

EIGHTY-EIGHTH SESSION

***In re* Ansorge (No. 3)**

Judgment 1911

The Administrative Tribunal,

Considering the third complaint filed by Mr Wolfgang Richard Ansorge against the European Southern Observatory (ESO) on 17 November 1998 and corrected on 16 February 1999, the ESO's reply of 18 May, the complainant's rejoinder of 25 August and the Observatory's surrejoinder of 18 October 1999;

Considering Articles II, paragraph 5, and VIII 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. Facts relevant to the complainant's case are set out under A in Judgments 1739 and 1862 in which the Tribunal ruled on his first and second complaints.

The complainant held the post of product assurance manager at Garching in Germany. On 19 August 1998 the Head of Administration wrote to him on the Director General's behalf. In that letter, which is the impugned decision, he referred to a letter sent to the complainant on 21 November 1996 and confirmed that his contract would not be extended or renewed upon its expiry on 30 April 1999.

B. Citing the case law the complainant puts forward several pleas. The first is that the ESO was in breach of its obligation to state the reasons for an administrative decision adversely affecting a staff member. In his letter of 19 August 1998 the Head of Administration merely referred to a letter of 21 November 1996 in which the Head of Personnel informed the complainant that he would not be given an indefinite contract and that his current contract would probably not be renewed beyond a period of two-and-a-half years because by then he would have finished the work for which he had been recruited.

The complainant asserts that an organisation has a duty to honour "legitimate hopes" that it has raised for the renewal of a staff member's contract. He contends that the duties of product assurance manager are not due to end until 2006 as they are essential to the continuation of the Very Large Telescope (VLT) project. Citing two notices of vacancy for posts related to his duties, published on 22 March 1998 and 2 January 1999, he seeks to show that his duties were necessary beyond 30 April 1999. He further observes that a "Global Project Plan" concerning the construction of a sub-system of the VLT, dated 28 October 1998 and published by his supervisor, indicates that product assurance management has been assigned to another official.

At no time did the ESO consider whether there was any other work he could do in the Observatory's interests. Therefore, it failed in its duty to give him preference for reassignment if a suitable job was available.

He also accuses the Observatory of abuse of authority: the only possible explanation for its refusal to renew his contract is that it wanted to "get rid of him". The ESO has not acted in its own interests, since, in order to replace him, it will have to recruit two people with "less experience and hence less rigour". It has, therefore, failed in its duty to avoid causing him unnecessary and undue injury.

Lastly, by deciding unlawfully not to renew his contract seven years before his retirement, the ESO has caused him material and moral injury "of extreme gravity", since he will have difficulty in finding another job.

He seeks the quashing of the decision of 19 August 1998 and all consequent redress. He claims costs.

C. In its reply the Observatory points out that the complainant did not file an internal appeal.

It denies wanting to get rid of him. The complainant has misread the publication of 28 October 1998. The VLT sub-system requires only eighty days' work by a product assurance manager for the period 1999-2001. It would make no sense to take someone on for so small an amount of work. The duties involved will be entrusted to other members of staff. Besides, the complainant's post was temporary and was necessary only for the instrumentation of the VLT project. Now that that operation has been completed, the post has become redundant.

The reason for the impugned decision is stated in the letter of 21 November 1996 informing the complainant that his duties would end in 1999. After consideration, the Director General concluded that there had been no change in the situation and so his contract should not be renewed.

The complainant could be assigned to neither of the two posts he mentions: one was for a local member of staff and the other did not match his profile. The Director General did explore the possibilities of reassigning him but no suitable post was available.

The complainant was not treated unjustly. The ESO regrets the difficulty he has encountered in finding another job but asserts, citing the case law, that it formed part of the risk inherent in "the accepted practice of international organisations to employ staff on the basis of fixed-term contracts".

D. In his rejoinder the complainant states that in Judgment 1739 the Tribunal stressed that the letter of 21 November 1996 said only that "his post was not an indefinite one and few permanent appointments were to be had anyway".

He asserts that the ESO is inconsistent: by excluding a product assurance manager from only one of the VLT sub-systems, it has admitted that the duties of such a manager are necessary to the continuation of the other components of that project.

The redistribution of his former duties among other members of staff is impossible from a technical standpoint *as it would imply halting the development of the VLT project. Besides, it is "likely seriously to endanger the safety" of those working on the site.

The complainant maintains that the post of project assurance manager is linked to the completion of the VLT project, since the fact that he would not reach retirement age before completion of the project was a "decisive element" in his being selected for the post. He adds that the ESO made no serious attempt to reassign him.

The Observatory did not reply to his plea of abuse of authority. Furthermore, it was "very obviously biased" against him: as chairman of the Staff Committee he was "implicitly" the target of some "harsh" comments made by the Director General at a briefing on 11 June 1997.

E. In its surrejoinder the Observatory points out that in Judgment 1862 the Tribunal found his arguments concerning the abuse of authority to be unfounded.

It is not for the complainant to say that his post is indispensable. Only the Director General and the ESO Council have the authority to identify posts necessary to the fulfilment of the Observatory's objectives.

CONSIDERATIONS

1. The working relations between the complainant and the ESO gave rise to Judgments 1739 and 1862, to which the Tribunal refers.

The complainant joined the ESO on 1 May 1991 under a fixed-term contract for three years. He was assigned to the Very Large Telescope (VLT) project as product assurance manager. On 19 November 1993 his contract was renewed for another three years until 30 April 1997.

On 2 February 1995 the staff of the ESO were informed that, over and above his other duties, the complainant would be in charge of safety and security.

By a letter of 30 October 1996 the Head of Personnel offered the complainant a two-year extension of his contract, until 30 April 1999.

On 21 November 1996 the Head of Personnel sent him a further letter, identical in content to that of 30 October but for the addition that he would discuss with him in due course his duties as safety manager.

On 16 January 1997 the complainant signed the offer of a two-year extension adding the words "without prejudice to my rights" and on the same day filed a notice of appeal with the Director General against the refusal of an indefinite contract. He impugned the Director General's refusal to reverse that decision in a complaint which the Tribunal ruled on in Judgment 1739.

On 3 April 1997 the ESO staff were informed that the Head of Administration was to replace the complainant as safety manager. The complainant appealed against that decision. The Director General rejected the appeal and upheld the decision. The complainant challenged it in a second complaint on which the Tribunal ruled in Judgment 1862.

2. By a letter of 19 August 1998, notified on 7 September, the Head of Administration informed the complainant that his appointment would not be extended or renewed and that he was to treat the letter as official notice under Article R II 6.03 of the Staff Regulations. That is the decision he is now impugning.

3. The complainant seeks the quashing of the Director General's decision as notified by the Head of Administration's letter of 19 August 1998, with all consequent redress. He also claims costs.

4. He submits that the impugned decision is unlawful. First, the Observatory was in breach of its obligation to state the reasons for an administrative decision adversely affecting a staff member, particularly one terminating an appointment. Secondly, it disregarded the principle that a staff member on a fixed-term contract has a rightful expectation to renewal, thereby failing in its obligation to allow staff preference for reassignment if a suitable job is available. Thirdly, the decision shows abuse of authority. Fourthly, the ESO failed in its duty not to impair the dignity and good name of staff and not to cause them unnecessary and undue injury.

5. The complainant contends that the ESO failed in its obligation to state the reasons for an injurious administrative decision, particularly one terminating an appointment. He submits that the Observatory failed to substantiate the injurious decision of 19 August 1998 not to renew his fixed-term contract.

In rebuttal, the ESO argues that it did substantiate the decision which is impugned: its earlier decision of 21 November 1996 explained that the complainant's duties as product assurance manager would end in 1999 and that his contract would not be extended beyond 30 April 1999. That situation remained unchanged.

It adds that the Director General reconsidered the situation before deciding not to extend or renew the complainant's contract.

The Tribunal notes that nothing in the evidence bears out the ESO's allegations. In particular, the Observatory adduces no evidence in support of its assertion that the Director General reconsidered the situation.

The impugned decision of 19 August 1998 refers to the letter of 21 November 1996. That letter had explained that the complainant's duties as product assurance manager for the VLT project would not be needed after the expiry of his two-year contract, and its main purpose was to inform him of the decision not to give him an indefinite contract since his post was not a permanent one and only a limited number of indefinite contracts were available. The purpose of the impugned decision was also to notify the non-renewal of the contract expiring on 30 April 1999, in accordance with Article R II 6.03 of the Staff Regulations.

6. The complainant rightly observes that "it is difficult to see how a letter predating the impugned decision by two years can account for it, unless that decision had already been taken two years previously". The Tribunal endorses that observation and considers that, even though the letter of 21 November 1996 stated

that the complainant's contract would not be extended beyond 30 April 1999, the reference to that letter cannot be interpreted as the sole reason for the decision of 19 August 1998 not to renew his contract. It is a general principle of the international civil service that there must be a valid reason for any decision not to renew a fixed-term contract and that the reason must be given to the staff member (see Judgment 1154, *in re* Bluske).

An official whose fixed-term contract is reaching expiry must be informed in a timely manner of the real reasons for the decision not to renew it.

7. In this case a mere reference to a letter sent to the complainant nearly two years previously cannot, in the absence of any other indication as to the real reasons for the decision to be taken, exempt the Observatory from stating the grounds clearly. The more so as the situation would appear to have changed: the ESO admits that a small part of the project was to continue beyond 30 April 1999; and two vacancy notices were published, for the posts of safety engineer and systems engineer. All that warranted a more explicit account from the Director General of why the complainant's contract could not be renewed.

8. Accordingly, it may be concluded that the ESO failed to fulfil its obligation to account for an administrative decision adversely affecting a staff member, in this case the decision not to renew the complainant's fixed-term contract, thereby impairing his dignity and causing him undue and unnecessary injury.

The decision of 19 August 1998 must, therefore, be set aside; the Tribunal need not entertain his pleas concerning abuse of authority and disregard of the principle of legitimate expectation, which, in any event, would have failed given the circumstances of the case.

9. The Tribunal considers that by deciding not to renew his contract the ESO caused the complainant material injury. It also considers that the complainant suffered moral injury warranting redress. It, therefore, awards him 50,000 German marks in compensation for injury under all heads. However, the case will not be sent back to the ESO for reconsideration and shall be regarded as having been settled fairly and finally by this judgment in accordance with Article VIII of the Statute of the Tribunal.

10. The ESO shall bear the costs, which the Tribunal sets at 20,000 French francs.

DECISION

For the above reasons,

1. The decision of 19 August 1998 is set aside.

2. The Observatory shall pay the complainant 50,000 German marks in compensation for injury under all heads.

3. The Observatory shall pay the complainant 20,000 French francs in costs.

In witness of this judgment, adopted on 17 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

Catherine Comtet

