

Registry's translation, the French text alone being authoritative.

FORTY-EIGHTH ORDINARY SESSION

In re VOLZ

Judgment No. 493

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr. Donald Raymond Volz on 21 January 1981 and brought into conformity with the Rules of Court on 19 February 1981 and the Agency's reply dated 26 June 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 2, 50, 85 and 92 of the General Conditions of Employment of Staff of the Agency;

Having examined the written evidence, 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. The complainant, a citizen of the Federal Republic of Germany, joined the Agency in 1976 on a three-year appointment as an assistant technician stationed in the Karlsruhe centre for air navigation control. His appointment was extended several times and finally, by a decision of 26 June 1980, to 31 December 1980. On 22 October 1980 the termination of his appointment was confirmed. He appealed, but by a letter of 23 December the Director-General informed him that his appeal was irreceivable because the decision of 22 October merely confirmed the expiry of the appointment at the end of the year. The complainant filed his complaint.

B. The complainant contends that there is no valid reason for not extending his appointment. His post has not been abolished but given to someone else from outside the Organisation. His performance reports were satisfactory. The non-renewal is a disguised form of dismissal and as such is not authorised by the staff regulations. According to the General Conditions of Employment a dispute shall go to the Tribunal only if there is no competent national jurisdiction. This dispute relates to employment in the Federal Republic of Germany, and its courts have jurisdiction. According to the labour law of the Federal Republic the complainant has been unfairly dismissed. If the Tribunal nevertheless holds that it is competent, the complainant invites it to quash the decision of 22 October 1980; to hold that the proper law is that of the Federal Republic of Germany and that he suffered unfair dismissal according to that law; and to order the extension of his appointment by five years from 1 January 1981; subsidiarily, to order the defendant to pay him the severance grant due to him under the staff regulations, the compensation payable in accordance with the case law of the Federal Republic to an employee whose indefinite appointment is unjustifiably terminated, and costs.

C. In its reply the Agency contends that the complaint is irreceivable. In his letter of 26 June 1980 the Director-General made it plain to the complainant that the extension of appointment to 31 December would be the last and that is the decision he ought to have contested, and within three months; instead he is challenging the confirmation dated 22 October 1980. Moreover, his claims for relief go beyond those set out in his internal appeal, and to that extent he has failed to exhaust the internal means of redress. Further, it is the staff regulations of Eurocontrol which apply, and the West German courts cannot hear disputes between an international organisation and its staff. As to the merits, the Agency denies that the complainant's performance reports were satisfactory. It explains that there were valid reasons for non-renewal and denies that the complainant was replaced by an external recruit. It adds that on 3 March 1981 the complainant was paid a severance grant of over 33,000 Deutschmarks under Article 85 of the General Conditions of Employment. The Agency invites the Tribunal to declare that it is competent and that the complaint is time-barred and therefore irreceivable; to note that the complainant has been paid the severance grant; to dismiss all his other claims; and to award costs against him.

CONSIDERATIONS:

The Tribunal's competence

1. Although the complainant has himself come before the Tribunal, he is challenging its competence.

The question arose in an earlier case and for reasons which are sound also in the present instance the Tribunal declared itself competent. It need not therefore discuss the point in detail here. It merely observes that on appointment the complainant accepted the General Conditions of Employment of the Eurocontrol Agency, of which Article 92 states that the Tribunal may hear any dispute regarding their non-observance. On 20 March 1964 the Director-General of Eurocontrol addressed to the International Labour Office a declaration recognising the Tribunal's competence and the Governing Body of the International Labour Office approved such recognition. The international agreement thus concluded between the ILO and the Agency in accordance with Article II, paragraph 5, of the Statute of the Tribunal is not subject to any limitations on the recognition of the Tribunal's competence other than those arising out of the actual text. The Tribunal derives its competence from that international agreement, which prevails over rules unilaterally adopted earlier by one of the parties. The agreement recognising the Tribunal's competence does not exempt staff members such as the complainant from the application of the General Conditions of Employment. Indeed Article 92 reads: "Any dispute between the Agency and any personnel to whom these Conditions of Employment apply regarding the non-observance, in substance or in form, of the provisions of the present Conditions of Employment, shall be referred to the Administrative Tribunal of the International Labour Office, in the absence of a competent national jurisdiction."

Receivability

2. The complainant is impugning a decision of 22 October 1980 which reads: "The appointment and establishment of Mr. Donald Volz (N.M. 1327/39), of German nationality, born on 10.8.1948 at Karlsruhe, shall terminate on 31.12.1981". The decision confirms an earlier one of 26 June 1980 which extended the complainant's appointment to 31 December 1980. Accordingly, if the complaint were allowed and the decision of 22 October 1980 quashed, the decision of 26 June 1980 would have to be set aside as well.

3. Since the Director-General's decision to reject the complainant's internal appeal and to confirm the decision of 22 October 1980 was not taken until 23 December 1980, the complaint was filed within the time limit set in Article VII of the Statute of the Tribunal and is therefore receivable.

4. The Organisation's argument is that the time limit for filing the complaint started on 26 June 1980, when the complainant's contract was extended to 31 December 1980. The argument would succeed only if the later decisions, of 22 October and 23 December 1980, had merely confirmed the decision of 26 June. But they did not. The extension of the contract on 26 June for three months did not necessarily mean that there would be no further extension.

The proper law

5. The complainant further submits that the proper law is that of the Federal Republic of Germany.

As the Tribunal has stated before, it will not as a rule apply municipal law.

In accordance with Article II of its Statute it hears complaints alleging the non-observance of terms of appointment or of the Staff Regulations. In reaching its decisions it construes such texts by the accepted methods of legal interpretation. It also draws upon general principles of law in so far as they may apply to the international civil service. It takes no account of municipal law, however, except in so far as such law embodies those principles. As to the matters raised in this case the provisions of municipal law differ and do not apply outside the municipal context. The municipal law cited by the complainant is therefore immaterial. In particular the complainant's citizenship of the Federal Republic of Germany, his residence in that country, and the fact that he is working for Eurocontrol there afford no reasons for applying the law of the Federal Republic.

Non-renewal of the appointment

6. Under the rules applying to the complainant and in accordance with the General Conditions of Employment, which in particular are cited in paragraph 6 of his letter of appointment, his appointment was to terminate automatically on the expiry of the contract and any subsequent extension (Articles 2, third paragraph, and 50, third paragraph).

It is a matter for the Director-General's discretion whether to renew a short-term appointment, and it does not appear from the evidence that his exercise of that discretion was tainted with any abuse of authority. Indeed the decision not to renew the appointment was designed to give effect to Directive No. 27 approved by the Permanent Commission of Eurocontrol on 25 November 1976 whereby the Government of the Federal Republic of Germany is gradually to replace the Agency in administering the Karlsruhe centre for air navigation control. It is only reasonable that this change should lead to a steady decline in the numbers of Eurocontrol staff in Karlsruhe.

There are therefore no grounds for setting aside the decision.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, the Right Honourable Lord Devlin, P.C., Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner