He questions the impartiality of some of its members. He points out that the report of 21 April 1999 bore only the Chairman's signature and accuses the Committee of serving as an appeals body for Tribunal judgments. He objects that office notice 15/97 refers expressly to the remuneration of officials of the European Union, whereas, according to him, Judgments 1095 (*in re* Gilles) and 1814 had already declared that practice unlawful in Eurocontrol. He adds that some annexes to the office notice had not been written until October 1997 and so could not have been submitted in the advisory procedure which took place on 4 August 1997. Lastly, the method of reckoning set out in the office notice has led to "obvious aberrations" because it has not taken into account the actual expenses borne.

In his complaint form, the complainant seeks the quashing of the impugned decision, one million Belgian francs in moral damages and 50,000 francs in costs. In his attached brief, he also seeks the cancellation of the implied rejection of his request for renewal of his mother's status as a dependant.

C. In its reply, Eurocontrol recognizes that the use of the phrase "virtual execution" of the judgment by the Director of Human Resources was poorly chosen; it explains that the discrepancy between the date of the letter announcing that the Joint Committee for Disputes was going to meet and the actual date of the meeting was due to the fact that the letter had been signed late.

Eurocontrol contests the receivability of the claim to renewal of the status sought for his mother on the grounds that the complainant failed to exhaust his internal remedies. In its view, the request he submitted on 5 February 1999 is a new one.

On the merits, Eurocontrol explains that the complainant's claim was reviewed in the light of office notice 41/72, in force when the first request was made, which gives the Director General a wide measure of discretion. Like the Committee before him, the Director General considered that although the complainant undeniably had to bear heavy costs, they were not such as to warrant the exceptional measure of having his mother treated as his dependant. Eurocontrol points out that the Committee is not obliged to hear complainants or inform them when the internal complaints will be examined. According to office notice 6/95 setting up the Joint Committee for Disputes, the Chairman signs the report.

In a subsidiary argument, Eurocontrol submits that the Tribunal never intended to prohibit it from taking up rules from other organisations by publishing them as its own.

D. In his rejoinder the complainant denies having made a "new" request in his letter of 5 February 1999. He simply asked that his request of February 1997 be reconsidered in the light of Judgment 1814, as well as, *mutatis mutandis*, his request to have his mother treated as his dependant, annually renewed. Since the objective of his request was to obtain "the full and entire execution" of Judgment 1814, he considered that he was "exempted from following the internal appeals procedure".

He reiterates his objections concerning the Joint Committee for Disputes.

Lastly, he affirms that he does meet the requirement of "heavy expenditure" provided for in Article 2(4) of Rule of Application No. 7 concerning remuneration.

E. Eurocontrol submits in its surrejoinder that decisions regarding special dependent status are only valid for one year. Therefore, no yearly renewal, *mutatis mutandis*, is possible. It argues that the request can stand on the strength of neither office notice 41/72 nor office notice 15/97 and recalculates the costs borne by the complainant to prove that these are well below the ceiling set for "heavy" expenditure. In its view, Judgment 1814 ordered the review of the claims of 3 June 1997 but did not rule that it was sound. Therefore, it had sent the case back to the Joint Committee for Disputes before taking a new decision, and the procedure it followed was a regular one.

## CONSIDERATIONS

1. The complainant is an expert at Eurocontrol's Experimental Centre at Brétigny-sur-Orge in France. He submitted a request on 7 February 1997 which the administration construed as a request to have his mother, who was to be admitted to a hospital as a long-term patient, treated in the same way as a dependent child. After the Joint Committee for Disputes had been consulted, his request was rejected by a decision of 30 October 1997, which he impugned before the Tribunal. By Judgment 1814 delivered on 28 January 1999, the Tribunal ruled that the Committee's recommendation had been issued in unlawful circumstances. As to the merits, the administration had wrongfully referred to the rules applicable to officials of the European Union.

2. As early as 5 February 1999 the complainant submitted a two-fold request to the Director General of Eurocontrol based on Judgment 1814: first, that his mother be treated as his dependant as from 1 December 1997; secondly, that this status be renewed from 1 December 1998 to 30 November 1999. Eurocontrol referred the matter to the Joint Committee for Disputes as it was bound to do following Judgment 1814. Having met on 23 March 1999, the Committee made its recommendation on 21 April based on the following considerations:

"From the information provided by Mr Salard, it appears that his part of the maintenance of his mother is undeniably a burden. Nevertheless, it is not so "heavy" as to warrant treating Mrs L. as a dependent child according to the terms of office notice 41/72, which moreover grants broad discretionary authorities to the Director General.

By office notice 15/97 of 15.09.97, effective from the same day, Eurocontrol informed its employees of the provisions and requirements relating to the treatment as a dependent child.

These requirements are the same as those relied on by Eurocontrol in the first office notice, 41/72, to refuse the request to have Mr

Salard's mother treated as a dependent child."

**The Committee ruled unanimously that**

"Mr Salard's claim to dependent status for his mother cannot stand, for it fails to meet the requirements listed in office notices 41/72 and 15/97".

**3. By a decision taken on 5 May 1999, the Director of Human Resources, on the Director General's behalf, stated that he fully endorsed the recommendation of the Committee and informed the complainant that "the request that [his] mother be treated as his dependant is rejected". The complainant's main claims are to quash this decision and to grant him one million Belgian francs in moral damages. He also filed an application for execution, which the Tribunal has dismissed this day in Judgment 1892.**

**4. To grasp the extent of the dispute as it now stands before the Tribunal, it is necessary first to consider a point of law and a point of fact.**

**5. In law, as stressed both by the Joint Committee for Disputes and Eurocontrol, the rules for classifying an individual in the same way as a dependent child of an eligible official of Eurocontrol have been amended. Until 15 September 1997 office notice 41/72 of 31 October 1972 was applicable. It recalled the terms set out in Article 2(4) of Rule of Application No. 7:**

"Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child, by special reasoned decision of the Director General, based on supporting documents."

The office notice specified the factors to be considered in examining the requests, but did not clearly define "heavy expenditure". As from 15 September 1997 office notice 15/97 of the same date is applicable: an annex to this office notice fixes a method of reckoning for expenditure borne by officials which is identical to the one applied to officials of the European Union.

**6. In fact, a study of the case reveals that although the complainant had indicated in his first request that his mother would be admitted as a long-term patient as from 20 February 1997, she was not actually admitted until 20 November 1997.**

**7. The complainant submits that the decision of 5 May 1999 to refuse his request is unlawful because it was taken after an irregular meeting of the Joint Committee for Disputes and it was in breach of Judgment 1814. He challenges the dismissal both of his claim to treat his mother as his dependant and his request for an annual renewal of this status. Eurocontrol argues that the claims relating to the periods from 1 December 1997 to 30 November 1998 and from 1 December 1998 to 30 November 1999 are irreceivable and asks that his other claims be dismissed because they are unsound.**

**8. Contrary to Eurocontrol's assertion, the complainant's claims are all receivable, even though he merges the periods over which he requests to have his mother treated as his dependant. The wording of both the request of 5 February 1999 and the recommendation of the Committee does however indicate that the dispute concerns both the request submitted initially on 7 February 1997 and the request for renewal of the special status until 30 November 1999. As for the impugned decision, it is couched in general enough terms to cover the entire period. The complainant may therefore challenge the rejection of both his request of 1997 and that of 1999.**

**9. Although his claims are receivable, they are devoid of merit.**

First, contrary to the complainant's contentions, Judgment 1814 did not imply that his case succeeded on the merits; its sole objective was to send the case back to Eurocontrol's competent bodies so that a lawful decision could be taken.

Secondly, there is nothing in the evidence to suggest that the Joint Committee for Disputes met in irregular circumstances: it delivered its opinion after having examined the complainant's written submissions and was not bound to summon him for a hearing. Further, there is no evidence to support the allegation that Committee members were biased and so incapable of giving a fair opinion on his claims. The complainant's

pleas on form, which are subsidiary, must fail.

Finally, on the merits, the impugned decision correctly applied the relevant provision: for the period prior to 15 September 1997, the argument became theoretical since it appears that the complainant's mother did not become a long-term patient until after that date. Since the case involves periods during which the complainant's mother was actually a long-term patient at the hospital, Eurocontrol rightfully applied the method of reckoning defined in office notice 15/97 which is perfectly lawful. The complainant has failed to prove that the calculations, on which Eurocontrol based its rejection of his request, were wrong. Therefore, his complaint, as well as his claims to payment of moral damages and costs, must be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

*(Signed)*

Michel Gentot  
Mella Carroll  
James K. Hugessen

Catherine Comtet