

SEVENTY-FIRST SESSION

In re MAUGIS (No. 6)

(Application for interpretation)

Judgment 1110

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 996 filed by Mr. Michel Maugis on 25 June 1990, the reply of 23 August from the European Southern Observatory (ESO), the complainant's rejoinder of 1 October, the ESO's surrejoinder of 5 November 1990, the complainant's further brief of 3 February 1991 and the Observatory's observations thereon of 6 March 1991;

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

Having examined the written evidence;

CONSIDERATIONS:

1. In his second complaint the complainant impugned a decision of 7 September 1988 confirming the termination of his appointment with the European Southern Observatory at 31 October 1988. In Judgment 996, which it delivered on 23 January 1990, the Tribunal set the decision aside and ordered the complainant's reinstatement in the service of the Observatory "with full arrears of salary and allowances".

2. During his service with the Observatory the complainant had been a member of its staff health insurance scheme, which is provided for by an insurance contract between the ESO and a company of insurance brokers in the Netherlands, J. van Breda and Co. After termination he asked for and was granted coverage for medical expenses for a further period of six months, from 1 November 1988 to 30 April 1989. For such coverage he himself paid 2,982.66 Deutschmarks in premiums. From 1 May 1989 he was not covered by health insurance.

3. In execution of Judgment 996 the ESO reinstated him in membership of its health insurance scheme. It paid him back the 2,982.66 Deutschmarks he had paid in premiums for the period from November 1988 to April 1989. But it also revalidated the period from 1 May 1989 to 31 January 1990 and deducted premiums accordingly from his pay for that period. He contends that it should not have done so and he asks the Tribunal to declare whether the amount of the premiums forms part of his pay.

The Observatory's answer is that it has reinstated the complainant in membership of the scheme with retroactive effect from 1 November 1988, the date of his reinstatement in its service, and he is therefore in the same situation as if the termination had never taken place.

4. That is indeed what the complainant is entitled to. It is not the purpose of insurance to let the staff member make a profit. If he incurs medical expense he is entitled to reimbursement, that is to say, to indemnity, up to the limit of the coverage. If he incurs no expense he gets nothing.

The complainant has been given the coverage he is entitled to, and he may not opt to take the amount of the premiums instead. He is therefore mistaken in contending that the premiums form part of his pay and are recoverable by him in execution of Judgment 996, the intention of which was to put him as far as possible in the same position as if he had not been dismissed.

5. An issue of fact arose in the course of the pleadings. The complainant states in his rejoinder that he again became a member of the insurance scheme only as from 1 February 1990. With its surrejoinder the Observatory produces a letter dated 22 October 1990 from van Breda affirming that he was affiliated to the scheme from 1 October 1979 to the present without interruption. In a further brief he was given leave to file the complainant produces two claim forms for medical expenses both dated December 1990. One of them claims, among other things, the sum of 1,090 Chilean pesos paid to a chemist, Farmacia Ahumada, on 10 January 1990 and the other 1,017 pesos paid on 17 November 1989 to the same chemist. Neither sum was reimbursed, the reason given in the "Remarks" column of

both forms being that the costs had not been incurred during a period of coverage. The complainant argues that the forms show that van Breda's affirmation in its letter of 22 October 1990 was wrong. In reply the ESO again affirms that he was reinstated in the scheme with retroactive effect and that van Breda made a mistake over the claims. It has written to the company asking it to let him have immediate reimbursement.

The Tribunal is satisfied that the company simply made a mistake in not meeting the two claims and that in the matter of health insurance coverage the Observatory has complied both with the letter and with the spirit of Judgment 996.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. José Maria Ruda, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

Mohamed Suffian
Mella Carroll
José Maria Ruda
A.B. Gardner