

SEVENTY-FOURTH SESSION

In re ALBERTY (No. 3)

Judgment 1237

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. José Alberty against the European Organization for Nuclear Research (CERN) on 21 May 1992, the Organization's reply of 24 July, the complainant's rejoinder of 28 August and CERN's surrejoinder of 30 October 1992;

Considering Articles II, paragraphs 5 and 6, and VII, paragraph 1, of the Statute of the Tribunal, Rules I 2.01 and V 1.01 and 1.03 and Regulation R V 1.01 of the CERN Staff Rules and Regulations;

Having examined the written submissions and decided not to order hearings, 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's relations with CERN and his status there are explained in Judgment 1166 of 15 July 1992 under A.

This case is about a claim he put to the Organization for unemployment benefit. The material facts are the same as those set out under A in Judgment 1236, also delivered this day, but here he is impugning the letter of 21 February 1992 from the Director of Administration refusing his claim to unemployment benefit.

B. The complainant submits that by adjourning his internal appeal CERN showed that it had no intention of taking a decision within a reasonable time. For his part he believes that he has met the requirement that he exhaust the internal remedies open to him.

On the merits he argues that CERN has a duty to grant him both unemployment and pension insurance coverage, and he cites Rule V 1.01 and a paper recently put to the Organization's Finance Committee. As in his first two complaints he contends that he had a contract which made him a staff member of the Organization and that by virtue of that contract he is entitled to unemployment benefit under Chapter V of the Staff Rules.

He seeks the quashing of the decision of 21 February 1992, any consequent relief and costs.

C. In its reply CERN submits that the complaint is irreceivable because the complainant has not exhausted the internal means of redress. On 15 January 1992 he filed an internal appeal against CERN's refusal to grant him unemployment benefit. The Organization replied on 21 February that since he had lodged with the Tribunal on 9 October 1991 a complaint that required a ruling on the nature of his relationship with it it was staying the appeal proceedings until that ruling was made. It so decided for the sake of fair process and on the assumption that his original employer had taken him back in October 1991 and he was therefore in gainful employment. Since the internal appeal proceedings were still pending the decision of 21 February 1992 was not a final decision within the meaning of Article VII(1) of the Tribunal's Statute. After the publication of Judgment 1166 CERN resumed the appeal proceedings by summoning the Joint Advisory Appeals Board to take up the case.

CERN puts forward three pleas on the merits.

Its first is that to qualify for unemployment benefit someone must have been in its employ. The complainant was not.

Secondly, he has no entitlement to unemployment benefit under the Staff Rules and Regulations. His plea of breach of Rule V 1.01 rests on a misreading of the material rules. The protection they prescribe against unemployment applies only to "established" members of the personnel, not all of them, in line with the rule that social security and

the employment relationship go together. There is nothing at odds with that rule in the Finance Committee paper he produces.

Lastly, CERN pleads what it sees as the whole purpose of unemployment insurance. Unemployment benefit is reckoned as a percentage of final basic salary. Since the complainant never got a salary from the Organization he had no claim to unemployment benefit either.

D. In his rejoinder the complainant points out that although CERN says that the internal appeals proceedings have resumed its reply makes the outcome a foregone conclusion. Citing Judgment 1166 and several CERN documents, he maintains that it did grant him pay. His other arguments are those he put forward in the rejoinder to his second complaint.

E. In its surrejoinder CERN submits that the rejoinder raises no new issue and it presses its pleas. The complainant may not, it says, properly take it to task for not applying to the Tribunal for a stay of proceedings when he filed his complaint before knowing the outcome of his internal appeal.

CONSIDERATIONS:

1. Judgment 1166 of 15 July 1992, which dismissed the complainant's first case, explained under 1 the terms of his appointment. This case is about his entitlement to unemployment insurance coverage with CERN.

After getting CERN's memorandum of 14 August 1991 telling him that financial support from the Organization would end at 30 September 1991 he made a claim on 9 October to unemployment benefit. By a decision of 26 November 1991 the Head of Administration answered on the Director-General's behalf that the memorandum had not ended his contract with CERN and he was not entitled to unemployment benefit.

He filed an appeal against that decision. In his reply of 21 February 1992 the Director of Administration reaffirmed CERN's view that it was not his employer and he was not entitled to unemployment benefit, but said it would adjourn the internal appeal proceedings until the Tribunal had ruled on his first complaint objecting to the non-renewal of his appointment. That is the decision now impugned.

2. In the Organization's submission the complaint is irreceivable because the complainant has failed to exhaust the internal means of redress. But there is no need to rule on the plea since his complaint is devoid of merit and fails anyway for the reasons set out below.

3. In support of quashing the decision of 21 February 1992 he cites Rule V 1.01 of the Staff Rules, which establishes a social security scheme for CERN staff. Rule V 1.03 states that "the Staff Regulations shall lay down the conditions and terms of this scheme" and Regulation R V 1.01 of the Staff Regulations that the social security scheme referred to in Rule V 1.01 shall include "such measures with respect to unemployment as may be approved by the Council" of the Organization for "established members of the personnel". The arrangements are set out in Administrative Circular No. 4 (Rev. 1) of March 1984 on unemployment insurance, which stipulates in paragraph 1 that the staff covered shall be entitled to unemployment benefit.

As was held in Judgment 1166 under 2, unpaid associates come under "non-established members of the personnel" by virtue of Rule I 2.01. Being an unpaid associate the complainant was not entitled to unemployment benefit, which CERN grants only to "established members of the personnel".

4. There being no need to take up the pleas in his rejoinder, which are either superfluous or immaterial, his complaint must fail. So too does his claim to costs.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

William Douglas
E. Razafindralambo
Michel Gentot
A.B. Gardner

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