SEVENTY-EIGHTH SESSION

In re FRINTS-HUMBLET

Judgment 1408

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Maria Isabella Frints-Humblet against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 10 February 1994 and corrected on 22 February, Eurocontrol's reply of 3 June, the complainant's rejoinder of 30 June and the Agency's surrejoinder of 22 September 1994;

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. The complainant, a Dutchwoman, joined Eurocontrol in 1972. She is employed at its Area Control Centre at Maastricht. Also in 1972 she married Mr. J.G.M.H. Frints. Their son, Martijn, having been born in 1982, she became entitled to payment by Eurocontrol of household and child allowances. She was also granted on that account what is called "fiscal abatement", or tax relief, on the "internal tax" levied on her pay from Eurocontrol: the household and child allowances are deducted from the taxable amount in accordance with Article 3 of Annex VI to the General Conditions of Employment on the levy of tax on remuneration.

On 16 October 1985 Mr. Frints took up employment with the North Atlantic Treaty Organization (NATO) at Brunssum, which is also in the Netherlands, and thereby became entitled to payment by NATO of similar allowances. At the time the allowances were higher at NATO than at Eurocontrol.

By a standard form dated 29 January 1986, as corrected by another dated 23 October 1986, the Head of Personnel informed the complainant that because of the "change in family circumstances" the household allowance was "not payable" and the child allowance was "discontinued". The decision was applied as from April 1986, and she was accordingly paid 660 guilders less in net pay for that month than for March 1986.

In a letter of 10 June 1993 to the Head of Personnel she pointed out that Eurocontrol had not granted her tax credits for the household and child allowances her husband had been getting from NATO since 1985 even though pay at NATO was tax-free; she asked the Agency to pay back any amounts due after review of her tax position from October 1985 to May 1993 and to pay the child allowance from 1 June 1993. She also claimed education allowance from March 1993.

On 11 November 1993 the Director of Personnel wrote her a letter on the Director General's behalf granting as from 1 June 1993 the tax relief she was seeking and the education allowance from March 1993. He said that her request for review of her situation before that date was time-barred, that whichever organisation offered the higher amount by way of allowance would pay it, and that the claims in her letter of 10 June, being treated as a "complaint" under Article 91.2 of the General Conditions of Employment, were rejected as time-barred insofar as they concerned the period before 1 June 1993. That is the decision she impugns.

B. The complainant submits that Eurocontrol owes her "fiscal abatement" for the dependent child allowance NATO paid to her husband from November 1985 to June 1993. Although the Agency told her in October 1986 that payment of her child allowance was "discontinued", it neither warned her that it would cancel her tax relief nor asked whether her husband was entitled to any.

She says that since child allowance has been higher at Eurocontrol than at NATO since January 1991 the Agency owes her the difference between what NATO granted to her husband and what Eurocontrol should have been paying her. Having wrongly assumed that NATO's rates were higher at the material time, Eurocontrol ought to make good the deficit.

She claims "fiscal compensation for the current and past difference in children allowance", "correction of fiscal

abatement as of 16.10.85" and interest on all the sums due.

C. In its reply Eurocontrol submits that the claim to what it calls "adjustment of her remuneration" as from 16 October 1985 is time-barred. The decision she ought to have challenged about the different rates of child allowance was her first pay slip after 1 January 1991. But not until February 1994 did she tell the Agency that its allowances had been greater than NATO's since 1991.

As for tax relief, her pay slip for April 1986 showed a difference of 88.75 guilders on that account. Instead of claiming the entitlement at the time she tarried until June 1993 and only then informed the Administration that her husband's salary was tax-free.

On the merits Eurocontrol points out that under Article 67.2 of the General Conditions of Employment she had a duty to declare the amount of her husband's family allowances. Her failure to do so in 1991 and 1992 left the Agency at a loss to know whether its rates were higher than NATO's. So she has only herself to blame for not getting the child allowance from Eurocontrol sooner.

Since family allowances are not subject to internal tax she is wrong to claim "fiscal compensation" for the difference. Eurocontrol is nevertheless willing to pay her ex gratia the difference between the allowances as from 1 January 1993.

The Agency's policy on tax relief is in line with practice in the European Communities: when husband and wife both work for international organisations the one who gets a family allowance generally gets the tax deduction. So until she told the Administration in June 1993 that her husband's earnings were tax-free it had no reason to grant her relief for the allowances he was getting. Thereafter Eurocontrol recognised her son as a dependant for tax purposes as from 1 June 1993.

Inasmuch as the Agency is meeting both of her claims, with due allowance for time limits, it asks the Tribunal to award costs against her.

D. In her rejoinder the complainant maintains that her complaint is receivable: the decision in 1986 about the allowances made no mention of tax relief. So how could it have been challengeable on that score? What led her to think she did not have to declare her husband's allowances in 1991 was a confusing change in Eurocontrol's forms. She welcomes as a step in the right direction the Agency's offer to make good the difference in child allowance due her from 1 January 1993 but presses her claims to backpayment and interest.

E. In its surrejoinder Eurocontrol stands by the pleas it developed in the reply, insisting that her claims concerning the period before June 1993 are irreceivable. Office notice 115/80 of 10 December 1980 already referred to the matter of tax relief. Her allusion to the new forms is irrelevant: officials have a duty to keep the Administration informed of any changes that might affect their entitlements. Since claims may only be honoured within the time limits laid down in the rules she should not get payment of arrears or interest.

CONSIDERATIONS:

1. The complainant holds an appointment with Eurocontrol at grade C1 at its Area Control Centre at Maastricht, in the Netherlands. She married Mr. Frints in 1972 and in March 1982 they had a child, Martijn. She was paid household and child allowances and granted a corresponding "abatement" of the "internal tax" levied on her pay at Eurocontrol. Mr. Frints entered the service of the North Atlantic Treaty Organization (NATO) on 16 October 1985. The "change in family circumstances" prompted from Eurocontrol an administrative decision dated 29 January 1986, later replaced by another dated 23 October 1986. The decision was applied only from April 1986. Eurocontrol thereby discontinued payment to the complainant of the household and child allowances on the grounds that her husband was in receipt of allowances of a like nature in amounts higher than those paid by Eurocontrol. The abatement of internal tax also ceased.

2. It was in a letter dated 10 June 1993 that the complainant first queried the computation of her pay and she asked Eurocontrol to supplement the child allowance that NATO was paying to her husband. She claimed the recalculation of her monthly salary, arrears of pay from October 1985 to May 1993 and education allowance from March 1993, when her son had reached the age of eleven.

3. In a letter dated 11 November 1993 the Director of Personnel allowed her claims in part. Those that related to

periods prior to June 1993 were rejected as time-barred, except that Eurocontrol paid the education allowance as from 1 March 1993. It granted the abatement of internal tax as from 1 June 1993. As for the child allowance, it said that payment was due from whichever organisation granted the greater amount, and that was NATO. That is the decision impugned.

4. On 9 February 1994, the day before she lodged her case with the Tribunal, the complainant submitted to Eurocontrol details of the amounts payable by NATO in child allowance from July 1984 to July 1993. That was the first time that she informed Eurocontrol that since January 1991 the child allowance had been greater at Eurocontrol than at NATO.

5. The relief the complainant seeks is:

(i) "fiscal" compensation for current and past differences in the child allowances;

(ii) correction of the abatement of internal tax as from 16 October 1985; and

(iii) the payment of interest on the amounts due.

6. It is, says Eurocontrol, ex gratia that it concedes her claim to payment of the child allowance as from 1 January 1993, on the grounds that it would be justified in paying the difference only from 9 February 1994, when it was first given the necessary information. The issues which remain are whether the complainant is entitled to the difference in the child allowance for 1991 and 1992 and to the abatement of internal tax from 1985 to 1993.

7. The complainant points out that the decisions taken in 1986 are silent about the discontinuance of the tax abatement and that the payslip she got after those decisions did not explain that it was being discontinued. The Organisation observes that on her own admission she did not check the computation of her pay until June 1993; in March 1986 she had received the equivalent of 570.86 guilders in household and child allowances, and she failed to notice that in April 1986, over and above the deduction in full for those allowances, her pay was reduced by 88.75 guilders on account of the discontinuance of the abatement.

8. The decision not to allow the abatement of internal tax had a continuing effect which was reflected in each of the complainant's payslips. As the Tribunal has held on many occasions, payslips constitute administrative decisions that are subject to appeal. The time limit for appeal therefore began to run on receipt of each payslip and, according to Article 91(2) of the General Conditions of Employment that time limit was three months from the date of notification of the contested decision. Once the complainant had challenged the computation of her pay she was entitled to have it corrected retroactively, and subject to the limit of the time allowed for appeal. The Tribunal has stated a similar reasoning in Judgments 292 (in re Molloy) under 13, 323 (in re Connolly-Battisti No. 5) under 23 and 24, and 978 (in re Meyler) under 8.

9. The conclusion is that the complainant is entitled to recover the amount of the abatement for any period covered by a payslip she received in the three months prior to 10 June 1993. She is not, however, entitled to recover anything in respect of the child allowance, the Organisation having offered to pay her the amounts she seeks as from 1 January 1993. That covers more than the period of three months prior to 10 June 1993.

10. The Organisation has sought to lay the blame on the complainant for failing to inform it when the child allowance became lower at NATO than at Eurocontrol and to notice that the abatement of tax had stopped. She has sought to blame the Organisation for failing to inform her that it was going to stop the abatement. But the question of blame is immaterial: where a mistake is made in calculating pay the time limit for challenge runs from the date of receipt.

11. The complainant having claimed interest on the sums due, she is entitled to payment of interest on those amounts as from 10 June 1993, the date of her claim, and the Tribunal sets the rate of interest at 8 per cent a year. A precedent is afforded by Judgment 874 (in re Cachelin No. 2) under 3.

12. Since she does not claim costs the Tribunal makes no award under that head.

DECISION:

For the above reasons,

1. The Organisation shall pay the complainant the amounts of abatement of tax which should have been allowed in respect of any payslip received in the three months prior to 10 June 1993, together with interest to be reckoned at the rate of 8 per cent a year from that date.

2. All her other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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