

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

SIXTY-FIFTH SESSION

Judgment 941

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. G. F. J. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 30 May 1988, Eurocontrol's reply of 19 July, the complainant's rejoinder of 30 August and Eurocontrol's surrejoinder of 13 October 1988;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Tribunal, Articles 72 and 92(1) and (2) of the Staff Regulations governing officials of the Agency and Rule No. 10 relating to sickness and accident insurance;

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, is employed as an assistant principal at grade B at Eurocontrol's centre for air navigation in Luxembourg. On 15 July and 19 August 1987 he applied to the Sickness Insurance Scheme of Eurocontrol for refund of the cost of vaccinations. A statement dated 7 September 1987 from the Scheme showed such costs as not refundable. On 2 October 1987 the complainant made a "request" for a decision on refund. A minute of 12 November 1987 from a Scheme officer acknowledged receipt and said that the matter

would be put to the Management Committee of the Scheme at an early meeting and he would then be told the decision. No decision having come, he lodged an internal "complaint" with the Director General on 7 March 1988. Having got no answer, he is impugning the implied rejection.

B. The complainant submits that his complaint is receivable. As Article VII(1) of the Tribunal's Statute requires, he has exhausted the internal means of redress. On 2 October 1987 he made his "request" for a decision under Article 92(1) of the Staff Regulations. Having waited four months for an answer, he lodged an internal "complaint" on 7 March 1988 under 92(2). He has also complied with Article VII(3) of the Statute, which allows the Administration sixty days in which to take a decision. The sixty days ran out on 7 May 1987 and he lodged his complaint on 30 May.

As to the merits, he observes that officials of other European organisations are refunded the cost of vaccination; that that is just common sense, prevention being better than cure; and that the office notice of 22 February 1979 on which he says the decision rests has never been approved by the Management Committee.

He asks the Tribunal to order the refund of the cost of the vaccinations at the prevailing rates and to award him costs.

C. In its reply Eurocontrol submits that the complaint is irreceivable because the complainant has failed to respect the time limits for appeal.

Eurocontrol's submissions on the merits are subsidiary. It observes that it is not bound by the rules in other European organisations save insofar as it has incorporated them in its own rules. The complainant may not establish the existence of a right by pleading his own ideas of common sense. The basis for

refusing the refund is not the office notice of 22 February 1979 but Article 72 of the Staff Regulations and Article 1 of Rule No. 10 relating to sickness and accident insurance, which limit refund to cases of actual illness, thereby excluding preventive treatment.

D. In his rejoinder the complainant maintains that the statement from the Scheme was not an "act adversely affecting" him within the meaning of Article 92(2) of the Staff Regulations; if it had been, the reasons for it would have had to be stated. Since he got no explanation it was only reasonable to seek a decision from the Director General in case he wanted to follow the appeal procedure. The Organisation has acted in breach of the principles of sound administration by never letting him have its views in writing.

As to the merits he seeks to refute the Organisation's pleas and enlarges on his own.

E. In its surrejoinder the Organisation enlarges on its pleas on receivability and on the merits.

CONSIDERATIONS:

1. The complainant, an official of Eurocontrol, is in dispute with the Administration about the refund by the Sickness Insurance Scheme of the cost of vaccinations he had in 1987 before going on holiday to the tropics.

2. According to a statement of 7 September 1987 the Scheme refused payment and on 2 October the complainant submitted a "request" under Article 92(1) of the Staff Regulations to the Director General pressing his claim: in his submission both common sense and financial interest should favour prevention over cure, and other European organisations did refund such vaccinations.

3. On 12 November 1987 an officer of the Scheme answered that his claim would come up at the next meeting of the Management Committee and he would then be told of the decision. No such decision was ever taken.

4. Eurocontrol having vouchsafed no reply, the complainant submitted an internal "complaint" on 7 March 1988 under Article 92(2). Still getting no answer, he filed this complaint with the Tribunal on 30 May 1988.

5. In its reply the Organisation's main plea is that the complaint is irreceivable. Its argument is that the statement of 7 September 1987 was the "act adversely affecting" the complainant, that his "request" of 2 October 1987 ought therefore to be treated as a 92(2) "complaint" and that for want of a reply there was by 2 February 1988 an implied decision to reject it. The time limit for going to the Tribunal therefore ran out on 3 May 1988.

6. The Organisation may not plead its own failure to act. The complainant had good reason to infer from the interim reply of 12 November 1987 that his claim was still under review. The Tribunal will therefore go into the merits without further consideration of receivability.

7. Eurocontrol submits on the merits that sickness insurance does not ordinarily cover the cost of vaccination: Article 72 of the Staff Regulations says that the staff member and his dependants "are insured against sickness", and that is the purport also of Article 1 of Rule No. 10 relating to sickness and accident insurance.

8. In other words the Scheme does not ordinarily cover preventive treatment, apart from some kinds of vaccination expressly provided for in the office notice of 22 February 1979, which the complainant cites.

9. The Organisation's position is correct. As the texts stand vaccinations are not ordinarily covered by the Scheme and any precautions the staff member or his family may take are at their own discretion and on their own responsibility. That the policy of other European organisations is more liberal is an example Eurocontrol may wish but is not bound to follow.

10. It appears from the foregoing that whether the complaint is receivable or not it is devoid of merit.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Mr. Héctor Gros Espiell, Deputy Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneve on 8 December 1988.

(Signed)

Jacques Ducoux
H. Gros Espiell
P. Pescatore
A.B. Gardner