

## FORTY-SECOND ORDINARY SESSION

### *In re SAUER*

#### **Judgment No. 378**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the European Organisation for the Safety of Air Navigation (Eurocontrol) by Mr. Stephan Karl Ferdinand Sauer on 24 March 1978, the Eurocontrol Agency's reply of 28 April, the complainant's rejoinder of 5 June and the Agency's surrejoinder of 15 September 1978;

Considering the communication of 9 October 1978 from the complainant's counsel informing the Registrar that the complainant had died in an accident on 17 September 1978 and that his family wished to pursue the proceedings and not withdraw suit, and the Agency's communication of 3 November 1978 on that subject;

Considering Article II, paragraphs 5 and 6, of the Statute of the Tribunal, and the Staff Regulations governing officials of the Eurocontrol Agency, particularly articles 17, 19, 41, 50, 91 and 92;

Having examined the documents in the dossier and considering the oral proceedings suggested by the complainant to be unnecessary;

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

A. On 1 November 1973 the Eurocontrol Agency appointed the complainant, a citizen of the Federal Republic of Germany, as a trainee in air traffic control. His pay was based on grade B5 and he was subject to the rules set out in Annex V to the Staff Regulations governing officials of the Eurocontrol Agency, which states that the administrative regulations governing the permanent staff of Eurocontrol apply to members of the technical staff of the control centres at Maastricht and Karlsruhe. The remuneration of such staff is defrayed by only four member States of Eurocontrol: Belgium, the Federal Republic of Germany, Luxembourg and the Netherlands. On 23 March 1977 the complainant had his appointment confirmed at grade B5 and on 11 July was promoted to grade B4 as a second-category controller. By a decision of 21 February 1977, the text of which was amended on 28 February, the complainant was, on his own application, regraded B5, step 2, in a post as deputy administrative officer at the Karlsruhe centre, where he was already stationed. By a letter of 7 March 1977, however, he declined that post - "on the grounds", says the defendant organisation, "that he preferred to benefit from the improved provisions of article 41 [of the Staff Regulations] and redeployment in the Federal German administration".

B. The Federal Republic of Germany decided that the Federal Office of Air Navigation Safety (Bundesanstalt für Flugsicherung) should be in charge of air navigation, and the procedure for declaring staff to have "non-active status" therefore had to be followed. By a circular of 14 June 1977 the Director-General informed the staff that the measures approved by the Permanent Commission on 9 June 1977 would be put into effect. On the Joint Committee's recommendation decisions were taken on 13 July and 10 August on the types of posts abolished and on the list of eight staff members declared to have "non-active status". On becoming "non-active" four of them were redeployed to the French and West German administrations and another was re-engaged by Eurocontrol. On 15 September the complainant appealed against the Director-General's decision of 10 August to include him in the list of "non-active" staff. His appeal was dismissed on 13 January 1978. At the same time he applied for permission to continue training to become a qualified radar controller. The defendant organisation says that the complainant was given permission to continue training up to 28 February 1978 "to facilitate his transfer to the West German administration". On 6 January the complainant said that he was not interested in an offer of appointment from the West German Civil Aviation Department, and with effect from 1 March he was declared "non-active" by a decision which the Director-General took on 27 February. On 24 March 1978 he filed the complaint.

C. The complainant takes the view that, in so far as the decision to declare him to have "non-active status" is based on article 41 of the Staff Regulations it should be quashed for want of a proper foundation in law. In his view article 41 relates to circumstances which are not suited to the decision to terminate his appointment. "The

Permanent Commission, the Committee of Management and the Administration fully realised" that article 41 of the Staff Regulations did not afford a proper foundation for a decision on the complainant's legal position. Lastly, it was possible to apply exceptional and temporary measures to him, "as indeed to anyone else in like position", which would have afforded a more satisfactory solution of the problems raised by the decision to end his appointment.

D. In his claims for relief the complainant asks the Tribunal: "principally: to quash on the grounds of error of law, inasmuch as it was based on article 41 of the Staff Regulations, the decision to declare him non-active, so that he shall continue to be employed until the completion of a termination procedure which suits his interests and the situation in which he was put because of the decision of the Federal Republic of Germany with regard to the staff of the Karlsruhe centre; subsidiarily: should it prove difficult to keep the complainant on the Eurocontrol staff, to award him compensation for the wrongful and unlawful termination of his appointment, assessed in accordance with the rules on redundancy in the European Communities ...; and to award costs, including the complainant's proven legal expenses, against the defendant organisation".

E. The Eurocontrol Agency points out that whereas in his internal appeal of 15 September 1977 the complainant contested the decision of 10 August to include him in the list of "non-active" staff members, in his complaint he is challenging the decision of 27 February 1978, in respect of which he has not exhausted the internal means of redress. He has failed to show how the decision to declare him "non-active", which complies with article 41 of the Staff Regulations, is based on a mistake of law. That article was in fact correctly applied. "Thus the complainant's non-active status, declared in accordance with the conditions laid down by the Permanent Commission on 9 June 1977, is not the result of unlawful application of the texts ... Redundancy is a general risk of employment, for which article 41 of the Staff Regulations provides. The complainant was granted the prescribed safeguards. Further efforts were made by the Agency and even by national administrations. Loss of employment is always a painful matter, but the Agency's behaviour is beyond reproach. By declining reappointment to the Agency and then to the West German administration and by failing to take his training seriously the complainant deliberately forfeited certain opportunities which were open to him."

F. The defendant organisation therefore asks the Tribunal: as to receivability: to declare the complaint irreceivable in so far as it impugns the decision of 27 February 1978 and to consider whether it is receivable in so far as it impugns the decision of 10 August 1977; as to the merits: subsidiarily, to dismiss the claims for relief as unfounded; and to award costs against the complainant.

#### CONSIDERATIONS:

There being no need to consider the pleas of irreceivability made by the defendant organisation;

By the impugned decision the complainant, an established official of the Eurocontrol Agency, was declared in accordance with article 41 of the Staff Regulations to have non-active status. That article states:

"1. An official with non-active status is one who has become supernumerary by reason of reduction in the number of posts in the Agency.

2. Reductions in the number of posts in a particular grade shall be decided by the appropriate budgetary authority under the budgetary procedure.

The appointing authority shall, after consulting the Joint Committee, decide what types of posts are to be affected by such measures.

The appointing authority shall draw up a list of the officials to be affected by such measures, after consulting the Joint Committee, taking into account the officials' ability, efficiency, conduct in the service, family circumstances and seniority."

It appears from that article that a declaration that a staff member has non-active status, following a reduction in the number of posts in the Agency, is a measure which is not in itself disciplinary and one which the Director-General is entitled to take, provided posts do have to be abolished, and provided he heeds a number of criteria set out in article 41.

The fact that the Director-General had to abolish posts is not in dispute in the present case. Nor does it appear from

the documents in the dossier that in taking the impugned decision he disregarded any of the criteria mentioned above.

Lastly, the Agency was under no duty to take exceptional and temporary measures before carrying out the dismissals forced on it by the need for a reduction in staff. Nor may the complainant rely on any provisions which he alleges apply in other organisations.

It appears from the foregoing that in dismissing the complainant by a general measure the Agency did not commit any impropriety and that the complainant's heirs are therefore not entitled to compensation.

#### 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, Bernard Spy, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 18 June 1979.

(Signed)

M. Letourneur  
André Grisel  
Devlin

Bernard Spy