

FORTY-SECOND ORDINARY SESSION

In re PAULUS

Judgment No. 379

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the European Organisation for the Safety of Air Navigation (Eurocontrol) by Mr. André Paulus on 13 February 1978, the Eurocontrol Agency's reply of 22 March, the complainant's rejoinder of 28 July and the Agency's surrejoinder of 30 October 1978, and having declared irreceivable an additional memorandum submitted by the complainant on 5 May 1979 after the written proceedings had closed and without the prior authorisation provided for in Article 9 of the Rules of Court;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal and the administrative regulations governing the permanent staff of Eurocontrol, particularly articles 26, 43, 45, 92 and 93;

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

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

A. On 28 June 1961 and again on 3 February 1963 the complainant applied for an appointment with the Eurocontrol Association. Eurocontrol was established, and he was appointed to its staff on 18 March 1963. By a decision of 3 June 1964, which took effect on 1 September 1964, he was appointed administrative expert at grade A6, step 4. On 17 June 1968 he was promoted to grade A5, and he still held that grade at the time when he filed his complaint.

B. On 22 April 1977 the complainant addressed a claim to the Director-General with regard to "the whereabouts of two documents" which he had found missing from his personnel file. One was an interim performance report made at the Director-General's request and signed by Mr. Breuckmann, the chief of the Contracts Division, in which the complainant had served from 1 March 1973 to 18 August 1975. The other was a minute, bearing the reference PE/E/45, signed by the complainant and dated 30 July 1975, concerning his transfer, with effect from 18 August 1975, from the Contracts Division to Division S.2 of the general secretariat. On 27 May 1977 the Director of Personnel and Administration sent the complainant the interim report for comment and asked him to return it for filing with the minute PE/E/45. In a minute of 4 July the complainant protested in writing to the Director of Personnel and Administration against the abstraction of the two documents from his file and asked for an explanation. The complainant says that his minute of 4 July and a reminder dated 21 October remained unanswered.

C. The complainant relies upon articles 26 and 45 of the administrative regulations governing the permanent staff of Eurocontrol and makes the following claims for relief:

"(a) considering that two documents have been abstracted from the complainant's personnel file, one of them ... consisting mainly in favourable assessment of his performance during his two-and-a-half years in the Finance Department; (b) considering that the abstraction of those documents constitutes a breach of articles 26(a) and (b) and 45(1) of the administrative regulations governing the permanent staff of Eurocontrol; (c) considering further that their abstraction has proved detrimental to the normal continuation of the complainant's career in the Agency; the complainant asks the Tribunal, in accordance with Article VIII of its Statute and Article IX, paragraph 3, of the Annex to that Statute, to order the Eurocontrol Agency to pay him compensation for the wrong he has suffered." In his rejoinder he states that he would be properly compensated for the "material or moral prejudice, or both, which he has suffered" if the Agency were ordered to pay 1 Belgian franc as damages and to pay costs.

D. The Organisation contends that the complaint is irreceivable because it is time-barred and because the claims for relief are not the same as those submitted in the internal appeal. "The rejoinder actually includes new claims." As to

the merits, and subsidiarily, the Organisation maintains that the documents were not abstracted from the complainant's file and that there was no intention of not filing them. It concedes that at the time of the internal appeal of 22 April 1977 the two items were in the office of "the appointing authority". But it explains that the Department of Personnel and Administration automatically sends each official his file without taking time to check beforehand whether it is complete. Since the files contain many documents, it may happen, as it did in the present case, that some of them are sent to the departments concerned. According to article 26 of the administrative regulations, an official must be allowed to see any documents which will be produced whenever his case is under review. "Mr. Paulus was able to do so within a reasonable period, even though the Agency was not using any document in evidence against him." Even when there is question of impropriety - and in the present case there is not - some form of direct and definite damage, and a causal link between the impropriety and the damage, have to be shown.

The complainant has not shown that he suffered any damage whatever because of the alleged mishandling of his file.

E. The Organisation asks the Tribunal to declare the complaint irreceivable and as to the merits, subsidiarily, to dismiss it as unfounded; and to award costs against the complainant.

CONSIDERATIONS:

There being no need to consider whether the complaint is irreceivable, as the Organisation contends, or whether the Organisation was at fault in regard to the complainant, it appears from the documents in the dossier that the Eurocontrol Agency has not caused him any material or moral prejudice entitling him to compensation. In any event, therefore, the complaint must be dismissed.

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.

M. Letourneur
André Grisel
Devlin

Bernard Spy