

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

## FIFTY-SEVENTH ORDINARY SESSION

In re FINNEY

Judgment No. 683

### THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr. Jeffrey Peter Finney on 4 March 1985, Eurocontrol's reply of 15 May, the complainant's rejoinder of 30 June and Eurocontrol's surrejoinder of 4 October 1985;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 2, of the Statute of the Tribunal, Articles 20, 70, 92 and 93 of the Staff Regulations governing officials of the Eurocontrol Agency and Eurocontrol Rule 8 concerning reimbursement of expenses;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, a British subject, joined the Agency in Brussels on 1 August 1983 as an administrative assistant. When he applied for the post, on 7 December 1982, he was employed in Brussels by a company known as Datasolve International. He gave Manchester, in England, as his "permanent address" and Tervuren, in the Brussels area, as his "address for correspondence". Since 1 August 1982 he had been living in a house in Tervuren under a three-year lease. On 15 May 1984 he rented a flat in Woluwé St. Etienne, also in Brussels, under a fifteen-month lease. On the same date he applied for permission to remove his household goods from Manchester to Brussels at the Agency's expense and for payment of an installation allowance. On 23 May the Director of Personnel and Administration refused his claims. By a letter of 2 July he lodged a complaint, but the Director rejected it by a minute of 18 July. On 31 August and 5 October he repeated his claims. Having received no answer, he states he is challenging the implied decision to reject the claims as set out in his letter of 5 October 1984.

B. The complainant submits that his residence in Tervuren prior to taking up his appointment was purely temporary despite the length of the lease, the practice in Belgium being to conclude leases for periods of 3, 6 or 9 years. The bulk of his household and personal effects had remained in Manchester. On his appointment to Eurocontrol his stay in Belgium ceased to be temporary. Indeed he was required to settle in Brussels by Article 20 of the Eurocontrol Staff Regulations, which reads: "An official shall reside either in the place where he is employed or at no greater distance therefrom [than] is compatible with the proper performance of his duties". He had to leave Tervuren because his house there had been found and paid for by his former employer. He asks the Tribunal to order Eurocontrol to perform its obligations under Article 70 of the Staff Regulations<sup>(1)</sup> and Article 1 of Rule 8 concerning reimbursement of expenses.

C. The Agency submits that the complaint is irreceivable. The original "act adversely affecting" him within the meaning of Article 92(2) of the Staff Regulations was the decision of 23 May 1984 rejecting his claims of 15 May. His letter of 2 July therefore constituted a "complaint" under that article. Since the present complaint was not filed within 90 days of his getting the decision of 18 July rejecting that "complaint", it is time-barred under Article VII(2) of the Statute of the Tribunal. His letter of 5 October 1984 set off no new limit.

Subsidiarily, the Agency pleads that the complaint is devoid of merit. Article 5 of Rule 8 provides: "The expenses incurred in respect of removal of furniture and personal effects ... shall be reimbursed to an official who is obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations..." Since the complainant was already living in Tervuren when appointed, he did not need to move in order to comply with Article 20. The lease of his house in Tervuren shows that it was unfurnished; so he must already have had furniture of his own in Belgium and did not need to bring it from Manchester. No refund is due under Article 70 of the Staff Regulations unless removal expenses have actually been incurred. The complainant's only removal was from Tervuren to Woluwé St. Etienne.

As to installation allowance, Article 1 of Rule 8 says: "An installation allowance ... shall be paid to an established official who ... furnishes evidence of having been obliged to change his place of residence in order to comply with Article 20" as "shall be paid on production of documents establishing the fact that the official ... settled at the place where he is employed". Thus it is the act of settling at the place of employment that gives entitlement. Since the complainant was already in Brussels this claim too is unsound and the gain would be unwarranted.

D. In a brief rejoinder the complainant seeks to rebut the reply. He submits, as to receivability, that he wanted to make sure of exhausting the internal means of redress before coming to the Tribunal. As to the merits, he observes that Eurocontrol has just arbitrarily assumed that he incurred no expenses for installation because he had been living in Brussels since August 1982. He challenges the Agency's construction of the rules and accuses it of confusing the issue with its mistaken contention that ineligibility for refund of installation expenses precludes payment of the installation allowance.

E. In its surrejoinder the Agency enlarges on its reply. It contends that the arguments in the rejoinder are either irrelevant or mistaken and in no way weaken the force of its pleas both as to receivability and as to the merits.

## CONSIDERATIONS:

### Receivability

1. Article VII(1) of the Statute of the Tribunal states that a complaint shall not be receivable unless the staff member has exhausted such means of redress as are open to him under the applicable Staff Regulations.

The Staff Regulations governing officials of Eurocontrol provide two internal means of redress. One is a "request" under Article 92(1) that the Director General take a decision, the other is a "complaint" under Article 92(2) against an act adversely affecting the staff member. As the Tribunal has consistently held, any application challenging a decision must be treated as an Article 92(2) "complaint".

According to Article 93(2) the decision on a "complaint" may be challenged before the Tribunal. Article 93(3) confirms Article VII(2) of the Statute of the Tribunal and sets a time limit of three months for filing a complaint.

Thus a complaint to the Tribunal will be time-barred and irreceivable if filed over three months after notification of the decision on the 92(2) "complaint". It is immaterial that the internal means of redress were correctly followed.

2. In this case the complainant submitted a "request" to the Agency on 15 May 1984. He sought refund of the cost of moving his household goods from Manchester to Brussels and payment of an installation allowance. On 23 May the Director of Personnel and Administration rejected both claims.

On 2 July 1984 the complainant asked for review. He thereby challenged the Director's reply of 23 May and was submitting an Article 92(2) "complaint".

On 18 July the Director rejected his claim and confirmed the decision of 23 May.

For his present complaint to be valid the complainant ought to have filed it not later than three months from 18 July 1984, the date of the decision on his 92(2) "complaint". Since he filed out of time, on 4 March 1985, his complaint is irreceivable.

The complainant did challenge, in a letter of 31 August 1984, the reasons given by Eurocontrol for its decision of 18 July, and in another letter of 5 October he said he was submitting a "complaint" against that decision. But neither letter prompted any decision and so neither of them set off any new time limit.

### Merits

3. Since the complaint is irreceivable the Tribunal need not go into the merits.

## DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

1. "An official shall be entitled, in accordance with a ruling of the Director General, to reimbursement of expenses incurred by him on taking up appointment..."