

Registry's translation, the French text alone being authoritative.

FORTY-EIGHTH ORDINARY SESSION

In re HELTZEL

Judgment No. 500

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr. Hermann Heltzel on 13 April 1981 and brought into conformity with the Rules of Court on 3 July, the Agency' preliminary observations of 27 July and reply of 29 October, the complainant's application of 9 February 1982 for oral proceedings, the Agency's observations of 26 March on that application, the order made by the President of the Tribunal on 13 April rejecting the application subject to the Tribunal's approval and inviting the complainant to file a rejoinder if he so wished, and the letter addressed by the complainant's counsel to the Registrar of the Tribunal on 28 April stating that the complainant did not wish to file a rejoinder;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 91 and 92 of the General Conditions of Employment of Staff of the Agency;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a citizen of the Federal Republic of Germany, joined the Agency on a five-year appointment as an electronics technician stationed in the centre for air navigation control in Karlsruhe. His appointment duly expired on 31 August 1979, and he is challenging the decision not to renew it.

B. The complainant contends that it is not the Tribunal but the courts of the Federal Republic of Germany that are competent to hear his case. He nevertheless invites the Tribunal, should it hold that it is competent, to declare his complaint receivable and to consider his arguments on the merits. There was, in his view, no valid reason for not renewing his appointment. He further submits that he is entitled under the Agency's regulations to payment of an invalidity pension, of family allowances in respect of his dependent children and of a sum which he claims as family assistance and which he alleges was wrongly deducted from his salary for August 1979. He seeks reinstatement with retroactive effect from 1 September 1979 and, subsidiarily, payment of (1) family allowances amounting to 2,159.60 Deutschmarks, (2) the sum of DM 3,801.36 as family assistance and (3) an invalidity pension amounting to 70 per cent of his basic salary with retroactive effect from 1 September 1979.

C. The Agency replies that the Tribunal is competent under Article 92(1) of the General Conditions of Employment: it is the Agency's regulations which apply, and the courts of the Federal Republic of Germany, as they themselves have recognised, are not competent. If the Tribunal holds that it is competent, the Agency invites it to dismiss the claims in their entirety. As to subsidiary claim (1), the Agency has paid the sum to the complainant, and there is no cause of action. The other claims are irreceivable, both because they are time-barred, as he himself admits, and because the internal means of redress are not exhausted, as the Tribunal's Statute and Article 92 of the General Conditions of Employment require. The complainant has never filed an appeal with the Director-General in accordance with Article 91. The Agency also argues the merits and explains why, in its view, the other claims are unfounded.

CONSIDERATIONS:

The Tribunal's competence

1. Article 92(1) of the General Conditions of Employment provides that any dispute between the Agency and an employee relating to the non-observance of the terms of appointment shall be referred to the Tribunal. The International Labour Organisation having accepted the Agency's recognition of such competence, the Tribunal will, in accordance with Article II, paragraph 5, of its Statute, hear this complaint, which relates to the employment of an

Agency official.

Article 92(1) adds that the Tribunal shall be competent only "in the absence of a competent national jurisdiction". But the condition is not met in the instant case. In a judgment of 10 November 1981 the Constitutional Court of the Federal Republic of Germany held that the West German courts were not competent in this case. Nor may any other national jurisdiction be invoked.

The complainant's claims

2. The complainant's subsidiary claim (1) is for the payment of "family allowances amounting to 2,159.60 Deutschmarks". In its reply the Agency says that it has paid the amount to the complainant and submits that there is no cause of action. Since the complainant has filed no rejoinder he presumably does not challenge the statement, and, there being no cause of action, the claim fails.

The complainant's principal claim is for reinstatement with effect from 1 September 1979 and his subsidiary claims (2) and (3) are for payment of an amount of DM 3,801.36 deducted from his salary and of a 70 per cent invalidity pension with effect from 1 September 1979.

Under Article VII(1) of its Statute the Tribunal will hear a complaint only if the internal means of redress have been exhausted. This condition appears also in Article 92(2) of the General Conditions of Employment. Under Article 91(2) officials may appeal against a decision to the Director-General. The article thus affords a means of redress, and the complainant was required to resort to it before coming to the Tribunal.

It does not appear that he did appeal to the Director-General. His counsel may have written letters to the Director-General but the evidence does not show that they filed any claim in the proper sense of an appeal seeking the quashing or amendment of a decision. No internal appeal having been made and the internal means of redress not being exhausted, the claims are irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner