

SEVENTY-EIGHTH SESSION

***In re* MANGEOT (No. 4)**

Judgment 1399

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Bernard Mangeot against the European Organization for Nuclear Research (CERN) on 25 February 1994, CERN's reply of 29 April, the complainant's rejoinder of 29 July and the Organization's surrejoinder of 3 October 1994;

Considering Article II, paragraphs 5 and 6(a), of the Statute of the Tribunal;

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 career at CERN is summed up under A in Judgments 1184 and 1290, which ruled on his first two complaints. Facts relevant to the present dispute also appear under A in Judgment 1375, on his third complaint.

His fixed-term appointment at CERN expired on 28 February 1993. In the weeks before he left he asked the head of Personnel Services orally whether he stood to benefit from what is known as "outplacement", a service intended to help anyone whose appointment is ending to find employment. On 24 February 1993 the head of Personnel Services instructed him to submit a written claim to the Leader of the Personnel Division before his contract ran out.

In a registered letter dated 18 March the head of Personnel services observed that he had not yet put in any claim, gave him until 20 April to do so and warned that CERN would meet no claim from him thereafter. But the Organization sent that letter to the wrong address and he never received it.

By Judgment 1290 of 14 July 1993 the Tribunal dismissed his claim to the quashing of a decision not to extend his appointment. Thereupon the complainant, in a letter of 6 August, asked the Leader of the Personnel Division to grant him the benefit of outplacement. The Leader of the Personnel Division refused in a letter of 2 September, to which was appended a copy of the letter of 18 March. In a letter of 13 September the complainant sought review. By a letter of 13 October the Leader of the Personnel Division replied that he could not meet the claim, which he said was time-barred.

By a letter of 4 November the complainant informed the Director-General that he intended to lodge an internal appeal against the decision of 13 October. In a letter of 11 November the Director-General told him that he had passed on his "request" to the Director of Administration.

In a letter of 30 September 1993 to the Director of Administration the complainant had asked for disclosure of the minutes of a meeting the Joint Advisory Appeals Board had held on 24 June 1993. The Board had then taken up his internal appeal of 17 March 1993, which he had lodged after raising objections on 26 February to the Administration's refusal to put a performance appraisal dated 31 May 1991 in his personal file. The Board recommended allowing his appeal and on 6 August 1993 the Director-General endorsed its recommendation.

By a letter of 18 October 1993 the Director of Administration reminded him that at the Board's meeting of 24 June he had himself agreed to the making of a tape recording of the hearings instead of minutes and he could listen to the recording whenever he liked.

In a letter of 22 November the complainant again asked for the minutes of the meeting of 24 June along with those of another meeting the Board had held on 9 February 1993. In the absence of a reply he lodged a second internal appeal on 8 December against CERN's refusal to send him the minutes. By a letter of 13 December the Director-

General again told him he had referred his "request" to the Director of Administration.

In a letter of 15 December 1993 the Director of Administration informed him on the Director-General's behalf that since he had left the Organization his two internal appeals were irreceivable. That is the decision he is impugning.

B. The complainant submits that the rejection of his internal appeals of 4 November and 8 December 1993 as irreceivable goes against precedent: the Organization entertained an appeal which he lodged on 17 March 1993, after he had left. CERN's refusal to take up his other appeals marked a radical shift in policy and was in breach of acquired rights.

He alleges misuse of authority by the Director of Administration, who was not empowered to reject his appeals: Regulation R VI 1.06 vests sole authority for such matters in the Director-General. He charges CERN with infringing his right of appeal.

On the merits he contends that CERN has a duty to provide minutes of the Board's meetings. Though he agreed to there being a tape recording in lieu of minutes he did not waive his right - conferred in the Staff Rules and Regulations - to a written record of hearings. The Organization broke the rule on adversarial proceedings and impaired his right of defence.

He has several arguments to support his claim to outplacement. Not until 6 September did he get the letter of 18 March 1993 containing an implied promise from the head of Personnel Services to grant any request from him up to 20 April; to rely on that deadline when he did not get the letter in time is to cancel the promise and prevent him from having CERN keep it.

In view of the time the head of Personnel Services gave him he does not see why he had to claim outplacement before he left.

The decisions of 2 September and 13 October 1993 are arbitrary and discriminatory since CERN has granted outplacement to other former officials in like case.

The decision of 15 December 1993 is a "dilatatory ploy". The complainant has not yet found another job.

He seeks the quashing of the decision of 15 December 1993 and wants the Tribunal to order CERN to produce the minutes of the Appeals Board's meetings of 9 February and 24 June 1993 and grant him outplacement. He claims material damages in the amount of 6,811 Swiss francs a month from 25 February 1994, when he filed his complaint, to the date of judgment; moral damages in the amount of 25,000 francs; and costs.

C. In its reply CERN submits that the complaint is irreceivable and an abuse of process, or even vexatious. First, the complainant's internal appeal about outplacement is time- barred. CERN's entertaining an appeal dated 17 March 1993 is not a true precedent since he had originally filed it on 26 February 1993 while still in the Organization's employ. He has no cause of action. The rules lay no duty on CERN to grant him outplacement, a form of help it offers but seldom. Secondly, he shows no cause of action insofar as he is objecting to the refusal to supply the minutes of two Board meetings. On that score CERN has given him satisfaction: he may listen to the tapes whenever he wants.

The Director-General having explicitly delegated authority to the Director of Administration, the Director's decision of 15 December 1993 shows no procedural flaw or misuse of authority.

Since the letter of 18 March 1993 failed to reach the complainant in time the promise in it simply lapsed.

As to alleged discrimination CERN says it complied with the rule on equal treatment and has never entertained a claim from a former staff member over five months after the end of his appointment. In its letter of 18 March 1993 it gave the complainant until 20 April to submit a claim and that was a reasonable deadline. In any event the claim he filed on 6 August is time-barred.

D. In his rejoinder the complainant maintains that his complaint is receivable.

Should it prove true, as CERN contends, that the Director- General delegated authority to the Director of Administration to consider his two internal appeals, that would be in breach of the rule against bias and of the

Director-General's note of 17 February 1992 stating the policy on delegation of authority to sign. The note requires that the Director-General himself answer any appeal against a decision by the Director of Administration.

On the merits the complainant argues that it was CERN's fault he was unable to claim outplacement before the end of his appointment. It took too long to tell him what to do.

CERN had his correct address and in any event its own mistake cannot release it from its promise to honour a claim from him.

As to its refusal to send him the minutes, it failed to warn him that he himself would not get any record either in writing or on tape if he consented to a tape recording instead of proper minutes.

E. In its surrejoinder CERN points out that the Director-General's letters of 11 November and 13 December 1993 never acknowledged the filing of internal appeals: the Director of Administration said that his "requests" did not amount to appeals.

It presses its other pleas in full.

CONSIDERATIONS:

1. CERN recruited the complainant in 1985 as an "operation technician". It granted him several fixed-term contracts, the last of which it extended to 28 February 1993 but no further. In Judgment 1290 of 13 July 1993 the Tribunal dismissed a complaint of his seeking the quashing of a decision of 27 August 1992 not to renew his appointment. After he left the Organization he followed two quite separate courses of action. Each of them culminated in rejection of his claims and in an internal appeal which the Director of Administration told him was irreceivable in a letter dated 15 December 1993. That is the decision he challenges.

2. The first bone of contention is CERN's refusal of his claim to "outplacement", a service intended to help in finding employment for those who leave the Organization. Before he left he was orally invited to put in such a claim. CERN wrote him on 18 March 1993 a letter which he seems not to have got in time because it was sent to the wrong address. It invited him to claim outplacement by 20 April 1993 and said that "any later claim" would be "rejected". Not until 6 August did he claim "the benefit of outplacement". The Leader of the Personnel Division refused the claim in a letter of 2 September which was confirmed on 13 October. In a letter of 4 November 1993 to the Director-General the complainant objected to the decisions and asked that his letter be "treated as lodging an internal appeal".

3. The second head of dispute is altogether different. On 17 March 1993 the complainant lodged an internal appeal against a decision not to put in his personal file a memorandum about the appraisal of his performance. The appeal went to the Joint Advisory Appeals Board and on 1 July 1993 the Board recommended allowing it. The Director-General did so in a decision of 6 August 1993. Having thus got satisfaction of his claim in substance, he asked on 30 September 1993 that he be given the minutes of the Board's meeting and thereby set off further dispute. The Administration retorted that he had formally agreed that a tape recording of the discussion might replace minutes and he was free to listen to the recording whenever he chose. Being dissatisfied with that reply, which CERN gave him on 18 October 1993, he submitted a claim to the production of minutes of that meeting and of an earlier one. Having got no answer he submitted an internal appeal to the Director-General on 8 December 1993.

4. His two appeals prompted a single reply dated 15 December 1993 from the Director of Administration, who said on the Director-General's behalf that his claims failed because "according to Rule VI 1.01 only a member of staff may lodge an internal appeal".

5. The complainant thereupon filed directly with the Tribunal a complaint which seeks the quashing of the decision of 15 December 1993 rejecting his internal appeals, of the decisions of 2 September and 13 October 1993 about outplacement and of the one of 18 October 1993 rejecting his claim to the production of minutes of the Joint Advisory Appeals Board.

6. The Tribunal will consider in turn the three issues of receivability that the complaint raises.

7. The first is whether the complainant may come to the Tribunal if he is no longer on the staff of CERN and that is the reason why the Director-General has declined to entertain his internal appeal. There need be no doubt about the

answer. Whatever the merits of CERN's reply, which is taken up below, the Tribunal is open to any official, "even" - as Article II(6)(a) of the Statute puts it - "if his employment has ceased", who lodges a complaint alleging non-observance of the terms of his contract or of the rules that apply to him. The complainant, a former staff member of CERN, is alleging breach of safeguards he claims by virtue of circumstances prior to the end of his appointment. He has exhausted the internal means of redress because CERN's attitude precluded his trying them, and his complaint may not be declared irreceivable on that account.

8. The second issue the Organization raises is whether his complaint is to be deemed an abuse of process or treated as such. CERN regards the point as serious because, it says, his real intent is "above all to criticise and challenge any action or decision it takes". As the Tribunal acknowledged in Judgment 885 (in re West No. 10), an organisation may find it awkward in all sorts of ways to defend its case when a complainant is stubbornly bent on indiscriminate exercise of the right of appeal. But the issues the present complainant has raised are not such that the Tribunal sees his complaint as any abuse of his right of appeal. That right is a safeguard for organisation and staff alike and the exercise of it is to be denied only in extreme and quite exceptional cases.

9. CERN submits that his claim to the production of minutes of the Joint Advisory Appeals Board is irreceivable because he shows no cause of action. The plea fails. However his claim may fare he sees the lack of minutes as breach of his rights under the Staff Rules and Regulations. That amounts to a cause of action.

10. On the merits the Tribunal will first consider whether it was lawful for the Director of Administration in the letter of 15 December 1993 to reject the complainant's internal appeals on the grounds that he was no longer a staff member of CERN. Inasmuch as Rule VI 1.01 confers the right of appeal on "every member of the personnel" it may be that someone does forfeit that right on leaving the Organization and so ceasing to be a staff member provided that the issues they are objecting to or the decisions they are challenging did not occur before they left. There is no danger thereby of any miscarriage of justice since, as stated above, a former official who alleges breach of contract or of the rules he was subject to may still come to the Tribunal.

11. The complainant contends that the Director of Administration, who took the decision, was acting ultra vires and was perforce hostile to him. But the plea is unsound: there was nothing to keep the Director-General from empowering the Director to answer claims put to him, and there is no evidence to bear out the charge of partiality.

12. As for the refusal of outplacement, there is no provision in the rules on the subject. The only document on outplacement is a decision the Council of CERN took on 14 December 1989 approving efforts aimed at encouraging the mobility of staff "using the services of outplacement agencies and easing the reintegration in national social security systems". That decision confers no particular right on staff. Obviously if outplacement is on offer it must be available to everyone it is supposed to help and must be given proper publicity so that everyone can benefit equally. But here it is plain on the evidence that the complainant was told about it and invited to apply. It is a pity that CERN's letter of 18 March 1993, which observed that he had not yet applied and gave him until 20 April to do so, went astray and he got it only much later. But he has only himself to blame for tarrying until 6 August 1993, over five months after he had left. His filing a complaint against non-renewal - which the Tribunal dismissed on 13 July 1993 - does not excuse his delay in claiming a service that CERN is bound to offer only in the few weeks before and after separation. And there is no evidence of arbitrary or discriminatory treatment. So his claim to the quashing of the decision refusing outplacement fails because of the date at which he made the claim.

13. CERN's refusal to produce minutes of meetings of the Joint Advisory Appeals Board in no way impaired his interests insofar as the hearings were recorded on tape to which CERN has expressly allowed him access from the outset. Besides, he himself agreed that there should be no minutes but only a tape-recording of the meeting of 24 June 1993 at which the Board recommended allowing his appeal. Even though such practice is not in line with Regulation R VI 1.09 the omission is not in the circumstances a serious one.

14. Since the claim to quashing of the decisions fails so too do the claims to awards of material and moral damages and to costs.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas

Michel Gentot

P. Pescatore

A.B. Gardner

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