

SIXTY-EIGHTH SESSION

In re DAGNEAU

Judgment 992

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Claude Dagneau against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 30 November 1988 and corrected on 6 January 1989, the Agency's reply of 29 March, the complainant's rejoinder of 27 June and Eurocontrol's surrejoinder of 21 September 1989;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 92(2) of the Staff Regulations governing officials of the Agency and Articles 20 and 25 ter of Rule No. 10 concerning sickness and accident insurance;

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. Article 20 of Eurocontrol Rule No. 10 concerning sickness and accident insurance states in paragraph 1:

"The subsistence expenses relating to a cure at a health resort prescribed by the practitioner, which is recognized as strictly necessary by the medical officer, for which prior authorization has been granted and which is carried out under medical supervision, shall be reimbursed ...

...

Applications must be accompanied by the medical prescription and a detailed medical report to the medical officer showing the necessity for the cure and specifying where this is to take place."

The complainant, a French citizen, is employed as a principal assistant at grade B at Eurocontrol's Experimental Centre at Brétigny-sur-Orge, in France.

In 1986 and 1987 the Sickness Insurance Scheme granted him permission to undergo treatment at a thermal centre at Amélie-les-Bains for a nasal infection. On 14 April 1988 he forwarded to the Scheme an application, made out by his doctor and accompanied by a medical certificate from a doctor at the centre, for a third spell of treatment. A letter of 6 May 1988 rejected his application on the grounds that it was not clear that the treatment was "essential". On 18 May his doctor made out another application, this time with the comment "third thermal treatment indispensable". Eurocontrol turned down the second application as well on 7 June on the grounds that it still did not show the treatment to be strictly necessary, the addition of the word "indispensable" without explanation being thought insufficient. On 4 July the complainant submitted an internal "complaint" to the Director General against that decision and in keeping with Article 25 ter of Rule No. 10 the matter was referred for an opinion to the Management Committee of the Scheme.

In its opinion, which was sent to the complainant on 17 November 1988, the Committee recommended by a majority that the medical officer at Brétigny examine him before any final decision was taken.

Having got no final answer within the time limit of four months in Article 92(2) of the Staff Regulations, the complainant filed this complaint on 30 November 1988 impugning the implied decision to reject his claim. On 22 December 1988 an express decision was taken to reject it.

B. The complainant contends that the Scheme misconstrued paragraph 1 of Article 20 of Rule No. 10 by taking the words "strictly necessary" and "necessity for the cure" to mean "indispensable" or "absolutely necessary". Since, in his submission, medical treatment is "absolutely necessary" only when life is at stake, the medical officer may

never find that the treatment applied for qualifies. The purpose of requiring the medical officer to declare the treatment "strictly necessary", and not "indispensable", is to discard applications for treatment that will serve no therapeutic purpose and to make sure that the patient does need the treatment. The complainant says that he knows for certain that the treatment he has undergone twice already did do him good and made his sick leave less frequent. So Eurocontrol drew direct benefit.

The complainant asks the Tribunal to quash the implied decision by the Scheme and to authorise the treatment prescribed by his doctor. He claims costs.

C. Eurocontrol replies that according to Article 20 of Rule No. 10 it is the medical officer who determines whether the treatment is "strictly necessary" and he does so on the strength of the detailed medical records that are supposed to be appended to the prescription. That treatment should be useful is not enough. The Scheme's rejection of the applications was founded on the adverse report the medical officer had made on the papers the complainant had supplied. The Management Committee is only an advisory body. Since Rule No. 10 does not provide for the kind of referral the majority of the Management Committee suggested, the Director General took the view that he was free to endorse the medical officer's opinion and reject the applications. The complainant may still have the cost of some other sort of treatment refunded.

D. The complainant rejoins that his doctor prescribed the treatment for him on the strength of a diagnosis made after examination whereas the medical officer never even saw him, let alone examined him. It is clear on the evidence that the rejection of his applications was not based on any written and substantiated findings by the medical officer, whose findings were put to paper only after he had submitted his internal "complaint".

The Organisation's refusal to let him undergo further medical examination on the grounds that it is not expressly provided for in the rules betrays its view that its medical officer's findings are beyond challenge, a posture that is quite inadmissible and contrary to fundamental rights.

E. In its surrejoinder Eurocontrol rebuts the pleas in the rejoinder and enlarges on its own case.

It observes in particular that it is not the medical officer's function to have Scheme members undergo examinations to obtain second opinions. It is the Scheme itself that decides on applications for treatment on the strength of the medical officer's findings. The Organisation denies that the findings were made after the complainant lodged his appeal and that there was procedural irregularity in handling the complainant's applications.

CONSIDERATIONS:

1. The complainant, who works at Eurocontrol's Experimental Centre at Brétigny-sur-Orge, in France, is challenging a decision not to authorise him to take a cure prescribed by his doctor.
2. The complainant was twice granted permission to undergo treatment for a nasal infection at a thermal centre at Amélie-les-Bains, and according to certificates made out at the time the treatment was successful. His doctor, Dr. Barthes, applied on 14 April 1988 for authorisation of a third cure at the same establishment, but the medical officer of Eurocontrol objected on the grounds that the doctor's application did not make it clear that the cure was strictly necessary, and so Eurocontrol refused to authorise it.
3. On 18 May Dr. Barthes applied again, this time affirming that the cure was "indispensable". But on 7 June Eurocontrol informed the complainant that its medical officer still refused to accept it as such.
4. On 4 July the complainant filed an internal "complaint" with the Director General under Article 92(2) of the Staff Regulations. That complaint was referred for an opinion to the Management Committee of the Sickness Insurance Scheme. In the course of the ensuing proceedings the medical officer twice commented on the complainant's application.
5. In a minute he addressed to the Scheme on 14 July 1988 the medical officer pointed out that Dr. Barthes had given no explanation of the need for treatment. The complainant submitted the opinion of another specialist, Dr. Sarment, who believed that a third cure would be "worthwhile" in view of the success of the first two. In a letter of 8 November 1988 to the complainant the medical officer observed that "Dr. Sarment is not citing the results of any clinical examination but merely commenting on the records you have already submitted", and that the term "worthwhile" did not suggest that the treatment was strictly necessary.

6. On 17 November 1988 the Management Committee informed the Director General that the majority opinion was that the medical officer should examine the complainant.

7. The complainant filed this complaint on 30 November 1988. He pointed out that since his internal appeal of 4 July 1988 was still pending after over four months he was entitled under Article 92(2) of the Staff Regulations to file a complaint challenging the rejection of his claim to be inferred from Eurocontrol's failure to answer it.

8. So as to comply with the prescribed procedure the Director General sent the complainant on 22 December 1988, after he had filed his complaint, an express decision rejecting the internal appeal and observing that the sole issue in dispute was the refund of the subsistence expenses of the cure since the cost of the actual treatment might be covered by a doctor's prescription. The Director General added that he saw no need for the complainant to undergo medical examination.

9. The ruling on the issues of law is as follows.

10. What the Tribunal must determine is whether the material provisions of Rule No. 10 concerning sickness and accident insurance have been complied with. Article 20 of the Rule says that subsistence expenses relating to a cure prescribed by a medical practitioner shall be reimbursed at the rate set in the rule provided that the cure "is recognised as strictly necessary by the medical officer" and "prior authorisation has been granted".

11. As to whether the cure was "strictly necessary", as the Rule requires, all that need be said - without going into the merits of the issue of the complainant's state of health - is that he fails to adduce any evidence that casts the slightest doubt on the assessment by the medical officer. Indeed the medical officer very properly pointed out that in the doctor's application for the treatment there was no analytical diagnosis that made it possible to establish the need for it. To be sure, the form the doctor has to fill up allows little scope for detail. But all that the doctor put in his original application was the comment that the first two cures had been successful and in his second application the words: "Third thermal treatment necessary, and further rheumatological treatment".

12. As the medical officer correctly observed in his letter of 8 November 1988, the application cited no clinical examination and merely referred to the records supplied earlier by the complainant himself. Moreover, the case records being so slight, the Director General was not at fault in rejecting the Management Committee's suggestion of further medical examination.

13. Since the papers the complainant has filed do not afford a shred of evidence to suggest that Eurocontrol was remiss or that its medical officer made any improper medical assessment, the complaint must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva 23 January 1990.

(Signed)

Jacques Ducoux
Mohamed Suffian
P. Pescatore
A.B. Gardner