

## **EIGHTY-FIRST SESSION**

### ***In re* LANGELEZ (No. 5)**

#### **Judgment 1552**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Jean-Claude Langelez against the European Organization for Nuclear Research (CERN) on 26 June 1994 and corrected on 15 July 1995, CERN's reply of 23 October 1995, the complainant's rejoinder of 29 January 1996 and the Organization's surrejoinder of 19 April 1996;

Considering Articles II, paragraph 5, and VII 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. Some of the material facts of this case are set out under A in Judgment 1551, also delivered this day, on Mr. Langelez's fourth complaint.

At the end of lengthy correspondence and by a letter of 22 March 1994, the impugned decision, the Organization yet again confirmed that all the complainant's appeals were irreceivable "for the reasons given in earlier letters".

B. The complainant restates the pleas which he put forward in his fourth complaint and which are summed up under B in the above-mentioned Judgment.

He asks the Tribunal to quash all the decisions that CERN has taken on his case since 3 October 1988, award him damages for the decisions of 26 July 1993, 23 November 1993 and 22 March 1994; to declare either that the SL (SPS) Division acted ultra vires or else the Director-General acted unlawfully by vesting authority in it; to order the Organization to afford him the protection and compensation due to staff under Rule I 3.07 in the performance of their duties; to order an independent medical inquiry; and to award him costs.

C. CERN replies that the complaint is irreceivable. The letter of 22 March 1994 is not a decision since it merely refers to earlier letters from the Organization informing him that his appeals and claims to redress were irreceivable. In any case the claims in the complaint are too vague to be receivable: he states neither the nature and cause of the injury nor the amount he seeks in damages.

In subsidiary argument it contends that the complaint is devoid of merit.

D. In his reply the complainant restates the pleas he put forward in his fourth complaint which are summed up under D, in the above-mentioned judgment.

E. In its surrejoinder the Organization presses its pleas. It submits that the impugned decisions are final and beyond challenge.

#### **CONSIDERATIONS:**

1. In this complaint Mr. Langelez is challenging a decision of 22 March 1994 and making the claims set out in B above. In an internal appeal of 10 June 1992 he asked the Director-General to reopen the case so that the Organization might adduce evidence in support of a decision it had taken on 3 October 1988 that he was unfit for shift work. CERN told him on 19 June 1992 that even if his letter of 10 June might be treated as an appeal it was time-barred and therefore irreceivable. That reply prompted from him another appeal dated 20 August 1992. On 19 October the Organization confirmed that his claims were irreceivable.

2. On 20 August 1992, the very day on which he lodged his appeal, he sent CERN a letter alleging that a "new fact"

entitled him to appeal against the decision of 3 October 1988 and against another of 15 January 1991 about his reclassification. On 20 October 1992 CERN informed him that the alleged "new fact" afforded no grounds for appeal against the decisions taken in 1988 and 1991.

3. By a letter of 19 December 1992 the complainant told the Director-General that he was renewing the "appeals he had already lodged in the letter of 10 June 1992 and in two others of 20 August 1992, all about earlier appeals" and wanted referral to the Joint Advisory Appeals Board. By a letter of 5 February 1993 the Director of Administration answered him on the Director-General's behalf that under Staff Rule VI 1.01 appeal lay against a specific decision by the Director-General and that he was too late to challenge the decisions of 3 October 1988 and 15 January 1991.

4. On 9 April 1993 the complainant filed what he called "a new appeal against the latest unfavourable decision of 5 February 1993" and maintained his "earlier appeals". He asked CERN to determine the date of "consolidation" of his illness in accordance with paragraph 11 of administrative circular 14. By a letter of 4 May 1993 the Director-General said that he confirmed that the appeals were irreceivable; that since 10 June 1992 the Organization had shown not the slightest inclination to reverse the final decisions of 3 October 1988 and 15 January 1991; that the final decisions in his letters had settled those issues once and for all; and that in the ensuing correspondence there was no final decision against which appeal might lie under Staff Rule VI 1.01.

5. On 3 July 1993 the complainant again asked to have the date of "consolidation" of his illness determined; claimed damages for CERN's refusal to set that date; and pressed every single appeal he had lodged since 10 June 1992. The Organization's answer of 26 July 1993 was that setting a date of "consolidation" was utterly irrelevant to his case and that his claim was out of time anyway because he was challenging a decision that dated back to 15 January 1991. In answer to a further appeal that he had lodged on 23 September 1993 the Director of Administration told him in a letter of 23 November 1993 that his claim to damages and every one of his appeals were irreceivable.

6. The wording of that letter of 23 November 1993 is plain: it conveyed no new decision but merely referred to earlier replies. It reads:

"In answer to your letter of 23 September 1993 ... the Director-General has instructed me to tell you that he has nothing to add to the letters you were sent on [4] May and 26 July 1993."

7. By a letter of 21 January 1994 the complainant appealed against the letter of 23 November 1993. The Director of Administration answered yet again, on 22 March 1994, as follows:

"The appeals you have lodged or revived [in your letter of 21 January 1994] are irreceivable for the reasons given in my earlier letters to you ..."

8. Under point 3 (a) (i) of the complaint form the complainant gives 22 March 1994 as the date of the final decision he is impugning. As is plain from the foregoing, the letter bearing that date is not a challengeable final decision. Indeed, merely referring as it does to earlier correspondence it does not amount to a decision at all.

9. Article VII(2) of the Statute sets a time limit of ninety days for filing a complaint from the date of notification of the challenged decision. The complainant filed this complaint on 26 June 1994. It is therefore out of time and irreceivable insofar as it challenges any decision notified to him before 28 March 1994. Since the decisions he purports to challenge were all notified to him before that date they are no longer appealable before the Tribunal.

**DECISION:**

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, Vice-President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

Michel Gentot  
Julio Barberis  
Egli  
A.B. Gardner

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