

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

SIXTY-SIXTH SESSION

In re F. J. (No. 2), LAURENT and VAN DER SLUIS

Judgment 961

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. G. F. J. and the complaints filed by Mr. Dominique Laurent and Mr. Marinus Huibert van der Sluis on 28 July 1988 against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency), Eurocontrol's replies of 24 November 1988, the complainants' rejoinders of 26 December 1988 and Eurocontrol's surrejoinders of 24 April 1989;

Considering the applications to intervene filed by:

J. Abramowski

A. Abts

P. Agre

A. Albertini

V. Alminana

H-R. Altmann

J. Andriese

R. Angermeyer

H. Ansoerge

F. Arasse

J. Arp

B. Bams

A. Barnby

F. Bartocci

S. Basu

B. Baudier

J. Beaufils
H-W. Becker
B. Bedetti
D. Bell
B. Berecq
H. Bergevoet
G. Bernard
J. Bero
J. Berthommier
J. Beyer
M. Biardeau
F. Bidaud
N. Bisdorff
R. Blau
L. Bleyens
B. Bocquillon
W. Bodenstein
B. Boerrigter
P. Boland
C. Bonadio
F. Bontems
M. Borsu
M. Bory
A. Bos
J. Bralet
C. Breeman
C. Breeschoten
M. Bremmers
T. Brennan
O. Brentener
G. Bricart
L. Brozat
M-N. Brun
O. Buchheim
A. Bulfon
H. Burgbacher

F. Caloo
R. Carmienke
B. Cassaignau
L. Cassart
M. Castenmiller
R. Celis
R. Charpantier
C. Chauveau
M. Chauvet
N. Chichizola
P. Chudant
A. Claes
L. Clarke
N. Clarke
N. Clinton
G. Coatleven
C. Collignon
J. Collignon
C. Correa
J-M. Cosyns
M. Cox
P. Cracco
P. Crick
H. Cronin
A. Cuveliers
H. Czech
F. Daly
D. Danaux
B. Darke
D. Daubenspeck
H. David
P. David
A. Davister
V. Day
J. de Beurs
W. de Boer

J-M. de Boever
P. de Groot
P. de la Haye
J. de Lange
J. de Poorter
I. de Riemaeker Luppens
C. de Villenfagne
A. de Vos
G. Debruyne
J. Decarniere
J-M. Dechelle
J. Degrand
R. Dehouwer
H. Delachaux
J. Delwarte
P. Demelinne
J. Derozier
E-M. Deter
F. Devillieres
H. Devry
V. Dick
J. Dickmann
K. Dittmar
D. Doerr
P. Domogala
J. Dos Santos
J. Doyle
E. Dubiel
F. Dufier
F. Dupont
M. Durasse
P. Emering
R. Engels
H. Englmeier
A. Enright
H-J. Exner

G. Falkenstein
Y. Fauchot
F. Faurens
R. Feyens
R. Fisch
J-L. Flament
P. Flick
J-P. Florent
B. Flynn
G. Fortin
J. Fortin
G. Frost
C. Fuchter
B. Fuehrer
I. Fuller
G. Gabas
C. Galeazzi
M-T. Garzend
G. Gaveau
G. Gaydoul
F. Gehl
O. Geigner
A. Geirnaert
R. Geldhof
M. Gerard
M-T. Gilles
K. Glover
H. Goettling
W. Goettlinger
I-D. Goossens
D. Gordon
L. Gotting

J. Goyens
M-J. Graas
D. Grew
W. Gribnau
R. Grimmer
E. Groschel
A. Gruenewaelder
M-T. Guerin
A. Guyot
K. Haage
E. Haas
J. Haine
J. Haines
W. Handke
J. Handschuh
C. Hantz
G. Harel
H. Hauer
H. Heepke
J. Hein
G. Heinz
J. Heller
G. Hembise
G. Hepke
H. Herbert
R. Hess
T. Hoesen
W. Holtmann
M. Hoss
G. Hostyn
J. Hougardy
E. Huebsch
H. Huizer
P-O. Jeannet
R. Jenyns
M. Jenz

R. Johnson
A. Jourdain
K-D. Jung
P. Kaisin
H. Kaltenhauser
G. Karran
N. Kieffer
G. Klawitter
G. Klein
H. Klos
U. Klvetasch
T. Knauss
A. Krahl
F. Krella
L. Kroll
J. Kuijper
L. Lang
G. Lauter
F. Le Noble
H. Leenders
P. Lefebvre
F. Legrand
W. Leistico
E. Lejeune-Dirichlet
W. Lembach
M. Lemoine
M. Lenglez
Y. Leroux
C. Licker
H. Liss
L. Loeser
W. Lumpe
J. Maes
P. Maes
J. Mager
J-P. Majerus

Y. Marchal
B. Marschner
C. Martens-Servaes
J. Martin
C. Massie
M. Mathieu
D. Mauge
P. Maurus
K. Mayer
G. McAuley
E. McCluskey
J. McNeill
P. Meenhorst
A. Meloen
J. Mercier
J. Meredith
E. Merklinger
W. Mesman
J. Meyer
B. Michaux
W. Miller
M. Minner
F. Moitier
B. Molloy
M. Mommers
A. Mounier
R. Muehlstroh
B. Neher
C. Nelissen
H. Neumann
M. Nicolay
C. Niesing

D. Nymeijer
L. Olivier
J. Oury
H. Pannenberg
H. Parvais
K-U. Pawlicz
G. Peerbooms
P. Peeters
R. Peiffer
R. Perry
C. Petit
P. Petit
P. Petitfils
W. Petter
A. Peyrat
V. Pfeiffer
E. Phillips
M. Picard
J-F. Pieri
C. Poinso
M. Pommez
P. Praet
J. Prevoo
L. Pricken-Mommerency
V. Priplata
J. Prochasson
M. Prosser
B. Puthiers
L. Putz
B. Quentin
J. Raes
M-C. Ragot
M. Reck
J-L. Renteux
N. Reuter
J-J. Richer

J-M. Rigolle
A. Ritchie
G. Riu
C. Robijns
M. Roebroeck
J. Roelofsen
G. Rossignol
F. Roth
J. Roulleaux
G. Roumajon
E. Rousee
J-M. Roussot
J-P. Rue
B. Runacres
A. Rutherford
C. Saey
J-C. Salard
P. Sargent
J-Y. Schaack
G. Scheltien
J. Scheu
P. Schmitt
G. Schneider
P. Schneider
G. Schoeling
M. Schoeling
H. Schroeter
A. Schuh
M. Schwaller
K. Seipke
W. Sillevis
G. Sizun
F. Skerhut
P. Slingerland
E. Snijders
J. Sondt

P. Spencer
D. Spragg
S. Starlander
F. Steijns
E. Steiner
W. Steiner
Jan Storms
Joseph Storms
E. Stuhlsatz
E. Suetens
A. Sunnen
C. Suttie
S. Swierstra
N. Szewczuk
A. Talboom
E. Taylor
J. Thiecke
J-P. Thiel
A. Thill
G. Thorel
H. Tielker
J. Timmermans
C. Tovy
J-C. Tumelin
M. Turcan
R. Ueberhofen
J. Uhl
A. Urlings
B. Valdenaire
G. van Campenhout
P. van der Kraan
G. van Dijk

J. van Eck
E. van Eupen
T. van Hal
M. van Hemelryck
K. van Hollebeke
A. van Loveren
A. van Ommen
J. van Riemsdijk
J. van Tilburg
T. Vandamme
C. Vandenberghe
B. Vandenberghe-Vaury
J-P. Vanderspikken
D. Vanderstraeten
J. Vanelven
E. Vanschoenwinkel
M. Vatinel
P. Vergauts
J. Verlinden
M. Verschaffel
W. Viertelhauzen
Y. Viroux
J-C. Vollant
N. Vrancken
E. Vreede
F. Wagner
W. Warner
O. Warns
D. Waters
J. Watson
H. Weis
G. Wendling
F. Werthmann
P. Wildey
M. Wildner
R. Williams

J-P. Willox
D. Winkler
F. Wissink
W. Wolf
J. Wondergem
P. Wood
M. Woods
R. Xhrouet
D. Young
W. Zieger
J. Zipp
R. Zoellner

and Eurocontrol's comments thereon of 28 April and 3 May 1989;

Considering Articles II, paragraph 5, and VII, paragraphs 2 and 3, of the Statute of the Tribunal and Articles 82 and 92(1) and (2) of the Staff Regulations governing officials 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 facts of the case and the pleadings may be summed up as follows:

A. As the Tribunal recounted in Judgment 902 (in re Aelvoet and others), under A, the Permanent Commission of the Organisation decided at its 70th Session, on 25 November 1986, to bring about a 5 per cent differential between pensions in the European Communities and pensions in Eurocontrol as from the date at which the differential in pay attained the full rate, which was also 5 per cent, and to amend Article 82 of the Staff Regulations for the purpose. That decision became final, on 7 July 1987, when the Commission approved it at the 71st Session, as the staff was informed by an office notice of 16 July. In September and October several hundred staff members lodged with the Administration a "request" for a decision under Article 92(1) of the Staff Regulations. Mr. Fairfax Jones did so on 30 September, Mr. Laurent on 1 October and Mr. van der Sluis on 6 October. The purpose of their requests was to get a formal undertaking from the Organisation that it would respect in full their rights as accrued under the old text of Article 82 of the Staff Regulations. Having got no answer by the four-month deadline in 92(1) they lodged internal "complaints" under 92(2). Mr. Fairfax Jones did so on 28 March 1988, Mr. van der Sluis on 31 March and Mr. Laurent on 19 April. By letters of 22 April the Director General

told them that he was rejecting their 92(1) requests. On 28 July they lodged the present complaints challenging the implied decisions to reject their 92(2) appeals.

B. The complainants submit that their complaints are receivable because they respected the prescribed time limits. They lodged their internal appeals within the three-month time limit in Article 92(2) and, having received no answer from the Organisation within the 60 days prescribed in Article VII(2) of the Statute of the Tribunal, they filed their complaints in accordance with Article VII(3) of the Statute.

As to the merits, they submit that the decision the Commission approved on 7 July 1987 is flawed in that no valid reason is stated for it and it is in breach of the rules on the reckoning of pension entitlements, of their acquired rights and of their trust in the Organisation. It also discriminates between Eurocontrol staff and the staff of the European Communities and between groups of Eurocontrol staff.

They ask the Tribunal to order Eurocontrol to respect their rights under the text of Article 82 of the Staff Regulations as in force up to the date of amendment by the Commission at its 70th Session and to award them costs.

C. In its replies Eurocontrol maintains that the complaints are irreceivable: they fail to challenge an individual decision by the appointing authority as Article 92(2) of the Staff Regulations requires, and the claims are inadmissible in that the Tribunal may not order the Organisation to disregard amendments the Commission has made in the Staff Regulations. Moreover, the Tribunal may not rule on allegations of future injury on which no figure can yet be put.

The Organisation puts forward subsidiary arguments to show that none of the complainants' pleas on the merits is sound.

D. In their rejoinders the complainants enlarge on their pleas and seek to refute Eurocontrol's replies.

On the issue of receivability they maintain in particular that in keeping with precedent the Tribunal may declare the Commission's decision unlawful, void and therefore inapplicable to them. In their submission there is no question of the Tribunal's addressing orders to the Organisation. They give estimates of the expected reduction in the amount of the pensions they will be paid on retirement.

E. In its surrejoinders the Organisation develops its earlier pleas and discusses in detail the complainants', which it contends are mistaken. As to receivability, it again avers that no individual decision has yet been taken and observes that the complaints are premature because the precise effects of the Commission's decision cannot be determined.

CONSIDERATIONS:

1. At its 70th Session, on 25 November 1986, the Permanent Commission of Eurocontrol took a decision of policy to bring about a 5 per cent differential between staff pensions in the European Communities and pensions in Eurocontrol - the latter to be the lower - to apply the differential to pension rights for the period after the date at which the differential that applied also to pay reached the full rate of 5 per cent, and to amend Article 82 of the Staff Regulations for the purpose.

The Commission gave those decisions final approval at its 71st Session, on 7 July 1987, and by an office notice of 16 July the Director General announced that they had come into force.

A few months later several hundred staff members lodged internal appeals asking the Organisation to undertake to respect in full their rights as accrued under the old text of Article 82.

2. On 28 July 1988 three of those staff members - the present complainants - appealed to the Tribunal asking it to set aside the decision of rejection that they inferred from the Organisation's failure to answer their internal appeals.

The complaints are joined because they raise the same issues and should form the subject of a single ruling.

3. The Organisation submits that for two reasons the complaints are irreceivable. One reason is that the complainants are not challenging individual decisions by the "appointing authority", as Article 92 of the Staff Regulations and other provisions require. The other reason is that their claims are inadmissible because allowing them would be tantamount to the Tribunal's issuing orders to the Organisation. Eurocontrol further submits that the Tribunal may not rule on allegations of injury on which no figure has been put.

4. The three complainants are serving officials of the Organisation. The implied decisions of rejection, which they impugn, are decisions not to give a formal undertaking that their rights under the old text of Article 82 of the Staff Regulations will be respected. The decisions put no figure on their pension entitlements, a matter that will be determined only when, in furtherance of the Commission's general decision, the Director General eventually takes individual decisions giving actual figures. A ruling by the Tribunal on the impugned decisions would mean considering the lawfulness of the general decision. The Tribunal will not rule on that issue so long as it cannot tell just what effect the general decision will be given.

Since the amount of the complainants' pension contributions is not under challenge, all that is material in this case is the amount each complainant will get when he retires. The Tribunal will not make a general ruling, being competent only to entertain individual and actual disputes, and it therefore declares the complaints irreceivable.

DECISION:

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner