

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

111th Session

Judgment No. 3018

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. C. against the Intergovernmental Organisation for International Carriage by Rail (OTIF) on 20 July 2009 and corrected on 18 August, the Organisation's reply of 3 December 2009, the complainant's rejoinder of 4 January 2010 and OTIF's surrejoinder of 21 January 2010;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Article 51, paragraph 1, of the Staff Regulations of the Secretariat of OTIF, in the version in force at the material time, relevantly provides:

“Non-Swiss personnel recruited internationally shall [...] be entitled to a repatriation grant [...] provided they return not later than two years after termination of service to their country of origin or to another country the Secretary General may designate at the staff member's request [...].”

The complainant, a French national born in 1958, was recruited by OTIF, whose headquarters are in Berne, Switzerland, in 1994. He lived in Switzerland until 2003 and thereafter resided in France until 2009. That year he was recruited by the North Atlantic Treaty

Organization (NATO), and he moved to Belgium in order to take up his new post. In his resignation letter of 23 December 2008, he asked the Secretary General of OTIF to pay him, *inter alia*, a grant for repatriation to France, his country of origin. On 2 April 2009 the Secretary General dismissed the request. The complainant asked the Secretary General to review his decision, but the latter confirmed his position in a letter of 15 April. The complainant was informed by a letter from the Secretary General dated 1 May 2009 that the Chairman of the Administrative Committee had granted him leave to appeal directly to the Tribunal, in accordance with Article 59, paragraph 2, of the Staff Regulations, which he did by filing the present complaint, in which he impugns the rejection of his request for a repatriation grant.

B. The complainant states that Article 51 of the Staff Regulations, as amended in 2009, provides that in order to receive the repatriation grant, the staff member must be resident in Switzerland on termination of service. Since that condition did not apply at the time of his initial request, he believes that he fulfils the only condition for the payment of the grant, namely that he should return to his country of origin not later than two years after termination of his service, which in his view does not exclude the possibility of doing so earlier. He points out that he had been resident in France for almost six years when his contract came to an end. He also submits that, contrary to the view expressed by the Organisation, he was free to settle wherever he wished after the end of his appointment with OTIF.

Relying on Judgement No. 656 of the United Nations Administrative Tribunal, concerning a case similar to his own in which that Tribunal upheld the complaint submitted to it, the complainant contends that in 2003 the Office of the Secretary General had given him an oral assurance that his entitlement to the repatriation grant would not be affected by his taking up residence in France, since he was not leaving Switzerland permanently. He states that this position was confirmed by the fact that his entitlement to home leave was maintained.

He asks the Tribunal to order payment of the repatriation grant to which he believes he is entitled under the Staff Regulations.

C. In its reply, the defendant emphasises that there is no written trace of the assurances supposedly given to the complainant by the former Secretary General.

The Organisation points out that the complainant did not take up residence in his country of origin on leaving his post at OTIF, because he left France, where he had been resident since 2003, in order to move to Belgium. In its view, therefore, its refusal to pay the repatriation grant is justified. Indeed, the grant is paid when a staff member stops working for an international organisation, which was obviously not the case of the complainant, since he immediately took up a post with NATO. As that organisation paid him various indemnities to facilitate his move to Belgium, it considers that the complaint submitted to the Tribunal is indicative of bad faith on his part.

The Organisation argues that its decision to amend Article 51 of the Staff Regulations was taken for the sake of exactitude because, prior to the complainant's request for a repatriation grant, it had been thought inconceivable that a staff member who had been domiciled for several years in his country of origin would make such a request.

D. In his rejoinder the complainant submits that there is no provision in the Staff Regulations making payment of a repatriation grant conditional upon termination of service with an international organisation. In his view, there is no link between the indemnities he received in connection with his appointment at NATO and the payment of the grant in question. He also contends that the fact that Article 51 of the Staff Regulations was amended after his complaint was filed is evidence that the complaint is well founded.

E. In its surrejoinder the Organisation maintains its position, emphasising that its refusal to pay the repatriation grant is justified. It also points out that if the complainant decides to take up residence again in France after his employment with NATO ceases, he will be entitled to receive a repatriation grant from that organisation.

CONSIDERATIONS

1. The complainant, a French national who entered the service of OTIF in July 1994, settled with his family in the region of Berne, where the Organisation has its headquarters. He remained there until August 2003. He then transferred his residence to Cessy, in the French department of Ain. His working hours were scheduled so that he could go home to his family every evening at this new place of residence.

On 23 December 2008, having been recruited to an interpreter post at NATO headquarters in Brussels, he resigned his post at OTIF. His employment relationship with OTIF ended on 30 April 2009 and he moved to the Brussels area in order to take up his new duties from that date.

2. In his letter of resignation, the complainant asked the defendant to cover his removal costs and pay him a repatriation grant. He subsequently withdrew the first request and confined himself to the second. The Secretary General dismissed this request by a decision of 2 April 2009. In essence, he took the view that the complainant did not fulfil the conditions set out in Article 51, paragraph 1, of the Staff Regulations for the payment of a repatriation grant. Indeed, at the time when his service came to an end he was not resident in Switzerland and was about to take up residence, not in his country of origin, but in a third country where another international organisation by which he was being recruited has its headquarters.

The complaint is directed against this decision. The Chairman of the Administrative Committee of OTIF authorised the complainant to appeal directly to the Tribunal.

3. Article 51, paragraph 1, of the Staff Regulations, in the version which applies in this case, reads *in parte qua* as follows:

“Repatriation grant

Non-Swiss personnel recruited internationally shall [...] be entitled to a repatriation grant [...] provided they return not later than two years after termination of service to their country of origin or to another country the Secretary General may designate at the staff member’s request [...].”

4. By virtue of this provision, entitlement to a repatriation grant is confined to non-Swiss staff members who have not been recruited locally. It is not disputed that the complainant fulfils this condition. It is also established that his employment relationship with the defendant has come to an end and that he left Switzerland permanently when it ended.

5. Contrary to the complainant's arguments, Article 51, paragraph 1, is clear and shows no flaw. It states unambiguously that the repatriation grant is due only if a staff member entitled to it returns to his or her country of origin, or to another country designated by the Secretary General at the staff member's request.

6. This grant, which in other similar regulations is called a resettlement or repatriation allowance or indemnity, is intended to assist internationally recruited staff members in the efforts required of them if they decide, at the end of their employment, to return to their country of origin with the intention of establishing themselves there. Clearly, this condition is not met in the present case. The complainant was already resident in France at the time his employment ended. Accordingly, there was no return to the country of origin, or to another country designated by the Secretary General within the meaning of the provision mentioned above.

7. The complainant argues that he is entitled to the repatriation grant because, well before his employment ended, he had left Switzerland in order to move to France with his family so that his son could receive a certain type of education. However, this argument is not supported in any way by Article 51, paragraph 1, of the Staff Regulations, which provides for the payment of a repatriation grant only when employment comes to an end. There is nothing in the complainant's submissions which would justify the Tribunal giving an interpretation at variance with the clear wording of this article.

8. The complaint is therefore wholly unfounded and must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2011, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet