

THIRTY-SIXTH ORDINARY SESSION

***In re* PESSUS**

Judgment No. 265

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the European Organisation for the Safety of Air Navigation (Eurocontrol) drawn up by Mr. Jean Marcel Julien Pessus on 28 March 1975, the Organisation's reply of 7 May 1975, the complainant's rejoinder of 25 June 1975 and the Organisation's surrejoinder of 26 July 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 62-4 of the Eurocontrol Service Regulations and Rule of Application No. 7, Article 4bis;

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. In 1965 the complainant joined the service of the Eurocontrol Agency on an appointment of indeterminate duration as a first-grade deputy clerk. From 1970 to 1974 he received a temporary lump-sum bonus for copy-typing. Although his post was not that of a copy-typist, during that period his duties in the registry department and later in the library, to which he had been transferred, required him to use a typewriter. His supervisor did not propose paying him the bonus for 1975 and on 6 December 1974 he asked the Administration for an explanation. On 18 December 1974 the Administration replied that the copy-typing bonus was payable to staff members who, though they did not hold a copy-typist's post, spent on the average half their time on copy-typing work and that the complainant would not meet that condition after 1 January 1975 since the copy-typing work of the library was to be sent to the typing pool from that date. On 5 February 1975 the complainant appealed to the Director-General, who by letter of 3 March 1975 upheld the decision of 18 December 1975 to cancel with effect from 1 January 1975 the copy-typing bonus which the complainant had until then received. The complainant now impugns that final decision.

B. The complainant asks the Tribunal "to declare the complaint receivable; to quash the defendant Organisation's decision notified to the complainant by letter of 3 March 1975; to declare that the complainant's claim is well founded and that he should continue to receive, from 1 January 1975, the bonus prescribed by Rule of Application No. 7, section 2bis of Article 4bis, adopted in accordance with Article 62-4 of the Eurocontrol Service Regulations; and to award him costs".

C. The Organisation points out that Article 4bis of Rule of Application No. 7 is so drafted as to allow the Administration wide discretionary authority and in its strict interpretation does not make the payment of the bonus compulsory. But in the present case the reason for cancelling the bonus from 1 January 1975 is that a change has occurred in the complainant's duties, which since that date have not included copy-typing. Hence he no longer has any right to the bonus he has hitherto received.

D. The Organisation asks the Tribunal to dismiss the complaint as unfounded and award costs against the complainant.

CONSIDERATIONS:

According to Article 4bis of Rule of Application No. 7: "A staff member in the C category performing the duties of a copy-typist, shorthand-typist, telex operator, typist, personal secretary or principal secretary may be granted a temporary lump-sum bonus." The complainant, who is a first-grade deputy clerk, was assigned to the library and, because he had to do copy-typing work although he was not a copy-typist, was granted the bonus provided for in Article 4bis.

With effect from 1 January 1975 the chief of his unit changed the nature of his duties. Apart from some routine tasks in the library he was put in charge of work relating to the receipt and circulation of periodicals and was no longer required, even part time, to do copy-typing work. As a result he lost the bonus.

The Director-General of the Organisation, by virtue of the general authority conferred on him as such and in the interests of efficiency, is empowered to change the duties assigned to his subordinates provided that that change is not tainted with any flaw which entitles the Tribunal to interfere.

In the present case it is not disputed that the change was not so tainted. In particular, it does not appear from the documents in the dossier that the impugned decision was taken from any motive other than a desire to promote work efficiency.

It follows that the impugned decision is not tainted with any illegality and that the complaint is unfounded.

DECISION:

For the above reasons,

The complaint is dismissed.

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 12 April 1976.

(Signed)

Mr. Letourneur
André Grisel
Devlin

Roland Morellet