

THIRTY-SEVENTH ORDINARY SESSION

***In re* PESSUS (No. 2)**

Judgment No. 282

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the European Organisation for the Safety of Air Navigation (Eurocontrol) drawn up by Mr. Jean Marcel Julien Pessus on 28 November 1975, the reply of the Eurocontrol Agency of 770 January 1976, the complainant's rejoinder of 28 February 1976 and the Agency's surrejoinder of 31 March 1976;

Considering Article II, paragraph 5, of the Statute of the Tribunal and articles 7, 25 and 92 of the Eurocontrol Service Regulations;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant joined the staff of the Eurocontrol Agency on 1 July 1965, with retroactive effect to 20 January 1965, as a first-grade deputy clerk © 4). He was assigned at first to the Experimental Research Centre at Brétigny in France; transferred on 1 September 1967 at his request to headquarters in Brussels, where he held several posts; and finally transferred to the Brétigny Centre.

B. On 28 March 1975 a competition was announced for a post as deputy clerk at the Brétigny Centre. No one on the Agency staff applied and the one outside candidate, who had previously applied for other posts, was unsuccessful, being over the prescribed age limit. It was then decided to transfer the complainant to Brétigny to fill the vacancy and the Director-General so informed him on 28 July 1975. The next day he wrote to the Director-General to say that he was not interested in being transferred to Brétigny. The decision to transfer him was nevertheless taken on 31 July 1975 with effect from 1 October. On 1 August he appealed. On 1 September the Director-General replied that the purpose of the transfer was to fill a vacancy as soon as possible and that the decision had been taken in the Agency's interests. On 28 November 1975 the complainant lodged a complaint with the Tribunal.

C. The complainant regards the transfer as a covert disciplinary measure imposed because he had lodged another complaint with the Tribunal and was engaged in proceedings before the Tribunal at the time of the events referred to in the present complaint. He maintains that the transfer causes him prejudice in that it is detrimental to his career. Lastly, he states that, as soon as he made known his disagreement, the administration ought to have established that the transfer was in the Agency's interests, and that, in his view it failed to do .

D. The complainant asks the Tribunal to quash the Administration's decision to transfer him, notified by Notice of Transfer M.57 of 31 July 1975; to quash the confirmation of that decision in the letter of 1 September 1975 from the General administration of Eurocontrol in reply to his complaint of 1 August 1975; and to award full costs against the Agency.

E. In its reply the Agency denies that there is anything disciplinary about the transfer. In accordance with article of the Eurocontrol Service Regulations, it points out "the authority empowered to make appointments may, in the sole interests of the service, assign each official by appointment or transfer to a post within his category or the group corresponding to his grade". In accordance with that article the complainant was transferred to a post "within his category" and "corresponding to his grade". A staff member has no right to any particular post. The authority empowered to make appointments may assign him, in the interests of the service, to any of the posts corresponding to his grade. Determination of the desirability of a transfer falls within the discretion of the authority competent to make appointments and is therefore free from judicial supervision. Moreover, the impugned decision was warranted by the need to fill a vacancy at the Experimental Research Centre in Brétigny.

F. The Agency asks the Tribunal to quash the complaint as unfounded on the merits and to award costs against the complainant.

CONSIDERATIONS:

According to article 7 of the Eurocontrol Service Regulations, "the authority empowered to make appointments may, in the sole interests of the service, assign each official by appointment or transfer to a post within his category or the group corresponding to his grade".

The complainant is a first-grade deputy clerk and from 1968 worked in the Messenger and Library Service at Eurocontrol headquarters in Brussels. By decision of 31 July 1975, which he impugns, he was transferred in the interests of the service to the Experimental Research Centre at Brétigny at the same grade to a post within his category corresponding to his grade.

In support of his request that the decision be quashed the complainant maintains, first, that he was transferred to Brétigny without prior consultation and, secondly, that the decision of 31 July 1975 was not taken in the interests of the service and is tainted with abuse of authority.

As to the first argument:

It is clear from the documents in the dossier and indeed admitted by the complainant that on 28 July 1975 the Director-General told him that he was to be assigned to Brétigny from 1 October 1975.

Thus the Director-General informed the complainant of his forthcoming transfer by giving him two months' notice and so allowed him ample time - considering he was unmarried and a French citizen and had hitherto been assigned to Brussels - to resettle in France.

Contrary to what the complainant contends, the Administration was not bound to consult him beforehand.

It appears from the foregoing that the Director-General met the formal and procedural requirements he was obliged to respect for the contested transfer to be in order.

As to the second argument:

A clear distinction must be drawn between the quality of a staff member's work, as reflected in such things as performance reports and promotion, and specific facts or a general attitude at variance with his duties as a staff member and warranting disciplinary action.

The Eurocontrol Agency regarded the complainant's performance, and particularly his qualifications for his post, as not entirely satisfactory. In transferring him to a post corresponding to his grade and better suited to his talents the Director-General did not impose any disciplinary sanction but merely exercised his right to assign his subordinates in the Agency's best interests.

It is established that for some months there had been vacancies at the Brétigny Centre and staff had to be appointed to fill them.

Lastly, the transfer had the effect of assigning the complainant to his own country and cannot therefore, as he alleges, be regarded as "detrimental to his material and moral interests".

It appears from the foregoing that the complaint is unfounded.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as

myself Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 4 October 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet