

**TWENTIETH ORDINARY SESSION**

***In re* DANJEAN (Nos, 1 and 2)**

**Judgment No. 126**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint (No. 1) against the European Organization for Nuclear Research (CERN) drawn up by Mme Jeanne Danjean on 22 March 1967, the reply of the respondent organisation of 21 November 1967, complainant's rejoinder of 15 March 1968, and the reply of CERN to that rejoinder dated 15 May 1968;

Considering the supplementary memorandum filed by CERN on 16 September 1968 in reply to a question put by the Tribunal under Article 11 of the Rules of Court, and complainant's reply to that supplementary memorandum dated 27 September 1968;

Considering the complaint (No. 2) against CERN drawn up by Mme Danjean on 3 August 1967, the Organization's reply of 21 November 1967, complainant's rejoinder of 15 May 1968, and the reply of CERN to that rejoinder dated 15 May 1968;

Considering Article VII, paragraph 2, of the Statute of the Tribunal and Article J2 of the Staff Regulations and Rules of CERN in force at the time;

The Tribunal having decided to join the two complaints and to hear the parties in oral proceedings without calling witnesses;

Having heard in oral proceedings on 7 October 1968 Maître A. Dupont-Willemin and Maître R. Steiner, Counsel for complainant, and Maître J. F. Lalive, Counsel for the Organization;

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

A. Complainant entered the service of CERN on 6 May 1958 as a staff member in Grade 3+0. As a result of successive amendments of her contract she reached Grade 5+8. From the end of 1959 she was employed as an I.E.P. Operator (Instruments-Evaluation-Photography), Grade 3; she was then promoted to Grade 4, and in March 1961 to Grade 5 as a Calculator III (Co-ordinator). The latter appointment was made on the basis of the recommendation of an internal appeals committee. In the same year complainant obtained leave of absence to attend a course at the Institute of Physics at Padua. On her return on 1 September 1961 she was assigned to a post of Calculator-Co-ordinator in a group experiment which came to an end early in 1964. At the end of December 1962 she submitted a complaint on behalf of her colleagues employed on the same work and on her own behalf concerning their conditions of work. At the end of 1963 a job analyst recommended that her work should be regraded in Grade 6, but no action was taken on this recommendation.

B. At the beginning of 1964, when the experiment ended, she was re-assigned to a post as I.E.P. Operator in the T.C. (Tracing Chamber) Division, and put in charge of a new instrument, the "autogap". After performing this work for six months she asked in July 1964 for an investigation by the CERN Work Safety Service into the health aspects of her work, which she claimed was very trying and was affecting her general health. In its report the Safety Service recommended that steps should be taken to correct certain unsatisfactory features of the working conditions concerned. About the same time, a medical report also indicated that occupational factors had probably played some part in the origin of the headaches of which Mme Danjean complained. Complainant was then again transferred to data-processing work in connection with another technical experiment, where she remained until the experiment ended in December 1964. She was then re-assigned to work as an I.E.P. Operator. She again complained of the recurrence of the same symptoms which she alleged had been produced by this type of work in the past, and was absent for a month on sick leave. On her return to work, she was again assigned to a data-processing job which she performed from March to October 1965 to the entire satisfaction of her chiefs. She was promoted at that time to Grade 5+5. When the experiment ended she was once again assigned to a post of I.E.P.

Operator, this time in the N.P. Division, but was employed for over a year on simple work which she claimed was inferior to her qualifications and incompatible with her contract of employment and her grade, and was also unhealthy.

C. On 4 November 1966 the Chief of the Safety Service admitted, in a minute addressed to Mme Danjean, that the working conditions of which she had complained were not satisfactory. On 14 November 1966 complainant wrote to the Director-General asking to be assigned to work appropriate to her qualifications. The Director-General replied on 21 December contesting her complaints and advising her first to try to regain her health, and assuring her that the provisions of the Sickness Bund would be interpreted in the broadest possible way in her case; the question of her job status could be reconsidered thereafter. Complainant considered that this reply was entirely negative, and filed an appeal with the Joint Appeals Board. In its report, dated 13 March 1967, the Board found that since 1964 complainant had been assigned to work which was beneath the qualifications required in her contract of employment, but pointed out that this was partly due to the constant development of scanning procedures, and partly to complainant's difficulty in adapting herself to her work. The Board recommended unanimously that responsibility for the deterioration in complainant's situation should be shared between herself and the Organization. In accordance with the Board's recommendation, the Director-General on 22 March 1967 offered to grant complainant special leave with pay, to instruct the Personnel Division to take steps to secure her reclassification with a view to finding her another post, and to provide her with all possible assistance to improve her state of health. By letter of 28 March 1967 Mme Danjean agreed to take special leave with pay and stated that she was suspending the complaint she had filed on 22 March 1967 with the Administrative Tribunal. On 29 March 1967 the Chief of Personnel informed complainant that he intended to consider the possibility of her reclassification, and proposed that she should undergo a vocational guidance test, a proposal which was refused by Mme Danjean on the ground that after nine years' work in the Organization she had given sufficient proof of her abilities. On 25 April, 1 May and 8 May 1967 the Director-General sent complainant lists of all the posts vacant in the Organization with the request that she should inform him if she was interested in any one of them. On 19 May she replied that none of the vacancies corresponded to the job description in her contract or to her qualifications. On 30 May 1967 the Chief of Personnel informed Mme Danjean that her employment would be terminated in accordance with Article H 1/7 of the Staff Regulations and Rules. Complainant then filed a second complaint with the Tribunal on 3 August 1967, attacking the decision of 30 May 1967 to terminate her employment.

D. In her first complaint Mme Danjean prays that it may please the Tribunal:

As to substance:

1. To find that the submissions in the complaint are well founded.

2. In consequence:

(a) To quash the decision of the Director-General of CERN by virtue of which she was assigned from January 1964 to a post corresponding to Grade 3/4.

(b) To rule that complainant should be assigned to a post corresponding to the grade of Calculator III, Co-ordinator, in Grade 7/8, which she would normally have reached in January 1967, having already been promoted to the post of Calculator III in Grade 5+6.

3. To award all costs against the Organization, including a share of the fees of complainant's Counsel.

4. To award complainant damages in an amount to be determined by the Tribunal for the material and moral injury suffered by her as a result, in particular, of the statements made by Mr. Zumbach, Social Adviser of CERN.

5. To dismiss any other or contrary submissions by CERN.

By way of interim relief:

To order the parties, i.e. Mme Danjean and the Director-General of CERN, to appear in person.

As further interim relief:

(a) To order inquiries, and to this end to authorise complainant to call witnesses to prove the allegations set out

both in her complaint and in her memorandum.

(b) To order that all the documents produced and the tape recording of all the evidence taken before the Joint Appeals Board, which made its recommendation on 13 March 1967, should be included in the dossier. As still further interim relief:

(a) To place formally on record complainant's statement that she is willing to undergo a psychiatric test.

(b) To appoint for this purpose a panel of three psychiatric specialists, one to be chosen by each of the parties and the third by the two other specialists.

© To request the specialists so appointed to say, after questioning Mme Danjean, examining her file, obtaining all pertinent information, and if necessary hearing witnesses, whether she is not of perfectly sound mind, and in particular is not suffering from any ailment which might incapacitate her for the performance of her duties in CERN.

E. In her second complaint, Mme Danjean prays that it may please the Tribunal:

As to substance:

1. To find that the submissions in the complaint are well founded.

2. In consequence:

(a) To quash the decision of the Director-General of CERN made on 30 May 1967.

(b) To order complainant's reintegration in the Organization and to direct that her monthly salary of 1,680 francs should be paid as from the date of termination of her employment, taking annual internments into account.

3. If the Administrative Tribunal, while quashing the decision of 30 May 1967, should not see fit to direct the Director-General to reintegrate Mme Danjean in the staff of the Organization, to rule that she will then be entitled to compensation in an amount to be determined by the Tribunal *ex aequo et bono*, provided that it is not less than the salary which complainant would have received over a period of at least five years, this compensation to be additional to the grant she received on separation from the Organization.

Complainant then repeats the prayers for interim relief contained in her first complaint.

CONSIDERATIONS: COMPLAINT No. 1

1. The Organization contends that the present complaint has become irrelevant because of the fact that a decision to terminate Mme Danjean's employment was taken after the filing of the complaint.

But the legality of the decision to terminate, which is also attacked in a complaint before the Administrative Tribunal, depends on the disposal of the present complaint. Moreover, if the present complaint were held to be well founded, Mme Danjean could claim damages even if her complaint concerning termination were to be dismissed.

As to the plea to quash the decision assigning her to a post of operator in 19 4:

2. The decision in question was not attacked within the time limit laid down by Article VII, paragraph 2 of the Statute of the Tribunal and has therefore become final.

The complaint must, however, be regarded as attacking the decision of 21 December 1966 by which the Director-General refused to change the decision of 1964, and the decision dated 22 March 1967 by which the same authority, after consulting the Joint Appeals Board, informed complainant that she would not be reintegrated in her post.

As to the regularity of the procedure before the Joint Appeals Board:

3. It is clear from the evidence in the dossier that the procedure before the Appeals Board provided a fair opportunity for all parties to state their case; that, in particular, Mme Danjean, who was informed beforehand of the

procedure which the Board would follow, attended its sittings and had every opportunity to explain her grievances in full, to produce such documents as she considered necessary, and to have such witnesses heard as she considered useful; that the Appeals Board gave full consideration to her case; and finally, that she was never subsequently refused access to the Appeals Board's files.

It follows that complainant's contention that the procedure followed was irregular is ill-founded.

As to the legality of the decision of 21 December 1966:

4. Mme Danjean complains that although she was in Grade 5 (Calculator III), she was in fact on part time in 1964 and full time from October 1965 assigned to work as an I.E.P. Operator normally performed by members of Grade 3, and she contends that this was contrary to her contract of employment.

However, her contract, while describing the main features of the job of "Calculator III", also stated that the person concerned "performs such other duties as may be assigned to her".

Moreover, while as a general rule employees in a given grade must be assigned to work normally done by members of that grade, it is within the discretion of the Director-General, provided that there is no change in the grade or reduction in salary, nor any lowering of the dignity of the persons concerned, to assign them to work done by lower-grade employees if the needs of the service so require, for instance, if the Administration needs more or higher grade employees to perform such work, or if a staff member in a given grade proves to be unfitted for the work normally assigned to that grade. In the case at issue it appears from the evidence that the Director-General did not outstep the limits of his authority as defined above, and that the assignment to which Mme Danjean objects cannot in the circumstances of the case be regarded as a disciplinary measure.

As to the legality of the decision of 22 March 1967:

5. Mme Danjean contends that the very uncomfortable conditions and ill-ventilated premises in which she had to work from 1964 have seriously affected her health, which has been lastingly affected thereby.

The purpose of the decision of 22 March 1967, which on this point rescinded the decision of 21 December 1966, was aiming precisely at transferring Mme Danjean to another post, as she had repeatedly demanded.

It follows that even if complainant's allegations were held to be well founded, although they might conceivably entail a right to financial compensation, they could in no way affect the legality of the decision.

Moreover, the Director-General in his letter of 21 December 1966 offered complainant every opportunity of taking the necessary steps to improve her health, and to this end placed the facilities of the Medical Service of CERN at her disposal and assured her that she would be granted leave for the period necessary for her to undergo treatment.

As to the claim for promotion to Grade 7/8 Co-ordinator:

6. Mme Danjean does not allege that there is any decision by the Director-General rejecting a request for promotion. This claim is therefore not receivable under the terms of Article VII, paragraph 1, of the Statute of the Tribunal.

Moreover, it is clear from Administrative Circular No. A3. of October 1961 that promotion cannot be claimed by staff members as a right to which they are entitled.

As to the claim for written and public apologies to be made by the Organization's Social Adviser:

7. This claim is not within the competence of the Administrative Tribunal.

As to the claim for compensation for alleged injury to complainant resulting from the statements made to the Joint Appeals Board by the Organization's Social Adviser:

8. It appears from the transcript of the discussion before the Appeals Board that the Social Adviser of CERN, giving evidence as a witness, confined himself to expressing in carefully chosen and cautious terms the opinion, which was shared by Mme Danjean's own medical adviser, that it would be advisable for her to be examined by a

neurological and psychiatric specialist. The expression of such an opinion, particularly at a sitting of the Appeals Board in camera, cannot be regarded as in any way blameworthy, nor can it have injured complainant in any way.

It follows that this claim must in any event be dismissed.

## COMPLAINT No. 2

9. Complainant contends that "it is clear that the recommendations of the Joint Appeals Board were not followed" and that "the contradiction between the decisions of 22 March and 30 May 1967 is manifest".

From the evidence in the dossier, however, it appears that already on 29 March 1967 the Chief of the Personnel Division, acting on the Director-General's instructions, proposed to Mme Danjean that a vocational guidance expert should be consulted "to advise us as to the choice of jobs to be offered you"; that complainant rejected this proposal; that she also refused subsequently to make a choice from the list of jobs vacant at CERN.

In these circumstances, the Director-General in deciding on 30 May 1967 to terminate Mme Danjean's employment; did not act contrary to the meaning and scope of his decision of 22 March 1967; he did indeed try to apply it, and the responsibility for his failure to do so rests entirely with complainant, who systematically refused the various solutions proposed to her without herself making any positive proposals.

Moreover, the decision impugned of 30 May 1967 is based on the provisions of Article H 1/7 of the Staff Regulations and Rules, which is in the following terms:

"Unsuitability for work in the Organization

(a) In exceptional cases, the Director-General may terminate an indeterminate appointment if he is satisfied that the retention of the staff member concerned is contrary to the interests of the Organization. Before taking this action, he shall first consult the Chief of Division and the supervisors of the staff member concerned .... He shall also consider the possibility of transferring the staff member concerned to a more suitable post.

(b) A decision by the Director-General to terminate an indeterminate appointment on account of unsuitability under the terms of the present paragraph is not subject to appeal." (Registry's translation).

Under the terms of this article the Director-General clearly has discretionary power to determine whether the continued employment of a staff member is contrary to the interests of the Organization or not; it follows that any decision taken under Article H 1/7 does not come within the Tribunal's power of review unless it is taken without authority, is in irregular form or tainted by procedural irregularities or is tainted by illegality or based on incorrect facts, or essential facts have not been taken into consideration, or again, unless conclusions which are clearly false have been drawn from the documents in the dossier. But the Tribunal may not substitute its own judgment for that of the Director-General in regard to the work or conduct of the person concerned or his suitability for international service.

'The evidence in the dossier does not establish any of the faults which would bring this case within the competence of the Tribunal.

On the contrary, having recognised by decision of 22 March 1967, which has become final as a result of this judgment of today's date, the need to transfer complainant to a different post, and having found it impossible to find another post acceptable to her, the Director-General was lawfully entitled to consider, after consulting the persons referred to in Article H 1/7 cited above, that complainant's retention in the service of CERN was contrary to the interests of the Organization.

## DECISION:

For the above reasons,

The complaints are dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 15 October 1968 by M. Maxime Letourneur, President, M. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the

aforementioned have hereunto subscribed their signatures as well as myself, Bernard Spy, Assistant Registrar of the Tribunal.

(Signed)

M. Letourneur  
André Grisel  
Devlin  
Bernard Spy

Updated by PFR. Approved by CC. Last update: 7 July 2000.