

SIXTY-SIXTH SESSION

***In re* NIESING, PEETERS and ROUSSOT**

Judgment 963

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr. Cornélis Niesing, Mr. Patrick Peeters and Mr. Jean-Marc Roussot against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 28 July 1988, the Agency's replies of 13 October 1988, the complainants' rejoinders of 19 January 1989 and the Agency's surrejoinders of 7 April 1989;

Considering the applications to intervene filed by:

J. Abramowski

A. Abts

V. Alminana

A. Barnby

D. Bell

F. Bidaud

B. Boerrigter

P. Boland

J. Bralet

V. Brown

H. Buck

H. Burgbacher

M. Chauvet

P. Crick

F. Dahlbuedding

B. Darke

P. De Groote

P. de la Haye

J. de Poorter

P. Demelinne

F. Devillieres

K. Dittmar
L. Duysens
G. Fairfax Jones
J-P. Florent
M-T. Garzend
A. Geirnaert
J. Geurts
G. Gillett
I-D. Goossens
D. Grew
W. Gribnau
M-T. Guerin
W. Handke
J. Handschuh
H. Heepke
R. Hess
P. Hijnens
H. Hille
W. Holtmann
J. Hooijmaijers
M. Jacobs
A. Kicken
N. Kieffer
L. Kroll
J. Kuijper
D. Laurent
G. Lauter
W. Leistico
L. Loeser
H. Maas
J-P. Majerus

J. Martin
J. McNeill
A. Meloen
J. Meredith
H. Neumann
C. Nijpels
J. Oury
K-U. Pawlicz
G. Peerbooms
P. Petit
B. Puthiers
J. Reiss
M-L. Rensink
F. Roth
J-C. Salard
G. Schoeling
J. Schraa
N. Schreurs
M. Schwaller
K. Seipke
F. Skerhut
P. Slingerland
E. Snijders
S. Starlander
F. Steijns
E. Steiner
R. Ueberhofen
J. Uhl
M. van der Sluis
A. van Dooren

S. van Dronkelaar

A. van Zanten

D. Vanderstraeten

W. Viertelhauzen

J-C. Vollant

N. Vrancken

E. Vreede

G. Wendling

J-P. Willox

D. Winkler

W. Withofs

J. Zipp

and Eurocontrol's observations thereon of 28 April 1989;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal and Articles 2, 62, 67 and 92(2) of the applicable staff regulations of the Agency;

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. At its 62nd Session, on 7 July 1983, the Permanent Commission of Eurocontrol decided to bring in a 5 per cent differential between net pay in the European Communities and net pay at Eurocontrol. At its 71st Session, on 7 July 1987, it approved as from 1 July 1986 an initial reduction of 0.7 per cent in staff pay.

The complainants, who are officials of the Agency, found on getting their pay slips in December 1987 that amounts corresponding to 0.7 per cent had been deducted from the sums refunded to them against education expenses they had incurred for the period from July 1986 to June 1987. Those are the decisions which Mr. Roussot challenged on 2 March 1988, Mr. Niesing on 9 March and Mr. Peeters on 14 March by filing internal "complaints" with the Director General under Article 92(2) of the applicable staff regulations. Having got no answer within the time limit of sixty days set in Article VII(3) of the Tribunal's Statute they lodged the present complaints on 28 July 1988 challenging the implied decisions to reject their claims.

B. The complainants submit that the complaints are receivable: the decisions caused them injury insofar as sums were deducted from the amounts to be refunded and they have respected the time limits.

They put forward the following pleas on the merits.

Their first plea is that, like the reduction in pay challenged in complaints pending before the Tribunal by Mr. Boland, Mr. De Groote and Mr. Lefebvre, the decisions to reduce the amounts refunded to them are unlawful because no valid reasons have been stated and because they are in breach of the rules on the determination of the pay and pension entitlements of Eurocontrol staff, of the staff's acquired rights, of their reasonable expectations and of the principle of equal treatment.

Secondly, the complainants submit that even supposing that it was lawful to reduce their pay, it was not lawful to make any deduction from the sums refunded to them against education expenses, which, being refunded only on the strength of supporting evidence, are not a component of pay.

Thirdly, the reduction in the sums refunded discriminates between different categories of staff.

Fourthly, neither the complainants themselves nor the staff in general were ever informed of the decision, which therefore has no foundation in law and is not substantiated.

The complainants ask the Tribunal to set aside the decisions to deduct 0.7 per cent from the amounts refunded to them against education expenses they had incurred in the period from July 1986 to June 1987 and to award them the sums wrongfully withheld. They claim costs.

C. In its replies Eurocontrol submits that, contrary to what the complainants contend, the "education allowance" is, according to Articles 62 and 67 of the staff regulations, a component of staff pay: it consists of a payment of a regular allowance and of "other education expenses" which are refunded on the strength of supporting evidence. The complaints are irreceivable: first, because the pay slips the complainants got in December 1987 merely confirmed the decisions to reduce pay which they had had notice of in their pay slips for September 1987 and, secondly, because their complaints are mere repetition of the ones which Mr. Boland, Mr. De Groote and Mr. Lefebvre have filed and in which they have applied to intervene.

The Organisation puts forward subsidiary arguments on the merits, taking up the complainants' pleas seriatim.

It declines to answer their first group of pleas on the grounds that there is no more than a bald reaffirmation of them. In answer to the second plea it observes that the amount to be refunded against "other education expenses" is subject to a maximum limit and that there has never been any right to full refund of actual expenses. Thirdly, it maintains that there has been no breach of equal treatment: the decisions by the Permanent Commission have been applied without discrimination to everyone.

Lastly, the Organisation contends that the basis of the impugned decisions in law is the decision the Permanent Commission took on 7 July 1987 to reduce pay and that the complainants were informed thereof by an office note dated 29 July 1987. Since the Commission's decision was a general one there was no need to state reasons for it; as for the pay slips, it is not customary to substantiate them either since they are self-explanatory.

D. In their rejoinders the complainants seek to refute the Organisation's pleas. They submit that the "other education expenses" which form part of the education allowance are not a component of pay since only expense that has actually been incurred may be refunded.

As to the issue of receivability they contend, first, that their pay slips were not confirmatory decisions since they learned therefrom for the first time about the 0.7 per cent reduction, and, secondly, that their complaints are distinct from those of Mr. Boland, Mr. De Groote and Mr. Lefebvre.

They enlarge on their pleas on the merits, particularly on their allegations about the discriminatory nature of the reduction in the amounts refunded, a reduction which in their submission the Permanent Commission neither intended nor approved and which has been applied incorrectly and arbitrarily.

E. In its surrejoinders Eurocontrol maintains that according to the provisions it cited in its reply the education allowance does form part of staff pay, that the complainants' submissions betray a fundamental misunderstanding on that score and that their whole line of argument is therefore misconceived.

CONSIDERATIONS:

1. The complainants are asking the Tribunal to set aside decisions notified to them in their pay slips for December 1987 to reduce by 0.7 per cent the refundable amount of education expenses they had incurred from July 1986 to June 1987. Having lodged internal "complaints" in March 1988 but got no answer within the time-limit of sixty days, they inferred rejection and filed with the Tribunal on 28 July 1988.

Since the complaints raise the same issues and have the same purpose, they are joined to form the subject of a single ruling.

2. The Organisation contends that the complaints are irreceivable for two reasons.

One reason is that the pay slips they got in December 1987 merely confirmed earlier decisions, viz. a general decision which the Permanent Commission of Eurocontrol took on 7 July 1987, an office note dated 29 July and the pay slips for September.

The pay slips for December, which have prompted these complaints, mention a reduction of 0.7 per cent in the amount of the education expenses that Eurocontrol is refunding for the period from July 1986 to June 1987. The decisions are individual ones that cause the complainants injury. What is more, they do not constitute mere repetition of the general decision of 7 July 1987 and the office note of 29 July 1987, which, in accordance with rulings by the Tribunal such as Judgment 902 (in re Aelvoet and others), are not directly challengeable.

As for the pay slips for September 1987, the Organisation states that they also deal with the matter and that the complaints are time-barred because the complainants failed to challenge the initial application of the general decision.

But the Organisation fails to produce those pay slips and does not even reveal what they say or when they were notified. The plea is dismissed because the evidence before the Tribunal does not include the items the Organisation founds its argument on.

3. The other reason why the defendant submits that the complaints are irreceivable is that they duplicate earlier complaints by Mr. Boland, Mr. De Groote and Mr. Lefebvre in which the present complainants have applied to intervene.

They filed their complaints on 28 July 1988 and their applications to intervene in the other cases at the same date. But, even supposing that the present complaints and those applications do to some extent have a similar purpose, an application to intervene in another case cannot make the present complaints irreceivable, their validity being neither more nor less than what it is anyway.

Eurocontrol's objections accordingly fail.

4. Besides being receivable the complaints are well-founded.

As was said above, what the complainants want is the quashing of decisions to reduce by 0.7 per cent the amount of education expenses to be refunded to them for the period from July 1986 to June 1987. The Director General took the decisions in the exercise of his authority under Articles 2 and 62 of the staff regulations and in furtherance of a decision the Permanent Commission of the Organisation had taken, in July 1987, at its 71st Session.

5. The complainants challenge the decisions on the grounds that the reduction is retroactive.

Any authority is bound by the rules it has itself issued until it amends or repeals them. The general principle is that rules govern only what is to happen henceforth, and it is binding on any authority since it affords the basis for relations between the parties in law. Furthermore, a rule is enforceable only from the date on which it is brought to the notice of those it applies to.

The complainants' right to the refund of education expenses at the rate prescribed up to July 1987 is unchallengeable because the competent authority announced no decision before that date to change the rate.

Although the Permanent Commission did intend before its 71st Session to reduce salaries and allowances it took no formal decision enabling the Director General to make any reduction whatever in salaries and allowances. Indeed the Director General waited until the Permanent Commission had taken the decision before implementing it.

What is more, although the Director General's decisions - the only ones the Tribunal may quash - did not have retroactive effect, a staff member may challenge in an individual appeal the lawfulness of any decision of the Commission's that affords the basis in law for a decision by the appointing authority if he believes the latter decision to be at odds - as indeed here the decisions are - with a rule or principle that governs the international civil service.

Since the impugned decisions retroactively reduce the refundable amount of education expenses they are unlawful and cannot stand. The complainants are sent back to the Organisation for calculation of the sums wrongfully withheld from the amounts refunded to them.

6. The interveners have the same entitlements insofar as they are in the same position in law as the complainants themselves.

7. The complainants are entitled to an award of costs, which the Tribunal sets at 750 Swiss francs each.

DECISION:

For the above reasons,

1. The impugned decisions by the Director General of Eurocontrol are set aside.

2. The Organisation shall refund the complainants the sums wrongfully withheld from the amounts of education expenses refunded to them for the period before July 1987.

3. The interveners shall have the same entitlements insofar as they are in the same position in law as the complainants.

4. The Organisation shall pay each of the complainants 750 Swiss francs in costs.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner