

SIXTY-FIFTH SESSION

***In re* DUNAND and JACQUEMOD**

Judgment 929

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr. Louis Dunand and Mr. Jean-Louis Jacquemod against the European Organization for Nuclear Research (CERN) on 19 April 1988 and corrected on 2 May, CERN's replies of 3 June, the complainants' rejoinders of 30 June and CERN's surrejoinders of 22 July 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Chapter II, section 2, and Annexes RB 2 and RC 1 of the CERN Staff Rules and Regulations;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainants hold posts as heavy-vehicle drivers at CERN. They joined the staff of the Organization in 1964 at grade 2. Mr. Dunand was promoted to grade 3 in 1970 and Mr. Jacquemod in 1971. Mr. Jacquemod was promoted to grade 4 in 1974 and Mr. Dunand in 1975. One of their duties is the removal of potentially dangerous waste. On 2 September 1982 they lodged appeals under Annex RB 2.07 of the Staff Rules and Regulations alleging that their post descriptions and grades did not match their actual duties. Their appeals were rejected on 27 May 1983 on the recommendation of the Joint Advisory Appeals Board. On 31 October 1983 they filed second appeals making the same claim. In its report dated 20 February 1984 the Board, while acknowledging their good services, held that their correct grade was 4; it nevertheless advised keeping the matter under review in the years ahead. Their appeals were rejected on 27 March 1984. On 30 September 1987 they submitted third appeals against their grade. In two reports of 8 December 1987 the Board said that their post descriptions did not properly reflect the degree of their responsibilities, particularly for the transport of dangerous substances. It accordingly recommended reviewing the description in the Job Catalogue but felt unable to propose any change in the grading of their posts. By letters dated 20 January 1988, the decisions under challenge, the Director of Human Resources informed the complainants on the Director-General's behalf that their appeals had been rejected but that he had asked the Personnel Division to bring up to date the relevant post description in the Job Catalogue.

B. The complainants submit that it is high time there was review of their post descriptions, which were written in 1980 and which merely list the duties of a driver who transports ordinary substances. Although their work, which CERN admits they do well, is the last in a series of safeguards against radiation, it has not yet been regraded. When reviewed against the criteria laid down in Annex RC 1 in accordance with Chapter II, section 2, of the Staff Rules and Regulations (Classification of posts and advancement) the grading of their posts plainly overlooks their responsibility for safety. Moreover, the Annex requires that the classification of a post be reviewed from time to time. Though they have challenged the grading of their posts three times, the matter has never really come under proper review. They therefore submit that the Board and the Director-General failed to take account of an essential fact, the increase in their responsibilities.

They ask the Tribunal to quash the decisions of 20 January 1988, order CERN to review the classification of their posts and grade them 5, and to award each of them costs.

C. In its replies CERN disputes their contention that it has never properly gone into the merits of their applications. The procedure for the yearly staff review has been applied to them as to everyone else, their post descriptions have been reviewed and supplemented where necessary and as a result of their three internal appeals, they have been granted special review of their responsibilities. CERN did not overlook any essential fact in failing to take account of their increased responsibilities: in their present posts they have always transported dangerous and other waste, but only in and near CERN, not over long distances. The criterion in determining the grade is the area in which the

load is transported, not the nature of the load itself. The complainants do a mere double-check which comes after several other precautions.

D. In their rejoinders the complainants enlarge on their contention that their posts now carry greater responsibility, particularly for safety. They produce a list of the loads of toxic waste they have transported since 1987 and observe that on 27 occasions they have detected radioactive substances which the safety services had not already discovered.

E. In its surrejoinders the Organization observes that the complainants perform their duties under the supervision of and with instructions from the safety services. It explains that the substances they say they discovered were only slightly radioactive and not dangerous to human health. Although the disposal of waste is a growing problem and the safety services have to be constantly strengthened, the complainants themselves have no responsibility in the matter.

CONSIDERATIONS:

1. The complainants joined CERN in 1964 and hold posts as heavy-vehicle drivers. They pick up and sort out waste from work sites and laboratories on CERN premises and deliver it either at prescribed places within those premises or at outside dumps.

They have both held grade 4 for over ten years. Since 1982 they have been trying to no avail to get review of the description and grading of their posts. They are asking the Tribunal to quash decisions notified in letters of 20 January 1988 from the Director of Human Resources to dismiss their claims in the context of the 1987 staff review.

Both complainants seek the regrading of their posts; what is more, as members of a team they perform the same duties. Although the evidence suggests that they work well, the standard of their performance is immaterial, the sole issue being the objective determination of the grading of their posts as drivers. The Tribunal therefore joins the complaints and rules on them in a single judgment.

2. The CERN Staff Rules and Regulations provide that posts shall be classified in grades according to general definitions which afford the basis for "evaluation guides". The evaluation of a post is "based essentially on the nature of the functions and responsibilities involved". What is more, the evaluation is never final: Article R II 2.05 of the Staff Regulations provides for "the periodical review of the classification of posts", which may bring about a change in grade. There will be such change mainly when the original grading proves mistaken or the attributes of the post have altered.

The complainants' posts were reviewed in 1982; in 1983, after they had made their original claims; in 1984; and in 1987, when the review led to the decisions of 20 January 1988 that are now under challenge.

The complainants' posts are defined as follows in the CERN Job Catalogue:

"HV Driver 495-04-2: Drives heavy vehicles for the transport of equipment, materials, gases etc. usually on the site and in the local area. Oversees loading and unloading operations. Prepares the vehicle and carries out maintenance and routine repairs. Keeps records".

The definition was supplemented in 1982 with a more detailed description.

3. The evidence includes the opinions given and the decisions taken on the grading of the complainants' posts, all of which concur in rejecting their claims. The justification has nevertheless changed, to the point that in its report of 8 December 1987 the Joint Advisory Appeals Board said that "the job description does not accurately reflect the degree of responsibility of the post, particularly for the transport of dangerous waste, a matter of great public concern". The Board recommended reviewing the Job Catalogue to take account of the complainants' actual duties but held that it could not yet propose any change in grade.

The impugned decisions take the same line: the Director of Human Resources informs the complainants that he has asked the Personnel Division to update the job description by taking account of the latest accretions to their duties.

4. There is also material evidence about what they do. Though they are not responsible for the safe disposal of waste, there is now much more waste of some kinds that they have to transport and their responsibility has grown

too, the risk of error being greater the more they have to transport. Indeed they have had training for the purpose.

5. The grading of a post depends on evaluation of the work done and the degree of responsibility involved. Such evaluation must be done by those who by training and experience are able to apply the relevant technical criteria, and the Tribunal will interfere only if the Organization is shown to have applied the wrong principles or drawn illogical conclusions.

The Tribunal is satisfied on the evidence that the description of the post of a heavy-vehicle driver in 495-04-2 is out of date. Indeed both the Board and the Director agree. In the circumstances the Director was not free to reject the claims put forward in 1987 with a promise to look at the matter again later: his duty was to carry out the review. His procrastination was the more reprehensible in that the matter had been pending for years and everyone had the right data. The impugned decisions are tainted with a mistake of law that warrants setting them aside.

The complainants are also each entitled to an award of 1,500 Swiss francs in costs.

DECISION:

For the above reasons,

1. The decisions of 20 January 1988 are quashed and CERN shall make a new appraisal of the complainants' posts.
2. It shall pay each of them 1,500 Swiss francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, 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
Mohamed Suffian
Mella Carroll
A.B. Gardner