

**SIXTY-FIFTH SESSION**

***In re* BOLAND (No. 4)**

**Judgment 925**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Pierre Boland against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 24 May 1988, Eurocontrol's reply of 19 July, the complainant's rejoinder of 8 September as corrected on 12 September and Eurocontrol's surrejoinder of 13 October 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 92(2) of the Staff Regulations governing officials of the Agency and Rule No. 10 concerning sickness and accident insurance;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant applied to the Sickness Insurance Scheme of Eurocontrol on 9 November 1987 for the refund of medical expenses incurred for his daughters Anne and Laurence. In reply he was sent a statement dated 25 November. The statement recorded as "consulting general practitioner" two appointments charged at 400 French francs each that had been entered as "examination" in the certificates of treatment and refunded as such. On 18 January 1988 the complainant lodged a "complaint" under Article 92(2) of the Staff Regulations claiming, among other things, the refund of the cost of the two appointments at the rate in force for examinations - 80 per cent - and not at the lower rate that applied to consultation of a general practitioner. The Scheme having failed to respond, he is challenging the implied decision to reject his claim.

B. The complainant contends that the Scheme has made the mistake of unilaterally changing, without explanation, the description of treatment by a specialist. Eurocontrol is also in breach of Article 25 of Rule No. 10 concerning sickness and accident insurance, which in such instances requires referral to the Management Committee of the Scheme.

He asks the Tribunal to order the Scheme to refund the cost of the two appointments at the rate in force for examinations, to order Eurocontrol to pay him at least 100,000 Luxembourg francs in damages for "putting him through vexatious and pointless internal proceedings" and to award him costs. He also applies for joinder with his first and third complaints.

C. In its reply Eurocontrol submits that the claim to damages is irreceivable because it is made for the first time in the complaint.

As to the merits Eurocontrol contends that the complainant has had his due under Rule No. 10. The two appointments were described by his doctor, without any explanation, as "examination", a term that does not appear in the exhaustive list, in Article 16 of Rule No. 10, of forms of medical treatment refundable at 80 per cent. Neither he nor his doctor, to whom Eurocontrol sent a letter on the matter, has given any explanation of the nature of the treatment.

The Organisation objects to joinder with his first and third complaints.

D. In his rejoinder the complainant maintains that his claim to damages is receivable because, though he did not make it in his internal appeal, he refrained from doing so in the hope of settling his disputes with the Organisation out of court.

As to the merits he points out that there is a heading "sundry examinations" in the Scheme's schedule of forms of treatment. He enlarges on his pleas and accuses Eurocontrol of poor management. He says that he has never seen

any letter from Eurocontrol to his doctor, who has since sent him a certificate, which he supplies, declaring that the examinations come under item K 10 of the French medical insurance schedule. He presses his claims.

E. In its surrejoinder Eurocontrol explains that, although "sundry examinations" is a catch-all heading that for accounting purposes covers several kinds of examination, the Scheme member is still bound to give an account of the treatment he is claiming the refund of. The medical officer of the Scheme got further information from the complainant's doctor which showed that the treatment was mere consultation. The certificate appended to his rejoinder ought to have been submitted at the right time to the Scheme.

#### CONSIDERATIONS:

1. The complainant is an assistant principal at grade B1 with Eurocontrol and works at its centre for air navigation in Luxembourg. This case is about the refund by the Eurocontrol Sickness Insurance Scheme of the cost of treatment of his daughters Anne and Laurence by a general practitioner.
2. His daughters received treatment from the general practitioner in Paris at a cost of 400 French francs each. The Scheme recorded the treatment as "consulting general practitioner" and paid the sum of 535 Belgian francs each, or a total of 1,070 Belgian francs, the complainant being left to pay the balance of 3,897 Belgian francs.
3. On 18 January 1988 the complainant lodged an internal "complaint" alleging that the treatment ought to have been refunded as "examinations", the term that appeared on the doctor's bills, at the rate of 80 per cent.
4. Having got no answer, he lodged this complaint on 24 May 1988 accusing Eurocontrol of unmistakable abuse of authority, "passivity" and "inadmissible silence". He asks the Tribunal:
  - (a) to order the Scheme to record the treatment as "examinations" and refund the cost as such at the prevailing rate;
  - (b) to order the Organisation to pay his costs;
  - (c) to join the complaint with his first and third ones; and
  - (d) to order Eurocontrol to pay him at least 100,000 Luxembourg francs in damages for putting him through vexatious and pointless internal proceedings.
5. The Organisation's reply is that his claim (d) is irreceivable because he is making it for the first time. It objects to joinder on the grounds that the conditions laid down in the case law (Judgments 656 and 657 of 28 March 1985 and 663 of 19 June 1985) are not met: for the Tribunal to order joinder the complaints must rest on the same facts and have the same purpose.
6. On the merits Eurocontrol points out that the bills refer merely to "examination", a term that does not match any of the headings in the material rules. So it put the treatment under the broadest category, "consulting general practitioner", warranting the refund of only 535 Belgian francs for each child.
7. The complainant rejoins that the Scheme's schedule of forms of treatment does include "sundry examinations" and he cites the Scheme's statement to him of 13 August 1987, which shows such examinations refunded at the rate of 80 per cent. He supplies a certificate from the doctor who treated his daughters saying that the treatment came under heading "K 10" in the French medical insurance schedule.
8. In its surrejoinder the Organisation acknowledges that the heading "sundry examinations" does appear in the Scheme's own schedule, but it points out that the claimant has to explain the nature of the examinations in the papers he supplies and that the complainant failed to do so. The surrejoinder adds that Eurocontrol's medical officer got in touch with the doctor and obtained from him in professional confidence further information about the sort of treatment he had given. The information was that the examinations had amounted to "consultation", a term which, according to Article 15 of the French medical insurance rules covers not just clinical examination but also ordinary diagnosis and minor medical care. The treatment of the complainant's daughters went no further than that. The Organisation points out that the doctor was inconsistent: to begin with he charged for "examination"; then he gave the complainant a certificate saying that the treatment came under K 10 ("surgical and specialist treatment"); in the end he described the treatment as "consultation".

## Preliminary issues

9. The complainant's application for joinder is disallowed. Although this and his first and third complaints all arise out of disputes with the Scheme, they raise different issues of fact and of law, so that the conditions for joinder are not met.

10. The Organisation's objections to receivability relate to claim (d), which is really a claim to an award of costs and which the Tribunal will therefore take up after the merits.

## The merits

11. As Eurocontrol says, the Scheme member has a duty to support a claim with documents that are clear enough for the Administration to be able to tell what the treatment was and to apply the right rate of refund. The duty was drawn to the staff's notice in a circular of 16 June 1981 and in office notice 17/82, which are cited in Judgment 923 about the complainant's first case. The duty is the more imperative because the rules guarantee freedom to choose a practitioner either in the country of their residence or elsewhere (see Judgment 924) and the Organisation therefore gets medical papers from quite different health and social insurance schemes. So where the details are wanting the Scheme may either refuse refund altogether or else put the treatment under the commonest heading.

12. The bills put in by the complainant, each of which comes to 400 French francs, are on French social security forms filled up by a doctor practising in the sixteenth district of Paris, and all they give by way of explanation is the word "examination".

13. Since the bills give a general and largely meaningless description Eurocontrol was quite right to put the treatment under the commonest heading - "consulting general practitioner" - and refund at the corresponding rate. The later amendments by the doctor, though immaterial, corroborate the Organisation's original stance.

14. For the foregoing reasons the complaint fails, including the claim to costs. There is therefore no need to rule on the receivability of claim (d). Besides, the complainant is himself to blame for any delay in dealing with his claim to the refund since the paper he produced in support plainly fell short.

## DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 8 December 1988.

(Signed)

Jacques Ducoux  
Mella Carroll  
P. Pescatore  
A.B. Gardner