

EIGHTY-NINTH SESSION

In re Essers

Judgment No. 1955

The Administrative Tribunal,

Considering the complaint filed by Mrs Maria Gerarda Essers against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 12 August 1998 and corrected on 26 March 1999, Eurocontrol's reply of 26 July, the complainant's rejoinder of 20 September, her amendment thereto of 20 October and the Organisation's surrejoinder of 3 December 1999;

Considering Articles II, paragraphs 5 and 6, and VII 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, a Dutch citizen, is the former wife of Mr Leonardus Hubertus Julius Geurten, a deceased Eurocontrol official. He was on active service with Eurocontrol from 1973 to 1 June 1993, at which point he was granted an invalidity pension. He died on 22 July 1994.

The complainant married Mr Geurten in 1960. In a letter dated 18 March 1988 the complainant informed Eurocontrol that Mr Geurten was required to pay her a monthly allowance pursuant to an interlocutory order. However the final divorce decree pronounced on 19 April 1990 did not grant her a monthly maintenance allowance. The complainant agreed to a lump sum payment of 90,000 Dutch guilders "in full and final settlement of her spouse's legal obligation to pay her maintenance" in a recorded divorce settlement of 20 December 1989. This payment was satisfied by her former husband and monthly payments were ceased.

On 4 August 1994 the complainant wrote to Eurocontrol concerning an application for a survivors's pension. On 19 August 1994 Eurocontrol replied that she was not entitled to a pension under Article 27 of Annex IV of the General Conditions of Employment governing Servants at the Eurocontrol Maastricht Centre, which provides that "the divorced wife of a servant or a former servant shall be entitled to a survivor's pension, as defined in this chapter, provided that, on the death of her former husband, she can justify entitlements on her own account to receive maintenance from him by virtue of a court order or as a result of a settlement between herself and her former husband".

In a letter of 16 January 1996 her legal counsel forwarded the record of the mutual agreement to Eurocontrol, again inquiring about the complainant's entitlement to a survivor's pension. On 23 January 1996 the Head of the Pensions Section confirmed the refusal dated 19 August 1994. On 25 March 1996 the complainant requested the relevant provisions of the General Conditions of Employment; these were subsequently sent to her.

On 10 July 1996 her counsel disputed the contents of the refusal letter of 23 January and informed Eurocontrol that the complainant had agreed to the 90,000 guilders lump sum payment from her ex-husband in lieu of monthly maintenance payments while maintaining a reservation on her rights to a survivor's pension. In a letter of 13 August the Head of the Pensions Section reaffirmed the decision denying the survivor's pension.

On 18 February 1997 the complainant once again applied to Eurocontrol for a survivor's pension. In a letter of 7 October her legal counsel urged Eurocontrol to take action regarding this application and said that if this were not done she would bring an appeal. On 20 October 1997 Eurocontrol sent her counsel information on the procedures for filing complaints, the relevant provisions of the General Conditions of Employment, and the Tribunal's address.

On 17 February 1998 her legal counsel submitted a request to the Director General that he award the survivor's pension. On 2 June the Agency rejected this request. That is the impugned decision.

B. The complainant argues against the Agency's interpretation that the lump sum payment she agreed to cannot be considered as alimony. She submits that the difference between a monthly maintenance payment and lump sum payment is "juridically irrelevant" and that both should be considered as "meeting the cost of living". She admits that she withdrew her request for monthly maintenance payments upon acceptance of the lump sum payment from her former husband, but reserved her right to claim his pension. She argues that the method of payment does not affect the legal obligation to pay maintenance.

She contends that under Dutch law she has a right to the survivor's pension because Dutch law bases the right on payment of the premium and the number of years married and is not conditioned on an award of monthly alimony payments. By applying the Organisation's rules over national legislation surviving spouses of Eurocontrol officials are discriminated against compared to other Dutch citizens.

She asks the Tribunal to quash the decision denying her a survivor's pension and to order the Agency to pay her such a pension.

C. In its reply Eurocontrol objects to the receivability of the complaint on two separate grounds. First, it argues that the complaint is time-barred as the impugnable decision was communicated in the letter of 19 August 1994. Therefore the legal counsel's letter of 17 February 1998, appealing that decision, was out of time.

Secondly, even if it could be argued that the letter of 17 February was not time-barred, the complaint would still be irreceivable because the complainant has failed to exhaust all internal remedies before filing a complaint with the Tribunal.

Subsidiarily, it pleads that the complaint is without merit. The complainant accepted the 90,000 guilders as "payment in full" and in doing so also waived her application for maintenance. Since she was not receiving a monthly maintenance payment from her former husband at the time of his death she does not satisfy the requirements of Annex IV, Article 27, of the General Conditions of Employment.

D. In her rejoinder the complainant contests that the complaint is irreceivable. She says that the 19 August 1994 rejection of her claim did not inform her that she could submit a complaint or the applicable time limits for filing one; it was not until 28 January 1998 that her counsel received the final answer that it was the Agency, and not the Dutch judicial system, that had jurisdiction over the matter. She then duly filed her internal complaint on 17 February. Any correspondence before that time constituted "preparations to the internal complaint".

E. In its surrejoinder Eurocontrol notes that the complainant does not refute the facts as set out by it. It maintains that the complaint is time-barred and that the complainant's reasons justifying her delay, of several years, are not relevant.

On the merits it argues that the complainant has provided neither a court order nor any other proof that there was a settlement between herself and her former husband that would satisfy the requirements Annex IV, Article 27, of the General Conditions of Employment.

CONSIDERATIONS

1. The complainant is the divorced wife of a Eurocontrol official who died on 22 July 1994. On 4 August 1994, following a telephone conversation, she sent a letter to Eurocontrol containing information concerning her application for a survivor's pension. On 19 August 1994 the Agency informed the complainant that, in accordance with the statutory regulations in force, the divorced wife of a servant or former servant of Eurocontrol was only entitled to a survivor's pension if, at the date of the death of her former husband, she could justify entitlements to receive maintenance from him by virtue of a court order or as a result of a settlement between the former spouses. The Agency received a copy of a settlement between the former spouses, concluded on 20 December 1989 at the Maastricht District Court, stating that the husband had fulfilled his maintenance obligations through the immediate payment to the complainant of a sum of 90,000 guilders. The Head of the Pensions Section confirmed on 23 January 1996 that a survivor's pension could only be granted to the divorced widow of an official if she was entitled to a maintenance pension at the time of her former husband's death and that, as the complainant had received a lump sum in full and final settlement, she was not entitled to such a pension. Following several

exchanges of letters and a failed appeal to the European Ombudsman, the complainant's legal counsel submitted a request for a decision to the Director General on 17 February 1998. This was rejected on 2 June by a decision in which Eurocontrol confirmed that the complainant did not meet the conditions for entitlement to a survivor's pension set out in Annex IV, Article 27, of the General Conditions of Employment. That is the decision impugned in a complaint filed with the Registry of the Tribunal on 12 August 1998 and subsequently corrected.

2. Eurocontrol puts forward two pleas of irreceivability. Firstly, the decision not to grant the complainant's application was taken on 19 August 1994 and, in accordance with Article 91(2) of the General Conditions of Employment, should have been challenged internally within three months. Secondly, even if the letter of 17 February 1998 "had constituted a receivable request", the complainant should have then lodged an internal complaint, which she did not do.

3. Whatever the validity of these pleas, the Tribunal will not rule on them, since the complaint must in any case be dismissed on the merits. As Eurocontrol indicated to the complainant on several occasions, the relevant text is Annex IV, Article 27, first paragraph, of the General Conditions of Employment, which provides that:

"The divorced wife of a servant or a former servant shall be entitled to a survivor's pension, as defined in this chapter, provided that, on the death of her former husband, she can justify entitlements on her own account to receive maintenance from him by virtue of a court order or as a result of a settlement between herself and her former husband."

It is plain on the evidence that the settlement agreed to by the former spouses at the Maastricht District Court in December 1989 implied that the payment of a lump sum to the complainant by her husband was in full and final settlement of any obligation upon the latter to pay maintenance. Under this settlement, the parties agreed that "the husband will have fully met his maintenance obligations towards his wife if he pays her 90,000 guilders immediately". Following the payment of this sum, the wife withdrew her initial application for monthly maintenance, as certified by the divorce decree pronounced on 19 April 1990. Therefore, Eurocontrol was right in deciding that the complainant was no longer entitled to maintenance on the death of her former husband and could not claim the benefit of Annex IV, Article 27. To avoid this the complainant refers to the reservations that she says she or her legal counsel made on the occasion of the court settlement in 1989. However, no trace of these reservations is to be found either in the settlement or in the divorce decree. Moreover, the fact that the legal counsel of her former husband stated in October 1999 that the latter did not at the time intend to "cancel" her right to a widow's pension cannot interfere with the application of the statutory provisions which set out the rights of Eurocontrol officials and their dependants. Finally, even if the complainant maintains that Dutch law would permit the provision of an old-age pension to a surviving spouse, irrespective of the maintenance which could be claimed by the latter, this does not affect the application of the above statutory provisions.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

(Signed)

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

