

## EIGHTY-SECOND SESSION

### *In re Molloy (No. 3)*

#### **Judgment 1608**

The Administrative Tribunal,

Considering the third complaint filed by Mr. Brian Michael Molloy against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 21 October 1995 and corrected on 24 November, Eurocontrol's reply of 26 January 1996, the complainant's rejoinder of 5 April and the Agency's surrejoinder of 14 June 1996;

Considering Articles II, paragraph 5, and VII, 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. The complainant, who is British, joined the staff of Eurocontrol in 1968. He is employed as a senior technical assistant, first class, at grade B2 in its Experimental Centre at Brétigny-sur-Orge, in France.

In a minute of 29 November 1994 to the President of the Permanent Commission of Eurocontrol he accused Eurocontrol of "penny-pinching" over the "recommissioning of the canteen" and suggested other ways of saving money. He sent a copy of the minute to the President of the International Air Transport Association (IATA) and senior officers inside the Agency.

On 21 December the Director of the Centre gave him a reprimand under Articles 88 and 89 of the Staff Regulations for behaviour "incompatible with his status as a Eurocontrol official". By a minute dated 18 January 1995 the complainant asked the Director General to have the reprimand withdrawn. In a letter of 27 February the Director of Personnel said that he was answering his internal "complaint" of 18 January on behalf of the Director General, who had decided to uphold the reprimand.

In a minute of 30 March 1995, which the complainant described as a "complaint following Article 92(2)", he asked the Director General to confirm the decision in the letter of 27 February. By a letter of 10 May the Director of Personnel told him he was putting the matter to the Joint Committee for Disputes. In its report of 17 July 1995 the Committee recommended rejecting the appeal and by a letter dated 28 July the Director of Personnel informed him that the Director General had endorsed its recommendation. That is the challenged decision.

B. The complainant submits that the reprimand was unwarranted: he had neither infringed any rule nor communicated with "unauthorised" people. Since the letter of 28 July 1995 was the first decision to bear the Director General's signature it was the challengeable one.

He wants the Tribunal to quash the reprimand and award him damages for injury to his career.

C. In its reply Eurocontrol contends that the complaint is irreceivable because he filed it more than 90 days after getting the decision of 27 February 1995, which the Director of Personnel signed "For the Director General and by delegation".

In subsidiary argument on the merits it describes his behaviour as "morally reprehensible" and in breach of his duty of loyalty and discretion under Articles 12 and 17 of the Staff Regulations.

D. In his rejoinder the complainant presses his pleas.

E. In its surrejoinder the Agency maintains the arguments in its reply.

#### CONSIDERATIONS

1. The Organisation employs the complainant as a senior technical assistant, first class, at grade B2 in its Experimental Centre. The background to the dispute is that in drawing up its budget for 1995 it deleted

appropriations for restoring a canteen at the Centre. The local section of the Staff Committee, of which the complainant is a member, criticised that decision but declined to endorse the text of a letter he had drafted for despatch to the Permanent Commission, Eurocontrol's governing body. Acting independently, and without going through official channels, he addressed a memorandum dated 29 November 1994 to the President of the Permanent Commission and copies of it to the President of the Committee of Management, the Chairman of the Budgetary and Financial Working Group, the President of the International Air Transport Association, the Director General and the Director of the Centre. In his memorandum he expressed the opinion that the Organisation's "penny-pinching" would prove counterproductive and he suggested other ways of saving money.

2. On 21 December 1994 the Director of the Centre issued a reprimand to the complainant in pursuance of Articles 88 and 89 of the Staff Regulations. In a minute dated 18 January 1995 to the Director General the complainant said that under Article 21 of the Staff Regulations every employee had a duty, as he put it, to "assist and advise his hierarchical superiors". He maintained that in writing to a higher authority he had been carrying out "a statutorily defined act". He pointed out that where a complaint concerned a "hierarchical superior" Article 92(3) authorised submission of it "to the next higher authority". He suggested that the Director General should instruct the Director of the Centre to withdraw the reprimand. But the reply sent by the Director of Personnel on 27 February 1995 on the Director General's behalf was that the reprimand was fully justified and was maintained.

3. On 30 March 1995 the complainant wrote asking the Director General to confirm the conclusion in the Director's letter of 27 February. On 10 May the Director of Personnel answered, acknowledging receipt of the minute of 30 March 1995 and treating it as a "complaint" under the Staff Regulations. The matter was referred to the Joint Committee for Disputes and, acting on its advice, the Director General dismissed the complainant's claims on 28 July 1995. He filed this complaint on 21 October 1995.

4. He submits that it was reasonable for him to communicate with the highest authority in the Organisation once the Administration had refused dialogue with the accredited representatives of the staff. He is mistaken. Article 21 of the Staff Regulations, which he relies on, is about the responsibility of a staff member for the performance of the duties assigned to him and his duty to "assist and tender advice to his superiors". The "duties" meant are those to be performed by the staff member as such and the "superiors" are senior officers of the Administration of Eurocontrol. As for Article 92(3), which he also refers to, it deals with internal appeals and is irrelevant to the material issue.

5. The complainant had two obligations. First, he had to observe the hierarchical channels of communication if he wanted to refer a matter to the Organisation's decision-making bodies. Secondly, Article 17 of the Regulations required him to exercise discretion in the use of information that came to his knowledge in the course of duty. Since he acted in breach of both of those obligations the reprimand was fully justified. His complaint will therefore be dismissed in its entirety.

6. Since the complaint fails on the merits there is no need to rule on the Organisation's objections to receivability.

## 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. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas  
Michel Gentot  
E. Razafindralambo  
A.B. Gardner

