

Registry's translation, the French text alone being authoritative.

## FIFTY-EIGHTH ORDINARY SESSION

In re ECKHARDT

Judgment No. 727

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr. Alexander Eckhardt on 22 November 1985, as supplemented on 3 December;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and Article 8, paragraph 3, of the Rules of Court;

Having examined the written evidence;

### CONSIDERATIONS:

The facts

1. The complainant joined the staff of Eurocontrol on 4 October 1971 as a trainee controller at its centre in Maastricht.

By a letter of 14 February 1974 the Director of Personnel and Administration informed him that "in the light of the medical advice" he could not be kept on at Maastricht but that there was a vacant post in Brussels he could apply for.

After an abortive attempt to lodge an appeal, the complainant agreed to work temporarily in Brussels and asked for special leave.

On 16 December 1974 he informed the Director that he did not want to be permanently stationed in Brussels, that he waived his special leave and that he would like to go back to Maastricht.

On 18 March 1973 the Head of Personnel wrote to say that he was deemed to have resigned as from 1 March 1975.

On 14 August 1975 the Director of Personnel and Administration overruled his objections and upheld the decision of 18 March.

2. In mid-September 1975 the complainant filed suit against Eurocontrol with a Dutch court in the District of Sittard.

On 3 November 1975 Eurocontrol informed him through its agent that should he file a complaint with the Tribunal it would treat the time bar as suspended from 15 September 1975.

On 25 June 1976 the Sittard court declared that it was competent but that the action was irreceivable.

The complainant then appealed to the Maastricht District Court, which on 12 January 1984 held that the Sittard court had not been competent.

3. In his complaint, which was filed on 22 November 1985, the complainant invites the Tribunal to declare that Eurocontrol was in breach of its obligations in failing to submit his internal appeal to a medical board, in refusing to reinstate him and in accepting his so-called resignation. He seeks an award of the remuneration he believes he is entitled to.

Subsidiarily, he seeks a declaration that Eurocontrol broke his contract of appointment and should pay him 294,000 guilders in damages.

## Receivability

4. Article VII(2) of the Statute of the Tribunal provides that, to be receivable, a complaint must be filed within 90 days of the date of notification of the decision impugned. The complainant's principal and subsidiary pleas are directed at Eurocontrol's decisions of 18 March and 14 August 1975. Since he filed it out of time his complaint is irreceivable.

The complainant is mistaken in his contention that the filing of a suit with the municipal courts can have any effect on the receivability of a complaint lodged with the Tribunal. Suing Eurocontrol before the Sittard court did not have the effect of suspending the time limit for filing this complaint.

It is immaterial that the Organisation's agent agreed to waive the time limit from 15 September 1975. Article VII(2) of the Statute of the Tribunal is mandatory and the parties are not free, even by mutual consent, to waive its application.

Besides, in undertaking not to plead the time bar the Organisation's agent was presumably referring only to the proceedings before the Dutch courts. These came to an end on 12 January 1984 and, counted from that date, the 90-day time limit in any event expired long before the complaint was filed.

### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

(Signed)

André Grisel

Jacques Ducoux

E. Razafindralambo

A.B. Gardner