

SIXTY-FIFTH SESSION

***In re* BOLAND**

Judgment 923

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Pierre Boland against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 10 February 1988, Eurocontrol's reply of 2 June, the complainant's rejoinder of 26 July and Eurocontrol's surrejoinder of 6 October 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 72 of the Staff Regulations governing officials of the Agency and Rule No. 10 concerning sickness and accident insurance;

Having examined the written evidence;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Eurocontrol staff and their dependants are covered by a sickness insurance scheme in accordance with Article 72 of the Staff Regulations. Rule No. 10 governs sickness and accident insurance. According to Article 10 of the Rule four-fifths of the fees paid to doctors for surgery appointments shall be reimbursed up to the maximum set in the annex to the Rule, under I. The cost of orthodontic treatment may also be refunded to the extent of four-fifths, again up to the maximum stated in the annex, under IV.

The complainant, a Belgian, is employed by Eurocontrol at its air navigation centre in Luxembourg. His two dependent daughters received orthodontic treatment from a dentist in Brussels which continued until some unstated date in 1986. One of them, Anne, visited the dentist's surgery on 21 June and 20 December 1986; the other, Laurence, on 30 August and 20 December 1986. The complainant claimed refund of the cost of the four appointments. On 21 April 1987 he learned from the Insurance Scheme that they had refused on the assumption that the purpose of the appointments had been to continue the orthodontic treatment, for which he had already been paid as much as the Rule allowed. He explained orally to the medical officer that the assumption was wrong and the medical officer so informed the Scheme. But the Scheme still refused payment for Anne and, though it realised that the total payable for the orthodontic treatment of Laurence had not yet reached the maximum and it therefore agreed to pay for her two appointments, it still put them under "orthodontic treatment".

On 17 July 1987 the complainant submitted a claim to the Director General. By a minute of 22 September the department of Personnel and Administration informed him that his claim would be referred to the Management Committee of the Scheme. Having received no further response, he is challenging the implied decision to reject his claim. B. The complainant observes that he has a personal interest in obtaining the refund of four-fifths of the cost of two appointments for Anne and the proper attribution of the refunded costs of two for Laurence. The case is also of interest to the staff at large because it is yet another instance of the Scheme's "deplorable" behaviour. He claims costs.

C. In its reply Eurocontrol gives an account of the facts. It explains that the Scheme was unable to answer the claim. The matter had to go to its Management Committee, which could not meet because the staff representatives, of whom the complainant was one, had resigned.

By a letter of 17 May 1988 the Director General answered the complainant's claim. He said that, so that the limit on the refundable cost of orthodontic treatment could not be evaded by a claim for surgery appointments, the Scheme ordinarily refused such a claim for six months after the end of the treatment. After another look at the case, however, the Director General was taking an "exceptional" decision to allow the claim.

Eurocontrol contends that the complaint is irreceivable because the complainant has got satisfaction.

It also has pleas on the merits that are summed up under 6 below.

D. In his rejoinder the complainant objects to several points in Eurocontrol's version, pointing out that the staff representatives on the Management Committee did not resign and the Committee could have met. As the Director of Personnel and Finance informed the President of the Staff Committee in a minute of 21 November 1987, the reason why the Management Committee had not met was the "heavy workload" of its members. The answer to his claim came after he had lodged his complaint, which Eurocontrol's silence drove him to make in order to safeguard his rights. It allowed his claim only because it knew he was right.

As to the merits, he submits that he did supply full information in support of his claim. The six-month rule Eurocontrol cites appears in no text, was not mentioned by the medical officer and is unknown to the Management Committee. Eurocontrol has shown scant regard for "good management": according to Article 25 ter of Rule No. 10 the Director General should have consulted the Committee before taking a decision.

The Scheme is high-handed and often careless.

The statement of his claims is in 7 below.

E. Eurocontrol's surrejoinder is summed up in 8 below.

CONSIDERATIONS:

1. The complainant, a grade B1 assistant principal with Eurocontrol, is at its air navigation centre in Luxembourg. His dispute with it is over the refund by the Agency's Insurance Scheme of the cost of dental treatment for his daughters Anne and Laurence.
2. His daughters received orthodontic treatment from two dentists in Belgium and the issue is whether he is to recover the cost of dental appointments, two for Anne on 21 June and 20 December 1986 and two for Laurence on 30 August and 20 December 1986. The charge for each appointment was 800 Belgian francs. Eurocontrol took the view that the appointments formed part of the orthodontic treatment authorised by the Scheme, of which the cost is refundable only up to a maximum total of 60,500 Belgian francs under the Scheme's rules. The cost of Anne's appointments was refused because she had already reached the maximum; the cost of Laurence's was allowed, but under the heading of orthodontic treatment.
3. The complainant objected on the grounds that his daughters had had ordinary appointments quite distinct from the orthodontic treatment and that he ought to have been refunded the cost under the rules for such appointments.
4. Having got no answer to his claim of 17 July 1987, he lodged his complaint on 10 February 1988.
5. By a letter of 17 May 1988 Eurocontrol informed him that though it held to its original view of the matter it had taken an exceptional decision to allow his claim. In its reply of 2 June 1988 to the complaint it gives its version of the dispute and asks the Tribunal to declare the complaint irreceivable as devoid of substance.
6. On the merits Eurocontrol explains that to prevent evasion of the maximum the rules allow its practice is to refuse the refund of dental appointments in the six months following the end of orthodontic treatment unless the appointments are shown to be distinct. It cites a circular dated 16 June 1981 and office notice 17/82 of 30 July 1982, which say that to qualify for full refund the staff member must make sure that bills state the nature of the treatment. In its submission the evidence put in by the complainant fails to show that the appointments were not for orthodontic treatment; indeed they actually state that to be the purpose.
7. In his rejoinder the complainant goes into the merits in greater detail and asks the Tribunal (a) to hold that in allowing the cost Eurocontrol acknowledged the "true nature" of the treatment and (b) to award him 100,000 Luxembourg francs in costs, an amount he justifies on the grounds of the Organisation's "stubborn refusal" to answer his claim and its agreeing only after he had filed his complaint.
8. In its surrejoinder the Organisation maintains that the complaint is both irreceivable and devoid of merit. It submits a certificate from the medical officer saying that orthodontic treatment always ends with bracing which requires check-ups every three to six months. Since at the material time the complainant's daughters were plainly at that stage of treatment the connection between their orthodontic treatment and the later appointments is beyond

doubt.

9. The complainant's claims, which he is pressing even after Eurocontrol's ex gratia decision in his favour, call for the following comments.

10. The first claim, to a declaration about the nature of the treatment, is irreceivable because his purpose is to get a ruling on a question of principle that is immaterial to the outcome.

11. His claim to costs is receivable because the Organisation did not answer his claim to the refund and indeed did nothing at all until he had actually filed this complaint. A ruling on costs requires some consideration of the facts and pleas, though there is no need for the oral proceedings the complainant has applied for.

12. Where the cost of treatment is refundable only up to a stated maximum an organisation may seek to prevent evasion by determining whether forms of treatment are connected. For that purpose it may take account of any material factor: for example, the practitioner may be the same; the forms of treatment may be provided at about the same time; and their nature may also be relevant. As Eurocontrol says, in case of doubt it is for the staff member to show exactly what the treatment was if he is contending that the maximum limit does not apply.

13. The material fact is that the bills submitted by the complainant actually mention "orthodontic treatment". So Eurocontrol was right to conclude that his daughters' later appointments formed part of their orthodontic treatment.

14. The complainant's suit therefore never had the slightest chance of success. His claim having been allowed ex gratia, he had even less reason to take it to the Tribunal.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 8 December 1988.

(Signed)

Jacques Ducoux
Mella Carroll
P. Pescatore
A.B. Gardner