

EIGHTIETH SESSION

***In re* LANGELEZ (No. 3)**

Judgment 1490

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Jean-Claude Langelez against the European Organization for Nuclear Research (CERN) on 9 June 1993 and corrected on 1 October, CERN's reply of 3 December 1993 and the complainant's waiver of his right to rejoin;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 9(2) of its Rules;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts with some bearing on this case appear under A in Judgments 1104 and 1172 on the complainant's first two complaints.

In its report of 7 January 1991 the Joint Advisory Rehabilitation and Disability Board of CERN concluded that the complainant's ailments were not service-incurred and that the job CERN had offered him was acceptable.

By a letter of 15 January 1991 the Director-General informed him that he endorsed the Board's recommendations and was putting him on a post of mechanic in category 4, though he might keep the higher category, 3, in *propria persona*. From September 1991 to July 1993 he was on secondment to the Administrative Support (AS) Division. Since July 1993 he has been a records clerk, still in category 4, in the SL Division.

On 1 August 1991 CERN brought in a new scheme for advancement by which the staff were to follow "career paths", each comprising grades and steps. In a letter of 14 February 1992 the Leader of the Personnel Division told the complainant that he was put on path III.

On 24 April 1992 he lodged an internal appeal asking to be put on path IV, which is higher than III. In its report of 5 January 1993 the Joint Advisory Appeals Board found nothing wrong with putting him on path III and by a letter dated 3 March 1993, one of the two impugned decisions, the Director-General upheld his earlier decision.

On 20 August 1992 the complainant had filed another appeal with the Director-General objecting to the rota system of work that CERN had introduced in 1983. (For a description of the system see Judgment 1104 under A). In two letters of 19 and 20 October 1992 the Director of Administration answered that the case was "closed" and there was therefore no reason to convene the Appeals Board. On 19 December 1992 he wrote again to the Director-General. The Director of Administration replied in the same vein on 5 February 1993. The complainant sent the Director-General another letter on 9 April 1993. The Director-General confirmed on 4 May 1993 that his appeals were irreceivable and that is the second decision he is challenging.

B. The complainant pleads the Director-General's decision of 15 January 1991 to let him keep occupational category 3 in *propria persona*. In his submission the rules mean that anyone in that category should go on career path IV. So he was discriminated against.

He has never had any description or grading of the post and duties he has held since September 1991, when he was seconded to the AS Division. That, he says, has precluded tending his own interests properly.

He dwells at length on the dispute about the rota system that began in 1983.

He accuses CERN of "victimising" him as a staff representative.

He wants CERN to clear up his situation, put him on path IV and pay him damages for all the injury he has sustained since October 1984. He seeks costs.

C. CERN replies that the letter of 4 May 1993 contains no decision that the complainant may challenge before the Tribunal but merely explains or repeats the Organization's stand. Since there is no link between the two impugned decisions he may not challenge them both in a single complaint. And his claim to damages for injury sustained since 1984 is too vague to be receivable.

On the merits CERN explains the principles underlying its new system of advancement and submits that it has complied with the rules. It put the complainant in the occupational category that corresponded to his official duties. The Director-General's decision to let him stay in category 3 in propria persona afforded no guarantee that he would make a career in that category.

The Organization denies treating him unfairly or refusing him a post description.

His objections to the rota system are out of time.

CONSIDERATIONS:

1. The complainant joined CERN in 1970 as a mechanic at grade 5. He sometimes had to do shift work. In 1976 the Organization promoted him to grade 6 and made him an operator of particle-accelerators.

2. From 1987 the state of his health made shift work difficult and in a decision of 3 October 1988 the Director-General declared him unfit for his job. He appealed without success against that decision. There was a medical examination and the Joint Advisory Rehabilitation and Disability Board made a recommendation. By a decision of 15 January 1991 the Director-General upheld his earlier decision, put him on a post for a mechanic and, though the post was in category 4, let him keep category 3, that of his previous post, in propria persona.

3. At first he was in the SL Division. Then, from 1 September 1991, he was seconded to the AS Division to help in setting up a computer system in the library. The secondment ended on 30 July 1993. While on secondment he, like everyone else on the staff, was put on a career path in line with a new scheme for advancement. By a decision notified on 14 February 1992 he was put on path III as from 1 March 1992.

4. The complainant wants the Tribunal to quash the Director-General's decision of 3 March 1993 rejecting his internal appeal against being put on path III. He further impugns a letter dated 4 May 1993 declaring irreceivable his many appeals against decisions taken in 1988 on his fitness for shift work and in 1991 on his reclassification. He also wants other decisions quashed and seeks awards of damages and even the review of judgments on his earlier complaints.

5. His main objections are to the decision to put him on path III. As was said in Judgment 1412 (in re Audria), the new system of advancement entails putting staff on career paths that correspond to their main duties. Advancement along each path depends on yearly assessment of performance. To begin with each staff member got a provisional assignment to a career path that took account of "category" and other criteria. There followed a complex procedure and eventually, after making sure that the provisional assignment matched duties and "potential" and that there had been no discriminatory treatment, the Director-General took a final decision on the staff member's career path.

6. In support of his claim to path IV the complainant says that the Organization acted in breach of the rules it had itself set in instructions it issued on 3 October 1991. He pleads breach of equal treatment and says that CERN's unlawful processing of his case since 1984 has adversely affected the decision on his career path.

7. His plea of breach of the instructions fails. They said that someone in category 4 and at grade 6 would provisionally go on path III. Since reclassification in 1991 the complainant's duties had been in category 4 and his post in grade 6.

8. Relying on the Director-General's assurance in 1991 that he would keep category 3 in propria persona, he says he was entitled to provisional assignment to path IV under point 14 of the instructions. But he is thereby misreading them. What they said was that the criteria for determining career paths were to be "the staff member's present classification and level of function together with his/her potential". The Director-General's purpose in letting him stay in category 3 was to save him from losing the title of technician. But he acquired thereby no right to perform

duties in category 3 or demand a career proper to someone who was actually performing such duties. All that mattered in determining his career path was his actual duties. On that score he makes out that CERN has given him no proper post description since 1991. But the evidence is that it did: it appended to the text of its decision of 15 January 1991 a description of his duties as mechanic and it set out in communications of 13 December 1991 and 3 September 1993 descriptions of the duties he was to have while on secondment to the AS Division. He may have been "on trial" in AS, but that has no bearing on the correctness of the decision about his career path.

9. Lastly, there was neither any obvious misreading of the evidence nor any breach of the Organization's own rules in the final decision to put him on path III. That is plain from the nature of his actual duties, which correspond to the definition of that path as covering "fully qualified craft or office work involving a variety of problems of execution; or responsibility for specialised work units".

10. His plea of discriminatory treatment cannot be sustained either. His situation is not comparable to that of operators in category 3: the whole point of the transfer of 1991 was to take him off work as an operator of accelerators.

11. In support of his case against putting him on path III the complainant may be objecting to earlier decisions such as the one of 15 January 1991. But, as was held in Judgment 1412, cited above, a staff member may not, in the context of a challenge to the choice of career path, object to earlier incidents in his career. So the plea must fail and with it the claim to the quashing of the Director-General's decision of 3 March 1993.

12. CERN pleads that his challenge to the Director- General's letter of 4 May 1993 is irreceivable because, for one thing, it contains no decision and, for another, a single appeal may not lie against two unconnected decisions. Without taking up the second objection the Tribunal observes that in reply to one of the complainant's many letters the Director- General refused to reconsider matters on which he had taken a final decision. He thereby acted unimpeachably. What the complainant is trying to do is challenge the decisions that were taken on 3 October 1988 and 15 January 1991 and that have become final. In the absence of any new fact he may not challenge mere confirmation of those decisions.

13. Nor is his application for review of Judgments 1104 and 1172 receivable. Besides, the only grounds he offers are cryptic allusions to "new facts" and "mismanagement".

14. For the foregoing reasons his further claims must also fail: to damages for the various forms of injury he imputes to mismanagement of his career; to the disclosure of evidence; to recognition of his ailments as service-incurred; to the ordering of a medical enquiry; and to back payments against loss of salary, of which he affords no particulars.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, Vice-President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

(Signed)

Michel Gentot
Julio Barberis
Egli
A.B. Gardner