

SEVENTY-EIGHTH SESSION

***In re* LEBOURGEOIS**

Judgment 1402

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Emilienne Lebourgeois against the European Organization for Nuclear Research (CERN) on 9 April 1994 and corrected on 17 May, CERN's reply of 29 June, the complainant's rejoinder of 21 August and the Organization's letter of 12 September 1994 to the Registrar of the Tribunal stating that it would not submit a surrejoinder;

Considering Article II, paragraphs 5 and 6, of the Statute of the Tribunal;

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. In August 1950 the complainant, a French citizen, married Mr. Gaston Chesneau. He was an employee of CERN from 1955 to 1981. They got a divorce on 11 July 1975 and Mr. Chesneau married again in June 1980. He died on 9 December 1985. The Pension Fund of CERN (known as the Staff Insurance Scheme up to 1986) has since been paying a widow's pension to his second wife.

On 7 February 1984 the complainant wrote to the CERN Staff Insurance Scheme to enquire about her "entitlement to a transfer of pension as a surviving spouse". The Scheme asked her in a letter of 15 February 1984 whether she met the requirements of its Rules and Regulations and in a letter of 20 January 1986 whether she had been receiving alimony at the time of her former husband's death.

Her counsel replied in a letter of 29 January 1986 that she had not, and the Pension Fund did not pay her a pension.

On 26 May 1988 she lodged an appeal against CERN with a French court, but because CERN is an international organisation nothing came of it. The complainant wrote in August 1988 to the President and in December 1992 to the Ombudsman of France.

In answer to inquiries and requests for review from the French Ministry of Foreign Affairs and the Ombudsman CERN replied in letters of 3 November 1988 and 5 July 1993 that the complainant did not qualify under its own rules for any pension benefit. But the administrative officer of the Pension Fund said in a letter of 5 July 1993 to the Ombudsman that since the complainant was in financial straits, her case would be "put to the Governing Board of the Pension Fund at its next meeting".

By a letter of 30 September 1993 the administrative officer informed the Ombudsman that the Board had met on 13 September but had not yet come to any conclusion on the complainant's case. Confirming what he had said in his letter of 5 July, he repeated that CERN could not pay the complainant a pension.

By a letter of 11 March 1994 the complainant asked the Director-General of CERN to state his position. By a letter of 18 March the administrative officer of the Fund confirmed that her claim was rejected. That is the decision she is challenging.

B. The complainant states that she is badly off and submits that the widow's pension should be split between successive spouses in proportion to the length of each marriage.

Article 25.7 of the Rules of the Staff Insurance Scheme says that on the death of a member of the Scheme a divorced wife with no dependant children has the same rights as the widow. In the complainant's submission CERN's refusal to pay her a widow's pension, which it based on the fact that she had not been paid alimony, is due

to a misreading of the rules. In the event of divorce a surviving spouse who does not marry again is entitled to half of the widow's pension.

She asks the Tribunal to rule that she is entitled to benefit and that the total amount of the widow's pension is to be divided between Mr. Chesneau's wives in proportion to the length of each marriage over a total period of 30 years: 83.3 per cent for the complainant and 16.6 per cent for Mr. Chesneau's second wife. She also asks the Tribunal to order the CERN Pension Fund to pay her the sum of 10,000 French francs in damages.

C. In its reply the Organization submits that the complaint is irreceivable: its letter of 18 March 1994 was not a decision but mere confirmation of its earlier position, which was notified to the Ombudsman by a letter of 5 July 1993 and to the Ministry of Foreign Affairs by a letter of 3 November 1988. Even though the letters were not addressed to her she was free by 1988 to treat the absence of a reply from the Organization as implied rejection and to challenge it within the time limit set in Article 5 of the chapter on appeals in the Pension Fund Regulations. In any case her complaint is irreceivable because she has failed to exhaust the internal means of redress.

CERN's pleas on the merits are subsidiary. It submits that the complainant does not meet the requirements for payment of a widow's pension. Article II 5.02 of the Rules of the Pension Fund states that "the divorced former spouse shall be entitled to a pension for surviving spouse on the condition that ... the deceased former spouse at the time of death was under an obligation to pay maintenance to the survivor". Her complaint is therefore devoid of merit.

D. In her rejoinder the complainant states that the reason why she was not getting maintenance at the time of her divorce was that she had a regular job. But her counsel told her she would be entitled to a widow's pension upon the death of her ex-husband since the decree of divorce had declared him entirely at fault. So her means of livelihood are very poor: she is hemiplegic and cannot live properly on her own retirement pension.

CONSIDERATIONS:

1. From 1950 to 1975 Mrs. Lebourgeois was married to Mr. Gaston Chesneau, who was an employee of CERN's from 1955 until 1981. In 1975 she was granted a divorce. Mr. Chesneau remarried in 1980. He died in 1985. The present dispute is about the complainant's entitlement to a widow's pension.

2. She is challenging a decision in a letter which the administrative officer of the Pension Fund of CERN wrote her on 18 March 1994 and which confirmed earlier rejections of her claim to benefit. CERN answers that her complaint is irreceivable on two counts. For one thing, it is time-barred because the letter of 18 March 1994 merely confirmed decisions taken earlier, notably in 1988; for another, since she has not lodged an internal appeal against the decision she purports to be challenging she has failed to exhaust the remedies open to her under Article III 1.04 of the Rules of the Pension Fund and Article 1 et seq. of its Regulations for Appeals.

3. There is no need to rule on those pleas since her case is plainly devoid of merit. She argues that under "CERN's rules and regulations" she is entitled to payment of a widow's pension as the surviving spouse - and one who has not married again - of a former CERN official and pensioner. His pension, she says, should be split between herself and the second wife, each getting a share proportionate to the length of her marriage to him. But under Article II 5.02 of the current Rules of the Pension Fund, which corresponds to Rule 25.7 of the Rules of CERN's Staff Insurance Scheme as applied up to 1 January 1986, the divorced wife is entitled to the widow's pension only if at the time of death the husband was required to pay her alimony. The divorce decree that the competent court at Thonon-les-Bains in France made on 11 July 1975 did not order Mr. Chesneau to pay her alimony. Nor does she contend that the position altered in law between the date of the decree and that of his death. His gift to her of all the real and personal property coming under their contract of marriage does not amount to the payment of alimony that the material provision expressly requires. As CERN observes, she fails to meet the legal conditions for payment of the widow's pension. So her claim to such payment and as a result her claim to damages cannot succeed.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.