

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

## FIFTY-FOURTH ORDINARY SESSION

In re JANSEN (No. 3)

Judgment No. 639

### 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 10 March 1984 and corrected on 31 March, the Agency's reply of 13 July, the complainant's rejoinder of 14 September and the Agency's surrejoinder of 19 October 1984;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Article 41 and Annex II 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. Information on the complainant's career in Eurocontrol appears in Judgments Nos. 637 and 638, under A. He was employed as a B.2 programmer in the software section of the Eurocontrol Centre at Karlsruhe. On 7 July 1983 the Permanent Commission, the "budgetary authority" referred to in Article 41 of the General Conditions of Employment, abolished some 120 posts at the Centre as from 1 January 1984, the date on which the Centre was taken over by the West German civil aviation authority. Only a score of software technicians were to be kept on. Two vacancies were advertised in August 1983 for grade B.1/B.2 assistants to help the residual software team, and the complainant, with 17 others, applied. He has not been appointed to either post. In accordance with Article 41(2) and by a notice of 29 July the Director General decided, after consulting the competent Joint Committee, what types of post were to be affected by the abolitions and on 27 September he issued a list of 28 redundant staff members. They included the complainant. The individual decision was signed on 24 October as from 1 January 1984 he was to have "non-active status", i.e. he ceased to work and to be paid, but was to continue for up to five years to acquire pension rights and for two years would have priority for reinstatement in a suitable post. On 8 November 1983 he appealed to the Director General. By a decision of 9 March 1984, the one he impugns, the Director General rejected his appeal as partly irreceivable and wholly devoid of merit.

B. The complainant submits that under Article 41(3) non-active status confers priority for reinstatement in a post in the same category, that there are two vacant posts at Karlsruhe for which he has applied and that it is therefore in breach of the General Conditions of Employment to keep him in such status. It is also in breach of West German legislation for the protection of the disabled, which, as he contended in his first complaint, applies to Eurocontrol staff, and of various standards of international organisations. He claims payment of his full salary until he is awarded the invalidity pension he claims in his second complaint.

C. In Its reply the Agency contends that any claims based on West German law or international standards are time-barred it rejected such claims by a decision of 27 January 1983, and the complainant did not appeal to the Tribunal in time. Besides, such claims form part of his first complaint and are, for the reasons advanced by the Agency in its reply thereto, devoid of merit. His claim to full pay until award of an invalidity pension is irreceivable because he did not make it in his appeal of 8 November 1983 and so failed to exhaust the internal means of redress. Subsidiarily, the Agency submits that the complaint is devoid of merit. He cannot show any breach of Article 41 or of the Article 41 procedure. Although some software technicians are to be kept on for five years, the duties of the post the complainant moved to in September 1980 were different. The existence of vacancies in other fields of work does not make any less lawful the assignment to non-active status consequent upon the abolition of posts. For one of the vacant posts, that of a senior administrative assistant, the selection board put the complainant on the short list, but it questioned his ability to work in a team he did not have the qualifications required by Article 41(3) for reinstatement. His claim to full pay is unsound because the Agency has broken no rule. In any case from 1 January to 31 March 1984 he received full pay and from 1 April 1984 was paid allowances equivalent to percentages of basic salary, as prescribed in Annex II to the General Conditions of Employment.

D. In his rejoinder the complainant seeks to answer arguments in the Agency's reply. He enlarges on his version of the facts and describes the events leading up to his being put on non-active status. He maintains that he was qualified for both the vacant posts at Karlsruhe and observes that five temporary contracts were extended, while he, who had a permanent appointment, was declared non-active. The Invalidity Committee found him to be suffering from total permanent invalidity and by a decision of 3 July 1984 the Director General awarded him a pension as from 1 April 1984.

E. In its surrejoinder the Agency observes that, having been awarded the invalidity pension on 3 July 1984, the complainant no longer has any reason to maintain his complaint. Its answers to the arguments on the merits put forward in the rejoinder, which it deals with in some detail, are therefore subsidiary. It enlarges on its contentions that he was correctly put on non-active status and that the procedure was properly followed. It invites the Tribunal to dismiss the complaint.

## CONSIDERATIONS:

The decision not to reinstate the complainant

1. Under an agreement signed on 11 July 1983 the Centre which the Agency had set up at Karlsruhe was transferred on 1 January 1984 to the West German Department of Civil Aviation. The Permanent Commission of Eurocontrol therefore abolished some 120 budget posts at the Centre with effect from 1 January 1984. The only posts to survive were a score held by "software" specialists, which were to last for five years.

On 24 October 1983 the Director General decided to put the complainant, who had been employed as a programmer at the Centre, on non-active status. In support of his complaint

against that decision the complainant submits that the Agency ought to have put him on one of two posts put up for competition in 1983 for which he had applied.

Article 41 of the General Conditions of Employment states that when there is a reduction in the number of posts staff may be put on non-active status. The second clause of Article 41(3) confers on a staff member with non-active status priority for reinstatement for a period of two years "in any post in his category or service corresponding to his grade which may fall vacant or be created, provided that he has the necessary qualifications".

The complainant's claim to reinstatement is unsound. The posts he unsuccessfully applied for were, unlike his former post, for "officials". He therefore had no rights under the above rules, the conditions for applying them being unfulfilled. Besides, he has not established that he had "the necessary qualifications" for the vacant posts. Indeed he can scarcely allege that he does since in his second complaint he maintains that he has been fully disabled since the beginning of 1983.

The decision not to apply West German law and international law

2. The complainant submits that the Agency ought to have applied Section 12 of the West German statute on the disabled, Articles 7 and 10 of Resolution No. 3447 of the United Nations General Assembly, and the European Social Charter.

The grounds set out in Judgment No. 637 for declaring irreceivable the complainant's claims for application of West German and international law hold good in the present case. Since he failed to appeal to the Tribunal in time against the decision of 27 January 1983 rejecting the claims he based on West German and international law those claims again fail as being time-barred.

The decision not to pay the complainant his salary in full up to the date of its possible replacement by an invalidity pension

3. The complainant is claiming payment of his salary in full until the Invalidity Committee decides to replace it with a pension. In his rejoinder the complainant acknowledges that he has obtained satisfaction since he has been awarded a pension with effect from 1 April 1984. His final claim is therefore devoid of substance.

## DECISION:

For the above reasons,

1. The claim to payment of full salary up to the date of award of an invalidity pension is devoid of substance.
2. The other claims are dismissed.

In witness of this judgment by Mr. André 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