

## **EIGHTY-NINTH SESSION**

***In re Roulleaux***

**Judgment No. 1991**

The Administrative Tribunal,

Considering the complaint filed by Mr Jean Roulleaux against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 5 August 1999, Eurocontrol's reply of 3 December 1999, the complainant's rejoinder of 10 January 2000, corrected on 3 February, and the Agency's surrejoinder of 24 March 2000;

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. In 1991 the Agency adopted, with effect from 1 January 1992, Appendix IV to the General Conditions of Employment governing Servants at the Eurocontrol Maastricht Centre. This Appendix is entitled "Transitional provisions having the force of service regulations relating to the early termination of service of staff occupying a category B post on 29 April 1990 in the operations division at the Maastricht Centre". It provides that the employees concerned take early retirement at fifty-five years of age and receive a monthly allowance in place of their remuneration. The relevant part of Article 4 of Appendix IV is as follows:

"Recipients of the [termination of service] allowance shall be entitled, in respect of themselves and persons covered by their insurance, to benefit under the sickness insurance scheme provided for in Article 72 of the General Conditions of Employment on condition that they pay the relevant contribution ... and that they cannot be covered by any other public scheme against the same risks ..."

The complainant, a citizen of Luxembourg who was born in 1943, entered the service of the Agency in Brussels in 1971 as an employee at grade C3. In 1972 he was transferred to Maastricht. He was appointed controller 2nd class at grade B4 in 1989 and subsequently controller 1st class at grade B3 in 1992.

In an internal memorandum of 22 June 1998, the Head of the Pensions and Termination of Service Section informed the complainant that he would benefit from an early termination of service allowance as from 1 August 1998. In accordance with Article 4 of Appendix IV, the complainant and his family would no longer be covered by the Agency's sickness insurance scheme because he could be covered by the Belgian public scheme. In a letter of 14 July, the complainant requested a decision by the Director General. He considered that his insurance under the latter scheme would not guarantee him the same level of coverage. By an internal memorandum of 30 July, the Head of the Pensions and Termination of Service Section informed the complainant that he and his family were entitled to coverage under the Belgian public scheme and, in a letter dated 8 October 1998, confirmed that they no longer had the right to benefit from the Agency's sickness insurance scheme.

On 9 January 1999 the complainant filed an internal complaint with the Director General against the implicit rejection of his request of 14 July 1998. He complained that the insurance scheme with which he had been obliged to register did not meet the requirements of Article 4 of Appendix IV. The case was brought to the Joint Committee for Disputes which, at its meeting on 2 August 1999, recommended that the internal complaint be upheld and an amendment made to Article 4 of Appendix IV. By a letter of 9 August, the Director of Human Resources informed the complainant, on behalf of the Director General, that his internal complaint had been rejected as having no legal merit. In the meantime, on 5 August, the complainant had filed a complaint with the Tribunal against the implied rejection of his internal complaint of 9 January 1999.

B. The complainant argues that the decision to exclude him from the Agency's sickness insurance scheme is contrary to the provisions of Article 4 of Appendix IV. Citing a letter of 18 January 1999 from a manager of an insurance company, he seeks to establish that Article 32(15) of the Belgian Law respecting "compulsory health care insurance and benefits" of 14 July 1994 does not authorise him to be covered by that insurance scheme. He was therefore obliged to take out a complementary insurance policy, costing him around 87,000 Belgian francs a year, which does not form part of a public scheme as provided in Article 4 mentioned above.

He requests the Tribunal to set aside the decision to exclude him from the Agency's sickness insurance scheme; to state that he is entitled to the benefits guaranteed by the insurance scheme under Article 72 of the General Conditions of Employment, in accordance with Article 4 of Appendix IV; and to order the Agency to pay him, as a provisional measure, 500,000 Belgian francs in material damages, 150,000 francs in moral damages and 250,000 francs in costs, to which must be added "interest on arrears and on costs".

C. In its reply the Agency submits that Article 4 of Appendix IV was correctly applied. The complainant is indeed covered by a public scheme within the meaning of that Article and of the Belgian legislation. A Royal Order of 27 April 1997 amended several provisions of the Law of 14 July 1994 and abolished "residual schemes". The persons formerly insured under these schemes are now covered by one of two existing public schemes, which cover the same contingencies as the Agency's sickness insurance scheme. Furthermore, the complainant is endeavouring to mislead the Tribunal by citing the letter of 18 January 1999, which was not addressed to him. Eurocontrol also observes that the complainant provides no proof of the amount of his contributions, nor of whether he is covered by a complementary scheme. The Agency requests the Tribunal to reject all the complainant's claims as being without merit and to order him to bear the full costs.

D. In his rejoinder the complainant contends that the Agency's employees are obliged to be insured under its own sickness insurance scheme. Under the terms of the above-mentioned Law, he cannot therefore be covered by the compulsory Belgian insurance scheme. Not being covered against the same risks by any other public scheme, he must be considered as being covered, within the meaning of Article 4 of Appendix IV, by the benefits guaranteed by the Organisation.

The decision to exclude the complainant from the Agency's sickness insurance scheme is, in his view, also arbitrary and discriminatory insofar as two of his colleagues, who also benefited from early termination of service, have remained covered by the scheme.

E. In its surrejoinder the Agency produces a letter from a mutual insurance scheme certifying that the complainant and his family are indeed registered with the public scheme under the terms of Article 32(15) of the Law of 14 July 1994.

The two colleagues to which the complainant refers benefited from early termination of service before the Royal Order of 1997 came into force. Since they had not been able to register with the insurance scheme to which, in principle, they should belong, the Agency was obliged to maintain their coverage under its own sickness insurance scheme.

## CONSIDERATIONS

1. The complainant, who was born in 1943, is a citizen of Luxembourg. He joined Eurocontrol in 1971 and at the age of fifty-five was admitted as from 1 August 1998 to a transitional scheme known as "early termination of service". Pending access to his retirement pension on 1 February 2001 he gets a monthly allowance calculated according to a method set out in Appendix IV to the General Conditions of Employment. The decision of 22 June 1998 by which the Agency notified his early termination of service was accompanied by an internal memorandum informing him that he would no longer be covered by Eurocontrol's sickness insurance scheme because, as a resident of Belgium, he was eligible for coverage under the Belgian public scheme. The Agency explained that its decision was based on Article 4 of Appendix IV, which has been quoted under A above.

2. Having tried unsuccessfully to get the Organisation to revoke its decision and having joined a Belgian mutual scheme as of 1 August 1998, the complainant filed an internal complaint on 9 January 1999 against the withdrawal of the health coverage from which he had benefited ever since he joined Eurocontrol. This internal complaint was first referred to the Sickness Fund Management Committee, which declared that it was not competent, and then to the Joint Committee for Disputes, which found fault with the provisions of Article 4 of Appendix IV because, it

said, these were likely to lead to discrimination between Eurocontrol staff. It recommended that the Director General allow the internal complaint and amend Article 4 of Appendix IV which had been applied. On 9 August 1999, the Director General decided not to follow the recommendation and rejected the complainant's internal complaint. A few days earlier, the complainant had come to the Tribunal seeking recognition of his rights and payment of compensation by the Agency.

3. The complainant puts forward two pleas in support of his claims. The first is that he cannot be regarded as eligible for coverage by a Belgian compulsory insurance scheme. Secondly, the decision he challenges is arbitrary and discriminatory.

4. Discussion of his first plea requires an analysis of the system of entitlement to health benefits applied in Belgium under the Law of 14 July 1994 as in force at 1 January 1998 after it had been amended by a Royal Order. According to Article 32(15) of this Law, anyone on the national register of natural persons is eligible for health benefits, but not, inter alia, "persons who are or may be entitled to health care by virtue of some other Belgian or foreign health insurance scheme". What needs to be determined therefore is whether the complainant, who does not deny being on the national register of natural persons as a resident of Belgium, is still entitled to or eligible for health care benefits under Eurocontrol's sickness insurance scheme by which he was covered while in active service. Article 4 of Appendix IV shows both symmetry and contradiction with Belgian law on this point. It establishes the principle of affiliation to Eurocontrol's sickness insurance scheme with the proviso that the persons concerned must not be eligible for coverage under another public scheme. It is understandable that, in the light of this fundamental ambiguity, a former official of Eurocontrol in the same position as the complainant has been refused membership of the Belgian scheme on the grounds that he was eligible for the same benefits under the insurance scheme "offered by Eurocontrol". Nonetheless, in the complainant's case it has been established that he could be covered by the Belgian system - which is undeniably a "public scheme" - because he has been accepted as a member. That being so, the decision not to extend his coverage under the Agency's sickness insurance scheme conforms to the letter of Article 4 of Appendix IV, as the Joint Committee for Disputes rightly noted.

5. Is the rule at issue discriminatory and does it lead to arbitrary decisions? The complainant considers that it does and the Joint Committee for Disputes recommended allowing his appeal because if he had returned to his home country, Luxembourg, rather than staying on in Belgium, "as a former international civil servant he would have been excluded from the Luxembourg scheme and would therefore have been covered, no doubt at less cost, by Eurocontrol's sickness insurance scheme". But the fact that social protection schemes vary in scope depending on the country of residence does not in itself make the rule at issue unlawful. The Tribunal is bound to conclude that the offending decision was not arbitrary or discriminatory; and takes note that the defendant has said that, if the Belgian mutual company's refusal to admit another official heralds a change of attitude on the part of the Belgian sickness insurance managers, it will assume its obligation to provide social coverage for any officials excluded from the Belgian system.

6. Since the impugned decision is not unlawful, the complainant's various claims for compensation cannot be allowed. However, in the circumstances the Tribunal finds no reason to allow Eurocontrol's counterclaim to an award of all costs against the complainant.

## DECISION

For the above reasons,

1. The complaint is dismissed.
2. Eurocontrol's counterclaim is dismissed.

In witness of this judgment, adopted on 12 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

*(Signed)*

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 25 July 2000.