

FORTY-FIFTH ORDINARY SESSION

***In re* CHAMAYOU**

Judgment No. 430

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the European Molecular Biology Laboratory (EMBL) by Mr. Jean-Marie François Chamayou on 20 September 1979, the EMBL's reply of 30 November 1979, the complainant's rejoinder of 29 February 1980 and the EMBL's surrejoinder of 23 May 1980;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and EMBL Staff Regulations R.2.1.19, R.2.1.20, R.2.6.05 and R.6.1.20;

Having examined the written evidence, 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 won a competition for a post as a mathematician/programmer in the data-processing unit of the laboratory instrumentation division. On 17 June 1978 he signed a contract of appointment for three years, including six months' probation, and he took up duty on 15 September 1978. On 15 February 1979 the Chief of Personnel informed him in writing that, as a result of the conversations which the complainant had had with the chief of his unit, the chief of the division and the Director-General about his contribution to the work of his group and his co-operation with colleagues, it had been decided that, in accordance with Staff Regulation R.2.1.19, his appointment would not be confirmed, and that his service would end by 24 September 1979. The Chief of Personnel explained that the purpose of the long period of notice - under the Staff Regulations it was normally only one month - was to enable him to find alternative employment. On 23 April the complainant asked what the grounds for the decision were, and on 30 April the Chief of Personnel answered that the complainant had had difficulty with several problems which he had been given. For example, he had been "asked to implement a programme for the rapid approximation of an integral which plays an important role in the calculation of the diffraction pattern of fibres. Despite assistance from the head of your group ... you concluded by February [1979] that the problem could not be solved, having started on [it] in November 1978. The problem was solved finally by your head of group within a short time with the aid of a Hewlett Packard calculator". The Chief of Personnel then observed that the complainant was at present "engaged in the resolution of a problem of your own choice" which had no direct bearing on his work. In his complaint the complainant maintains that from February 1979 onwards he had unsuccessfully sought information on the solution. He wrote again asking for it on 24 and 31 July and at last, on 3 August, wrote to the Director-General himself. The solution was given to him in writing on 28 September. On 12 July he had written in reply to the Chief of Personnel's letter of 30 April and expressed the view that the rules on appeals by probationers were not clear. He repeated what he had said in a conversation with the Chief of Personnel in May, challenged each of the criticisms contained in the letter of 30 April and asked for an explanation.

B. The complainant filed his complaint on 20 September 1979, several days before he was given the solution. He had, however, been informed on 12 September that he would be getting it and he knew that it existed. In his memorandum he expresses strong doubts about its accuracy. He also doubts whether anyone could have found it single-handed, let alone just with the aid of a pocket calculator and by the date mentioned by the EMBL in its letter of 30 April 1979. He maintains that the decision he is impugning is tainted with abuse of authority: in his view the mathematical problem was only a pretext for withholding confirmation of his appointment, the chief of his group being anxious to get rid of him on personal grounds. He points out, among other things, that the letter dated 30 April criticised him for seriously reducing "the capacity of the [data-processing] group to proceed with an urgent research project". In his view, either the solution was available as early as February 1979 - in which case it is not true that he reduced the capacity of the group or else it is not true that it was available as early as February 1979.

C. The EMBL does not actually contend that the complaint is irretrievable on the grounds that it is time-barred. It

merely points out that the complainant was orally informed of the grounds for the decision of 15 February 1979 in discussions which he had with his supervisors before he filed his complaint. The contract of appointment stated that he would be required to undergo six months' probation and that the organisation was entitled to decide against confirmation of his appointment - as indeed it did, five months after he joined the staff. There was no abuse of authority. The grounds for the decision were not, as he contends, merely his failure to solve the problem, but his general inadequacy, as is made clear in the explanatory letter of 30 April 1979. In a more recent minute, dated 15 October 1979 the chief of division criticises the complainant for (a) lack of interest in belonging to the group and in sharing its aims, (b) slight interest in some parts of the work (algebraic problems) and (c) lack of experience in programming, which was not what had appeared from his curriculum vitae. The EMBL asks the Tribunal to dismiss the complaint as quite unfounded.

D. In his rejoinder the complainant observes that without the slightest warning the head of his group informed him on 24 January 1979 that his appointment would not be confirmed. Thereafter he had a single conversation with the chief of the division and another with the Director-General, each of whom merely endorsed what the chief of the group had said without giving him a hearing. The reason given to him orally by the chief of the group at the time was his failure to solve the problem relating to the diffraction of fibres. (The complainant contends that he failed because he was required to produce an analytical solution whereas he felt it should be a numerical one.) Not until months later did the Administration try to provide a list of reasons. The solution notified to him in September 1979 is dated 22 September. It therefore took a long time to discover and presumably required lengthy work, done for the sole purpose of defending the EMBL's case in the present dispute. The complainant files a declaration by a professor of mathematics at the University of Geneva that the numerical method which the complainant had proposed was just as valid as the analytical method actually used and that in any case neither of them was the best method. The reasons put forward by the chief of division at the end of April 1979 carry no weight: they were not given in support of the decision, but much later in *ex post facto* justification. Moreover, the chief of the division, a distinguished chemist, was not qualified to assess mathematical work. Lastly, the criticisms are vague and lacking in substance. The complainant assesses the damage he has sustained from loss of his employment at 141,372 Deutschmarks, the moral prejudice and damage to his career at 60,000 Deutschmarks and his costs at 8,000 Deutschmarks. He maintains that his complaint is not time-barred since the decision of 15 February was not substantiated and he was unable to challenge it under the internal appeal procedure. In any event it was not clear whether, as a probationer, he might file an appeal. He was never given the definitive text of the Staff Regulations. It was not until 26 July 1979 that the Chief of Personnel answered his questions about the Staff Rules and Regulations and told him that no internal appeal lay against a decision not to confirm an appointment. Lastly, when he filed his complaint he had not been given the solution to the problem which the EMBL made the main reason for its decision. As to the merits, the decision was arbitrary, based on no objective grounds and prompted by the animosity of his immediate supervisor. The EMBL has failed to establish that his scientific and professional qualifications were inadequate. In fact the work he did for Mr. Stuhmann and Mr. Gabriel, both employees of the EMBL, was well received and useful. The EMBL denied his right to a hearing since, despite his repeated requests, he was given neither the slightest explanation nor an opportunity to defend the method he was proposing for solving the problem. The decision he is impugning is in breach of Staff Regulation R.2.1.19, which states that, if so required by circumstances, the probation period may be extended, Staff Regulation R.2.1.20, which provides for reassignment; and Staff Regulation R.2.6.05, which requires that the reasons for dismissal be stated.

E. Taking up the question of receivability, the EMBL contends in its surrejoinder that the complainant was fully informed of the reasons for the decision as early as 15 February 1979 and in any event was informed of them in writing on 30 April 1979. Since no internal appeal lay against the decision not to confirm his appointment, he ought to have filed his complaint within ninety days of the date on which he received the letter of 30 April. His complaint is dated 20 September and is therefore time-barred. His letter of 12 July 1979, which asked for an explanation, did not constitute an appeal and no new time-limit ran from that date. As to the merits, the EMBL points out that several failures by the complainant, including his failure to solve the problem of approximation of an integral, led his supervisors to conclude early in 1979, and to explain to him in several conversations, that he was not showing a satisfactory degree of interest in algebraic work. The EMBL's interests and efficiency were being impaired, and that is the sole reason why it decided to terminate his appointment.

CONSIDERATIONS:

1. Having on 17 June 1978 signed a contract of appointment for three years, the complainant joined the staff of the Laboratory in Heidelberg, on 15 September. The contract stipulated a period of probation, which is compulsory in all cases under Article R.2.1.19 of the Staff Rules. Under Article R.6.1.20 no internal appeal will lie against

dismissal of a probationer.

2. In his letter of 15 February 1979 the Chief of Personnel informed the complainant that his appointment would lapse through non-confirmation before the expiry of the six-month probationary period and with the statutory one month's notice. He referred, among other things to conversations which had taken place between the complainant and his supervisors, Dr. Provencher, Professor de Maeyer and Sir John Kendrew. Thus the complainant has been fully informed of his supervisors' opinion that he did not meet the requirements for service in the Laboratory. His appointment was to terminate on 24 September 1979. According to the Chief of Personnel he was given fairly long notice so that he would have time to find other employment.

By a letter dated 23 April 1979 the complainant asked for further information on the grounds for the decision of 15 February, the Chief of Personnel replied on 30 April, citing the material provisions - Articles R.2.1.15, R.2.1.19 and R.2.6.05 of the Staff Rules - and setting out again the grounds for terminating the appointment.

3. The organisation's main plea, which appears in its surrejoinder, is that the complaint is time-barred and therefore irreceivable under Article VII, paragraph 2, of the Statute of the Tribunal.

The Tribunal will therefore consider whether the time limit set in Article VII(2) had expired by 20 September 1979, when the complaint was filed. Under point 6 of his original memorandum the complainant gives 15 February 1979 as the date of the decision impugned and, under point 7, 16 February as the date on which it was notified to him. In his appended statement of the facts he confirms that he "received notice of dismissal on 16 February 1979". Moreover, several passages of his rejoinder show that he took the decision of 15 February to be final.

4. It is clear from the evidence that the letter of 15 February is indeed the final decision. Even if the Tribunal took the Chief of Personnel's letter of 30 April 1979 to be the first notification of the final decision, the time limit set in Article VII(2) of the Statute had still expired. Under that Article the complainant ought to have filed his complaint within ninety days of the date of notification, or not later than 29 July 1979. As is said above, he did not file it until 20 September. The complaint is therefore time-barred and irreceivable.

5. There is no need for the Tribunal to look further into the complainant's arguments on this point. In particular, the letter of 12 July 1979 cannot be regarded as an application for further consideration on which the organisation should have acted. Consequently, the letter did not have the effect of setting a new time limit for filing a complaint with the Tribunal.

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 11 December 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy