

NINETY-SEVENTH SESSION

Judgment No. 2353

The Administrative Tribunal,

Considering the complaint filed by Mr P. V. H. against the Customs Co-operation Council (CCC), also known as the World Customs Organization (WCO), on 3 March 2003, the Organization's reply of 1 July, the complainant's rejoinder of 13 October 2003 and the Organization's surrejoinder of 22 January 2004;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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

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

A. Staff Regulation 12(a) provides:

“The Secretary General may, after consulting the appropriate advisory body, terminate the appointment of an official :

- (i) [...]
- (ii) if the post of the official is suppressed [...] and there is no vacant post for which the Secretary General considers that the official has the necessary qualifications;

[...]

The complainant, a Belgian national born in 1957, joined the CCC on 1 July 1975 as an assistant operator and was assigned to the Document Reproduction Service. He was promoted to the position of operator on 1 February 1981 and became head of the service on 1 March 1985. At the time of the material facts, he held grade C6.

In the course of an interview on 5 September 2001, the Head of the Division of Administration and Personnel told the complainant that, in the light of a study of the WCO's print shop facilities by a private company, the Administration would probably propose to outsource document reproduction. He made it clear to the complainant that this solution, which appeared to be the most economical, was bound to affect his position. On that same day, he sent a memorandum to the Chairman of the Staff Committee, giving the results of the study as well as his proposals, and asking the Committee to let him have its comments. The Committee met on 11 September and expressed its concern regarding the possible closure of the Document Reproduction Service, because of the situation of the two staff members working there and the need to preserve the confidential nature of the deliberations of the Committees of the WCO's Council. In a letter of 19 September 2001, the Secretary General informed the complainant that, having obtained the opinion of the appropriate advisory body, he had decided to close the Document Reproduction Service and that his post had been suppressed as a result. His appointment would be terminated on 31 January 2002.

On 18 October 2001 the complainant asked the Secretary General to modify or withdraw that decision. The Secretary General replied on 5 November and confirmed his earlier decision, given that the suppression of the complainant's budget post had come about for objective reasons and was required as part of the restructuring of the Secretariat. The matter was referred to the Appeals Board in December 2001. By letter of 4 December 2002, which is the impugned decision, the Secretary General copied the Appeals Board's recommendation to the complainant and informed him that, since the Board had been unable “either to justify or validate his grievances”, his appeal was rejected.

B. The complainant begins by denouncing the lack of substantiation or inadequacy of the reasons given insofar as he was not informed of the grounds for the Appeals Board's recommendation. He adds that, while the Secretary General was entitled to disregard the recommendation of the Staff Committee, he should at least have stated his reasons for doing so, which he did not do.

He also argues that the provisions of Staff Regulation 12(a), Staff Rule 12.1(a) and Staff Circular No. 142 were breached in that the decision to terminate his appointment was not preceded by an opinion of the Staff Committee. While the latter was asked to comment on the possibility of outsourcing document reproduction, it was not consulted about the intention to terminate his appointment following the suppression of his post, a question which was not even implicitly raised in the memorandum of 5 September 2001. The complainant, who also casts doubt on the validity of the Staff Committee's opinion, alleges that it was forwarded to the Administration on 20 September 2001, i.e. after the decision of 19 September.

According to the complainant, the provisions of Staff Regulations 10 and 12(a) were breached because his budget post either had not been suppressed at the time the decision was taken to terminate his appointment, or had been abolished by a non-competent authority, since in his view the Secretary General was not competent to suppress his post on his authority alone.

The complainant further considers that a study of the operation of one of the Organization's services necessarily involves considering what is in the interest of the service, and should never have been entrusted to a private company, because it was not qualified to gauge that interest.

He submits that the outsourcing option fails to take account of essential factors, such as the need for flexibility and confidentiality in the reproduction of documents for the Council's Committees and Policy Commission. The complainant argues that the Secretary General drew clearly mistaken conclusions from the file and he mentions two errors of fact or blatant mistakes of assessment.

The complainant further contends that his post has not really been suppressed; the duties attached to it have simply been modified. He accuses the Organization of not having considered the possibility of assigning him those duties or appointing him to a vacant post or to one which is shortly to be created.

Lastly, he pleads misuse of authority on the grounds that the decision to suppress his budget post was taken not in the interest of the service but in order to get rid of an "unwanted official".

The complainant requests that the decisions of 19 September 2001 and 4 December 2002 be quashed and that he be reinstated. Subsidiarily, in compensation for the harm done to his career, he claims an amount equivalent to "all the financial benefits or those reckonable in monetary terms" to which he would have been entitled if he had kept a C6 post, less whatever financial benefits he has obtained or might obtain from another employer, and 20,000 euros for moral injury. He also claims costs.

C. In its reply the Organization endeavours to demonstrate that the complainant was perfectly aware of the reasons underlying the decision to terminate his appointment and maintains that the sole reason for the decision was the closure of the Document Reproduction Service. It asserts that the Secretary General took his decision only after seeing the opinion of the Staff Committee, which he takes into consideration but by which he is not bound. While pointing out that under Staff Rule 29.3 only a copy of the Appeals Board's recommendation need be sent to the appellant, the Organization produces the Board's full report as an appendix to its reply.

According to the defendant, the Staff Committee met on 11 September 2001 to consider the memorandum of 5 September, which expressly contemplated the possibility that the complainant's post might be suppressed – as shown, in its view, by the minutes of that meeting – but did not express any opposition to the restructuring plan. Since the Committee had given its opinion on the suppression of the complainant's post, there was no justification for consulting it again once that formality had been completed. The Committee's Chairman was informed, however, that it had not been possible to reassign the complainant within the Secretariat. Moreover, all the applicable rules were fully complied with.

The Organization points out, furthermore, that both the Finance Committee and the Council were informed of the suppression of the complainant's post and approved it. The Secretary General, who is responsible for the organisation of services, followed constant practice in that respect.

With regard to the complainant's plea concerning the decision to have the operation of the Document Reproduction Service looked at by a private company, the Organization points out that it is up to the Secretary General to determine what is in the best interest of the service. It considers that, since it was in its interest to outsource the document reproduction, it became unreasonable to maintain the complainant's post. Making use of subcontracting is a reasonable measure, which is flawed neither by any blatant mistake of assessment nor by errors of fact and which took all essential facts into account.

The defendant maintains that it fulfilled its obligations towards the complainant to the best of its ability. It argues that, despite its efforts, it proved impossible to reassign him and points out that the Head of Administration and Personnel made many attempts to help the complainant find work outside the Organization. It adds that the grade C posts which were created have nothing to do with the complainant's post.

With regard to the complainant's plea that the Organization was guilty of misuse of authority, the latter maintains that the charge is based on "irrelevant combinations and groundless assertions".

D. In his rejoinder the complainant reiterates all his pleas. He submits that the Secretary General tried to make up for the lack of reasons justifying his decision of 4 December 2002 by producing the Appeals Board's report, but points out that this does not mean that the decision of 19 September 2001 was sufficiently substantiated.

In his view, furthermore, the memorandum of 5 September 2001 referred at best implicitly to the suppression of his post. It may be assumed that the Staff Committee would have opposed that measure, had it been consulted on the matter, given that it objected to the outsourcing of document reproduction.

The complainant defines his claim to compensation for harm done to his career, estimating his loss as 1,367,742 euros.

E. In its surrejoinder the defendant maintains its position. It contends that the complainant's post was suppressed in response to real requirements and was not replaced by any equivalent post. It holds that the question of compensation for injury to the complainant does not arise since it did not commit any error.

CONSIDERATIONS

1. On 5 September 2001 the complainant, who was Head of the Document Reproduction Service at the WCO, was interviewed by the Head of the Division of Administration and Personnel. The latter told him that, since all the reproduction equipment was outdated, the Administration had asked a private company to carry out a study of the print shop's facilities, as a result of which it would probably propose outsourcing the service.

That same day, the Head of Administration and Personnel sent the Chairman of the Staff Committee a memorandum enclosing a copy of the study carried out at his request by a private company and asked the Committee for its comments before proposing to the Secretary General to opt for outsourcing document reproduction as the most economical solution for the Organization. On 11 September the Staff Committee expressed its concern regarding the consequences of the possible closure of the print shop. On 19 September 2001 the Secretary General informed the complainant that he had decided to disband the service and that his post had therefore been suppressed. He added that his appointment would be terminated on 31 January 2002.

When the internal appeal procedure had been completed, the Secretary General notified the complainant that his appeal had been rejected in a letter of 4 December 2002, which the complainant received the following day. That is the impugned decision.

2. The complainant requests that the decisions of 19 September 2001 and 4 December 2002 be quashed and that he be reinstated. Failing that, he claims compensation both for the harm done to his career and for moral injury. He also claims costs.

In support of his complaint he puts forward eight pleas. The Tribunal will consider in particular his plea regarding the validity of the termination procedure.

3. The complainant accuses the Organization of breaching Staff Regulation 12(a), Staff Rule 12.1(a) and Staff Circular No. 142 on the grounds that the decision to terminate his appointment was not preceded by a notice issued

by the Staff Committee “in accordance with Staff Regulation 31 and its rules of application”.

The defendant submits that the Staff Committee met on 11 September 2001 to consider the memorandum of the Head of Administration and Personnel of 5 September, which expressly contemplated the possibility of suppressing the posts in the Document Reproduction Service and explained the reasons for doing so. According to the Organization, as stated in the minutes of the Committee’s meeting, the latter discussed the proposal to suppress those posts, a measure which inevitably entailed terminating the appointment of the incumbents once every possible effort had been made to reassign them. It adds that since the Staff Committee had given its opinion concerning the suppression of the complainant’s post, there was no justification for consulting it again once everything had been done to reassign him.

4. The relevant provisions of the Staff Regulations and Staff Rules and of Staff Circular No. 142 read as follows:

Staff Regulation 12(a):

“The Secretary General may, after consulting the appropriate advisory body, terminate the appointment of an official [...]”

Staff Rule 12.1(a):

“The appropriate advisory body shall be consulted by the Secretary General before he/she terminates the appointment of an official.”

Staff Circular No. 142:

“The appropriate advisory body to be consulted under (a) of [Rule 12.1] is the Administration Committee in the case of an official in category A and the Staff Committee in all other categories. [...]”

It is clear from the above provisions that in this case the Staff Committee had to be consulted before the decision was taken to terminate the complainant’s appointment. The purpose of consulting an advisory body, prior to terminating an official’s appointment, is to allow that body to ensure that all the conditions for taking such a step are met, with a view to submitting a recommendation to the executive head.

5. The Tribunal takes the view that it is established by the evidence available and by the parties’ submissions that the Staff Committee was indeed asked to give its comments before the Head of Administration and Personnel proposed that the Secretary General should opt for outsourcing document reproduction, which appeared to be the most favourable solution for the Organization but which would also affect the posts of the staff of that service, since those were to be suppressed. However, it finds that the Committee was not formally consulted with regard to the intention to terminate the complainant’s appointment, despite the requirement to that effect set out in the above-mentioned rules. The fact that the Chairman of the Staff Committee, according to the Organization, was personally told by the Head of Administration and Personnel that it had not been possible to reassign the complainant within the Secretariat did not relieve the Secretary General of his obligation to consult the Staff Committee prior to terminating the complainant’s appointment.

As the impugned decision was taken in breach of the applicable rules, it must be held unlawful and the Tribunal need not rule on the complainant’s other pleas.

6. The complainant requests that he be reinstated or, failing that, in compensation for the harm done to his career, that he be granted a sum equivalent to “all the financial benefits or those reckonable in monetary terms” to which he would have been entitled if he had kept a C6 post, less whatever financial benefits he has obtained or might obtain from another employer. He also claims 20,000 euros for moral injury and an award of costs.

In the particular circumstances of this case, the Tribunal does not consider it advisable to reinstate the complainant. However, availing itself of its powers under Article VIII of its Statute, and in view of the unlawful actions of the Organization, it shall order the latter to pay the complainant, in compensation for injury under all heads, an amount equivalent to two years’ salary and allowances without taking account of any earnings received by the complainant from other employers.

7. Since the complainant succeeds for the most part, he is entitled to costs in an amount of 3,000 euros.

DECISION

For the above reasons,

1. The Organization shall pay the complainant a sum calculated as indicated under 6 above in compensation for injury under all heads.
2. It shall also pay him the sum of 3,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 13 May 2004, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 14 July 2004.

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet