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

SEVENTY-SEVENTH SESSION

In re DECARNIERE No. 2 and VERLINDEN Nos. 1 and 2

Judgment 1369

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Josephus Verlinden against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 19 May 1993 and the second complaint filed by Mr. Jacques Decarnière against the same Organisation on 24 May, Eurocontrol's replies of 27 July and 3 August 1993, the complainants' rejoinders of 23 January 1994 and the Agency's surrejoinders of 29 April 1994;

Considering the second complaint filed by Mr. Verlinden against the same Organisation on 22 September 1993, Eurocontrol's reply of 10 January 1994, the complainant's rejoinder of 19 February and the Agency's surrejoinder of 6 May 1994;

Considering the applications to intervene received at the Registry of the Tribunal on 6 May 1994 from:

H.-J. Abramowski

W. Adamson

D. Aelvoet

J. Akkermans

G. Anastasiou

J. Andriese

R. Angermergd

I. Aras

P. Bals

B. Bams

E. Bartels-Lemmens

R. Bartlett

J. Bautista

H.-W. Becker

H. Bergevoet

J. Beyer

L. Bieshaar

N. Bisdorff

R. Blau

B. Bocquillon

G. Boel

B. Boerrigter

G. Boers

R. Boese

C. Boesmans

D. Boets-Defrance

P. Boland

H.-J. Bolz

C. Bonadio

H.-G. Bons

F. Bontems

J. Boots

A. Booy

A. Bos

J. Bouillier-Oudot

J. Bralet

F. Brams

C. Breeman

C. Breeschoten

K. Breivik

T. Brennan

G. Bricart

H. Buck

O. Byelmann

F. Caloo

R. Carmienke

F. Carrara

S. Carvalho

B. Cassaignau

M. Castenmiller

M. Chauvet

A. Claes

R. Claes

M. Coolen

J. Corbeel

E. Corsius

L. Corswarem-Stessens

A. Cuveliers

H. Dander

B. Darke

A. Davister

J. de Beurs

W. de Boer

A. de Vos

P. de Zeenn

J.-M. Debouny

P. Demelinne

J. Demesmaeker

J. Dieters

J. Dos Santos

J. Doyle

F. Dupont

M. Durasse

C. Edeb

P. Emering

A. Engel

R. Engels

H.-P. Englmeier

C. Enright

E. Essers

C. Esslemont-Richez

H. Evers

G. Fairfax Jones

M. Falk

F. Faria Da Silva

Y. Fauchot

R. Feyens

J. Fiers

R. Fisch

P. Fischbach

J.-L. Flament

P. Flick

J. Florax

J.-P. Florent

Y. François

J. Frusch

G. Gabas

C. Galeazzi

R. Geldhof

J. Gerards

J. Geurts

D. Glennon

H. Goldner

D. Grew

W. Gribnau

R. Grimmer

A. Gubbels

M.-T. Guerin

T. Guldemont

W. Haarmann

C. Habes

J. Haine

J. Haines

I. Hamers

J.-L. Hardy

G. Harel

H. Hauer

E. Hauff

U. Heger

J. Heller

F. Hendriksen

H.-J. Hermanns

L. Hertog

M. Hervot

R. Hess

H. Hille

S. Hitchcock

E. Hochstein

W. Holtmann

H.-D. Höyng

E. Huebsch

H. Huizer

P. Hunt

W. Jagemann

M. Jenz

P. Kaisin

M. Kalin

A. Kalkhoven

H. Kaltenhäuser

S. Kauppinen

B. Klarmann

G. Klein

J. Kloetstra

H. Klos

J. Koolen

H. Koot

W. Kramer

W. Kühn

H. Kunicke

L. Lang

P. Lascar

P. Leeuwenburgh

W. Leistico

W. Lembach

M. Lemmens

C. Lenfant

M. Lenglez

C. Licker

A. Lieuwen

H. Liss

W. Lockner

L. Löser

W. Lumpe

C. Lung

J.-P. Majerus

J. Martens

P. Matern

D. Mauge

H. Meertens

C. Meier

M. Melet Laine

M.-T. Meloni

V. Meyer

B. Michaux

R. Moers-Janssen

A. Molenaar

B. Molloy

R. Mühlstroh

P. My

C. Nelissen

M. Nicolay

M.-L. Nivelle

L. Olivier

G. Ostertag

R. Paulssen

P. Petitfils

V. Philippon

R. Pierrard

F. Plaza Bodalo

E. Poelmans

C. Pohl

C. Poinsot

C. Portzenem

V. Poty

J. Prevoo

M. Prosser

H. Purvis

H. Rakete

M. Ramus

M. Ravier

M.-L. Rensink-Leclercq

J.-J. Richer

J.-M. Rigolle

G. Riley

E. Rinkens-Knops

A. Ritchie

F. Robert

G. Romijn

J. Rose

Y. Rossel

J. Roulleaux

G. Roumajon

J.-P. Rue

T. Saglik

C. Sampson

S. Scharte

H. Scheffler

G. Scheltien

F. Schönenborn

J. Schraa

A. Schuh

K.-H. Seipke

K. Seybold

E. Sikkens

F. Skerhut

L. Smulders

E. Snijders

S. Starlander

F. Steijns

E. Steiner

W. Stijns

K. Stoltefuss

J. Storms

S. Stroobants

V. Stuhlsatz

C. Suttie

N. Szewczuk

J.-Y. Tfelt

A. Thill

R. Tielemans

H. Tielker

C. Tovy

R. Ueberhofen

J. Uhl

A. Urlings

I. Vallinga

E. van den Heuvel

A. van der Klij

P. van der Kraan

W. van der Molen

M. van der Sluis

M. van der Stockt

G. van Dijk

P. van Grieken

T. van Hal

F. van Landuyt

P. van Lent

M. van Loon

J. van Riemsdijk

J.-P. Vanderspikken

M. Vanhemelrijck

E. Vanhoven

B. Vaury

P. Vercruijsse

P. Vergauts

F. Vergne

F. Verheijden

M. Verschaffel

L. Verwilst

W. Viertelhauzen

C. Vodak

D. Volko

H. von Birgelen

E. Vreede

J.-P. Vriamont

F. Wagner

J. Watson

H. Weis

A. Werner

P. Wiegers

R. Wijnants-Moelmans

P. Wildey

J.-P. Willox

D. Wilson

D. Winkler

F. Wissink

W. Withofs

M. Woldring

and the defendant's comments of 28 June 1994 on those applications;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal, Articles 6.2(a) and 7(2) of the International Convention relating to Co-operation for the Safety of Air Navigation signed on 13 December 1960 (the Eurocontrol Convention) as amended, in particular with effect from 1 January 1986 by the Protocol of 12 February 1981, Article 12.1 of Annex 1 to that Convention and Articles 25, 65, 66 bis, 83 and 92 of the Staff Regulations governing officials of the Agency;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

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

A. The complainants are officials of Eurocontrol. Mr. Decarnière works for its Institute in Luxembourg and Mr. Verlinden at headquarters in Brussels.

In a working paper, CE 92/169/11, of 29 January 1992, the Director General of Eurocontrol informed the Committee of Management of a set of proposals to adjust staff pay. Five of them reproduced measures that the Council of Ministers of the European Communities had adopted on 19 December 1991. They were: a new method of adjusting pay from 1 July 1991 to 30 June 2001; the correction of base salary as from 1 July 1990; the adjustment of pay and pensions as from 1 July 1991; a temporary contribution of 5.83 per cent of base salary from 1 January 1992 to 30 June 2001; and an increase from 8 to 8.25 per cent in the rate of pension contribution by staff.

There was a sixth proposal, for repealing as from 1 July 1991 a measure dating back to 7 July 1983 to "attenuate" increases in staff pay. The aim of that measure was to phase in a differential of 5 per cent in staff pay between Eurocontrol and the European Communities and by 1992 the differential stood at 1.53 per cent.

At its 169th Session, on 25 and 26 February 1992, the Committee approved the proposals and decided to submit them to the Permanent Commission of Eurocontrol by correspondence, as Rule 8 of the Commission's Rules allowed. The Commission learned of the proposals from a letter of 7 April 1992 signed by the Director General. To adopt the proposals the Commission had to be unanimous. Three States refused to approve the sixth proposal and asked to have the matter adjourned to the next session.

On the strength of an "Agreement on consultation, conciliation and arbitration" that Eurocontrol and the chairman of the staff unions had concluded on 9 January 1992, and which came into effect on 1 February 1992, the unions asked the Director General in a letter of 14 July 1992 to start consultations to get approval of the full set of proposals. Consultations ensued at a meeting on 23 July, at which the unions said that they would be starting the second stage of the procedure if no early solution was found. A joint communiqué went out announcing another meeting on 28 September 1992.

On 30 July the Director General sent a letter to the Committee of Management together with a motion by one of its members that for the time being it approve only the first five proposals. The Director General agreed with the motion and asked that it be conveyed to the Permanent Commission.

On 4 September the Commission approved the five measures. They were published in office notice 12/92 of 9 September 1992.

On 28 September 1992 there took place the scheduled meeting between Director General and unions but the consultation procedure was not begun.

The Permanent Commission eventually approved the sixth proposal at its 80th Session, on 1 December 1992.

As was said above, one of the five measures approved by the Permanent Commission on 4 September 1992 was the introduction of a temporary contribution at the rate of 5.83 per cent of base salary. As from October 1992 that contribution was shown in the staff's pay slips. On 18 December 1992 the complainants each lodged three "complaints" under Article 92(2) of the Staff Regulations against their pay slips for October, November and December 1992. In a minute of 19 February 1993 Eurocontrol rejected Mr. Verlinden's "complaints" about October and November. It did not answer the one about December. It disallowed Mr. Decarnière's three by a minute of 22 February 1993. Such are the decisions impugned in Mr. Decarnière's second complaint to the Tribunal and Mr. Verlinden's first.

By a letter of 30 March 1993 to the Director General Mr. Verlinden lodged another three internal "complaints" against his pay slips for January, February and March 1993. Besides the temporary contribution of 5.83 per cent he challenged the increase to 8.25 per cent in the pension contribution. The Director General rejected his "complaints" by a decision of 24 June 1993, and that is the decision he impugns in his second complaint.

B. The complainants contend first that the Organisation acted in breach of Article 65 of the Staff Regulations,

which states that at the "instigation" of the Director General "the Committee of Management shall periodically examine the adjustments to salaries ... They shall be submitted to the Commission for approval ...". In the complainants' view the Director General had no authority to submit "to the Commission" in his letter of 30 July 1992 proposals that substantially changed those adopted by the Committee of Management at its 169th Session. By approving those changes, which are unlawful, the Commission acted ultra vires.

By writing to the Commission the Director General disregarded the consultation procedure provided for in the agreement of 9 January 1992 since he failed to inform the staff of the matter beforehand.

Article 65 lays down that salaries at Eurocontrol must take account of public sector salaries in member countries. That was why the pay scales were adjusted as from 1 July 1991. The effect of the Commission's decision of 4 September 1992 was to lower the complainants' pay by 5.83 per cent as from 1 October 1992. As the Appeals Committee of the Council of Europe held in a ruling of 15 May 1985, setting the scales of pay vests a "subjective" right in the complainants. So Eurocontrol infringed the complainants' acquired rights, particularly as the staff had disagreed with taking the measure on its own on the grounds that it was linked to the abolition of the 1.53 per cent differential in pay between Eurocontrol and the Communities.

The complainants' second plea is breach of Article 25 of the Staff Regulations: "any decision adversely affecting an official shall state the reasons on which it is based". The Organisation did not account properly, as the rules required, for the Commission's decision of 4 September 1992, or for office notice 12/92, or for the challenged pay slips.

In his second complaint Mr. Verlinden adds that the levy imposed by Article 66 bis of the Staff Regulations from 1 July 1981 to 30 June 1991 was a " single" and "exceptional" one. To his mind the Permanent Commission therefore had no right to introduce without the staff's consent a temporary contribution that extended the levy by ten years. The increase in pension contributions did not come after an actuarial assessment such as Article 83 of the Staff Regulations requires. It is arbitrary and unsubstantiated. It cannot be put down to alignment with practice in the Communities, since the situation of the two pension schemes is utterly different.

The complainants ask the Tribunal to quash the Agency's decisions of 19 and 22 February 1993 rejecting the "complaints" filed on 18 December 1992 against the pay slips of October and November 1992 insofar as they lower the complainants' salaries by 5.83 per cent in line with the Permanent Commission's decision of 4 September 1992; to order the Agency to pay the amounts unlawfully deducted from their salaries, plus interest on arrears at the rate of 10 per cent a year as from 18 December 1992; and to pay costs. Mr. Verlinden further seeks the quashing of the "implied decision of 18 April 1993" rejecting his "complaint" of 18 December 1992 challenging his pay slip for December 1992.

In his second complaint Mr. Verlinden seeks the quashing of Eurocontrol's three decisions of 24 June 1993 rejecting his "complaints" of 30 March 1993 against his pay slips for January, February and March 1993 insofar as they lower his pay by 5.83 per cent and deduct from it 8.25 per cent by way of pension contribution in line with the Permanent Commission's decision of 4 September 1992.

C. In its replies the Organisation submits first that the percentage increases in pay granted by the European Communities confer no right on its own staff, whose pay it adjusts quite independently.

Secondly, the Director General sent no letter to the Commission but on 30 July 1992 conveyed to the Committee of Management a motion by one of its members. The sixth proposal, which was to abolish the 1.53 per cent differential in pay between Eurocontrol and the Communities, went through the Commission on 1 December 1992. Although it did not take effect until 1 January 1994, that was offset by Eurocontrol's enforcing the temporary contribution only from 1 October 1992, whereas it had come in for staff of the Communities at 1 January 1992. The outcome was alignment with the Communities, but with some advantage to the complainants.

Thirdly, only on 1 February 1992 did the agreement between the Organisation and the chairman of the staff unions come into force whereas the proposals to amend the Staff Regulations had been sent to the Committee of Management on 29 January 1992. In any case the chairman did not agree in writing until 10 February 1992.

The Organisation submits that the Tribunal is not competent to enforce the agreement concluded with the unions on 9 January 1992. In its submission that text lays down no procedure prescribing agreement between the parties -

decisions always being taken unilaterally by the competent authority - and is quite distinct from the Eurocontrol Convention and Staff Regulations. So the Tribunal may not determine whether it has been properly applied. Subsidiarily, the Organisation denies breach of the agreement.

On the merits it denies breach of Article 65 of the Staff Regulations. The allegations of fact that the complainants' pleas rest on are wrong. There was no bar to the Committee of Management's amending the proposals it had adopted in February 1992. Nor was the Commission required to adopt together all the measures approved by the Committee. The subject of Article 65 is adjustment of pay, not the temporary contribution, which came about for other reasons and is not determined according to the article. In any case the Commission eventually adopted without change every single proposal the Director General had put to the Committee on 29 January 1992. The complainants are mistaken in saying that Eurocontrol disregarded the need for parity in pay between its own staff and civil servants in member States. The Tribunal held in Judgment 1118 (in re Niesing No. 2 and others), and the Court of Justice of the European Communities in cases 81/72, 70/74 and 3/83, that Article 65 was not restrictive and that other factors might be taken into account in adjusting pay. The temporary contribution is covered by Article 66 bis, which is an exception to Article 65. There has been no breach of any acquired right since the temporary contribution was not made retroactive. Nor was the complainants' actual pay reduced, since the deduction from and increase in pay came together. The ruling by the Appeals Committee of the Council of Europe which the complainants cite is immaterial: it was about the retroactive effect of an amendment that required staff consent. Such consent is not required at Eurocontrol.

Secondly, in answer to the plea that it failed to account for the impugned measure the Organisation observes that the complainants are being inconsistent: they want alignment with the Communities, yet make out that an explanation that refers to such alignment will not do. The staff knew what was going on in the Communities: after all, they saw document CE 92/169/11 of 29 January 1992, the Committee of Management's minutes and its report to the Permanent Commission. The measures approved on 4 September 1992 were announced in office notice 12/92 of 9 September 1992, which gave explanations for each of them. And the decisions rejecting the complainants' internal "complaints" were substantiated in accordance with Article 92 of the Staff Regulations, the complainants being free to ask Personnel for any further explanation they might want. Besides, the impugned decisions met the staff's wishes by bringing about strict alignment with the Communities; so they did not call for any more ample explanation. The Commission is not required to substantiate decisions: Article 25 of the Staff Regulations, which says that reasons must be given when a decision affects an individual, does not apply to general measures, which the case law says may be explained in just a few sentences.

In its reply to Mr. Verlinden's second complaint the Agency states that the compulsory contribution is not an extension of the emergency levy, which came to an end on 30 June 1991. It is a new measure, the staff representatives agreed to it, and the rate may be adjusted in five years' time under paragraph 2(b) of Article 66 bis of the Staff Regulations. Eurocontrol has had no pension fund of its own since 1979, when Article 83 of the Staff Regulations was aligned with the corresponding article of the Communities' Staff Regulations. The actuarial assessment mentioned in Article 83 is just an option and not an obligation, and, as the Tribunal held in Judgment 429 (in re Gubin and Nemo), the Permanent Commission was free to adjust unanimously the rate of contribution in accordance with Articles 6.2(a) and 7.2 of the Convention as amended and Article 12.1 of Annex 1 thereto. The rate of pension contribution used to be higher than in the Communities but is no longer with the adoption of the impugned measures, which have brought about strict alignment.

The Organisation asks the Tribunal to declare that it is not competent to review the observance of the arrangements for consulting the staff unions; on the merits to set aside the complaints as unfounded; and to award "full costs" against the complainants.

D. In their rejoinders the complainants explain under the heading "Purpose of the suit" that they seek the quashing of the "decision of 29 May 1993" rejecting by implication the internal appeals filed on 30 March 1993 against the temporary contribution of 5.83 per cent and the deduction of 8.25 per cent by way of pension contributions from pay in January, February and March 1993.

They submit that the temporary contribution brought their pay from October to December 1992 below the figures for September 1992. Their basic pay for September should have been higher than the figures shown in their pay slips since pay had been adjusted as from 1 July 1990 and 1 July 1991. So they ask the Organisation to let them have detailed statements showing the arrears due.

Only after comprehensive negotiation with staff did the Communities bring in the emergency levy and the succeeding temporary contribution. There was no such negotiation at Eurocontrol since it did not tell its staff of the amended proposals the Committee of Management had adopted in August 1992. The Permanent Commission's approval of the sixth proposal does have a bearing on this dispute.

In the complainants' submission the Tribunal does have competence to say whether the agreement of 9 January 1992 was observed: patere legem quam ipse fecisti. Since the agreement covers any proposal to amend the Staff Regulations and the General Conditions of Employment of the staff of Eurocontrol's centre at Maastricht, the Tribunal is free to determine whether the agreement has been applied. If it were not, Eurocontrol staff would forfeit a right laid down by the European Convention on Human Rights, particularly since they may not as individual officials apply for observance of the conciliation and arbitration procedures the agreement prescribes.

The complainants develop their pleas on the merits. They contend that since the representatives of member States were not told of the staff's views beforehand their decision is unlawful. The Organisation was wrong to use the Communities' statistics to gauge variations in civil servants' pay in its twelve member countries, which are not the same as the countries referred to in Article 65 of the Staff Regulations. Decision 3/83 of the Court of Justice of the European Communities is immaterial: the levy challenged in that case was introduced with the agreement of "the most representative staff organisations". The levy at Eurocontrol was not. The ratio of the ruling made by the Appeals Committee of the Council of Europe on 15 May 1985 is relevant. Eurocontrol did fail to substantiate the impugned decisions properly.

E. In its surrejoinders the Organisation points out that in their rejoinders the complainants have much altered the thrust of their case: their claim to the quashing of the "decision of 29 May" and their objection to the increase in the pension contribution, both of which they are making for the first time, are out of time and therefore irreceivable.

It abides by its view that the Tribunal may not entertain complaints about infringements of the agreement concluded with the unions in January 1992. The case law delimits the force of collective agreements, for example Judgment 236 (in re Belchamber) by the United Nations Administrative Tribunal: such agreement is not part of a staff member's contract of employment. The agreement itself refers dispute for conciliation and arbitration, which the unions failed to instigate in this instance.

The Organisation presses its pleas on the merits.

It denies breach of the agreement of January 1992 and failure to keep the unions abreast of the measures, which they expressed agreement with anyway.

As to the alleged breach of parity with national civil servants' pay, it points out that the authentic version of Article 65 refers to "pays de service", not to member countries, and that Eurocontrol provides no service outside the Communities. A subjective right does not arise until approved by the competent authorities, and Eurocontrol did not infringe the complainants' rights: the temporary contribution has not had the effect of reducing their pay.

The Organisation did substantiate the impugned decisions adequately.

In its surrejoinder on Mr. Verlinden's second complaint Eurocontrol presses its pleas and argues that he must have known that the change in the rate of pension contribution was one of a set of measures that were adopted unanimously. The rate at Eurocontrol was last put up in 1977. The latest increase has not radically changed the terms of the complainant's employment and he has no acquired right to the rate's remaining constant throughout his stint at Eurocontrol.

CONSIDERATIONS:

1. The complainants, who are on the staff of Eurocontrol, object to the Organisation's reckoning of their pay on the realignment of salaries as from 1 October 1992. The complaints being identical save as to the periods which they relate to and which are from October 1992 to March 1993, the Tribunal joins them so as to give a single ruling.

The background to the case and its purpose

2. On 9 January 1992 Eurocontrol, as represented by its Director General concluded with its staff unions a

collective agreement headed "Agreement on consultation, conciliation and arbitration procedures". It is a basic agreement which, subject to the authority vested in the Staff Committee under the Staff Regulations, lays down a procedure for "consultation" and two disputes procedures, "conciliation" and "arbitration". A schedule sets out criteria for determining whether staff unions are representative, grants them access to the Agency's working papers and describes the sundry facilities the Agency is to allow them.

3. According to a working paper - CE 92/169/11 - which the Director General put to the Committee of Management on 29 January 1992 the Agency was then about to adjust pay to bring it back into line with the European Communities. There had been disparity since 1987, when the Agency brought in the so-called "Eurocontrol reduction" of 5 per cent. Actually the "reduction" never went beyond 1.53 per cent. Judgment 1118 (in re Niesing No. 2 and others) of 3 July 1991 gives an account of it.

4. On 14 July 1992 the staff unions asked the Director General to start "consultation" on those matters under the agreement of 9 January 1992. The upshot was concurrence in a "pay package" consisting in endorsement of the following action on pay that the Council of the Communities had already taken:

a new method of adjusting pay in the period from 1 July 1991 to 30 June 2001;

the introduction of a "temporary contribution" at the rate of 5.83 per cent of base salary from 1 January 1992 to 30 June 2001, to replace the "emergency levy" brought in at the rate of 12.7 per cent in 1981 but lowered to 7.62 per cent by the time of expiry at 1 July 1991;

an increase from 8 to 8.25 per cent in the rate of pension contributions by staff;

the correction of base salary as from 1 July 1990; and

the adjustment of pay and pensions as from 1 July 1991.

5. The staff representatives agreed to those five measures, but there was a sixth, for repeal of the Eurocontrol "differential" of 1.53 per cent. On that score the appendix to CE 92/169/11 said under 5:

"At its session on 3 July 1991, the [Tribunal] acknowledged the validity of the differential applied, after having ruled against its retroactive application at an earlier session.

There is a need to consider the stance to be adopted as to the maintenance or abolition of this differential.

The Director General's recommendation with regard to the abolition of the 5% differential (also recommended in the Administrative and Technical Inspection Committee's Report in 1989) was endorsed by the Committee of Management at its 164th Session in May 1990.

All the arguments put forward at that time in favour of abolition are still pertinent and topical. They relate, inter alia, to the substantial change which has taken place in Eurocontrol's tasks since 1983, when the original decision had been taken, and also to the poor staff/management relations caused by this measure, the negative impact of which far outweighs the economy secured.

In view of the above considerations, it would seem appropriate to abolish this 5% differential with effect from 1.7.91."

6. The Committee of Management approved those measures and passed them on to the Permanent Commission. The Commission adopted the first five but one delegation asked that the sixth be held over to the next session. In office notice 12/92 of 9 September 1992 the Agency announced the five approved, and they were first reflected in staff pay in October 1992. From then on pay was subject both to the differential and to the temporary contribution of 5.83 per cent.

7. All this prompted further consultation with the unions on 28 September 1992. A joint communiqué then went out saying that the staff representatives regretted the Commission's failure to accept the whole pay package and demanded full alignment of pay at Eurocontrol and the Communities, which meant doing away with the differential altogether. Both sides promised to keep in touch pending the meeting the Commission was to hold in December.

8. On 1 December 1992 the Commission eventually approved the sixth measure - dropping the differential - but only as from 1 January 1994, or fifteen months after the other measures for alignment with the Communities had come in.

9. On 18 December 1992 Mr. Decarnière filed an internal "complaint" in standard form under Article 92(2) of the Staff Regulations against the reckoning of his pay for October, November and December 1992. He said that the figures had been unlawfully docked by the imposed combination of two levies, the 5.83 per cent "temporary contribution" and the 1.53 per cent "reduction", neither of which had followed negotiation with staff representatives or came with a word of explanation. Mr. Verlinden lodged identical "complaints" on the same day as Mr. Decarnière about pay for the same three months and another on 30 March 1993 about his pay for January, February and March 1993.

10. The Director of Personnel rejected those internal appeals on the Director General's behalf in letters of 19 and 22 February and 24 June 1993. He reminded the complainants that at its session of 25 and 26 February 1992 the Committee of Management had endorsed the Director General's proposal to adopt all the measures in CE 92/169/11, including the dropping of the differential, but that the Permanent Commission had been split on the differential because in Judgment 1118 the Tribunal had upheld it as lawful; so not until 1 December 1992 had the Commission decided, in a spirit of social partnership, to do away with the differential as from 1 January 1994.

11. Two conclusions may be drawn. First, the real matter at issue is the repeal of the 1.53 per cent differential, a measure which the unions made a condition of their consent to the pay scales obtaining in the Communities and which carried the burdens of the new temporary contribution and the higher rate of staff pension contributions. The second conclusion is that the dispute is over a transitional issue because it covers the period from 1 October 1992, when Eurocontrol went back to the pay scales approved by the Council of the Communities, until 1 January 1994, when the Commission's decision of 1 December 1992 to do away with the differential came into effect.

12. The complainants enlarge on the two main pleas they put forward in support of their internal appeals:

(a) breach of Article 65 of the Staff Regulations on adjusting pay:

in the Director General's failure to exercise his right to "instigate" proposals to the Committee of Management and the Permanent Commission;

in disregard of the outcome of the consultations with the unions under the agreement of 9 January 1992;

in breach of "parity" between Eurocontrol and the Communities; and

in breach of the staff's acquired rights on expiry of the emergency levy.

(b) breach of Article 25(2) of the Staff Regulations in Eurocontrol's utter failure to explain the decisions taken.

The Tribunal's competence as to collective agreements

13. Though it answers each argument in detail, Eurocontrol begins by challenging the Tribunal's competence to review observance of the agreement of 9 January 1992. In its submission the purpose of the agreement is to offer procedures outside the pale of the Staff Regulations for avoiding collective labour disputes. It points out that there is nothing in the Regulations about procedures that come under labour law, not administrative law. So objections to the observance of the agreement go beyond the sphere of the Tribunal's competence as delimited in Article II of its Statute and accepted by the Organisation. Eurocontrol submits that the Tribunal's competence is confined to the individual contract of employment. So the collective procedures in the agreement of 9 January 1992 cannot supplant each staff member's defence of his own individual rights; indeed the staff member may challenge even a decision that union representatives have agreed to if he thinks it does him injury.

14. The Tribunal will take up the preliminary demurrer, which raises weighty issues, before going into the merits. The gist of it is that the Tribunal may not rule on the legal effects of the agreement of 9 January 1992 and in particular that the complainants may not plead breach of that agreement in challenging the lawfulness of the pay adjustments decided on 4 September 1992.

15. The Tribunal must enforce the law within the full ambit of the competence its Statute vests in it. For that purpose it will apply any material rule of law, be it international or administrative or labour law or any other body of law. The only sort it will not apply is national law, save where there is express renvoi thereto in staff regulations or contract of employment: see Judgment 1311 (in re Guerra Ardiles) under 15. So Eurocontrol is wrong if it is seeking to keep the Tribunal within the bounds of administrative law to the exclusion of such sources as labour law.

16. What the preliminary objection comes down to is whether a complainant may rely on a collective agreement like the one of 9 January 1992 in pleading his case before the Tribunal. It is a truth universally acknowledged that the collective agreement is a basic vehicle of social progress, justice and peace. That that is so is due to the International Labour Organization, among others, and to its international instruments such as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151). An international organisation is still of course free to choose whatever methods or means it likes - be they formal rules or contracts of employment - to define the terms of appointment of staff. But any collective agreement it does conclude becomes part of the law of the international civil service. Signing such an agreement puts it under obligations in law; a member of its staff may plead such obligations in a complaint to the Tribunal; and the Tribunal will review compliance with the letter and spirit of the agreement.

17. It is in the light of such precepts that the Tribunal rules below on the case of Eurocontrol. After years of conflict with the staff and a spate of litigation uncertain in outcome and - as the Director General properly observed - adverse in effect, Eurocontrol came round to a cooperative approach by concluding the agreement of 9 January 1992. By virtue of its contractual nature it is a source of law which in the interests of both sides the Tribunal regards as material.

18. Eurocontrol is right in pleading that the collective procedure set up under the agreement cannot supersede each staff member's defence of his own rights. A collective agreement, even though concluded with staff associations acknowledged to be representative, does not divest the staff member of the safeguards he enjoys under the Staff Regulations.

By the same token there is nothing to keep him from relying on a collective agreement even if, not being a member of a staff association, he is not himself privy to it. Such indeed are consequences that flow from freedom of association and the principle of equal treatment.

19. Eurocontrol's preliminary objection therefore fails. There being no need to rule on the objections to receivability that it raises in its surrejoinder, the Tribunal will now rule on the merits, with due regard to the relevant clauses of the agreement, on which it has entered full, albeit subsidiary, argument.

The alleged breach of Article 65 of the Staff Regulations, the agreement on consultation and "parity"

20. The complainants put forward a set of connected pleas on the procedure for adjusting pay, a matter governed by Article 65 of the Staff Regulations. The article reads:

"On the instigation of the Director General, the Committee of Management shall periodically examine the adjustments to salaries and allowances which it deems necessary. It shall take particular account of any variations in public service salaries in the different member countries and of the recruitment needs of the Agency.

These adjustments shall be made by modifying the basic salaries as defined in Annex III or elements of the salaries and allowances as defined in Article 62.

They shall be submitted to the Commission for approval in accordance with the provisions of Article 14, paragraph 2, of the Statute of the Agency."

21. The complainants' first plea is that the Permanent Commission's striking out an essential item of the pay package infringed the Director General's right to "instigate" proposals and the Committee of Management's prerogatives.

22. In keeping with what was stated in a case against another organisation with similar rules (Judgment 1196, in re Andrews and others, under 11 and 12), the Director General's right to propose is an important safeguard of the stability of the staff's rights in that a body like the Permanent Commission of Eurocontrol may not act on its own

motion unless the Director General has submitted a proposal to it and unless it had advice from the Committee of Management, a body that is responsible for reviewing the adjustment of pay from time to time. But once the Permanent Commission properly has before it a proposal submitted by the Director General to the Committee of Management the Commission has unfettered freedom as the governing body of the Agency to decide on that proposal. So in this case it acted properly in adjourning debate on one item of the package.

23. The complainants' second plea rests on a similar point, which is breach of obligations they see as arising under the agreement of 9 January 1992. They say that the Director General ought not to have yielded so readily on the sixth measure - the repeal of the differential - when he knew it was the sine qua non of the staff's accepting the burdens of the temporary contribution of 5.83 per cent and the rise in the rate of pension contribution from 8 to 8.25 per cent.

24. In line with the agreement the consultations on the pay package set a goal which the Director General approved and the Committee of Management endorsed. But since it was then too early to be sure that the competent body - the Permanent Commission - would agree, the consultations could not yet be deemed to lay any legal obligation on the Organisation. Their only effect was to commit the Director General to working in good faith towards the goal he had set in agreement with the staff representatives. The joint communiqué issued on 28 September 1992 after the second round of consultations shows that was how the staff unions too saw things.

25. By dint of the Director General's efforts the goal was eventually attained on 1 December 1992. It may be a pity that when taking the decision to adjust pay the Permanent Commission did not acknowledge the part the staff had played by taking on the burdens that the adjustment required. Yet the fact is that Eurocontrol was not in breach of any commitment it had made towards the staff unions, whether under a formal agreement reached in the consultations or at the later stages of "conciliation" and "arbitration".

26. Last comes what the complainants call the rule of "parity" in pay between Eurocontrol and the Communities. The Organisation has consistently maintained that its following the Communities does not impair its administrative autonomy or its right to set pay according to its own needs. So, although it eventually put an end to discrepancies that had proved rather awkward than helpful, that does not at all mean that alignment with pay in the Communities must be immediate and complete.

27. The conclusion is that none of the arguments under this head is sound in law.

The alleged failure to explain the decisions properly

28. The duty to explain a decision is a general principle of administrative law: the decision-maker must at least give such statement of the reasons for the decision that anyone it affects may defend his rights and the Tribunal may rule on any case before it. But the content of the duty will vary with the nature of the decision.

29. The decisions impugned in this case are peculiar in two respects: they came after collective consultations; and the purpose of the consultations was to secure endorsement of decisions on pay that were the outcome of a process in another organisation, the Communities. There are other examples of such process in the law of the international civil service; indeed it has taken the form of an institution in the "common system" of the United Nations. Those two features of the case are material to the content of Eurocontrol's duty to account for its decisions.

30. The consultations with the unions under the agreement of 9 January 1992 distinguish this case from the earlier ones about the Eurocontrol "reduction". In those cases the Organisation kept the staff from knowing the real reasons for a decision which it imposed on them unilaterally. Ever since the signing of the agreement on 9 January 1992, and in this particular instance, the staff have had access through their representatives to the relevant information and have been able to look at proposals in close cooperation with management and in keeping with the procedure for consultation. The Organisation was therefore not required to state again reasons which it had already revealed in the consultations. There is no omission in that respect that the complainants may rely on. So much is plain from office notice 12/92 of 9 September 1992, which is part of the case records and affords all the material information.

31. Again, the duty to explain a decision differs in content when an organisation takes over as a whole the decisions on pay that another one - in this instance the Communities - has already adopted. One point worth noting is that in the Communities the process for taking decisions on pay is governed by a set of rules that are strictly

complied with: consultation with the staff (see for example the ruling of 5 June 1973 by the Court of Justice of the Communities on Commission v. Council of the Communities, ECR 1973, p. 575); the duty to substantiate, laid down in general terms in Article 190 of the Treaty establishing the Communities; and the staff appeal procedure. So on falling into line with the Communities Eurocontrol had no further obligation to give an explanation especially since it was the staff themselves who had been demanding alignment.

32. In sum the plea that the decisions were not substantiated must fail.

33. Since the complaints fail, so too do the applications to intervene, there being no need to determine whether they are receivable.

34. Although the complaints are dismissed the Tribunal will not allow the defendant's claim to the award of "full costs" against the complainants.

DECISION:

For the above reasons,

The complaints, the applications to intervene and Eurocontrol's claim about costs are dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.