

SEVENTY-EIGHTH SESSION

***In re* FELDMANN**

Judgment 1413

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Edith Feldmann against the European Organization for Nuclear Research (CERN) on 3 June 1993 and corrected on 15 December 1993, CERN's reply of 11 April 1994, the complainant's rejoinder of 11 August and the Organization's surrejoinder of 24 October 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. Information relevant to the present dispute is set out, under A, in Judgment 1412 (in re Audria) also delivered this day.

The complainant, a Swiss citizen born in 1932, was at the material time employed by CERN as an "administrative assistant" at grade 8 in the Electronics and Computing for Physics Division (ECP).

By a letter of 14 February 1992 the Leader of the Personnel Division informed her of a decision to put her on career path V.

In a letter of 21 April to the Director-General she appealed and asked to be put on path VI.

In a report dated 22 December 1992 the Joint Advisory Appeals Board concluded that "path V [had] been properly designated" for her.

By a letter of 3 March 1993, the impugned decision, the Director-General rejected her appeal.

B. Citing the documents dated 21 May and 3 October 1991 which are referred to in the above-mentioned judgment under A, the complainant submits that CERN failed to comply with "the substantive rules on the initial designation of career paths".

Although the Instructions make age a criterion only for the purpose of the provisional designation, CERN took account of age in its final decision too. The complainant's age is the less relevant in that her advancement was formerly held up and she should have reached her present grade much sooner.

The Administration failed to take account of the nature of her duties and her potential, and her division did not propose putting her on a higher path, as it was free to do for "staff whose present functions and/or future potential are judged to be insufficiently reflected in the provisional designation".

Taking the view that her responsibilities were greater than those of other officials on the same career path, she also contends that the decision was not an equitable one.

Lastly, she says that CERN leaves her no hope of advancement and that that is very discouraging.

She seeks the quashing of the Director-General's decision of 3 March 1993, assignment to career path VI as from 1 March 1992, moral damages and costs.

C. In its reply CERN contends that the procedure for designating her career path - the purpose of which was not advancement - was carried out according to objective criteria and in compliance with the applicable rules.

It denies that her age had anything to do with the final decision. Her allegation that she should have got her present grade much earlier "is completely at odds with the facts".

CERN says it went thoroughly into her case and took account both of her potential and of the level of her duties. It observes that those two criteria, which do not include professional qualifications, are matters to be determined at discretion.

The decision she is impugning is fair: she has not shown that CERN "failed to take account of the factual position of other staff members".

Prospects of further advancement are a general objective, not a criterion of any relevance to the advancement scheme. In making the plea she has failed to show what rule CERN may have infringed. In any event, far from dashing hopes, the new scheme enhances prospects of advancement. So there is nothing "discouraging" about it.

Lastly, CERN argues that her claim to moral damages is irreceivable because she puts no figure on it and is, besides, devoid of merit.

D. In her rejoinder the complainant enlarges on her pleas. She maintains that the scheme should not "depreciate" the attainments of staff. She says that the criteria CERN chose were not objective and that it was bound to abide by the general principles underlying the scheme. The definitions used to determine her potential and the level of her duties overlooked her qualifications and experience and were therefore wrong.

E. In its surrejoinder CERN demurs at the complainant's attempt to replace the criteria in the Instructions with others more to her liking. It observes once again that her reference to general principles on the designation of career paths is irrelevant: the only issue is whether the Administration followed the proper procedure. It denies overlooking essential facts and submits that the conditions for an award of moral damages are not met.

CONSIDERATIONS:

1. The complainant, along with other staff members at CERN, is challenging her assignment to one of the career paths which the Organization's Council set up in keeping with the scheme of merit-oriented advancement it brought in on 1 August 1991. In Judgment 1354 (in re Guyen) and another judgment delivered this day (No. 1412, in re Audria) the Tribunal describes the new scheme.
2. The complainant joined CERN in 1971 as a clerk- typist. She was promoted in 1978 to administrative assistant in category 5b ("administrative and office work"). She has held grade 8 since 1 July 1986. Having reached that grade after the age of 38, she was provisionally assigned to career path V. At the next stage of the procedure her division took the view that that path should be confirmed, and when she saw her supervisor he told her the reasons for keeping her on path V. Her objections were dismissed and the Director-General endorsed the proposal to put her on path V as from 1 March 1992. She appealed to the Joint Advisory Appeals Board. The Board recommended that the Director-General confirm the path and he did so by a decision of 3 March 1993, the one she is impugning.
3. Her claims rest on alleged breaches of CERN's own substantive rules. She contends, first, that in its final decision on her career path it took account of her age when she reached grade 8. Secondly, she says her advancement was held up and she should have been put at grade 9, not 8. Thirdly, CERN took into consideration neither her actual duties nor her potential and its decision was unfair. Lastly, its choice of career path leaves her no reasonable hope of advancement and in carrying out the exercise the Organisation has disregarded her own interests and the need to encourage her.
4. Her arguments fail. For one thing there is no evidence to suggest that her age when she reached grade 8 counted in choosing path V. Not a single item establishes that that criterion, which holds good only for the provisional determination - influenced the final decision by the competent authority.
5. Secondly, her claim to a higher grade is irreceivable. Even if her career did suffer delay she may not seek redress on that account in the context of the choice of career path; nor may she impugn any decision that she failed to challenge in time or object to her grading as administrative assistant.
6. Thirdly, she offers not a shred of evidence to show that CERN wrongly assessed her duties and potential. In its

surrejoinder it gives further information on her duties and rightly points out that the Appeals Board identified them accurately. Her charge of discriminatory and unfair treatment is in too general terms to be entertained.

7. Lastly, it is obvious that she still has prospects of advancement on the path she was put on or even, as CERN shows, on a higher one. As for her being "discouraged", that is no reason to quash the decision: CERN's clear intent in reforming the career system was not to harm any of its employees but to pursue the general interest.

8. The conclusion from the foregoing is that her claim to the quashing of the decision and so too her claim to moral damages must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas
Michel Gentot
P. Pescatore
A.B. Gardner