

***In re* SMITH**

Judgment No. 302

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the European Organisation for the Safety of Air Navigation (Eurocontrol) drawn up by Mr. Noel Godfrey Smith on 29 April 1976 and received at the Tribunal on 12 October 1976 and the Agency's surrejoinder of 12 October 1976;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal, Articles 48, 62, 87, 92 and 93 of the Eurocontrol Staff Regulations, Article 3 of Rule No. 7 of the Rules of Application of the Staff Regulations, General Decision No. 31.247/AF1 of the Director-General dated 10 May 1966 and Office Notices Nos. 67/65, 43/70 and 41/71;

Having examined the documents in the dossier and disallowed the oral proceedings requested by the complainant;

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

A. By a decision of 26 June 1967 which took effect from 1 December 1966 the Director-General appointed the complainant to the staff of the Agency as an expert at grade A, step 1. He is a British subject and has a wife and two children - Susan, who was born on 9 February 1958, and Sally, who was born on 22 November 1959. He was assigned to the Experimental Centre at Brétigny-sur-Orge, in France.

B. From the date of his arrival in France with his family until 1 September 1970 the complainant was paid school fees allowances for his two daughters at the special lump-sum rate laid down in Article 3 of Rule No. 7 relating to remuneration and in instructions published in Office Notice No. 67/65 of 28 December 1965. Instructions in Office Notice No. 43/70 of 18 September 1970 required that with effect from 1 September 1970 officials claiming the special rate should each year furnish proof that they had to pay excessively high school fees. At his request the complainant was paid at the special rate for his daughter Susan, who was attending an English school, but not for his daughter Sally, whose school fees were not high enough.

C. By letter of 3 November 1971 the complainant asked the Director-General to release him from duty at Eurocontrol so that he could return to the British civil service at the end of the five years' special leave it had granted him. By decision of 15 November 1971, which took effect on 1 December, the Director-General agreed.

D. Once he has returned to the British civil service the complainant told the Agency that in his view it had paid him 4,107 French francs too much school fees allowances for the period up to 1 September 1970 and by letter of 1 January 1973 he sent it a cheque for that sum. On 10 October 1973 the Finance Directorate of the Agency answered that the allowances paid to him had been due and asked him to state the number of his bank account so that it could return the cheque to him. The complainant insisted that the cheque should not be returned to him and the Agency ultimately cashed it. The calculation of his school fees allowances was then checked and the Legal Service consulted, and the payments made to the complainant were found to be fully warranted by the information he had given the Agency in writing. On 3 October 1975 the Director of Personnel and Administration accordingly returned to him the amount for which the cheque had been made out.

E. On 8 March 1976 the complainant applied to intervene in *Mollet v. Eurocontrol*, another case before the Tribunal. His application was different in scope from Mr. Molloy's complaint, however, and was disallowed by the President of the Tribunal. He was so informed and lodged his own complaint impugning what he terms the "decision" of 3 October 1975 mentioned in paragraph D above.

F. The complainant makes the points regarding payment of school fees allowance set out in paragraphs B to D above - on which he feels that the Agency's attitude may cast doubt on his integrity - and describes what he regards as the dubious circumstances in which he left the Agency. In his claims for relief he asks the Tribunal to order the Agency to provide a full explanation and apology, to pay the amount of any financial settlement into the Children's Christmas Party Fund, to reinstate him in an appropriate grade and post and to publish in the Staff Bulletin notice of his reinstatement and the reason therefor.

G. In its reply the Agency contends that the complaint is irreceivable in that refusal to accept the return of school fees causes the complainant no prejudice; in that he failed to submit a "complaint" to the appointing authority as is required in Title VII of the Staff Regulations; in that the complaint is time-barred; and in that his first, third and fourth claims for relief appear for the first time in the complaint and cannot be allowed.

H. As to the merits the Agency maintains that there is no doubt about the complainant's entitlement to the payments made to him. Under Article 62 of the Staff Regulations an official shall be entitled - and he "may not waive his entitlement" - to remuneration, which comprises family allowances, including school fees allowances. Although the complainant may have taken the moral view that he had been paid too much in school fees allowances the Agency could not legally accept unwarranted repayment. "In fact it appears that Mr. Smith has sought to make use of this rather odd dispute to obtain reinstatement." For that purpose he is implying that there is a link between his refusal to accept payment of the special lump-sum rate and his "resignation". But there is no such link, says the Agency. He did not resign of his own accord but was recalled by the British civil service on the expiry of five years' unpaid leave. Hence his apparent suggestion that "pressure" was put on him to resign cannot stand.

I. The Agency asks the Tribunal to declare the complaint irreceivable; to dismiss the complainant's request for oral proceedings as pointless; as to the merits, should the need arise, to dismiss the complaint as unfounded; and to award costs against the complainant.

J. In his rejoinder the complainant withdraws his third claim for relief and amends his fourth claim so as to ask the Tribunal to order the Agency to publish in the Staff Bulletin notice of the nature of his complaint and the Tribunal's findings.

K. In its surrejoinder the Agency repeats the arguments it put forward in its reply.

CONSIDERATIONS:

This complaint, which is dated 29 April 1976 and was filed on 8 May 1976, impugns a decision notified to the complainant on 3 October 1975. Paragraph 2 of Article VII of the Statute of the Tribunal provides that, to be receivable, a complaint must have been filed within ninety days after the complainant was notified of the decision impugned. The complaint is therefore irreceivable.

DECISION:

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 6 June 1977.

M. Letourneur
André Grisel
Devlin

Roland Morellet