

FORTY-FOURTH ORDINARY SESSION

In re RENSINK-LECLERCQ

Judgment No. 412

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the European Organisation for the Safety of Air Navigation (Eurocontrol) by Mrs. Marie-Louise Rensink-Leclercq on 20 February 1979 and brought into conformity with the Rules of Court on 8 March, the Eurocontrol Agency's reply of 11 May, the complainant's rejoinder of 14 June and the Agency's surrejoinder of 13 September 1979;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 56a and 91.2 of the General Conditions Employment Governing Servants at the Eurocontrol Maastricht Centre;

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

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

A. The complainant holds a post as a first-category deputy administrative assistant in the Centre for Regional Control of Air Navigation in Maastricht, where she is employed as a secretary in the General Services Division. On 8 May 1978 she asked to be allowed to work half-time for one year so that she could look after her two small children. On 8 July the Director of Personnel and Administration refused on the grounds that the Agency could afford to employ its staff only full-time. On 1 August 1978 the complainant submitted a "complaint" to the Director-General in accordance with Article 91.2 of the General Conditions of Employment, explaining that she would like to work part-time for not more than three years. On 13 March 1979 the Director-General informed her that in the Agency's interests he was rejecting her application. In the meantime, on 20 February, the complainant had lodged a complaint with the Tribunal asking at to quash the Director-General's implied decision to dismiss her application on the grounds that he had failed to answer her claim of 1 August 1978 within four months of the date on which she had lodged it.

B. The complainant takes the view that the Director-General misapplied Article 56a of the General Conditions of Employment: "Exceptionally the Director-General may, upon applications setting out the reasons therefor authorise a servant to work half-time if he considers that this would be fully in the interests of the Agency". She observes that her application was amply justified by her family circumstances, made even more difficult by the need to look after her mother. The Agency's general interests comprise the interests not only of the work but also of staff members. To retort, as the Agency does, that staff had to be employed full-time is to make no attempt to apply Article 56a and indeed make it meaningless.

C. In reply the Agency contends that part-time employment is not a right but something it allows by relieving the staff member of his duty to keep normal working hours. The Director-General enjoys full discretion in deciding what the Agency's interests require and whether the claim is warranted, and there is no question of preferring the staff member's interests to the Agency's. Besides, considering that one of the complainant's children was six and the other three years old at the date of the filing of the complaint and she did have means, her predicament, real enough though it was, was nothing out of the ordinary. Lastly, her work is such that it can scarcely be taken over by a part-time replacement. The Agency therefore asks the Tribunal to dismiss the complaint and to award costs against the complainant.

D. In her rejoinder the complainant argues that the Agency's power to authorise part-time employment becomes a duty when the staff member gives valid reasons for his application and the Organisation's general interests do not preclude it. There was nothing to prevent the replacement of the complainant and it is in the Agency's interests to take as full account as possible of the staff's interests; otherwise Article 56a of the General Conditions of Employment is meaningless.

E. In the Agency's view that line of argument is quite mistaken. Article 56a states that the Director-General "may", not "must", authorise the staff member to work half-time. That the Director-General has discretion in the matter does not mean he must invariably indulge the staff member's wishes: he must respect the requirements of work and is answerable to the bodies which run the Agency. The manner of applying Article 56a does not make it meaningless, since several staff members have been allowed to work half-time. There was nothing arbitrary about the impugned decision. Because she had financial means it was possible for the complainant to make other arrangements for having her children and mother looked after. Later she applied for leave on personal grounds and she was granted it. That shows that the Agency was willing to help and that she could be replaced full-time, but not half-time.

CONSIDERATIONS:

1. The complainant is impugning a decision which the Director-General of the Eurocontrol Agency took on 6 July 1978 dismissing her application for permission to work half-time.

She asks the Tribunal to quash the Director-General's decision.

2. The complainant claims the right to the status of a staff member working half-time and is relying on the first clause of Article 56a of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre, which reads: "Exceptionally the Director-General may, upon applications setting out the reasons therefor authorise a servant to work half-time if he considers that this would be fully in the interests of the Agency". Annex IIa sets out the arrangements for half-time work.

3. It is clear from both the letter and the spirit and purpose of the above Article that it does not bestow on staff members any right to work half-time. It states that the Director-General "may" authorise half-time work: the Director-General is merely given authority, and he may exercise it in his discretion. For the authorisation to be granted one requirement is that the reasons given for the application should be well founded, but it is not the only one: the Article also requires that the authorisation to work half-time should be fully in the interests of the Agency. In other words the Director-General enjoys wide discretion: he will exercise it first and foremost in the light of what the Agency's interests demand. He is also bound, of course, to answer to the executive bodies of the Agency for any Action he takes.

4. The Eurocontrol Centre in Maastricht, where the complainant is employed, controls a large area of international air space. Absolute priority must therefore be given to maintaining its services without interruption. It also appears from the evidence provided by the Director-General that the complainant's duties are such that it is difficult for them to be performed by someone working half-time since the secretariat to which the complainant belonged was concerned with a staff of several hundred officials; there were few who possessed the same qualifications as she, and it was out of the question to split up her duties among several staff members.

These are the grounds on which the Director-General dismissed the complainant's application.

5. The Director-General further observes that the Agency's good intentions in this case are beyond doubt inasmuch as he granted the complainant leave on personal grounds in his letter dated 17 May 1979. Thus for some time she was free the whole day and the decision was taken despite the cost and inconvenience of external recruitment.

6. According to its case law the Tribunal was quash a decision of a discretionary nature only if it was taken without authority, or violated a rule of form or of procedure, or was based on an error of fact or of law, or if essential facts were not taken into consideration, or if the decision is tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the facts.

7. None of the conditions for quashing the decision is fulfilled in this case, and since the complaint must be dismissed, the complainant's application for costs is unfounded.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 24 April 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy

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