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

EIGHTY-FIRST SESSION

In re LANGELEZ (No. 4)

Judgment 1551

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Jean-Claude Langelez against the European Organization for Nuclear Research (CERN) on 26 June 1994 and corrected on 15 July 1995, CERN's reply of 23 October 1995, the complainant's rejoinder of 29 January 1996 and the Organization's surrejoinder of 19 April 1996;

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.Facts relevant to the present case are set out under A in Judgments 1104 and 1172 on Mr. Langelez's first and second complaints. In Judgment 1172 the Tribunal dismissed his second one challenging the decision, taken on 15 January 1991 by the Director of Administration on the Director-General's behalf, to endorse the recommendations of the Joint Advisory Rehabilitation and Disability Board not to regard his ailments as service-incurred and to reassign him to a post for a mechanic.

In a letter of 10 May 1993 the complainant alleged that the decision of 3 March 1993 to put him on career path III was "directly linked" to the decision taken in 1991 to reassign him; that reassignment had been linked to the decision taken in 1988, after the reorganization of shift work in 1984-85, that he was unfit for such work; and so he wanted the quashing of the decisions of 1988, 1991 and 1993 and compensation for the injury he had suffered.

The Director of Administration replied on 9 July 1993 that the decision of 3 March 1993 was linked neither to the complainant's reassignment nor to the finding that he was unfit for shift work.

In a letter of 8 September 1993 the complainant pressed his claims of 10 May and asked the Director-General to tell the Joint Advisory Appeals Board that he was appealing against "the decision of 9 July 1993 ... and particularly the implied rejection therein of the claim to compensation".

The Director of Administration replied in a letter of 15 November 1993 that the claim to damages was irreceivable because it was vague and gave no figures and because there was no link between the decision he was challenging and others against which his internal appeals had failed.

On 14 January 1994 he renewed his appeals of 10 May and 8 September 1993.

By a letter of 15 March 1994, the decision he impugns, the Director of Administration referred him to the earlier replies.

By a letter of 8 June 1994 the Director informed him on the Director-General's behalf that he would be dismissed at 30 September 1994 on the grounds of serious shortcomings in the performance of his duties.

B.The complainant refers to a decision of 10 April 1985 about shift work which he says was in breach of Regulation R III 1.19. He alleges that when he objected the Organization used his poor health as an excuse to take him off shift work.

He argues from precedent that his complaint is receivable.

He asks the Tribunal to quash all the decisions concerning him that the administration has taken since 3 October 1988; to award him compensation for the injury caused by the decisions of 9 July 1993, 15 November 1993 and 15

March 1994; to rule that there was unlawful action on the part either of the SL (SPS) Division if it acted without authority, or of the Director-General if he delegated authority to the Division; to order CERN to grant him the protection and compensation for injury due to staff in the exercise of their duties under Rule I 3.07; to order an assessment by an outside expert; and to award him costs.

C.CERN replies that the complaint is irreceivable: the letter of 15 March 1994 which the complainant is challenging is not a decision since it merely refers to earlier letters from the Organization informing him that his appeals and claims for compensation were irreceivable. His appeal against the implied rejection of his claim of 10 May 1993 to damages was out of time. In any event the claims in his complaint are too vague to be receivable: he states neither the nature and cause of the injury nor the amount he seeks in damages.

Besides, his claim to compensation is irreceivable since it is out of time. The injury he alleges was a result of the 1984-85 reforms; so, to be receivable, his claim should have been made in an appeal filed in time against the decisions which he says are unlawful. The precedents he cites do hold that a complaint will be receivable against a decision that still affects the staff member. But they are immaterial because the complainant stopped shift work in 1988. And even though a staff member may impugn an individual decision in pleading the unlawfulness of the rule to which that decision gives effect, he must do so in time. The complainant did not.

CERN's pleas on the merits are subsidiary. It submits that there was no breach of the rules on shift work. The expert opinion of 1990 found that the illness the complainant suffered from in 1988 was not service-incurred. So there is no causal link between the illness and its alleged cause, namely the shift system introduced in 1984-85.

D.In his rejoinder the complainant maintains that the reform of the shift system was unlawful and was the cause of his illness and that the complaint is receivable. He cites administrative circular 14 which says that claims can be submitted for up to ten years after the appearance of the first symptoms of illness. As regards the medical examination he had to undergo in 1990, he wants to know whether CERN did its utmost to ensure that it was proper and in particular that the expert was fully informed. He claims not less than 2 million Swiss francs in damages.

E.In its surrejoinder the Organization presses its pleas. It points out that the complainant's pleas about a breach in 1984-85 of the rules on shift work and about the preparations for the expert medical examination were submitted in complaints that the Tribunal has already dismissed. So he may no longer challenge the decisions he alleges to be unlawful.

CONSIDERATIONS:

1.Facts relevant to this dispute are set out under A in Judgments 1104 and 1172 on Mr. Langelez's first and second complaints. In this complaint he purports to be challenging a final decision of CERN's dated 15 March 1994. His claims are set out under B above.

2.In an internal appeal of 10 May 1993 to the DirectorGeneral he submitted that a decision of 3 March 1993 to put him on career path III was directly linked to one of 15 January 1991 reassigning him to a post of mechanic and that it in turn was linked to one of 3 October 1988 declaring him unfit for shift work. Relying on the connection between those decisions, all of which he saw as "unlawful", he wanted them to be reversed and claimed damages. On 9 July 1993 CERN rejected his appeal. Believing that it had failed to answer his claims, he repeated them in a letter of 8 September 1993, asking the Organization to put his case to the Joint Advisory Appeals Board. On 15 November 1993 the Director of Administration told him that his request was irreceivable. In a letter of 14 January 1994 to the Director-General the complainant said he was pressing his appeal and all his pleas in support of it. In a letter of 15 March 1994 CERN referred him to its earlier replies.

3.The Organization contends that the complaint is irreceivable because it was not filed within the ninety-day time limit in Article VII(2) of the Tribunal's Statute.

4.In his letter of 15 November 1993 the Director of Administration rejected his appeal in the following terms:

"... since the decision you are objecting to has no connection in law with the others you mention and you have unsuccessfully exhausted all your remedies, your claim to 'compensation for injury', which is vague and on which you put no figure, is irreceivable."

The passage leaves no doubt but that the Director was notifying final rejection of the appeal. So the date of the final decision is indeed 15 November 1993. The letter of 15 March 1994 contained no decision but merely referred the complainant to earlier correspondence.

5.The decision of 15 November 1993 was notified to the complainant the next day. So the time limit of ninety days in Article VII(2) of the Tribunal's Statute for filing a complaint began on 16 November 1993. Since he did not file until 26 June 1994 his complaint is, as the Organization says, irreceivable.

6.In his internal appeal of 10 May 1993 he argued that a set of decisions CERN took from 3 October 1988 to 3 March 1993 had caused him harm. But in his complaint to the Tribunal he blames the injury he has suffered on decisions of 9 July 1993, 15 November 1993 and 15 March 1994. Having made one set of claims in his internal appeal and another before the Tribunal, he failed to observe the requirements in Article VII(1) on exhaustion of the internal remedies. On that score too his claims are irreceivable.

7.Secondly, he says in his brief that the offending decisions were taken in the course of the internal appeal proceedings. That statement makes no sense. The decisions which he blames for the injury came after 10 May 1993, the date at which he filed the appeal. So at the date of filing no injury could yet have occurred.

8.Lastly, a claim to damages cannot succeed unless the claimant proves the unlawful act and the consequent injury. Since the complainant has not done so, his claim to damages must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, Vice-President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

Michel Gentot
Julio Barberis
Egli
A.B. Gardner

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