

## EIGHTY-SECOND SESSION

### *In re Doyle*

#### **Judgment 1575**

The Administrative Tribunal,

Considering the complaint filed by Miss Deirdre Patricia Doyle against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 11 April 1996, Eurocontrol's reply of 19 July, the complainant's rejoinder of 10 September and the Agency's surrejoinder of 31 October 1996;

Considering Articles II, paragraph 5, and VII, paragraph 1, 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. Eurocontrol employs the complainant, who is Irish, as a senior technical assistant at grade B3 in its Experimental Centre at Brétigny-sur-Orge, in France. In a "vacancy notice/notice of competition", No. CE-94-AT/105, of 4 August 1994, Eurocontrol advertised a post for a "studies and applied research engineer". The complainant applied on 12 October 1994.

She was put on the short list and interviewed by an outside firm of consultants. But by a letter which she got on 15 June 1995 the head of the Recruitment Section told her of the Director General's decision to appoint a candidate better "suited" for the post. She lodged an internal "complaint" against that decision on 14 September 1995. Having got no reply, she infers and impugns the rejection of that complaint.

B. The complainant submits that the Director General's decision is in breach of the rules on competitions. Under Article 30 of the Staff Regulations the Agency should have held the internal competition before the external one and under Article 31 it should never have held an external competition at all because the Director General did not declare her, the only internal candidate on the short list, to be unqualified.

She claims appointment either to the disputed post as from the date at which the successful candidate took it up or to another post "of equivalent grade and function" at the Centre.

C. In its reply the Agency contends that her complaint is irreceivable on two counts: because her claims are different from those in her internal "complaint" and because the Tribunal may not order an organisation to put someone on a particular post.

In subsidiary argument on the merits Eurocontrol seeks to refute her pleas and dwells on her shortcomings in the critical area of "trajectory computation and guidance techniques".

It wants the Tribunal to order her to pay "all costs".

D. In her rejoinder the complainant maintains that her complaint is receivable and that the redress she is seeking is the corollary of her original claims. She points out that, whatever her shortcomings may be in "trajectory computation", they did not induce the selection board to declare her unfit for the post. She presses her claims.

E. In its surrejoinder Eurocontrol maintains its submissions on receivability and on the merits, "including with regard to" costs.

#### CONSIDERATIONS

1. On 4 August 1994 Eurocontrol issued a "vacancy notice/notice of competition" about a post at grade A5/A6/A7 for a "studies and applied research engineer". The notice invited applications from serving staff and from "official" candidates, sponsored by national authorities, and external ones. Besides academic qualifications and knowledge of languages the notice gave as two "particular requirements":

"Deep knowledge of trajectory computation and guidance techniques, and proven experience of their use, preferably in Air Traffic Control.

Proven experience in R & D [research and development] projects."

It described the selection procedure thus:

"An initial selection will be made on the basis of a first assessment of qualifications and experience of all candidates. Thereafter, those candidates considered suitable may be invited in a final selection procedure consisting of assessment and interviews. Further details will be given to candidates who are invited to participate."

The process of selection is governed by Articles 30 and 31 of the Staff Regulations and by Rule of Application No. 2

2. Having gone through all the applications, the selection board found seven candidates suitable, the only internal one being the complainant.

3. At an interview on 15 December 1994 she took a test of language skills, what she calls "a graphological test on a letter of motivation written during the examination", and a set of multiple-choice questions.

4. The Organisation states that eleven criteria were applied for the purpose of assessment. Each criterion was given a maximum score of 4 to 10 points according to its importance. The possible total was 72. "Trajectory computation" and "proven experience in R & D projects" were each given 10. The complainant got 2 points for the former and 4 for the latter, and a total of 46, whereas the successful candidate obtained 9, 7 and 56 respectively.

5. Eurocontrol told her by a letter that reached her on 15 June 1995 that "another candidate suited better the requirements of this particular post". On 14 September 1995 she appealed on two grounds:

"Holding a test was contrary to Rule No. 2, because the vacancy notice had not stipulated a test, and she was never told what kind of test she would have to take and how it would be marked; and the selection process was contrary to Articles 30 and 31. The former, said the complainant, did not authorise the comparison of internal and external candidates, and required that a competition be held first for internal candidates only. According to Article 31, only if that was not fruitful could a competition be held for external candidates."

Since the letter of rejection had not said that she was unqualified for the post she asked that the competition be reopened and her candidature re-examined. Treating Eurocontrol's failure to notify its decision to her within four months as implied rejection under Article 92 of the Staff Regulations, she has filed this complaint seeking appointment to the advertised post or to an equivalent one.

#### *Receivability*

6. The defendant pleads that the complaint is irreceivable insofar as the relief the complainant is claiming goes beyond what she sought in the internal proceedings and because she is asking the Tribunal to issue orders to the Organisation.

7. Although the complainant has indeed asked for the first time in her complaint that she be appointed to the post, she can be only if the competition is reopened: that was indeed implicit in her internal appeal. The substance of her claim both in the internal proceedings and before the Tribunal is the reopening of the competition. To that extent her complaint is receivable; her claim to be appointed to the post or to an equivalent one is not.

#### *The merits*

8. The process of interview and assessment showed not only that the complainant was less well qualified than the successful candidate but also that she lacked essential qualifications for the post. So the failure to select her has caused her no actionable injury and there is no need to entertain her plea that the process of selection was flawed. Her claim to the reopening of the competition therefore fails.

9. In line with its consistent practice the Tribunal dismisses the defendant's claim to costs.

### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas  
Mella Carroll  
Mark Fernando  
A.B. Gardner

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