

SEVENTY-EIGHTH SESSION

***In re* HÄUSERMANN**

Judgment 1414

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Monique Häusermann against the European Organization for Nuclear Research (CERN) on 1 June 1993 and corrected on 15 December 1993, CERN's reply of 11 April 1994, the complainant's rejoinder of 11 August and the Organization's surrejoinder of 24 October 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. Information relevant to the present dispute is set out, under A, in Judgment 1412 (in re Audria) also delivered this day.

The complainant, who was born in 1943 and holds both French and Swiss citizenship, was at the material time employed by CERN as an "administrative assistant (accounting)" at grade 7 in the Finance Division.

By a letter of 14 February 1992 the Leader of the Personnel Division informed her of a decision to put her on career path IV.

In a letter of 10 April to the Director-General she appealed and asked to be put on path V.

In a report dated 17 December 1992 the Joint Advisory Appeals Board recommended putting her on path V.

By a letter of 3 March 1993, the impugned decision, the Director-General rejected her appeal.

B. Citing the documents dated 21 May and 3 October 1991 which are referred to in the above-mentioned judgment under A, the complainant submits that CERN failed to comply with "the substantive rules on the initial designation of career paths".

CERN failed to take account of the nature of her duties and her potential, and her division did not propose putting her on a higher path, as it was free to do for "staff whose present functions and/or future potential are judged to be insufficiently reflected in the provisional designation".

On the strength of comparison of her position with that of others who had similar duties she submits that the impugned decision was also unfair.

Lastly, she says that CERN leaves her no hope of advancement and that is very discouraging.

She seeks the quashing of the Director-General's decision of 3 March 1993, assignment to career path V as from 1 March 1992, moral damages and costs.

C. In its reply the Organization contends that the procedure for designating her career path - the purpose of which was not advancement - was carried out according to objective criteria and in compliance with the applicable rules.

CERN says it went thoroughly into her case, and took account of her potential. It points out that "potential" does not include quality of performance or qualifications, but simply affords an opportunity of taking into consideration any "emerging" duties. In any event the Organization determines at discretion whether the criteria are relevant.

The decision she impugns is fair: the Director-General took it in "full knowledge of the material facts".

Prospects of further advancement are a general objective not a criterion of any relevance to the advancement scheme. In making the plea she has failed to show what rules CERN may have infringed. In any event, far from dashing hopes, the new scheme enhances prospects of advancement. So there is nothing "discouraging" about it.

Lastly, CERN argues that her claim to moral damages is irreceivable because she puts no figure on it and is, besides, devoid of merit.

D. In her rejoinder the complainant enlarges on her pleas. She maintains that the scheme should not "depreciate" the attainments of staff. She says that the criteria CERN chose were not objective and that it was bound to abide by the general principles underlying the scheme. The definitions used to determine her potential and the level of her duties overlooked her qualifications and experience and were therefore wrong.

E. In its surrejoinder CERN demurs at the complainant's attempt to replace the criteria in the Instructions with others more to her liking. It observes once again that her reference to general principles on the designation of career paths is irrelevant: the only issue is whether the Administration followed the proper procedure. It denies having acted unfairly and points out that the conditions for an award of moral damages are not met.

CONSIDERATIONS:

1. The complainant, along with other staff members at CERN, is challenging her assignment to one of the career paths which the Organization's Council set up in keeping with the scheme of merit-oriented advancement it brought in on 1 August 1991. In Judgment 1354 (in re Guyen) and another judgment delivered this day (No. 1412, in re Audria) the Tribunal describes the new scheme.

2. The complainant joined CERN in 1964 at grade 4 as an office typist II in the Finance Division. She had a short break in career for private reasons. She was granted promotion several times, the last in 1988, when she reached grade 7 in category 5b and had the title of her post changed to "administrative assistant (accounting)". When the CERN put her provisionally on a career path it took account of her being over the age of 38 at the time of promotion to her then grade, 7, and in keeping with the guidelines put her on path IV. Since the provisional path was also the one her division leader was proposing the Leader of the Personnel Division advised making it final, and by a decision of 14 February 1992 the Director-General did so. In an appeal to the Joint Advisory Appeals Board she argued that in view of her qualifications that decision was unfair and deprived her of reasonable career prospects. The Board agreed and described her work as "careful, needing very little checking and respectful of tight deadlines". Being in favour of "affording encouragement and taking fuller account of potential", the Board recommended path V. The Director-General disagreed and confirmed his decision, and the complainant has come to the Tribunal.

3. She has but one plea: CERN was in breach of the substantive rules on provisional determination of career path by discounting her potential and good record, by ignoring the aim of fair treatment that should have governed it, by denying her reasonable career prospects and by disregarding her own interests and the need to encourage her.

4. The complainant's strengths are undeniable and indeed CERN acknowledges them. The Director-General plainly states in the very decision she impugns that "as to the possibility of [her] reaching path V, that will have to await the new 'advancement and claims' system which is to come in in 1994 and will give [her] new duties assigned in line with the change". But the only matter at issue now is whether by putting her on path IV, which applies to "Technical, Clerical/administrative, Master craftsmanship, Skilled craft/office work supervision", CERN broke its own rules or obviously got the facts wrong. In view of the the present description of her duties and in the absence of specific allegations of discriminatory treatment the conclusion must be that putting her on path IV is not unlawful and has not damaged her prospects of advancement or her "potential".

5. Her claim to the quashing of the decision and so too her claim to damages must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas

Michel Gentot

P. Pescatore

A.B. Gardner

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