

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

FIFTY-FOURTH ORDINARY SESSION

In re JANSEN

Judgment No. 637

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr. Günter Gerhard Jansen on 5 August 1983, the Agency's reply of 18 October, the complainant's rejoinder of 6 November 1983 and the Agency's surrejoinder of 25 January 1984;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and Articles 41, 91 and 92 of the General Conditions of Employment of officials of the Eurocontrol Agency;

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, a citizen of the Federal Republic of Germany born in 1936, joined the Agency in 1974 and was given a permanent appointment in 1975 at grade B2. At the material time he was employed at the Eurocontrol Centre at Karlsruhe as a programmer in the "software" section of the Engineering Division. The West German civil aviation authority has been manning the Centre since 1 January 1984, except for a small team of Eurocontrol software programmers. The complainant was on sick leave several times owing to an operation to remove kidney stones in 1980 and accident injuries in 1978, 1981 and 1982. On 31 March 1982, and again on 2 June, he addressed to the Director General a "request" under Article 91 of the General Conditions of Employment alleging that he had been given "trivial duties" and discriminated against on grounds of health and asking for work "at a level commensurate with my qualifications and abilities" in the software section. On 3 November the Director General answered that in addressing him directly the complainant had not followed the channels prescribed in Article 91(3) and his claims were therefore invalid; they were time-barred because the matter had been settled by his acceptance on 21 December 1981 of his staff report for 1979-81; and in any event they were rejected on the merits, his duties being suited to the Agency's interests as well as to his abilities. Meanwhile he had written to the Director General again, on 11 August 1982, to appeal against what he took to be the implied rejection of his claims of 31 March and to ask that he be kept on at Karlsruhe after 31 December 1983. He wrote again on 25 October, 9 and 10 November and, through counsel, on 18 November. In his reply of 27 January 1983 the Director General confirmed what he had said on 3 November 1982 and rejected the appeal as time-barred. On 9 February the complainant repeated his claims. On 11 April 1983 he filed an appeal under Article 91(2) against the rejection of the claims in his minute of 10 November 1982. By a decision of 28 July 1983, the one he impugns, the Director General rejected his appeal of 11 April on the grounds that his letter of 10 November 1982 merely repeated his irreceivable claims of 11 August 1982.

B. In a brief dated 4 August 1983 the complainant observes that he is threatened with being put on "non-active status" under Article 41 of the General Conditions of Employment by the end of the year. In his view it is in breach of International Labour Organisation standards, of the European Social Charter and of a United Nations resolution for the Agency not to protect the employment of disabled staff like himself. He invites the Tribunal (1) either to order that West German legislation of 1974 on the employment of the disabled be applied in his case, or (2) that Eurocontrol observe "the International law for disabled persons", or (3) amend its rules to afford protection for the disabled, or else (4) to declare that the Tribunal is not competent.

C. The Agency replies, as to claim (4), that only the Tribunal is competent to hear the dispute. In its view claims (1) to (3) are irreceivable. For one thing, they are time-barred. Any claim for a change in his duties is time-barred because he did not challenge in time the comment in his staff report for 1979-81 that his duties were "well-suited" to his training and abilities. The Director General's letters of 27 January and 28 July 1983 merely confirmed the decision of 3 November 1982 declaring the claims irreceivable. The shifts in his arguments -- sometimes founded on West German law or international law, sometimes not -- did not give rise to new time limits. Claims (1) and (2)

are irreceivable for the further reason that they do not match those in his letter of 11 April 1983 -- those rejected by the impugned decision -- in which, by implication, he waived his demands for the application of municipal law and "international law". Besides, he does not say how or for what purpose he believes the General Conditions of Employment should be amended. Subsidiarily, the Agency maintains that the claims are devoid of merit. Municipal law does not apply to Eurocontrol staff: nor do the international standards he cites, which are addressed to States, and besides do not confer rights on citizens of those States. Eurocontrol cannot be made to amend its rules, which, for reasons it explains, are in any case more favourable than West German law on the disabled. His work record was poor in many respects, and he was not fit for software development work.

D. In his rejoinder the complainant contends that the only claims which are time-barred are those relating to the nature of his duties from 1 July 1981. He challenges statements of fact in the reply and enlarges on some of his arguments. He believes that he should benefit from the rehabilitation and protection against dismissal which West German law prescribes for the disabled. He presses his claims and also seeks costs.

E. In its surrejoinder the Agency observes that the complainant disregards most of its arguments on competence and receivability. In its view the substance of his claims remained the same; he merely altered his pleas and was already time-barred when he submitted his appeal of 11 August 1982. The Agency develops its subsidiary arguments on the merits.

CONSIDERATIONS:

Competence

1. In point 4 of his claims for relief the complainant asks the Tribunal to confirm that under Article II of its Statute it is not competent to hear his case. Inasmuch as he is inviting it to make a declaration of competence the claim is receivable, even though, in keeping with precedent, the Tribunal will dismiss it.

Article II, paragraph 5, of its Statute says that the Tribunal is competent to hear complaints filed against international organisations which have recognised its jurisdiction by a declaration approved by the International Labour Organisation. The Director General of Eurocontrol made such a declaration on 20 March 1964, and the declaration was duly approved. The Tribunal is thus competent to hear the present dispute by virtue of an international agreement which is still in force. Besides, the complainant can scarcely object to the Tribunal's jurisdiction when on joining Eurocontrol he accepted the General Conditions of Employment: Article 92 expressly authorises the Tribunal to hear any dispute between the Agency and a staff member.

Receivability

2. The Tribunal will accordingly rule on the complainant's first three claims: that West German law should apply, that certain international standards should apply, and that Eurocontrol must amend the General Conditions of Employment. All three are irreceivable for the reasons set out below.

3. On 11 August 1982 the complainant submitted a claim which he founded on Section 11(2) of a West German statute on the disabled. On 10 November 1982 he again asked that German law should be applied and, more particularly, that he be granted six days' special leave thereunder. On 18 November his counsel wrote to the Agency again citing the West German legislation and asserting that the International Labour Organisation had recognised that it was applicable.

In its decision of 27 January 1983 the Agency replied that West German law did not apply and it thereby rejected the claims based thereon. The complainant failed to challenge the decision within the limit of three months set in Article VII(2) of the Statute of the Tribunal and repeated in paragraph 92(3) of the General Conditions of Employment. The claim is therefore time-barred.

4. The claim that international standards should apply is irreceivable on similar grounds.

In his claim of 10 November 1982 the complainant said that if the Agency declined to apply West German law he claimed "the application of the equivalent international law for seriously disabled persons". The decision of 27 January 1983 did not take up the point, but it rejected his claims in full, including, by implication, his claim to the benefit of "international law". If he wanted to appeal to the Tribunal against the implied rejection he ought to have done so within the time limit. Since he failed to do so the claim is time-barred.

5. Lastly, a claim will not be receivable unless couched in terms precise enough to enable the Tribunal to make an enforceable decision. The third claim does not satisfy that requirement. The Tribunal is being asked to order the Agency to amend the General Conditions of Employment to prescribe special safeguards for the disabled such as their "social resettlement" and protection against dismissal. The wording is vague, and the Tribunal cannot issue any order of that kind to the Agency. The claim is therefore irreceivable. Besides, it is clearly devoid of merit since Eurocontrol staff may not demand amendment of the rules governing their employment.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner