

FIFTY-SECOND ORDINARY SESSION

In re FREEMAN

Judgment No. 600

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Molecular Biology Laboratory (EMBL) by Mr. Robert Freeman on 27 May 1983, the Laboratory's reply of 17 August, the complainant's rejoinder of 23 September and the Laboratory's surrejoinder of 19 October 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal and EMBL Staff Rules 6.1.01 and 6.1.02 and Staff Regulations R 6 1.04 and R 7 1.06;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, a British subject, joined the staff of the Laboratory, in Heidelberg, on 1 June 1977 as a staff scientist at grade 8, step 4. He was assigned to the electron microscope development group under Mr. Jones. He received step increments at the end of six months' probation and at yearly intervals. In 1978 he moved to the electron microscope applications group, where his supervisor was Mr. Dubochet. He was promoted to grade 9 on 1 June 1979. He accepted a three-year extension of contract from 1 June 1980. In a minute of 17 May 1982 to Personnel Mr. Dubochet said his work had not been satisfactory and recommended withholding the increment. It was nevertheless granted. On 1 October 1982 he went back to Mr. Jones' group. In November 1982 he was offered a nine-month extension -- the "last possible" -- to 29 February 1984. On 3 February 1983 he signed the new contract but at the same time wrote to the Director-General objecting to the shortness of the extension. On 22 February he addressed an appeal to the Director-General and in a minute of 1 March -- the impugned decision -- the Director-General answered that he rejected the appeal.

B. The complainant believes that the decision to give him only a nine-month extension failed to take due account of his excellent work record. Though no reasons for it had been given in writing, he understood from conversation with the Director-General that it was prompted by the unfavourable opinion orally expressed by Mr. Dubochet, with whom, like others in the group, he could not get on. The decision is therefore not based on objective assessment of his performance. As Chairman of the Staff Association from November 1980 until recently he had to spend a fifth of working hours on staff business, and the Director-General's refusal to take account of this was in breach of Staff Regulation R 7 1.06, which prescribes time off for staff representatives. He invites the Tribunal to award him "compensation for loss of salary and allowances due to the contract being limited to nine months rather than ... at least two years until 1 June 1985".

C. The Laboratory submits that the complaint is irreceivable. The Director-General's offer of the nine-month extension was made on 18 November 1982 and under Staff Regulation R 6 1.04 the complainant should have lodged his appeal against that within thirty days. He did not do so and thus failed to exhaust the internal means of redress. Moreover, it is contrary to good faith for him to challenge the terms of an offer he accepted. In any event the decision to renew for nine months was a discretionary one and shows none of the defects which would enable the Tribunal, in the exercise of its limited power of review, to set the decision aside. The Director-General consulted the complainant's supervisors, who were directly familiar with his work, and there is nothing to suggest that their advice was unfair or that the decision was not taken in the EMBL's interests. A group of outside and independent experts -- the Scientific Advisory Committee of EMBL -- endorsed the decision at a meeting it held in November 1982.

D. In his rejoinder the complainant contends that his complaint is receivable. The reason why he did not ask for review of the offer of 18 November 1982 until 3 February 1983 was that he was still discussing it with the Director-General and others in the hope of getting a better one. He had no reason to believe that offer to be final.

Only when he failed to get a longer extension did he feel obliged to make a formal appeal, on 22 February. Nor was he in breach of good faith: he explicitly stated his objections on accepting the offer. Besides, he had to accept for fear of finding himself without employment from 1 June 1983, and it was only reasonable to accept at least what was on offer. As to the merits, he believes that the only unsatisfactory opinion came from Mr. Dubochet, who was prejudiced because of animosity towards him.

E. In its surrejoinder the Laboratory enlarges on its submissions that the complaint is irreceivable and devoid of merit. There was nothing to prevent the complainant from lodging an internal appeal in time against the offer of 18 November 1982. Nor is there any evidence of animosity on the part of Mr. Dubochet. His performance was fairly assessed by independent scientists qualified to pass an opinion on it.

CONSIDERATIONS:

1. The complainant, who joined the organisation as a staff scientist on 1 June 1977, was at the material time employed under a contract for a fixed term to end on 31 May 1983. On 18 November 1982 he was notified that in effect his contract would not be renewed. Actually he was offered a renewal for nine months to expire on 29 February 1984 and informed that there would be no further extension. The nine months were granted partly to give him longer time for adjustment and partly in recognition of his work as Chairman of the Staff Association. A decision not to renew is one that falls within the discretion of the Director-General: it will not be reviewed by the Tribunal unless it is first shown to be flawed by lack or abuse of authority, the violation of a procedural rule, or a basic error of fact or of law, or a clearly mistaken conclusion has been drawn from the dossier. The Tribunal has not found any such flaw in this case.

2. A decision not to renew a contract must be one taken by the Director-General in what in his discretion he sees as in the interests of the organisation. The decision in this case stemmed from a report dated 17 May 1982 by the complainant's group leader Mr. Dubochet. Assessing the general quality of the complainant's service as good but not first-class, the report stated that his contribution to the research of the group had not been satisfactory. A recommendation in the report that he should remain in his then grade of 9.2 was not accepted and on 1 June he was promoted to grade 9.3. But the report created what the complainant describes as a "personal disagreement" between himself and Mr. Dubochet. In October 1982 the complainant moved to another group headed by Mr. Arthur Jones. On 8 November there was a meeting of 11 senior scientists in the organisation, including Mr. Jones but not Mr. Dubochet, with the Director-General presiding, which discussed among other things possible extensions for employees. In the case of the complainant the meeting decided, with one abstention but otherwise unanimously, to recommend a final extension of nine months. This led to the notification of 18 November. The subsequent decision of the Director-General not to renew was endorsed on 29 November by the Scientific Advisory Committee of the Laboratory, a group of outside experts.

3. The complainant's case is that he was not given an opportunity to present to the Director-General or his advisers his own assessment of the value of the work he was doing. He relies also on the fact that the Director-General did not seek information from other members of the group who would have expressed an opinion favourable to him. He has produced statements from three members on which the organisation comments that two of them were transferred out of the Dubochet group, the contract of one of them not being renewed. The substantial point is whether the complainant had a right to argue his own case in person.

4. In the opinion of the Tribunal he had not. If he was being deprived of a substantial right, he would have had the procedural right to be heard. But here he has no right which is being infringed. The question is simply whether he continues to be worth his place in the organisation. If he does, it is prima facie in the interests of the organisation to retain his services, if he does not, it is the Director-General's duty to allow the appointment to terminate. The Director-General must reach an informed and unprejudiced conclusion, but that is all that is required of him. There may be cases in which the Director-General cannot inform himself properly without inviting a presentation of the case by the complainant. But in most cases a Director-General can safely rely on his own knowledge or that of his advisers of what is going on in the organisation. In the present case he made his decision after consultation with 11 senior scientists. Any one of them who felt that he did not know enough about the complainant's work to express an opinion would naturally have abstained, it being a serious matter to express an opinion which might lead to a setback in a fellow scientist's career. Apart from the one abstention, the opinion was unanimous and the Director-General would have been failing in his duty to the organisation if he had ignored it.

DECISION:

For the above reasons and without its being necessary to examine the question of receivability.

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 April 1984.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner