

## THIRTY-SEVENTH ORDINARY SESSION

### *In re* WATSON

#### Judgment No. 285

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the European Organisation for the Safety of Air Navigation (Eurocontrol), drawn up by Mr. John Watson on 8 August 1975, the reply of the Eurocontrol Agency of 16 October 1975, the complainant's rejoinder of 10 November 1975 and the Agency's surrejoinder of 16 December 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and Articles 2, 62 to 64, 77 to 84, 86, 92 and 93 and Article 45 of Annex IV of the Eurocontrol Service Regulations and Article 14 of Annex I to the Eurocontrol Convention;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant was on the staff of the Eurocontrol Agency from 1 February 1965 to 30 April 1973 as a director at grade A.2. Having reached the age of sixty, he decided in September 1972 to retire and so informed the Director-General, stating that 30 April 1973 would be his last day with the Agency. Exercising his rights under Article 45 of Annex IV to the Service Regulations, he asked for payment of his retirement pension in Belgian francs, the currency of the host country of Eurocontrol headquarters, and not in sterling, the currency of his country of origin and, from the date of retirement, residence. The Director-General confirmed that choice by decision of 27 April 1973. The pension, expressed in Belgian currency - 34,100 Belgian francs - was regularly paid into the complainant's account with a bank in Belgium, and the arrangement worked to his satisfaction until 1 April 1975.

B. In March 1975 the complainant was told that the arrangement followed until then had been mistaken and was to be changed. Under the new procedure the original sum of 34,100 Belgian francs was converted into sterling at the International Monetary Fund rate applicable in 1965 and then converted back into Belgian francs. As a result the pension fell from 34,100 to 24,431 Belgian francs.

C. The complainant protested at once to the Administration, alleging a breach of the Service Regulations which nullified Article 45 of Annex IV thereto. He obtained no redress, and after lengthy correspondence the Administration confirmed the new arrangement, in particular by letter of 27 March 1975 from the Director of Finance and, finally, by a letter of the Director-General dated 14 July 1975, against which the complainant is now appealing.

D. In his claims for relief the complainant asks the Tribunal to declare:

(a) that the action of the Director of Finance in revising the application of the Service Regulations to effect a reduction in the amount of pension paid to the complainant was without the prior authority of the Director-General and was therefore illegal;

(b) that the conclusion mentioned in the penultimate paragraph of the letter of 14 July 1975 from the Director-General to the complainant is not in conformity with the Service Regulations and is therefore null and void;

(c) that the Agency, whilst it uses staff regulations, approved by ministers, which are copies of, or are based on, the Staff Regulations of the Commission of the European Communities, should apply those regulations to its pensioners in the same way as the Commission applies the Regulations to its pensioners; and

(d) that the Agency should pay the complainant's costs.

E. In its reply the Agency states that the impugned decision is that taken by the Director of Finance on 27 March 1975, not the Director-General's letter of 14 July 1975. It takes the view that the complaint is irreceivable for failure

to exhaust the means of redress within the prescribed time limits. As to the merits it argues as follows. The complainant lived in the United Kingdom and benefited from the weighting factor calculated for that country in accordance with the International Monetary Fund parities of 1 January 1965. Under the former arrangement for calculating the pension, owing to the decline in the value of the pound sterling in Belgian francs, he was receiving a sum in sterling nearly 60 per cent greater than the amount payable in the same circumstances to a staff member assigned to London or a pensioner resident in the United Kingdom but not choosing payment in Belgian francs. The Agency contends that the competent department was entitled to correct that anomaly in the method of calculating the complainant's pension. The new arrangement takes account of the reasoning underlying the pay and pensions structure, conforms to Article 82 of the Service Regulations and respects the choice of currency granted to the pensioner in Article 45 of Annex IV to the Service Regulations. It is also true to the spirit of the Service Regulations.

F. The Agency asks the Tribunal to declare the complaint irreceivable; should the need arise, to dismiss the complaint as unfounded on the merits; and to award costs against the complainant.

#### CONSIDERATIONS:

1. Articles 62, 63 and 64 of the Organisation's Service Regulations constitute a group of articles designed to ensure as far as possible that officers of the Organisation who enjoy the same salary will also enjoy the same purchasing power wherever they may be working, whether at the headquarters where they would be paid in Belgian francs or in some other country where they would be paid in the currency of that country. The device used is that of a weighting factor as prescribed by Article 64. This is to be fixed by the Committee of Management. In fact it is in two parts, a cost of living component and a tax adjustment component; the latter seeks to adjust the difference between national income tax and the tax in the European Community,

2. The calculation is made and the salary is expressed in Belgian francs. But for the purposes of the weighting factor, in making the comparison between the figures of cost of living in different countries, it is necessary to take a rate of exchange on a given date. The rate taken is that accepted by the International Monetary Fund on 1 January 1965. Any rate would do so long as the same rate is taken when the resulting salary, expressed in Belgian francs, has to be converted into some other currency. If the same rate were not taken at both stages, the calculation would be thrown out: if parity in purchasing power has been reached, exchange fluctuations are irrelevant. So it is provided by Article 63 that the rate of conversion shall be the 1965 IMF rate. None of this is in controversy.

3. It appears from Article 82 that pensions, which are calculated as a percentage of salary, are to follow the same design and to be affected in the same way by the weighting factor. There is not, however, in the case of a pensioner a country in which he performs his duties and for that there has to be substituted the country in which he intends to reside. So Article 82 provides that pensions:

"shall be weighted in the manner provided in Article 64 for the country where the person entitled to the pension declares his home to be. Payment of such pensions shall be effected in accordance with the terms contained in Article 65 in respect of payment of remunerations".

The second sentence in this extract is not very precise, but in its context it must be taken to mean that conversion must, as in the case of remuneration, be made at the IMF 1965 rate. If it did not have that meaning, it would upset the weighting factor which, as is clearly expressed, is to operate as in Article 64.

4. Up to this point there is no difficulty. But then Article 84 provides that the "detailed application of the pension scheme" shall be laid down in Annex IV. This Annex has seven chapters dealing with the details of the different pensions, etc. and the third section of Chapter 7 deals with payment. In this section Article 45 provides as follows:

"Beneficiaries may elect to have their pensions paid in the currency either of their country of origin or of their country of residence or of the country where the Agency has its seat; their choice shall remain operative for at least two years."

The complainant, who resides in England and has elected under the above article to have his pension paid in Belgian francs, claims that he is entitled to have the Belgian francs, in the amount as calculated with the benefit of the weighting factor; if they are to be converted into sterling, he claims that they must be converted at the current rate of about 87 francs to the £ instead of at the IMF 1965 rate of 140 francs to the £. By this means his pension

would, when converted into sterling, be about 60 per cent larger than it would be if it were a salary paid to an employee of the Organisation working in England.

5. This might well be the effect of Article 45 if it stood by itself. But it is a subordinate clause dealing only with the method of payment. It cannot be so interpreted as to alter profoundly the method of calculation settled by Article 82 and to give to the complainant the benefit of both the weighting factor and the present favourable rate of exchange. The complainant is entitled, if he wishes, to be paid in Belgian francs but he is not entitled by exercising that option to receive a more valuable pension than that calculated in accordance with Articles 82 and 63. This calculation produces a sterling figure: the payment in Belgian francs must not exceed the value of the sterling expressed in Belgian francs at the rate current at the date of payment. Accordingly, the Tribunal, without deciding the question of receivability, upholds the argument of the Organisation on the merits.

6. The Tribunal observes that for some years the Organisation itself misunderstood the combined effect of Articles 82 and 45. This is not surprising since the relationship between them is obscure; if they are left as they are, others besides the complainant are likely to be misled. The Tribunal has already noted the imprecision in Article 82. If, as the Tribunal believes, it is intended by this article that a pensioner should be paid in the currency of the country in which he "declares his home to be", the article should say so expressly. It will then at once be apparent that the options given to the pensioner by Article 45 are misleadingly wide. It may well be considered desirable that he should have an option to change his country of residence and consequently the currency in which his pension is paid; if this is what is intended, the article should be limited to that.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 4 October 1976.

M. Letourneur  
André Grisel  
Devlin

Roland Morellet