

SEVENTY-FIRST SESSION

In re LEHMANN

Judgment 1113

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Marianne Lehmann against the European Organization for Nuclear Research (CERN) on 3 May 1990 and corrected on 21 June, CERN's reply of 28 August, the complainant's rejoinder of 5 November and the Organization's surrejoinder of 7 December 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article R II 2.01 and Annex R C 1 of the CERN Staff Regulations;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a Swiss citizen, joined CERN in 1975 as a clerk typist at grade 5. In 1982 she took up duty in the Personnel Division and in 1983 became an administrative officer in that division, still at grade 5. She was transferred in 1987 and 1989 and is now in the General Services Group of the General Administration Division. After a job evaluation the grade of her post was confirmed at 1 July 1989.

On 29 September 1989 she submitted to the Director-General an appeal against the classification of her post. The Administration made an evaluation report on 13 November 1989 and again confirmed the grading. Her appeal was referred to the Joint Advisory Appeals Board and in its report of 14 December 1989 the Board recommended upgrading her post to 6. But by a letter of 1 February 1990, the decision she impugns, the Head of Administration informed her on the Director-General's behalf of the rejection of her appeal.

B. The complainant contends that the impugned decision shows several fatal flaws.

(1) The Head of Administration failed to state the reasons for the decision, and that failure is the more reprehensible in that the decision departed from the Appeals Board's own substantiated recommendations. Besides, the Director-General is merely said to have taken account of "views and recommendations": what can those have been but the Board's?

(2) There was a mistake of law in that the rules on classification and promotion were not complied with. Article R II 2.01 of the Staff Regulations reads: "Every post shall be classified in one or more grades according to the general definitions given in Annex R C 1". That annex explains: "Based on these general definitions, additional, more detailed evaluation guides are drawn up so that posts can be evaluated by reference to established criteria".

The complainant's duties are set out in a "job information form" signed by her supervisor in 1989, and comparison of them with the established criteria shows that they warrant, not grade 5, but 6 or even 7. In support of that contention she analyses the nature of her duties and says how the criteria should in her view be applied thereto.

(3) The complainant submits that, as mere comparison of the job information forms reveals, her responsibilities are greater than those of other officials whose posts bear higher grades. Moreover, besides her secretarial duties she is also in charge of the housing service and, as the Appeals Board observed, that is her heaviest burden. The official who used to be in charge and who has now retired held grade 7. As the case law makes plain, staff performing similar duties should be given the same grade. In her case not only did the Director-General act in breach of that basic principle but he overlooked essential facts and drew obviously mistaken conclusions from the evidence.

She seeks the quashing of the impugned decision and an award of costs.

C. In its reply CERN submits that the administrative process for the review of grading and for advancement and the appeal procedure, both of which it describes in detail, were correctly applied to the complainant.

(1) The reasons for confirming the complainant's post at grade 5 were notified to her in the course of the administrative process for review: in particular the job information form filled up in 1989 said that despite new duties the degree of responsibility, initiative and judgment her post required did not warrant grade 6. The Head of Administration confirmed the reasons for the grading in his letter of 1 February 1990 to the complainant rejecting her request of 29 September 1989 for review.

(2) There was no error of law in the impugned decision. CERN carried out a proper analysis of the complainant's duties, duly applied to them the established criteria and accordingly came to the correct decision on the grading of her post. The Organization discusses the degree of responsibility the complainant is given. It points out that the Director-General has discretion in the matter of evaluation and that the complainant fails to show any flaw in his exercise of that discretion that would warrant setting the decision aside.

(3) The Director-General did not overlook essential facts or draw mistaken conclusions. The personal position of other officials who are not parties to the present case and about whom the complainant is relying on information from confidential files is irrelevant. The only proper comparison is between the complainant's duties and those of other CERN posts. CERN rejects the complainant's own analysis of the nature of her duties and submits that comparison of her job information form with forms relating to the posts she mentions shows that those posts are more responsible.

The Organization invites the Tribunal to dismiss the complainant's claims as devoid of merit and award costs against her.

D. In her rejoinder the complainant enlarges on her original pleas and seeks to refute CERN's. She maintains that CERN committed procedural errors by taking account of "views and recommendations" other than the Appeals Board's, as the Organization does not deny. Even supposing that the Director-General may take account of such other views - which is moot - in this case he failed to afford the complainant the safeguards she is entitled to: she ought at least to have been told what the other "views and recommendations" were and to have had a chance to comment. It is wrong that the results of the annual grading exercise should not have been published since 1988 and that officials should not be told of the decisions taken and the evaluations made.

The text of the impugned decision does not state the reasons for it; indeed neither before nor after nor at the same time as that decision was the complainant told what the reasons for it were, and she does not know them even yet.

The complainant enlarges on the analysis of her duties in support of her submission that CERN made mistakes of law, disregarded essential facts and drew obviously wrong conclusions from the facts.

E. In its surrejoinder CERN develops the reasoning in its reply and again addresses the pleas the complainant enlarges on in her rejoinder. It contends that there were no procedural errors or mistakes of law, that the impugned decision was duly substantiated and that there were no other flaws of the kind that would warrant setting aside the action the Director-General took within the bounds of his discretion.

CONSIDERATIONS:

1. After carrying out the yearly "Staff Review" for 1989, in which it examined the nature of the complainant's duties in the General Administration Division, CERN confirmed the grading of her post at 5 at 1 July 1989. On 29 September 1989 she submitted an internal appeal against the grading of her post and the failure to promote her. The Organization had an evaluation report made and the report, dated 13 November 1989, confirmed the grading of her post. The Joint Advisory Appeals Board, to which her appeal was referred, recommended upgrading her post to 6, but on 1 February 1990 the Head of Administration rejected her appeal on the Director-General's behalf, and that is the decision she is impugning.

The reasons for the decision

2. Her first objection to that decision is that no reasons are given for it: the Head of Administration's letter of 1 February 1990 notifying the decision to her refers to the Appeals Board's recommendations and merely says that "After consideration of the various views and recommendations submitted" the appeal failed.

The procedure CERN follows in an appeal of this kind is to constitute a file, to which the staff member has access,

and which consists of the "job information form", the post evaluation report, and submissions and evidence from the Administration. On that basis the Board makes a recommendation. The Administration discusses the recommendation with the Board and takes the decision.

The reasons for CERN's decision in this case are evident from the file, the implication in the words used being that it accepted the "views and recommendations" on the file that there should be no upgrading. Those views and recommendations are set out clearly enough in the documents for the complainant to have been left in no doubt about the reasoning for the decision and there are no grounds for her contention that it was based on opinions that do not appear on the file.

Her first objection fails.

The alleged breach of the rules on grading and disregard of essential facts

3. Her other two objections will be taken together. One is that, contrary to the rules on grading her post was not put at the grade that corresponded to its functions and requirements, and the other is that the Administration failed to take account of essential facts. In particular she alleges that some of her duties are more important than those carried out by staff in a higher grade, that she took over the duties of a staff member who retired and had had grade 7, and that another secretary, in the Personnel Division, who has grade 7 performs duties that are much the same as her own.

The job information form for 1989 lists under Part I, as completed by the complainant, additional "elements" for that year, namely helping staff and others to find lodging, keeping in touch with estate agents and owners, advising and helping tenants and making statistics. But in Part III of the same form the Personnel Division comments that even though the complainant has been given further duties, as was foreseen in the preceding staff review, the degree of responsibility, initiative and judgment shown at present does not correspond to grade 6.

The post evaluation report dated 13 November 1989 observes under point 3 that "the diversity and complexity of the work and the duties generally inherent in such posts might warrant grade 6 provided that the responsibility, initiative and judgment the incumbent showed also matched what that grade ordinarily required"; but her direct supervisor's assessment of her "fully bears out" the evaluation of her job. The degree of responsibility she shows is "limited" in that her supervisor has to check carefully any text she has typed and there has to be "strict supervision" of the way in which she organises her work and carries out her various duties, which very often means "changing her priorities, making sure she meets deadlines and putting mistakes right". As for "Initiative and judgment", the comment is that matters of interpretation are almost systematically put to her supervisor for a decision and she "cannot tackle her work efficiently".

In its report of 14 December 1989 the Joint Advisory Appeals Board, in support of its recommendation in favour of upgrading her post to 6, cites the fact that since 1988 she has been in charge of the housing service and acting as secretary to the General Services Group. The Board takes a different view of her work. It says that she is "taking proper care" of the technical side of the housing service, "gets through to applicants fairly well" because she is fluent in three languages, shows a "great degree of responsibility" and initiative in sometimes difficult working conditions, and is "doing a very useful job".

4. It is clear from the foregoing that there was a difference of opinion that had to be resolved. The Head of Administration accepted the view that the degree of responsibility, initiative and judgment the complainant was showing did not meet the requirements of grade 6. There was evidence on which such a judgment could be based and the Tribunal will not substitute its own view on the matter for the Organization's.

There is no proof of disregard of any relevant fact. The essential point is that, though the complainant's duties might warrant an upgrading if she showed a higher degree of responsibility, initiative and judgment, it was proper to take the view that she did not, and therefore her post does not warrant the higher grade. The conclusion is that it bears the grade that corresponds to its requirements and that the decision was taken in accordance with the Regulations and shows no formal or procedural flaw.

The comparison which she makes between her work and the work done by other staff members holding a higher grade is invalid because the essential ingredients of responsibility, initiative and judgment for the grant of a higher grade are missing in her case.

Costs

5. Since her main claim is dismissed so too is her claim to an award of costs; but the Tribunal will not entertain CERN's counter-claim to an award of costs against her.

DECISION:

For the above reasons,

The complaint and the Organization's counter-claim are dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and 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

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