

SEVENTY-FOURTH SESSION

***In re* PETITFILS (No. 2)**

Judgment 1229

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Patrick Petitfils against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 29 January 1992, the Agency's reply of 8 April, the complainant's rejoinder of 10 September and the Agency's surrejoinder of 29 October 1992;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal and Articles 24, 40(1) and 91(2) of the General Conditions of Employment governing Servants at the Eurocontrol Maastricht Centre;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant joined the staff of Eurocontrol's Centre at Maastricht in 1971 as a trainee in air traffic control and he has been a principal controller at grade B1 since 26 February 1992. While working at the Agency he studied administrative and transport law and obtained a doctorate in public law in 1990 for a thesis on the liability of air navigation services under French law. By a letter of 7 January 1991 he pointed out to the Director General that controllers at the Maastricht Centre seldom benefited from the third and fourth paragraphs of Article 24 of the General Conditions of Employment, which read:

"The Agency shall facilitate such further training and instruction for staff as is compatible with the proper functioning of the service and is in accordance with its own interests.

Such training and instruction shall be taken into account for purposes of promotion in their careers."

The complainant believed that in his case the further training had rather deterred promotion.

In a letter of 13 June 1991 the Director General answered that his grievances had no merit: he was not covered by the above provisions because his university courses had not improved on his original qualifications but taken a new tack.

By a letter of 10 September 1991 he lodged an internal "complaint" under Article 91(2) of the General Conditions of Employment. The Agency having taken no decision within the sixty days provided for in Article VII(3) of the Statute of the Tribunal, he is now challenging the implied decision to reject his claims.

B. The complainant pleads a close connection between the subjects of his further training and his work as an international official for the safety of air navigation.

Studying administrative law has given him a clearer insight into the rights and duties of employer and employee. Most jobs at Eurocontrol being technical, its staff know little of such matters. He has tried to make good his deficiency and his further qualifications are an asset to the Agency. By saying that he had been granted all the facilities needed to get through - namely two-and-a-half months' unpaid leave - the Director General acknowledged that what he had accomplished was "further training" in the Agency's interests within the meaning of the third paragraph of Article 24. It is a mistake of law for Eurocontrol to refuse to treat his instruction in administrative law as such training within the meaning of the fourth paragraph of Article 24.

Eurocontrol has also made an obvious error of judgment and drawn wrong conclusions about the nature of his new qualifications. His training made him more familiar with, among other things, the sources of air transport law and trends in technical and social conditions in air traffic control and the controller's duties.

He asks the Tribunal to declare that he did receive "further training" within the meaning of Article 24 of the General Conditions of Employment and that the Agency's breach of its own rules has damaged his career.

C. The Agency replies that the complaint is irreceivable. Under Article 91(2) of the General Conditions of Employment an internal "complaint" may be lodged only against an "act adversely affecting" the staff member. In his reply of 13 June 1991 the Director General merely went over the complainant's career, showed that he had made normal progress and said that his university qualifications might count if he applied for a job that required legal training. The distinction the Director General drew between further training and retraining is not to be read as refusal to take his university qualifications into account. The Director General has taken no decision that alters his administrative status.

He put forward no claims in his internal "complaint" but ended by saying that he would like to see broader career prospects for controllers. His claims appear for the first time in his complaint to the Tribunal and are therefore irreceivable.

Eurocontrol's reply on the merits is subsidiary. It submits that the complainant is wrong to regard his university qualifications as further training, which has to be closely relevant to the employee's duties and in the interests of "the proper functioning of the service". Studying the sources of law, the status of the international civil servant and matters of legal liability does not make a controller a whit better at his job or further the knowledge or skills he needs to perform it. Eurocontrol itself gives its staff further training anyway by letting them attend courses which are held within scheduled working hours and which always have a direct bearing on their actual work.

The facilities the complainant was granted were not those provided for in Article 24 of the General Conditions of Employment but the leave allowed under Article 40(1), which reads:

"An established servant may, in exceptional circumstances and at his own request, be granted unpaid leave on personal grounds."

So Eurocontrol has committed no mistake of law or of judgment and has not acted in breach of the General Conditions of Employment. In any case for it to be liable for any breach some form of injury must be shown. The complainant has reached the top grade in his category. His university qualifications have not held up his promotion but have even enabled him to apply for jobs which would ordinarily be beyond a controller's reach.

D. The complainant contends in his rejoinder that his qualifications in administrative law have served the Agency's interests because they are essential to his duties as a staff representative.

The Director General's refusal on 13 June 1991 to let him benefit from Article 24 of the General Conditions of Employment constitutes in itself sufficient grounds for a receivable complaint and shows that Eurocontrol is in breach of its own rules and has caused him injury.

E. In its surrejoinder Eurocontrol enlarges on its earlier pleas. In its submission it never hampered the complainant's career. The promotion he got to his present grade, B1, came as soon as he had the minimum number of years in B2. The doctoral degree he got in 1990 has not held him back. His prospects are good. The fact that no university degree is required to teach air traffic control gives ample proof, if any be needed, that studies alone do not amount to further relevant training. Besides, the complainant has never challenged either Eurocontrol's application of the fourth paragraph of Article 24 of the General Conditions of Employment or the Agency's competition procedures.

CONSIDERATIONS:

1. The complainant, a principal air traffic controller at Eurocontrol, asked the Organisation to give him credit in his career for university qualifications he had obtained while in its service. It refused to do so, he lodged an internal appeal, and he seeks the quashing of the rejection he infers from its silence.

2. The complainant joined the Organisation as a trainee in air traffic control and in the normal pursuit of his career became a principal controller at grade B1, the post he now holds. At the same time he did university studies and for the purpose was granted two periods of leave on personal grounds. He thus acquired an arts degree (known in French as the DEUG) in 1979; a law degree in 1981; a master's degree in administrative law in 1983; a post-graduate diploma in air traffic law in 1984; and a doctorate in 1990 for which he wrote a thesis on the liability of air navigation services under French law.

3. Wanting to make use of his new qualifications, he has applied for several Eurocontrol posts in category A, but so far to no avail. On 7 January 1991 he sent a letter of grievance to the Director General citing the fourth paragraph of Article 24 of the General Conditions of Employment. He said that Eurocontrol was keeping him in subordinate duties despite his "further training and instruction" and was not, as that provision required, taking them into account "for purposes of promotion" in his career.

4. By a letter of 13 June 1991 the Director General told him that his new qualifications in law could not be treated as "further training and instruction" for the duties which he had been appointed to and had since been performing. Instead they showed a bent towards other sorts of job of which there were but few in Eurocontrol. The Organisation had - the letter said - duly considered in competition with others his applications for the few posts that had fallen vacant but had been unable to offer him any of them. The Director General therefore dismissed his grievances as unfounded.

5. By a letter of 10 September 1991 the complainant submitted an internal "complaint" under Article 91(2) of the General Conditions of Employment stating much the same grievances as he had in his letter of 7 January 1991. Having got no answer, he filed this complaint on 29 January 1992.

6. In its reply Eurocontrol contends that the complaint is irreceivable. According to Article 91(2) of the General Conditions of Employment a staff member may appeal only "against an act adversely affecting" him. Since the complainant's letter of 7 January 1991 made no specific claim the Director General's reply thereto may not be regarded as such an act. In the Organisation's submission his 91(2) "complaint" made no claim either. There may be challenge to a specific assessment of a staff member's qualifications only if there has been some decision that has legal effect on his career, such as transfer, or promotion, or an appointment made as a result of a competition. The complainant's case does not fit into any of those contexts, its purpose being to secure assurances about his future career that the Organisation cannot give.

7. The Organisation's pleas on the merits are subsidiary. It points out that his studies and qualifications, though evidence of his interest in some aspects of air law, do not equip him any better for the duties of an air traffic controller. So they do not come within the notion of "further training and instruction" in Article 24 of the General Conditions of Employment which posits some direct connection with actual duties. The complainant chose to further his education out of a preference of his own and his studies had no direct connection with his duties.

8. The complainant rejoins that he did seek to further his career as an air traffic controller by gaining his new qualifications. He explains why he believes that specialist studies in air law help in serving as a controller and should earn him higher responsibility in his career.

9. The decision impugned is the rejection the complainant infers from the Organisation's failure to answer his internal appeal. For the purpose of determining whether Eurocontrol's objections to receivability are sound the material rule is Article 91 of the General Conditions of Employment:

"1. Any person to whom these provisions apply may submit to the Director General, a request that he takes a decision relating to him. The Director General shall notify the person concerned of his reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these provisions apply may submit to the Director General a complaint against an act adversely affecting him, either where the Director General has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. ..."

10. Also material are certain duties of protection and assistance the Agency owes its staff under the third and fourth paragraphs of Article 24 of the General Conditions of Employment as quoted under A above.

11. Where a staff member lodges, as the complainant did, a 91(2) appeal against the implied rejection of his claims, he must show failure to "adopt a measure prescribed by the Staff Regulations". Such appeal will lie only where the required decision may be determined by reference to some duty the Organisation has under the General Conditions of Employment and where it is in terms that allow the Tribunal to exercise its power of review.

12. As Eurocontrol rightly observes, the complainant's letters to the Director General were mere statements of

grievances that had no particular purpose but to express disappointment at not getting immediate recognition, in the form of career advancement, of the further studies he had chosen to pursue outside work. Neither his internal appeal nor his complaint identifies any duty towards him under the General Conditions of Employment that Eurocontrol may have failed to discharge. So there cannot have been any "act adversely affecting" him within the meaning of 91(2).

13. The third and fourth paragraphs of Article 24, which are about the professional training of the staff, lay no specific obligation on the Agency. The fourth paragraph, which says that "such training and instruction" shall count "for purposes of promotion in their careers", clearly refers in the context to efforts made by the staff at the Organisation's request and in its own interests. The paragraph may not be read to impose upon the Organisation any duty to reward training a staff member may have chosen, out of personal preference, to undergo. Nor does the grant of leave on personal grounds constitute a commitment on the Organisation's part to the staff member where he used the leave to follow studies or further his training.

14. In sum the complainant has failed to show that Eurocontrol owed him any duty whatever, the more so since the duty he is seeking to impose on it is in the matter of career advancement, an area in which the Organisation has wide discretion anyway.

15. For the foregoing reasons the complaint is wholly irreceivable, there being no decision at all, not even an implied one, that is challengeable in law.

DECISION:

For the above reasons,

The complaint is dismissed. In witness of this judgment Miss Mella Carroll, Judge, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

Mella Carroll
P. Pescatore
Michel Gentot
A.B. Gardner