

***In re* GÖRNER**

**Judgment No. 298**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the European Southern Observatory (ESO) drawn up by Miss Else Görner on 22 March 1976, the ESO's reply of 2 June 1976, the complainant's rejoinder of 23 July 1976 and the ESO's surrejoinder of 14 September 1976;

Considering Article II, paragraphs 5 and 6(a), and Article VII of the Statute of the Tribunal, the ESO's Combined Staff Rules and Staff Regulations in force in 1973, particularly Staff Regulations SII 2.02 and SVI 1.03 and Staff Rules SVI 1.06 and SVIII 1.01 and the Combined Staff Rules and Staff Regulations of 1 July 1974, particularly Staff Rule RVIII 1.01;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 7 September 1964 the complainant was appointed to the staff of the ESO as a secretary at grade 4. She had her appointment extended under several fixed-term contracts to 1 January 1971. She then received an appointment of indefinite duration at grade 7.2, her duties being described as those of an "editor". By letter of 10 May 1972 she complained to the Director-General that since joining the ESO in 1964 she had been kept at a grade lower than her qualifications and the nature of her duties warranted: she was doing the work of a reviser and should therefore be granted grade 9. In his reply of 10 January 1973 the Director-General demurred but said he would grant her an additional step. By an ante-dated letter of 3 January 1973 the Chief of Administration told her that with effect from 1 January she had been granted a salary increment corresponding to promotion of three steps within grade 7. The complainant did not respond to either of these letters.

B. Just before reaching the age of sixty-three the complainant informed the Director-General by letter of 20 September 1973 that she wished to retire on 31 December 1973. Her request was granted and her retirement took effect from 1 January 1974. On leaving she was paid a lump sum from the pension fund of CERN of which she was a member, and from the date of her retirement she received a pension from the Social Insurance Fund of the Federal Republic of Germany. On 5 June 1974, i.e. after leaving the ESO, she claimed from the ESO through her lawyer payment of a sum of DM 90,094 corresponding to the difference between her actual remuneration and the remuneration she contended she would have received had her work not been undervalued during her nine years' service. The ESO dismissed her claim. She sued it before the Labour Court of Hamburg, but by decision of 31 October 1975 the Court declared itself not competent.

C. The complainant has accordingly appealed to the Tribunal. She claims payment of DM 90,094, in her view the difference between the remuneration warranted by her qualifications and the nature of her duties and the remuneration she actually received at the ESO from 1964 to 1973. She also claims payment of interest on that sum at 4 per cent a year from 5 June 1974, the date on which her lawyer put her claim to the ESO (see paragraph B above). In her complaint she gives 31 October 1975 as the date of the decision she impugns. That is the date of the Hamburg court's decision. In fact what she seemingly wishes to impugn is the decision refusing her claim contained in the Director-General's letter of 10 January 1973 (see paragraph A above).

D. In its reply the ESO sums up its case as follows: "After a lapse of over three years the complainant is impugning an ESO decision of 10 January 1973 without having exhausted the internal means of redress provided under the Staff Rules. Her complaint is therefore irreceivable. As to the merits, she objects to not having been promoted to grade 9 on the grounds that her work in the ESO was 'undervalued'. As a rule a staff member's opinion of his own work is coloured with subjective considerations and cannot properly be set against that of his supervisors, whose task it is to assess objectively his ability, performance and fitness for promotion. By objective criteria the Director General ... took the view that the complainant, who had been taken on in 1964 as a secretary at grade 4, had

reached the highest point warranted by her qualifications and performance - namely grade 7.7. Her career in the ESO brought her all the financial and other benefits she had any right to expect and she has no cause to complain."

E. The ESO asks the Tribunal: as to the form: (a) to declare itself competent to hear the complaint; (b) to declare the complaint irreceivable; subsidiarily, as to the merits: to dismiss the claims for relief in their entirety as utterly unfounded; to order the complainant to pay all costs, including a fair share of the ESO's legal fees; further to allow the ESO to rebut the complainant's allegations in their entirety and to establish by any lawful means, including calling of witnesses, the facts on which it bases its case.

#### CONSIDERATIONS:

The complainant states that she is impugning a decision of 31 October 1975 notified to her on 12 December 1975. She then makes the contradictory statement that in the absence of a decision by the organisation she lodged a claim on 6 January 1976.

It appears from the dossier that the decision of 31 October 1975 was not taken by an organ of the European Southern Observatory and that the organisation made no notification to the complainant on 12 December.

It appears from the documents in the dossier that in fact the alleged decision of 31 October 1975 is a decision taken on the matter on that date by the Labour Court of Hamburg and notified to the complainant, by her own account, on 12 December.

But the Administrative Tribunal of the ILO is an international tribunal and is not competent to hear an appeal against a decision by a national court.

Moreover, even if recourse to a national court, which does not have jurisdiction, might be regarded as postponing the time limit for appeal to the Tribunal, which does have jurisdiction, such an appeal may be properly lodged in accordance with the Tribunal's Statute only within ninety days after notification of the national court's decision that it is not competent, i.e. in the present case within ninety days after 12 December 1975. The complaint was not lodged until 22 March 1976, i.e. after the time limit had expired.

Hence the complaint is in any event irreceivable.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 June 1977.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Roland Morellet