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

EIGHTY-SIXTH SESSION

Judgment 1817

The Administrative Tribunal,

Considering the complaint filed by Miss F. J. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 18 September 1997, Eurocontrol's reply of 23 January 1998, the complainant's rejoinder of 18 April and the Organisation's surrejoinder of 23 July 1998;

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. The complainant, who was born in 1956, is a Belgian journalist who writes on aeronautics in Europe. She joined the staff of Eurocontrol on 1 April 1996 under a contract for five years. She was an administrative assistant at grade B4. The letter appointing her put her on probation for nine months. She held a post as editor in External and Public Relations at the general secretariat in Brussels.

On 17 July 1996 she saw her supervisors about the drafting of her "interim probation report". On the 18th the head of the Human Resources Directorate sent her the text of it together with a record of the meeting. The report described her as "unsatisfactory" under five of the six heads of assessment; and according to the record her supervisors had told her that she was too poor at writing for the extension of her probation to serve any likely purpose.

On 23 July she submitted comments on report and meeting. She rebutted the criticisms and asked for a meeting of the Reports Committee in accordance with Article 9 of the Staff Regulations. By a memorandum of 26 July the acting Director of Human Resources told her that the Director of the General Secretariat was in favour of dismissing her and that her case had therefore gone to the Reports Committee.

In a report of 21 August to the Director General the Committee said that it was not in the Organisation's interests to keep her on and it recommended terminating her probation at 1 September 1996. On 23 August the Director of Human Resources decided on the Director General's behalf to terminate her appointment under Article 36 of the Staff Regulations with the required one month's notice, i.e. at 1 October 1996. He told her to clear out at once.

On 22 November 1996 she filed a request under Article 92(2) of the Staff Regulations for review of the decision of 23 August. She claimed reinstatement and material and moral damages. By a letter dated 28 May 1997, but sent the next day, the secretary of the Joint Committee for Disputes told her that the Committee would hear her on 4 June. In a letter of 3 June to the Committee her counsel said that the time was too short for him to plead her case. The Committee met on 4 June in her absence. By a letter of 10 June the Director of Human Resources told her counsel that the Agency had tried to reach her by telephone on 21 May and in any event the Committee heard only staff members.

In its report of 16 June the Committee recommended rejecting her appeal. By a letter of 20 June 1997 the Director of Human Resources told her that the Director General had done so. That is the decision she is challenging.

B. The complainant sees serious flaws in the impugned decision. The decision of 23 August 1996 states neither the grounds for it in law nor any facts warranting action under Article 36 of the Staff Regulations, which allows dismissal of a probationer for unsatisfactory performance. The reasoning of the Joint Committee for Disputes was too general and abstract, and that shows how contrived is the Agency's charge of poor drafting. Resting as it does solely on the Committee's report, the decision of 20 June 1997 is flawed for lack of a proper explanation. The only warning she ever got that she had been found wanting was in the interim probation report, which was inchoate and which in any event she did not get until 18 July 1996, just a few days before there came the decision to dismiss

her. She got only three working days in which to offer written comment on the report and that was not enough to answer such vague criticism. Scarcely a month went by from 26 July 1996, when she was told of the proposal to dismiss her, until 20 August, when the Reports Committee met; again that was not time enough for her to plead her case, the less so since she was on holiday for part of the period. The Organisation would not let her get help from counsel in pleading before the Joint Committee for Disputes. The advisory bodies did not work properly.

Her probation did not give her the opportunity of showing her mettle. She had no proper supervision while on probation. At no time did she get any clear and objective description of her duties.

Her performance and behaviour were obviously misjudged, and she rebuts the strictures on that score.

Because of a "power struggle" between other members of the unit to give her duties to someone else there was abuse of authority.

She seeks the quashing of the decision of 20 June 1997 rejecting her appeal and of the decisions of 23 August 1996 terminating her appointment and forbidding her to stay on until she had served the period of notice. She claims payment of 7,593,480 Belgian francs in material damages, the amount she would have earned in the five years of her appointment; of the same amount to cover another five years' appointment; of 2 million francs in damages for disruption of her studies; of 12 million for "breach of contract with the European Commission"; of 30 million for harm to her career; and of 1 million in costs. She claims moral damages in the amount of 10 million francs for her "summary eviction" from the Organisation's premises and another 20 million for injury to her health.

C. In its reply the Organisation submits that it did properly account for its decisions of 23 August 1996 and 20 June 1997. The earlier one cited the Reports Committee's report and the later one the report of the Joint Committee for Disputes, and both reports were duly reasoned. The complainant was told orally at the meeting of 17 July 1996 of the criticisms of her work. So she knew - and her comments of 23 July bore it out - that the main fault her supervisors found was poor drafting. Besides the interim probation report of 18 July 1996 several electronic mail messages from them took her to task for both attitude and work. She got all the time she needed to ready her case. The reason why the Joint Committee wanted to hear her and not her counsel was that her case turned on issues of fact, not of law.

Whatever might have helped her to make good her shortcomings, a detailed description of her duties would not. None of her tasks demanded skills beyond those of a specialised journalist.

As for her charge of misjudgment, her supervisors found her so unpromising that they thought further probation pointless. The Reports Committee and the Joint Committee agreed. So by many objective tests she looked unlikely ever to measure up. She shows no abuse of authority.

The breaking-off of probation was not actionable. Her claims to damages are "highly fanciful and exorbitant". Eurocontrol asks the Tribunal to award the costs of the case against her.

D. The complainant enlarges on her pleas in her rejoinder. She submits that the Joint Committee meant at the outset to hear her and was not free to change its mind on the grounds that her counsel had applied for adjournment. She rebuts the Organisation's criticisms of her. The abuse of authority is to be seen also in its delay over meeting in full the medical costs she ran up while on probation. She raises to 2 million francs the amount she claims in costs.

E. The defendant presses its pleas in its surrejoinder. It cites the Joint Committee's view that the written evidence sufficed. Its inviting her to appear did not imply that hearing her was "indispensable". What she says in her attempt to show abuse of authority is irrelevant to this case.

CONSIDERATIONS

1. The complainant started a career as a freelance journalist in 1981. In 1983 she got a degree in journalism and communication and in 1984 a postgraduate diploma qualifying her to teach those subjects in French-speaking secondary schools in Belgium.

Eurocontrol held a competition to fill a post for an editor at grade B4/B5. The complainant entered it and won: on 1 April 1996 the Agency appointed her for five years as administrative assistant at grade B4. For the first nine months she was to be on probation.

Article 36 of the Staff Regulations reads:

"1. Officials other than those in Grades A1 and A2 shall serve a probationary period before they can be established. The probationary period for officials in Category A, the Language Service and Category B shall be nine months and six months for other officials.

However officials falling under the Air Traffic Flow Management Service may only be established where the duration of the period of training is at least as long as 9 months. If the period of training is shorter, it must be supplemented by a probationary period equal to the difference between nine months and that period.

When the training has not been completed after 9 months, establishment will be postponed accordingly until the official has finally completed his training.

Where during his probationary period an official is prevented, by sickness or accident, from performing his duties for one month or more, the appointing authority may extend his probationary period by the corresponding length of time.

2. Not less than one month before the expiry of this probationary period, a report shall be made on the ability of each probationer to perform the duties pertaining to his post and also on his efficiency and conduct in the service. This report shall be communicated to the probationer, who shall have the right to submit his comments in writing. An official on probation whose work has not proved adequate for establishment in his post shall be dismissed.

In the event of patent inaptitude of the probationer a report may be drawn up at any time during the probationary period. This report shall be communicated to the person concerned who shall have the right to comment in writing. On the basis of this report the appointing authority may decide to discharge the official on probation before his probationary period expires subject to one month's notice. In such cases the duration of service shall not exceed the normal probationary period.

Unless the official on probation is able to resume his duties with his parent administration immediately he shall receive compensation equal to two months' basic salary if he has completed at least six months' service and to one month's basic salary if he has completed less than six months' service.

The provisions of this paragraph do not apply to an official who resigns before expiry of his probationary period."

The Agency assigned the complainant to the section for External and Public Relations. Her first-level supervisor was Mrs. L. K., the assistant to the head of the section. One of her duties was to draft texts for internal use or for outside publication. The head of section and Mrs. K. were both English-speaking, and Mrs. K. also had good French. The complainant and her supervisors sent each other many electronic mail messages. She has accused them of not keeping in close enough touch. But the Agency denies the charge, and it is not proved. There is no evidence to suggest that her supervisors ever refused to see her or answer her questions. The mass of e-mail messages shows that Mrs. K. kept a close and careful watch on her and gave her constant tips on how to go about her work. One example is the following e-mail on 8 May 1996:

"I am pleased that you managed to complete the task today, in spite of your misgivings.

However, I find the presentation of the whole slipshod and the contents leave a lot to be desired. I have perhaps been remiss in not bringing equivalent shortcomings to your attention before now: I had hoped that these faults could be ascribed to your being new in the Organisation and that you would overcome them in time. You have now been with us for over a month and your carelessness in such matters can no longer be tolerated with equanimity.

To restrict my comments to this package:

The photographs present a good selection but the captions are very poor. Not only has the black ink you used to write with smudged the surface of some photos but the information is much too scanty. Please arrange for labels to be printed containing full information - the name EUROCONTROL must appear on each label; all acronyms must be given in full; "siège" and "salle ops" is not good enough: please be more precise - and as the request came to us in English, give the captions in English.

The list of Member States ought to be re-typed and properly headed; in its current presentation, a photocopy of the back page of a press release headed "Note To Editors", it is confusing.

The information contained in your typed version of "EUROCONTROL in Brief" contains several serious inaccuracies which I have marked and the information I asked you to update on the CFMU is repetitive in style. Please correct the inaccuracies and improve the style of your addition.

I find it rather primitive simply to highlight the first sentence of the CFMU/Italy information: attach a note explaining the context.

Please produce a properly presented cover page for both the graphics, explaining what they are, and for the selection of press releases.

Where is the draft covering letter for Mr [P.]'s signature indicating that this selection of information had been prepared and that it will be sent under separate cover?

I understand you did this in a rush, but the quality of the work need not betray this fact. We pride ourselves on providing a high-quality service - on time. Strive to bear this in mind."

The complainant's supervisors did not care for her drafts in French and passed some of them on to the language service, which revised them fairly heavily.

2. Her supervisors felt that her poor performance warranted an interim probation report, which would afford an opportunity of talking with her about her shortcomings and serve as a warning that she must improve.

By a memorandum of 15 July 1996 the Human Resources Directorate called her to a meeting on the 17th about completing the interim report.

At the meeting two supervisors showed her the draft text and explained it. It described as "unsatisfactory" her "Aptitude for the post", "Output", "Behaviour in the service", "Relations with colleagues" and "Punctuality" and as "satisfactory" her "General appearance". Under the heading "Special aptitudes" it said:

"The post requires perfect command of one language and good mastery of the other.

Good time-keeping skills and productivity are a must. In non (sic) of these areas has the present incumbent proved satisfactory."

The main topic talked about was her poor drafting in French. She remonstrated at all their criticisms. The upshot was that her supervisors asked the Director General whether there was any point in keeping her on probation or she should just go. They let her have a summary record of the meeting and a copy of the probation report signed on 18 July 1996. They gave her until 23 July to comment in writing.

She wrote an eight-page memorandum commenting on both report and meeting. It was a wretched text: the spelling, choice of vocabulary, punctuation and syntax were poor, and some sentences made no sense. As for the content, she still brooked no criticism and made out that from the start her two supervisors had been oddly hostile to her. She asked for a meeting of the Reports Committee.

The Committee reported on 21 August 1996. It saw nothing wrong with the way in which she had been treated while on probation. In answer to her arguments it said:

"As for proficiency in her mother tongue, which is French, the texts she has herself provided betray spelling, grammar and syntax below par. Her English is no better, as the test she took at the job interview shows.

The Committee sees no likelihood of improvement by the end of the period of probation."

It came to the same conclusion about the other criticisms of her and so recommended ending both her probation and her appointment on 1 September 1996.

The Deputy Director General and the Director of Human Resources saw her at her own entreaty. The secretary of

the Staff Committee went with her and asked them to let her serve her full probation. He hinted that it was not her own poor performance, but the "dishonourable intents" of others that had prompted the dispute.

Not but what on 23 August 1996 the Director of Human Resources told her on the Director General's behalf that, with due notice, her appointment would end at 1 October 1996.

With help from her counsel she filed a "request" challenging that decision with the Director General. The gist of it was that she was objecting to the criticisms: if the Agency wanted more from her it should have given her better guidance and supervision. It gave her no proper oral or written warning before termination. The real reason for the termination was that her two supervisors disliked her: they had been against appointing her and wanted to settle a score by getting rid of her.

On 4 June 1997 the Joint Committee for Disputes recommended rejecting her "complaint". Commenting on her skills and fitness for her duties, it found her French style, vocabulary, grammar and syntax unsatisfactory: if her job application and her memorandum of 23 July 1996 were anything to go by, she was "not given to checking her own work, which showed all sorts of careless blunders". She was "no hand at writing". The corrections by the language service had not prompted her to do any better. "Since some of her work is intended for senior diplomatists and politicians her shortcomings could badly harm the Organisation's standing". The Joint Committee found nothing wrong with the probation procedure or dismissal procedure.

On 20 June 1997 the Director of Human Resources rejected her "complaint" on the Director General's behalf.

3. That is the decision she is asking the Tribunal to set aside, together with the termination of 23 August 1996 of her appointment and the decision of even date forbidding her to serve the period of notice, both of which she sees as unlawful. Though she does not seek reinstatement, she claims awards of damages. She pleads procedural flaws: the Agency failed to explain its decisions and denied her due process. On the merits she submits that the Agency's criticisms of her were empty; some of her work was not up to her to do; she got no proper guidance or written or oral warning; the charge of poor drafting was flimsy and fanciful, and trumped up as a pretext for dismissal; there was no ostensible reason for prematurely ending her probation.

The Organisation seeks dismissal of the complaint as devoid of merit.

4. The complainant asks to have struck from the records the synopsis headed "Tasks given by [L. K.] to F. [J.]" which the Organisation has appended to its reply.

That text is to be treated, not as an item of evidence, but as a statement by the defendant and as such may remain in the case records.

5. A consistent line of precedent - see, for example, Judgment 1418 (*in re* Morier) under 6 - has it that a decision not to renew a staff member's appointment is discretionary and will be set aside only if it is *ultra vires* or breaks some rule of form or of procedure, or rests on a mistake of fact or of law, or overlooks a material fact, or draws a clearly wrong conclusion from the evidence, or discloses abuse of authority. The Tribunal will be particularly cautious in reviewing a decision not to confirm the appointment of a probationer; otherwise probation would fail to serve as a period of trial. The purpose of probation is to ensure that new staff members are the best qualified. So an organisation must be allowed the widest discretion in the matter and its decision will stand unless the flaw is especially serious or glaring. Moreover, where the reason for refusal of confirmation is unsatisfactory performance, the Tribunal will not replace the organisation's assessment with its own. The same precepts hold good for termination of probation before the end of the prescribed period: see Judgments 1736 (*in re* Seim) and 1753 (*in re* Vitry). The Tribunal does not thereby narrow its review of issues of law: its cautiousness is confined to matters of discretion.

The reasons for the decision

6. A staff member needs to know the reasons for a decision so that he can act on it, for example by challenging it or filing an appeal. A review body must also know the reasons so as to tell whether it is lawful. How ample the explanation need be will turn on circumstances. It may be just a reference, express or implied, to some other document that does give the why and wherefore. If little or no explanation has yet been forthcoming, the omission may be repaired in the course of appeal proceedings, provided that the staff member is given his full say.

Here the decision under challenge is the one rejecting the "complaint", and it states the reasons plainly enough by citing, for one thing, the report of the Joint Committee for Disputes. That report made no bones about it: the complainant's probation should be ended because her drafting in French was poor and unlikely to come up to standard by the expiry of the ordinary period of probation. For a precedent see Judgment 1127 (*in re* Verlaeken-Engels) in 15 to 18.

Besides, the Director General's original decision had already given her those reasons.

Though she further contends that the reasons were wrong the plea goes rather to the merits.

7. She argues that, not knowing what exactly the Agency's criticisms were, she could not plead her case properly before the decision to terminate her appointment was taken.

The case law says that an organisation may not take unilateral action that affects status before giving the staff member the opportunity of answering: see Judgment 1484 (*in re* Thuillier) under 8, and the others cited therein. And that rule applies, of course, to dismissal of a probationer.

But here there was no breach of it.

Termination was spoken of at the meeting of 17 July 1996 after she had denied all the criticisms of her; the summary record of the meeting confirmed the possibility; and it was again mooted by the Reports Committee and at the meeting with the Director General's representatives.

The nature of the criticisms, too, was quite clearly explained to her, in particular at the meeting of 17 July 1996, and the memorandum she wrote in reply shows that she knew full well what they were: poor drafting in French, among others. In her rejoinder she admits to having known that the language service had corrected some of her texts, and with her memorandum she submitted samples.

She fails too to show that she got too little time to comment. Though not given much, she did not, as she might, ask for more, there is no reason to think it would have been refused: see again Judgment 1127 under 6. She says that she was on holiday and that some papers were in her office to which she was not sure of access. But she failed to say so at the time and she fails to show now that her defence was thereby hampered.

8. She pleads breach of her right to a hearing in the refusal to let her counsel address the Joint Committee for Disputes, though counsel wrote and signed her "complaint" of 22 November 1996.

By a letter of 28 May 1997 the Committee told her that it would hear her on 4 June. Her counsel asked for adjournment on the grounds that he was busy and she had to sit university examinations that month. The Director of Human Resources replied that the Agency had tried to reach her earlier and that the Committee heard staff, not counsel. The complainant failed to turn up on 4 June 1997 and the Committee dropped the idea of hearing her.

Judgment 995 (*in re* Agbo) commented under 5 on a requirement in the statutes of the appeals board of another organisation that an appeal be lodged by the appellant or by a member of headquarters staff; it said that, being "in mandatory and limitative terms", that requirement had to be observed even if it "would not be admissible before any court of law". The Tribunal ruled likewise on a case where counsel had been barred altogether from the internal appeal proceedings in Judgment 1610 (*in re* del Valle Franco Fernandez), under 12, and in Judgment 1763 (*in re* González-Montes), under 10, on a case where counsel had not been admitted to hearings. In Judgment 1673 (*in re* Cabral No. 2) the Tribunal discussed, in 5, how far rules of judicial procedure should apply to internal appeals.

Here Eurocontrol let counsel draft the complainant's briefs and that is what mattered most. She does not even make out that she had any right to be heard. The Committee's intention was merely to hear her answer a few questions, but when she failed to appear it let the matter drop. She does not say that she suffered on that account, or show that she was prevented from attending.

The conclusion is that the internal appeal proceedings disclose no breach of any general principle of law. It is only reasonable that the arrangements should not be so hard-and-fast as for judicial process, and only as to a lesser issue was help from counsel barred. Since in the end there were no hearings anyway the absence of her counsel simply did not matter. Her plea fails.

9. The complainant pleads flaws in the proceedings before the advisory bodies.

(a) In her submission one member of the Reports Committee had been on holiday and so did not see her comments until 20 August 1996, the day before the Committee met. Be that as it may, he was unlikely to need a whole day to go through them, and on that score there is no reason to suppose that the Committee was remiss.

(b) The complainant says that she was not told beforehand the names of the Committee's members. But she neither denies learning them later nor makes out that she had any grounds for objection.

(c) She alleges that one member wrote scathing remarks against her comments on the probation report.

The defendant's answer is that it was the language service that wrote the remarks, and the complainant does not disprove it.

(d) She accuses a member of the Joint Committee for Disputes of behaving improperly in advising her to answer the criticisms in the first draft of the probation report and then using her answers against her.

She fails to show that that member did anything but advise her to comment on the criticisms. That did not mean "reversing the burden of proof". There was nothing wrong with giving advice of that kind, and she offers no convincing reason why the Committee member should have stood down or not looked at her comments.

(e) Citing the rules, she contends that no-one may serve on both the Reports Committee and the Joint Committee and that it was a breach of the rules for the two to have the same secretary.

The plea fails: the rules say nothing of the secretary, who does not express views anyway.

The merits

10. An organisation has broad discretion both in determining its own needs and in saying whether someone is fit for employment, and in such matters the Tribunal has only a limited power of review.

(a) The Director General agreed with the Reports Committee and the Joint Committee that the complainant's duties called for the skilful drafting of texts for outside publication and that the Organisation's good name largely depended on their quality. What was wanted was someone who could single-handed turn out polished texts that needed no checking by the language service.

(b) The Director General also agreed with the Committees that, to judge from some of the texts gone over by the service, her drafting in French was not up to the mark.

On neither count did he exercise his discretion wrongly. Of course an organisation may demand fine writing, and the finding that she fell short is beyond reproach. Even her lengthy comments of 23 July 1996 on the draft probation report revealed not only shaky spelling, punctuation, vocabulary and grammar but a muddy style. Those faults are the more striking for appearing in the very text she intended to rebut the main criticism of her: dismal French.

11. Poor performance does not warrant ending a probationary appointment unless there is not some hope of reasonably early improvement, usually by the expiry of the probation.

(a) Before dismissing someone on the grounds of performance an organisation must ordinarily give fairly prompt warning so as to allow for improvement. But all that is needed is that the staff member be aware of the risk of dismissal and of the need for improvement. If the staff member still proves unsatisfactory, dismissal will be in order even if founded on new shortcomings that are not the same as those that prompted the warning: see Judgment 1546 (*in re* Randriamanantenasoa) under 18. And again those rules hold good *mutatis mutandis* for ending probation: see Judgments 1212 (*in re* Schickel-Zuber) under 3 and 4; 1246 (*in re* Pavlova Nos. 1 and 2) under 14; and 1386 (*in re* Bréban) under 21.

By an e-mail message of 8 May 1996 Mrs. K. did send the complain-ant a fairly strong warning that she was not coming up to the high standards that the section set.

(b) But was that warning enough, coming as it did in the early days of her probation, and considering the Organisation's duty to groom a probationer?

For the following reasons there is no need to rule on that issue.

A warning will serve no purpose at all if the probationer is obviously unwilling or even unable to heed it: see Judgment 453 (*in re* Heyes) under 5 and 6. That was Eurocontrol's view in this case. When warned of her failings the complainant took a hostile stance and would not hear of them. Nor has she since appeared any more docile in her comments, in her internal appeal or, for that matter, in her present suit. The defendant inferred that she would never acknowledge her own shortcomings or even try to do better and was therefore unlikely to show enough improvement by the end of probation.

To a large extent the Director General had discretion to form such an opinion of the complainant's personal attributes; he did not commit any obvious abuse of it, and her pleas on that score cannot succeed.

She contends that she could not acquiesce in any of the criticisms because they were unfounded. She thereby ignored what was quite obvious: her French texts were below par.

She argues that it was unfair, and indeed in breach of due process, to hold her attitude or her texts against her because she was merely acting in her own defence. But what a litigant may say in exercise of free speech does matter: the defendant was entitled to take account of anything the complainant said in the course of the proceedings that might have a bearing on the merits of her case.

She knew full well what improvements her texts needed. Even if she wanted to challenge the criticisms, she might readily have attempted to rise to her supervisors' expectations. She never did.

12. She submits that the criticisms and the termination were unwarranted because the Agency failed to discharge the duty it owed her as a probationer and so blighted her hopes of success: it gave her duties other than the proper ones, which, for want of a job description, she takes to be those set out in the notice of competition; her supervisors failed to give her the help and attention any probationer needs; she had not enough training; and the methods of work were inadequate.

The Agency rebuts her arguments. It contends that it was from her performance of specific tasks forming part of her duties that her shortcomings became apparent. Her supervisors did give her constant attention, tips and criticisms, not just by e-mail but often orally.

Her objections to working methods are misconceived: it is for the Organisation to follow the methods it likes. A job description would have served no purpose since it was the performance of set tasks that was her undoing. But what matters most is that she was told time and again that skill in writing French was expected of her. So her comments on that score are immaterial.

13. She pleads abuse of authority: unmindful of the Agency's interests, her supervisors had her thrown out because they had never wanted her in the first place.

Though the burden of proof is hers, she has failed to discharge it. Besides, it was not her supervisors who took the impugned decision but the Director General, and on the advisory bodies' recommendation at that.

The plea fails.

14. She sees breach of her rights in the oral decision by the Director of Human Resources to relieve her of serving the period of notice and order her off the premises forthwith. To her mind that was needlessly drastic and churlish: she had a right under her contract to go on working.

The Agency replies that it treated her as it usually treats people in those circumstances; she suffered no injury since it paid her; and, being released from work, she had time to study for her university examinations and look for a new job.

The holder of a contract of service is entitled, not just to receive payment, but, up to the date of transfer or dismissal, to carry out the set duties. Save where there is agreement to the contrary the organisation is bound by the

contract to let the staff member work. The staff member's right to do work as well as to earn money is indeed the reason why transfer must not cause undue injury: see for example Judgment 1496 (*in re* Güsten) and the case law cited therein. But the employer has authority to tell the staff member how best to serve its own interests. So it may relieve a staff member of duty during a short period of notice provided that it no longer anticipates worthwhile services and avoids giving the harmful impression of summary dismissal.

In Judgment 1022 (*in re* Michel) the Tribunal ruled on a plea by a complainant that she had been discriminated against in that she, but not others, had had to serve the period of notice. It said in 8:

"The main purpose of notice of termination is to protect someone who has his appointment terminated from sudden action that might put him in an awkward plight. Either he may go on working throughout the period or else he may be paid compensation in lieu. In any event there is nothing compulsory about compensation.

It is for the Organisation as employer to determine where its interests lie."

Here the Agency scarcely explained to the complainant why she was not to work in September 1996. But it obviously saw no benefit to itself in keeping on a probationer whose work was poor. It may, too, for the reasons stated above, have thought it in her own interests that she should go.

Letting her go was tantamount to putting her on special leave, a decision it had discretion to take: see for example Judgment 1759 (*in re* Mussnig No. 4).

Again her plea is without merit.

15. Since her main claims fail, so too must the subsidiary ones.

16. Eurocontrol's claim to an award of costs against the complainant is disallowed.

DECISION

For the above reasons,

The complaint and the Agency's claim to costs are dismissed.

In witness of this judgment, adopted on 18 November 1998, Mr. Michel Gentot, 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 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

Jean-François Egli

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 28 September 2004.