

NINETY-SEVENTH SESSION

Judgment No. 2352

The Administrative Tribunal,

Considering the complaint filed by Mr G. B. against the Customs Co-operation Council (CCC), also known as the World Customs Organization (WCO), on 3 March 2003, the Organization's reply of 1 July, the complainant's rejoinder of 13 October 2003 and the Organization's surrejoinder of 22 January 2004;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. Staff Regulation 12(a) provides:

“The Secretary General may, after consulting the appropriate advisory body, terminate the appointment of an official :

(i) [...]

(ii) if the post of the official is suppressed [...] and there is no vacant post for which the Secretary General considers that the official has the necessary qualifications;

[...]”

The complainant, a Belgian national born in 1950, joined the CCC in May 1974 as a Senior Administrative Officer and was assigned to the accounting service. He was later appointed to the B6 post of Document and Computer System Manager, then as Computer System Administrator. He was transferred to the General Services from 3 January 2000, then to the Building Maintenance and Viabilities Section of the Division of Administration and Personnel starting 6 July 2001.

In the course of an interview on 5 September 2001, the Head of Administration and Personnel told the complainant that the post of Document and Computer System Manager no longer existed, since the duties related to the post had been redistributed. He also told him that he intended to propose the suppression of his B6 budget post to the Secretary General and, on the basis of his current duties in the Building Maintenance and Viabilities Section, to create a new B3 post which would be offered to him. When the Head of Administration and Personnel referred the matter to the Staff Committee in a memorandum also sent on 5 September, the Committee replied that it was not opposed to the suppression of the complainant's post, but that it considered it important that the new B3 post should be offered to him. In a letter of 19 September 2001, the Secretary General informed the complainant that, having obtained the opinion of the appropriate advisory body, he had decided to suppress the post of Document and Computer System Manager and his appointment would be terminated on 31 January 2002.

On 18 October 2001 the complainant asked the Secretary General to modify or withdraw that decision. The Secretary General replied on 5 November and confirmed his earlier decision, given that the suppression of the complainant's budget post had come about for objective reasons and was required as part of the restructuring of the Secretariat. The matter was referred to the Appeals Board in December 2001. By letter of 4 December 2002, which is the impugned decision, the Secretary General copied the Appeals Board's recommendation to the complainant and informed him that, since the Board had been unable “either to justify or to validate his grievances”, his appeal was rejected.

B. The complainant begins by denouncing the lack of substantiation or inadequacy of the reasons given insofar as he was not informed of the grounds for the Appeals Board's recommendation. He adds that, at the time he filed his complaint, he was still unaware of the real reasons for the termination of his appointment. He contends that the Secretary General did not give the reasons that led him to drop the idea of reclassifying his post to the B3 level and did not follow the recommendation of the Staff Committee, as he was bound to.

He also argues that the provisions of Staff Regulation 12(a), Staff Rule 12.1(a) and Staff Circular No. 142 were breached in that the decision to terminate his appointment was not preceded by an opinion of the Staff Committee. While the latter was asked about the plan to create a B3 post, it was not consulted about the intention to terminate his appointment following the suppression of his post. The complainant casts doubt on the validity of the Staff Committee's opinion.

According to the complainant, the provisions of Staff Regulations 10 and 12(a) were breached because his budget post either had not been suppressed at the time the decision was taken to terminate his appointment, or had been abolished by a non-competent authority, since in his view the Secretary General was not competent to suppress his post on his authority alone.

The complainant further accuses the Organization of adopting a "casual" attitude and giving "scant attention" to the question of his reclassification.

He also believes that by deciding to assign him to the General Services and then to the Building Maintenance and Viabilities Section, the Organization breached the principle of matching job with grade and its obligation to treat its staff with due respect.

Lastly, he pleads misuse of authority on the grounds that the decision to suppress his budget post was taken not in the interest of the service but in order to get rid of an "unwanted official".

The complainant requests that the decisions of 19 September 2001 and 4 December 2002 be quashed and that he be reinstated. Subsidiarily, in compensation for the harm done to his career, he claims an amount equivalent to "all the financial benefits or those reckonable in monetary terms" to which he would have been entitled if he had kept a B6 post, less whatever financial benefits he has obtained or might obtain from another employer, and 20,000 euros for moral injury. He also claims costs.

C. In its reply the Organization endeavours to demonstrate that the complainant was perfectly aware of the reasons underlying the decision to terminate his appointment even before the decision was taken and adds that it is clear from the letter of 5 November 2001 that the decision was taken as part of the restructuring of the Secretariat. It contends that the Staff Committee was consulted according to the normal procedure and that it was in the light of the Committee's opinion that the Secretary General took his decision. The latter was not bound by the suggestion to create a B3 post, nor indeed by the Staff Committee's opinion. While pointing out that under Staff Rule 29.3 only a copy of the Appeals Board's recommendation need be sent to the appellant, the Organization produces the Board's full report as an appendix to its reply.

According to the defendant, the Staff Committee met on 11 September 2001 to consider the memorandum of 5 September, which mentioned the possibility that the complainant's post might be suppressed. Since the Committee had given its opinion on the suppression of that post, there was no justification for consulting it again once that formality had been completed. The Committee's Chairman was informed, however, that it had not been possible to reassign the complainant within the Secretariat. Moreover, all the applicable rules were duly complied with.

The Organization points out, furthermore, that both the Finance Committee and the Council were informed of the suppression of the complainant's post and approved it. The Secretary General, who is responsible for the organisation of services, followed constant practice in that respect.

The defendant maintains that it fulfilled its obligations towards the complainant to the best of its ability. It argues that the termination of the complainant's appointment became inevitable, given that it was unable to reassign him. It adds that it was not in the Organization's interest to create the new B3 post, and the letters of the Head of Administration and Personnel, who made many attempts to help the complainant find work outside the Organization, had remained unanswered.

A further point made by the defendant is that the Tribunal, when dealing with a complaint against a specific

decision, should not at the same time examine the validity of a series of earlier decisions which the complainant did not challenge within the prescribed time limits.

With regard to the complainant's plea that the Organization was guilty of misuse of authority, the latter maintains that the charge is based on "irrelevant combinations and groundless assertions". It concludes by pointing out that, according to the Appeals Board, the complainant was never shown "any lack of respect".

D. In his rejoinder the complainant submits that the Organization has not replied to his pleas and he reiterates them all. He argues that, while the Secretary General was perfectly entitled to disregard the Staff Committee's recommendation, he should nevertheless have stated his reasons for doing so. In his view, by suggesting that the Committee was consulted not only on the matter of the suppression of his post but also on the possibility of terminating his appointment, the defendant misinterprets both the memorandum of 5 September 2001 and the Committee's opinion.

The complainant endeavours to demonstrate that the Organization did not look into all the possibilities of finding him a new assignment and, under the cover of restructuring the Secretariat, in fact pursued a policy of evicting officials, who, because they had acquired a certain seniority, constituted a hindrance to the "drastic reform of conditions of employment" which was envisaged.

He defines his claim to compensation for harm done to his career, estimating his loss as 1,359,225.64 euros.

E. In its surrejoinder the defendant again rebuts each of the complainant's pleas. It explains that, while an official whose appointment has been terminated must be offered vacant posts, this does not imply an obligation to offer him any job whatsoever. It reiterates that it made a serious effort to check that no post suitable for the complainant was due to become vacant.

CONSIDERATIONS

1. After holding B6 posts at the WCO as Document and Computer System Manager and then as Computer System Administrator, the complainant was assigned to the Building Maintenance and Viabilities Section in July 2001.

On 5 September 2001, in the course of an interview, the Head of Administration and Personnel informed him that he intended to propose to the Secretary General suppressing his B6 budget post, on the grounds that the technical tasks attached to the Document and Computer System Manager post had been redistributed and that his current duties in the Building Maintenance and Viabilities Section, corresponding to grades B2 and B3, would be attached to a new B3 post, which he would be offered. The Head of Administration and Personnel also told the complainant that if he did not accept the post he would be given help to find alternative employment.

That same day, the Head of Administration and Personnel referred the matter to the Staff Committee by a memorandum, outlining what was said at the interview. The Committee replied that it was not opposed to the suppression of the complainant's post, but that it considered it important that the new B3 post which would be created should be offered to him.

In a letter of 19 September 2001, the Secretary General informed the complainant of his decision to suppress the B6 post of Document and Computer System Manager and to terminate his appointment as of 31 January 2002.

When the internal appeal procedure had been completed, the Secretary General notified the complainant that his appeal had been rejected in a letter of 4 December 2002, which the complainant received the following day. That is the impugned decision.

2. The complainant requests that the decisions of 19 September 2001 and 4 December 2002 be quashed and that he be reinstated. Failing that, he claims compensation both for the harm done to his career and for moral injury. He also claims costs.

In support of his complaint, he puts forward seven pleas covering various issues, including the validity of the procedure.

3. The complainant accuses the Organization of breaching Staff Regulation 12(a), Staff Rule 12.1(a) and Staff Circular No. 142 on the grounds that the decision to terminate his appointment was not preceded by a notice issued by the Staff Committee “in accordance with Staff Regulation 31 and its rules of application”.

The defendant submits that the Staff Committee met on 11 September 2001 to consider the memorandum of the Head of Administration and Personnel of 5 September, which indicated not only that the suppression of the complainant’s post was planned but also that, failing his transfer to a B3 post, the creation of which the Head of Administration and Personnel intended to propose, the complainant would be helped by the Organization to find alternative employment.

It adds that the Secretary General followed the Staff Committee’s recommendation regarding the suppression of the complainant’s post and, after initially reserving judgment on the creation of the B3 post, eventually decided not to create such a post. That being the case, in the defendant’s view, the termination of the complainant’s appointment was inevitable, at any rate once every possible effort had been made to reassign him. It maintains, lastly, that since the Staff Committee had given its opinion concerning the suppression of the complainant’s post, there was no justification for consulting it again once everything had been done to reassign him.

4. The relevant provisions of the Staff Regulations and Staff Rules and of Staff Circular No. 142 read as follows:

Staff Regulation 12(a):

“The Secretary General may, after consulting the appropriate advisory body, terminate the appointment of an official [...]”

Staff Rule 12.1(a):

“The appropriate advisory body shall be consulted by the Secretary General before he/she terminates the appointment of an official.”

Staff Circular No. 142:

“The appropriate advisory body to be consulted under (a) of [Rule 12.1] is the Administration Committee in the case of an official in category A and the Staff Committee in all other categories. [...]”

It is clear from the above provisions that in this case the Staff Committee had to be consulted before the decision was taken to terminate the complainant’s appointment. The purpose of consulting an advisory body, prior to terminating an official’s appointment, is to allow that body to ensure that all the conditions for taking such a step are met, with a view to submitting a recommendation to the executive head.

5. The Tribunal takes the view that it is established, by the evidence available and the parties’ submissions, that the Staff Committee was indeed consulted regarding the suppression of the B6 post and the creation of a B3 post in the Building Maintenance and Viabilities Section. However, it considers that the Committee was not formally consulted with regard to the intention to terminate the complainant’s appointment, despite there being a requirement to that effect in the above-mentioned rules, even though, according to the defendant, the Chairman of the Staff Committee had been informed verbally by the Head of Administration and Personnel that it had not been possible to reassign the complainant within the Secretariat. The memorandum of 5 September 2001, by which the Head of Administration and Personnel referred the matter to the Staff Committee, in fact only mentions the suppression of the B6 post held by the complainant, the duties of which he no longer performed, and the creation of a new B3 post that would be offered to him, and it was only in the event that he refused this post that he was to be assisted to find alternative employment. This leads to the conclusion that the Staff Committee was therefore not duly consulted before the decision of 19 September 2001 was taken to terminate the complainant’s appointment, as required by Staff Regulation 12 and Staff Rule 12.1, to which that decision refers expressly (see Judgment 1696, under 5).

As the impugned decision was taken in breach of the applicable rules, it must be held unlawful and the Tribunal need not rule on the complainant’s other pleas.

6. The complainant requests that he be reinstated or, failing that, in compensation for the harm done to his

career, that he be granted a sum equivalent to “all the financial benefits or those reckonable in monetary terms” to which he would have been entitled if he had kept a B6 post, less whatever financial benefits he has obtained or might obtain from another employer. He also claims 20,000 euros for moral injury and an award of costs.

In the particular circumstances of this case, the Tribunal does not consider it advisable to reinstate the complainant. However, availing itself of its powers under Article VIII of its Statute, and in view of the unlawful actions of the Organization, it shall order the latter to pay the complainant, in compensation for injury under all heads, an amount equivalent to two years’ salary and allowances without taking account of any earnings received by the complainant from other employers.

7. Since the complainant succeeds for the most part, he is entitled to costs in an amount of 3,000 euros.

DECISION

For the above reasons,

1. The Organization shall pay the complainant a sum calculated as indicated under 6 above in compensation for injury under all heads.
2. It shall also pay him the sum of 3,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 13 May 2004, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet