

EIGHTY-SIXTH SESSION

In re Palma (No.2)

Judgment 1785

The Administrative Tribunal,

Considering the second complaint filed by Mr. Francesco Palma against the European Southern Observatory (ESO) on 23 February 1998, the ESO's reply of 27 April, the complainant's rejoinder of 5 June and the Observatory's surrejoinder of 10 August 1998;

Considering Articles II, paragraph 5, and VII 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, an Italian, served on the staff of the Observatory from 1 September 1989 to 31 August 1995. Further information about his career and facts relevant to this case are set out in Judgment 1665 of 10 July 1997 on his complaint against the European Organization for Nuclear Research (CERN) and in Judgment 1718 of 29 January 1998 on his first complaint against the ESO.

By a letter of 6 January 1995 the head of Personnel told the complainant that the Administration would be withholding his yearly step increment because his work fell short of expectations. On 13 March 1995 he appealed to the Director General, who put the matter to the Joint Advisory Appeals Board. In its report of 21 July 1995 the Board recommended upholding the decision not to grant him the step, though it found that management had not "optimally handled" the case. By a letter of 26 July 1995 the head of Administration told him that the Director General had decided not to grant the step.

In a letter of 11 February 1998 he applied to the Director General for disclosure of "any information and ... existing documentation" on the case the Appeals Board had reported on in July 1995. By a letter of 13 February 1998 the head of Administration told him on the Director General's behalf that there were no grounds for reopening the matter. That is the decision he is impugning.

B. The complainant submits that the impugned decision is unlawful. He pleads breach of the Observatory's duty under Staff Regulation R VI 1.11 to inform staff members of "the correct truth". The ESO's treatment of him was unfair, discriminatory and offended against "justice and democracy".

He seeks the quashing of the impugned decision and the order of "disclosure of information and delivery of copy of all documents" concerning his appeal of 1995. He also claims costs.

C. In its reply the Observatory contends that his complaint against the withholding of his step is devoid of merit and just a ploy to reopen his case against the ending of his employment. Both issues are time-barred. Regulation R VI 1.11, which requires the Director General to bring the Appeals Board's recommendations to the staff's attention, affords no grounds for the relief he seeks. In any event there are no relevant documents that the Board has not already seen.

D. In his rejoinder the complainant enlarges on his pleas. He finds the ESO's breach of good faith "evident". He affirms his entitlement under the Charter of the United Nations to redress for the breach of fundamental rights and to information. He presses his claims.

E. In its surrejoinder the defendant contends that the Tribunal is not competent under Article VIII of the Statute to issue the "order of discovery" he seeks. The documents he wants to see - be they "administrative" or "judicial" - are figments of his own imagination.

CONSIDERATIONS

1. The material facts of this complaint date back to the last year of the complainant's service with the European Southern Observatory. The head of Personnel informed him by a letter of 6 January 1995 that he would not be granted a yearly step increment in salary as from 1 January. He appealed, and his appeal went to the Joint Advisory Appeals Board. In its report of 21 July 1995 the Board held that "the case was not optimally handled by the ESO Management in what concerns the communication to the Appellant, specifically on the assessment of his performance". Its unanimous recommendations were to uphold the decision and "have the failures in this case properly investigated and understood and to take action to avoid their repetition in the future". By a letter of 26 July 1995, the head of Administration told the complainant on the Director General's behalf that the refusal of the increment was upheld.

2. By a letter dated 11 February 1998 the complainant asked the Observatory -

"to disclose any information and to deliver me a copy of any existing documentation concerning the case Palma, following and in relation with the JAAB recommendation report dated July 21st, 1995, i.e. any document concerning the measures by you adopted for 'investigating, understanding and taking action'."

The last five words in inverted commas were lifted from the text of the Board's recommendations.

3. As is recounted in Judgment 1718, the complainant's contract of service with the Observatory had come to an end at 31 August 1995. In his first complaint against the Observatory he asked the Tribunal to order the Director General "to clearly and unambiguously state his *legally* presumed negative final decisions", particularly on assignment to a post and on health insurance. By Judgment 1718 the Tribunal dismissed his claim to relief for being not of a kind it might grant.

4. By a letter of 13 February 1998, and in answer to the complainant's letter of 11 February, among others, the Observatory informed him on the Director General's behalf that there was "no basis for reopening any issues" arising out of his contract, which had ended in August 1995. That is the decision he is impugning, and the relief he claims is that the Tribunal -

"quashes ESO decision, ordering in such a way a disclosure of information and delivery of copy of all documents concerning the case Palma, following and in relation with the ESO Joint Appeal Advisory Board (JAAB) Recommendation Report dated July 21, 1995."

He claims costs. He argues that what he wanted from the ESO was not the "reopening" of any issues arising out of his contract but "legitimate delivery of documentation relative to his case" and that the misdemeanours the Observatory was guilty of in handling his case were not just administrative but criminal.

5. The defendant replies that the complainant is seeking redress for the administrative decisions to refuse him renewal of contract and a step increment.

6. It is clearly right. Because the time limits for challenging those decisions have long since expired he may no longer do so. There are therefore no grounds in law for ordering disclosure of material about either issue and his claims must fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.