

EIGHTY-FOURTH SESSION

In re Boland (No. 10)

Judgment 1685

The Administrative Tribunal,

Considering the tenth complaint filed by Mr. Pierre Boland against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 25 July 1996 and corrected on 20 September, Eurocontrol's reply of 13 December 1996, the complainant's rejoinder of 28 March 1997 and the Organisation's surrejoinder of 11 July 1997;

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. Facts of some relevance to this case appear under A in Judgment 1615 of 30 January 1997, which dismissed several complaints, including Mr. Boland's ninth.

The complainant, a Belgian who was born in 1943, joined the staff of Eurocontrol on 4 May 1970. At the material time he was head of the General Services, Library and Documentation Section of the Organisation's Institute of Air Navigation Services, which is in Luxembourg. He held grade A6. As was said in Judgment 1615, the Institute underwent reform in 1995 and some of its staff were redeployed. The reforms prompted objections to breach of due process. The Tribunal held in its judgment that redeployment had not impaired the complainants' status and that their complaints were therefore irreceivable. On 6 June 1995 the Director General ordered the complainant's provisional transfer to the office of the Director of the Institute as from 1 July.

By a notice dated 11 October 1995 the Director General transferred the complainant as from 1 January 1996 to the Organisation's Experimental Centre at Brétigny-sur-Orge, near Paris. He was put on a post for an expert in technical installations. The post had been put up for competition by notice No. CE-95-AT/057 of 19 May 1995. On 10 November 1995 the Director of Human Resources told the complainant that on the instructions of the Director of the Centre his transfer was to take effect at 1 February 1996.

On 12 January 1996 he submitted to the Director General a protest against the two decisions. By a memorandum of 26 January the Director of Human Resources told him that there was no intention of amending the procedure that had hitherto been followed and had culminated in his transfer and that his case was being put to the Joint Committee for Disputes. In a report dated 29 May 1996 a majority of the Committee upheld his case; it recommended awaiting the Tribunal's ruling on the lawfulness of the process of redeployment and settling the case of everyone concerned in the light of that judgment. The complainant is challenging the implied rejection of his claims.

B. The complainant contends, first, that by failing to answer his internal appeal the Organisation has disregarded its duty to account for his transfer. Besides, there was no valid reason to do away with the post he was assigned to in Luxembourg.

His second plea is that the transfer was ordered in breach of the process of redeployment. Unlike the reforms which were made at the Institute as from 1 January 1993 and on which the Tribunal ruled in Judgment 1358 (*in re* Cassaignau No. 3), that process had the effect of abolishing some jobs and creating others. So the Director General was bound under Article 30 of the Staff Regulations to announce all the new and vacant posts, hold competitions and set up selection boards. He could not shirk that requirement merely

by citing Article 7, which empowers the appointing authority to assign any staff member by appointment or transfer, and in the sole interests of the Organisation, to a post in his category or service which corresponds to his grade. Article 8 of Rule of Application No. 2, which also affords the basis for redeployment, is unlawful. It is in breach of the Staff Regulations because it allows the Director General discretion to assign someone to a post at his grade without holding any competition.

The complainant observes, thirdly, that he was transferred to the Centre at a time when his post there was up for competition. There was, in his view, misuse of authority in that his duties at the Institute have not been scrapped but split between other staff and his personal and family circumstances were overlooked. He has suffered serious material and moral injury.

He asks the Tribunal to quash the implied decision to reject his appeal of 12 January 1996, set aside the decisions of 11 October and 10 November 1995 and award him moral damages and costs.

C. In its reply the Organisation argues that the complainant's claim to moral damages is irreceivable because he has failed to exhaust the internal means of redress. At no point in the proceedings has he been represented by counsel, either in his internal appeal or before the Tribunal; so he is not entitled to costs.

On the merits it pleads that the decision of 11 October 1995 does meet the requirements of the case law on the substantiation of decisions. The complainant cannot in any event make out that he was unaware of the reasons for his transfer. His objections to the lawfulness of the redeployment are immaterial. Even if the process was unlawful the Director General was entitled under Article 7 of the Staff Regulations, and by virtue of his discretionary authority to run the secretariat, to transfer the complainant at any time and independently of any such process. The Organisation puts forward the subsidiary argument that, as in 1993, the redeployment did not consist in filling vacant posts and that Article 30 was therefore inapplicable.

The publication of notice CE-95-AT/057 did not prevent the appointing authority from filling the post by internal transfer under Article 7 of the Staff Regulations.

The complainant has failed to show misuse of authority. His personal and family circumstances were not overlooked, and any employee of an international organisation with duty stations in several countries can expect transfer at any time in its interests. The complainant has not, in Eurocontrol's submission, suffered any material or moral injury on account of the transfer.

The Organisation invites the Tribunal to award full costs against the complainant.

D. In his rejoinder the complainant contends that his transfer to Brétigny was the outcome of the process of redeployment. So the Tribunal must rule on the unlawfulness of that process. He presses all his arguments.

E. In its surrejoinder the defendant contends that the complainant may no longer challenge the lawfulness of redeployment, the Tribunal having ruled on that issue in Judgment 1615. It presses its objections to several of his claims and maintains all its arguments on the merits.

CONSIDERATIONS

1. The complainant joined the staff of Eurocontrol's Institute of Air Navigation Services in Luxembourg on 4 May 1970. He served there until 31 December 1995. On 11 October 1995 Eurocontrol decided to transfer him as at 1 January 1996 to its Experimental Centre at Brétigny-sur-Orge. By a letter of 10 November 1995 it told him that he would be transferred at 1 February 1996. That was when he took up duty at Brétigny.

2. The background to the case is as follows.

On 31 January 1995 the Personnel Directorate told the staff of the Institute that changes in its work would entail a process of redeployment in four phases. The third phase was redeployment within the Institute and the fourth redeployment elsewhere within Eurocontrol. At a meeting on 24 March 1995 the Director of the Institute announced the start of the process.

The Director General decided on 6 June 1995 to transfer 73 officials. One was the complainant, who was to move temporarily and without any change in grade to the office of the Director of the Institute. By a letter of

14 June the Director of Personnel told him that he would be covered by the fourth phase, in other words that he would be redeployed outside the Institute.

He filed an internal "complaint" on 28 June 1995 against the decisions of 6 and 14 June 1995 but had it rejected by a decision dated 27 October. On 14 November he appealed against that decision to the Tribunal, in his ninth complaint. Judgment 1615 dismissed that complaint on 30 January 1997.

On 12 January 1996 he had submitted a "complaint" against the decisions of 11 October and 10 November 1995 about his transfer and, having got no reply within the time limit in Article VII of the Tribunal's Statute, he inferred rejection. On 25 July 1996 he filed this complaint.

3. In support of his claim to the quashing of the two decisions he pleads Eurocontrol's failure to account for them, the unlawfulness of the process of redeployment, breach of Articles 7 and 30 of the Staff Regulations, misuse of authority, bad management and breach of his reasonable expectations. He is seeking damages for the material and moral injury that he says the decisions caused him. He claims costs.

4. A distinction must be drawn between his challenge to the process of redeployment and his particular objections to the decisions of 11 October and 10 November 1995. He contends that because the redeployment was unlawful so were the decisions. Thus he says:

"The order of transfer came in 'phase IV' of a process of redeployment which the complainant has already challenged by internal appeal and then by his ninth complaint ... One claim he made in the complaint was to the quashing of all the transfers ordered in the context of that process ..."

"The challenged decisions were taken in the context of a process of redeployment that the complainant challenged in his ninth complaint ... His pleas in support of this complaint are a shorter version of the arguments in his ninth ..."

"The process of redeployment which led to the impugned transfer is unlawful because it is in breach of Article 30 of the Staff Regulations ..."

"The breach of Article 30 ... suffices to make the process unlawful, and so too, are the decisions it led to, including the complainant's transfer to Brétigny."

Again, in his rejoinder he says:

"The complainant's transfer to Brétigny is of course the culmination of the process of redeployment ..."

"The complainant maintains that the order of transfer, being the direct outcome of an unlawful process, is itself unlawful."

5. Taking up his ninth complaint, the Tribunal ruled in Judgment 1615 on the lawfulness of the process of redeployment. To reach its conclusion that the complaint was irreceivable it reviewed that process and said, under 10, that there was "no evidence to suggest that redeployment impaired" the complainant's status. In other words, it did not impair any acquired rights of the staff. The reason why the complaint was irreceivable was that the process was lawful: only if the process had been found unlawful could the complaint have been declared receivable.

As was also said in 10, "structural reform is at an organisation's discretion", and in 11, there was "no evidence to suggest that the reforms constituted any misuse of authority".

6. The ruling the judgment hinged on was the lawfulness of the reforms. So any plea that the complainant founds on a challenge to that process is *res judicata* and must fail.

7. Next come his more specific objections to the decisions of 11 October and 10 November 1995. They are unlawful, he argues, because they are not properly substantiated, Eurocontrol having failed to reply to his internal "complaint", and because the abolition of his old post as head of the General Services, Library and Documentation Section in Luxembourg constituted a misuse of authority.

Precedent has it -- for example, Judgment 1289 (*in re Enamoneta*) -- that an organisation need not give express reasons for all its decisions; it will do if, though not stated in the actual text of the decision, they are given in the defendant's reply to the complaint. The reasons for transferring the complainant to Brétigny-

sur-Orge were well known. Because of the reforms at the Institute Eurocontrol did away with some of his former duties and split the rest among other staff. So it had to find for him elsewhere a suitable post that bore his grade. The evidence adduced by both parties shows the reasons for the impugned decisions to have been sound.

The plea of misuse of authority fails because the complainant offers not a jot of evidence in support .

8. He further pleads bad management and breach of his reasonable expectations. Eurocontrol, he says, failed to take account of his own circumstances and his family's, such as the effect of his transfer on his wife's employment. He points out that he had been serving Eurocontrol in Luxembourg ever since joining the staff in 1970 and had many close ties there.

Eurocontrol replies that his objections do not outweigh its own interests and that it never promised to let him stay for evermore in Luxembourg. Indeed he must have known that a career in the international civil service might require him to change duty stations at any time.

9. Since for the foregoing reasons his main claim fails, so too do his claims to damages and costs.

10. The Tribunal disallows the Organisation's counter-claim to an award of costs against the complainant.

DECISION

For the above reasons,

The complaint and Eurocontrol's counter-claim are dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot
Julio Barberis
Seydou Ba

A.B. Gardner