

THIRTY-FIFTH ORDINARY SESSION

***In re* RABOZEE**

Judgment No. 264

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the European Organisation for the Safety of Air Navigation (Eurocontrol) drawn up by Mrs. Lucie Damasse Ghislaine Rabozée on 31 August 1974, the Organisation's reply of 2 October 1974, the complainant's rejoinder of 29 November 1974 and the Organisation's surrejoinder of 23 January 1975;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal, Articles 2, 25, 72, 90, 92, 93, 100 and 102 of the Eurocontrol Service Regulations, Rules of Application Nos. 7 and 10, and Article 13, paragraph 3(a), of Annex I to the Eurocontrol Convention;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

- A. The complainant joined the service of the Eurocontrol Agency on 1 October 1964. Her husband is employed by the National Belgian Railways Corporation (SNCB). There is one son by the marriage.
- B. On 10 July 1973 the Chairman of the Staff Committee of the Agency sent a letter to the Director of Personnel and Administration drawing his attention to the interpretation put on Article 72 of the Service Regulations, which he regarded as discriminatory between male and female officials. The Chairman of the Staff Committee pointed out that where the spouse of a male official was a member of a social security scheme the Sickness Benefit Fund of the Agency refunded, in respect of that spouse, the difference between the amounts refunded by such a scheme and the maximum allowed under the Fund rules, namely 80 per cent of the expenses incurred. He expressed the view that it would be fair to apply the same rule in making refunds to female officials and asked that consideration be given to a new interpretation of Article 72 of the Service Regulations to ensure its identical application to all officials of the Agency.
- C. Being aware that such a letter had been sent to the Administration, the complainant submitted to it a dossier containing details of medical expenses incurred in respect of her husband and child and asked for payment of the difference between the amounts already recovered from other sources and the 80 per cent maximum mentioned above. By letter of 20 July 1975 Mr. Buurman, the Director of Personnel and Administration, replied: "I am not at present in a position to take account of the dossier which you have submitted to the Sickness and Accident Benefit Fund for the purpose of obtaining a further refund". By letter of 16 October 1973 the complainant made a request, which she deemed to be in accordance with paragraph 1 of Article 92 of the Service Regulations, for reimbursement by the Sickness Benefit Fund of the sums to which she considered herself to be entitled in respect of her husband and son. By letter of 31 January 1974 Mr. Buurman informed her that her request had "received careful study" and that the relevant texts would shortly be revised with regard to dependent children. The complainant interpreted that letter as a refusal of her request and on 14 February 1974 lodged what she deemed to be a complaint within the meaning of paragraph 2 of Article 92 of the Service Regulations. By letter of 7 June 1974 she was informed in reply that the rules and regulations governing the sickness benefits scheme had been properly applied in regard to the points she had raised.
- D. In impugning the decision of 7 June 1974 the complainant contends that it should be quashed inasmuch as it did not meet the requirement of Article 25 of the Service Regulations that decisions should be substantiated. Since the decision of 7 June 1974 upholds the earlier decisions of 31 January 1974 and 20 July 1975 the complainant asks that the two latter decisions should also be quashed if that proves necessary to the success of her financial claims. She considers that the relevant texts, namely Article 72 of the Service Regulations and Rule of Application No. 10, are unambiguous in that they refer to "officials" and set no restriction on grounds of sex. since she is herself an

official and pays the same contribution as male officials she believes that she is being discriminated against on grounds of sex. She contends that if she were employed by the SNCB and her husband by the Agency he would have no difficulty in obtaining the sums claimed.

E. In her claims for relief, therefore, in addition to the quashing of the three decisions referred to in paragraph D above, the complainant asks the Tribunal to declare well-founded her claim for reimbursement of 80 per cent on the amounts paid by her for medical attention to her husband and child, less whatever amounts she has recovered from any other source under the same head; to order the defendant Organisation to re-examine her dossier and pay her the sums due; and to order the Organisation to pay her costs.

F. In its reply the Agency maintains that the complaint should be declared irreceivable, firstly, because it is time barred, and secondly, because there is no final decision, the complainant having failed to exhaust all means of redress available to her under the Service Regulations since she did not follow the prescribed channels (by filing a claim) with a view to obtaining redress from the authority competent to make appointments, namely the Director-General.

G. As to the merits and, in particular, as to the interpretation of Article 72 of the Service Regulations - of which paragraph 1 provides (Registry translation): "... the official and the official's spouse, children and other dependants are covered by sickness insurance" - the Organisation disagrees with the complainant's arguments and maintains that grammatically the term "other dependants" is generic and applies to the other persons previously listed, i.e. "spouse" and "children", who form a homogeneous category. Hence the spouse and children are covered only if they are the official's dependants. There has never been any doubt but that a wage-earning child does not necessarily receive any refund from the Sickness Benefit Fund and it is difficult to see why a working spouse should enjoy more favourable treatment. Finally, the Organisation maintains that according to both the spirit and the letter of Article 72 of the Service Regulations the spouse may benefit from the sickness benefit scheme only if he is the official's dependant. As an employee of the National Belgian Railways Corporation the complainant's husband is a compulsory member of the Corporation's own sickness insurance scheme and cannot therefore claim, even in addition, benefits from the Sickness Benefit Fund. Her child did not become entitled to claim the refund of medical expenses on the conditions laid down in particular in the Service Regulations and Rules until 1 January 1974, the date on which Rule of Application No. 10 was amended.

H. As regards the complainant's contention that there is unlawful discrimination between male and female officials, the Organisation points out that the recognition of a dependant - as, in certain cases, the grant of special benefits - is never based on any form of discrimination against female officials. A husband who cannot afford to meet his medical expenses or those of a child may be regarded as the dependant of a wife employed by the Organisation. The reason why the complainant's husband cannot receive a refund from the Sickness Benefit Fund of the Agency is that, as the complainant herself says in her rejoinder, he is not her dependant. In reply to the complainant's argument that if her husband had been an official of the Agency and she an employee of the SNCB she would have received benefits from the Sickness Benefit Fund, the Organisation states that that would be true, but only if she were her husband's dependant. There are in fact wives of officials who have never received benefits from the Sickness Benefit Fund and there are also husbands who have obtained refunds on being recognised as dependants of female officials.

I. The Organisation prays that the Tribunal: (a) declare the complaint irreceivable; (b) as to the merits - if the question arises - dismiss the complaint as unfounded; and (c) award costs against the complainant.

CONSIDERATIONS:

As to the receivability of the complaint:

The letter of 20 July 1973, to which the Organisation refers, was addressed to the Chairman of the Staff Committee, and only a copy was sent to the complainant. Besides, as to the complainant's claims its terms were vague.

The first decision, which was to the complainant's detriment, is that of 31 January 1974 which by implication dismissed her request of 16 October 1973 for reimbursement of certain medical expenses incurred by her husband.

On 14 February 1974 the complainant lodged an administrative appeal against that decision within the time limit

prescribed in Article 92.2 of the Service Regulations. It is true that that appeal was addressed, not to the authority competent to make appointments, the competent authority within the meaning of Article 92, but to one of his subordinates. But it was the duty of that subordinate to forward it to his superior. The appeal was dismissed on 7 June 1974, i.e. within the time limit set by the last paragraph of Article 92.2.

That decision was referred by the complainant to the Administrative Tribunal on 31 August 1974, i.e. within the legal time limit. The complaint is therefore receivable.

As to the lawfulness of the impugned decision:

The complainant's husband, an employee of the National Belgian Railways Corporation (SNCB), received reimbursement of medical expenses as prescribed under the compulsory sickness insurance scheme of which he was a member.

The complainant, who is an official of the Agency, contends that she is entitled to reimbursement of the same expenses by the Organisation on the more favourable terms laid down in Article 72 of the Service Regulations. She has accordingly asked the Organisation to refund the difference to her.

According to Article 72, paragraph 1, of the Service Regulations (Registry translation): "Up to a maximum of 80 per cent of the expenses incurred and in accordance with the rules prescribed by the Director-General the official and the official's spouse, children and other dependants are covered by sickness insurance. The rate of refund is, however, increased from 80 to 100 per cent in the case of tuberculosis, poliomyelitis, cancer, mental illness and other illnesses recognised by the authority competent to make appointments as being of similar gravity. A third of the contribution towards the costs of such insurance is borne by the member, provided that it shall not exceed 2 per cent of basic salary."

According to this provision an official's spouse is included among those who may be regarded as a staff member's dependants and as such is covered by sickness insurance. Such an interpretation of Article 72, paragraph 1, reflects the actual situation of the spouses, who owe each other a duty of mutual assistance and who, when both are in gainful employment, may be regarded as mutually dependent. Moreover, the provision is expressed in general terms and, according to the general principles of existing law, even in the absence of express provision is applicable irrespective of the sex of the official. Thus, if the official is a woman her husband should benefit in his wife's right from the sickness insurance as prescribed in Article 72 referred to above if he does not himself benefit in his own right from a more favourable or at least as favourable a scheme.

It is not in dispute that the sickness insurance scheme of the Agency is more favourable than the one which covers employees of the SNCB.

The complainant is therefore right in claiming from the Organisation reimbursement of the difference between the amount to which she is entitled in respect of her husband and the amount to which her husband is entitled as an employee of the SNCB.

DECISION:

For the above reasons,

The complainant shall receive reimbursement by the Organisation of the difference between the amount to which she is entitled in respect of her husband and the amount to which her husband is entitled as an employee of the SNCB.

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

Delivered in public sitting in Geneva on 27 October 1975.

(Signed)

M. Letourneur

André Grisel
Devlin

Roland Morellet

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