

EIGHTY-FIFTH SESSION

***In re* Evalet Arsène (No. 2), Haeberli (No. 3) and Maurer (No. 2)**

(Application for execution)

Judgment 1737

The Administrative Tribunal,

Considering the application for execution of Judgment 1613 filed by Miss Chantal Evalet Arsène, Mr. Heinz Haeberli and Miss Elvira Maurer on 17 July 1997, the European Free Trade Association's single reply of 25 September, the complainants' rejoinder of 2 October, EFTA's surrejoinder of 28 October 1997 and the complainants' letter of 10 March 1994 withdrawing some of their claims;

Considering that in a letter of 1 May 1998 to the Registrar the complainants' counsel said that Miss Maurer was withdrawing her complaint and that the Association did not take up the Registrar's invitation to comment;

Considering that that withdrawal is unqualified;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written proceedings;

CONSIDERATIONS

1. By Judgment 1613 of 30 January 1997 the Tribunal set aside decisions by the Secretary-General of the European Free Trade Association. Those decisions had refused to set at 21.3 per cent of "reference salary" the cost to three former staff members of buying back three-and-a-half years' contributions, which they needed to do to qualify for pensions. The pensions were to come from a private insurance company, Rentes genevoises, to which the Association had transferred the assets and liabilities of the scheme that had till then managed its staff pension fund. The Tribunal also sent the complainants back to the Association for new decisions on their claims and ordered it to pay costs.

2. The Association did not execute the judgment at once. By a letter of 26 June 1997 it informed the complainants' counsel that execution posed problems. One was that, its Staff Insurance Scheme (SIS) having ceased to exist, it was unsure which of its governing bodies were competent to execute. Another was that the complainants had lodged another complaint with the Tribunal challenging EFTA's agreement with Rentes genevoises, and the outcome might have some bearing on the execution of Judgment 1613. On receipt of the letter of 26 June the complainants protested against what they saw as refusal to execute. On 17 July 1997 they filed the present applications, which the Tribunal joins to form the subject of a single ruling.

3. Things have since cleared up. In Judgment 1660 (*in re* Aschenbrenner No. 2 and others) of 10 July 1997 the Tribunal validated the transfer by EFTA to Rentes genevoises of responsibility for the pensions of its former officials. After lengthy correspondence the complainants came to the view that they had managed to get the Association to execute Judgment 1613. Miss Maurer made an unqualified withdrawal of suit on 1 May 1998, and the Tribunal records it. The other two complainants have withdrawn their claims to an order for execution within 30 days and to the imposition of a penalty in the event of default, but not their claims to awards of 5,000 Swiss francs in moral damages for the delay in execution and of an unstated sum in costs.

4. The Tribunal records the withdrawal of some of their claims. In ruling on their claims to damages and costs it will recapitulate the sequence of events.

5. Judgment 1613 went out on 30 January 1997. The Association began by sending the complainants a letter, dated 17 April 1997, which the parties have not produced. On 26 June EFTA wrote again to say that it would take up the matter as soon as possible after the Tribunal had ruled on the lawfulness of the transfer of the pension fund to Rentes genevoises. That ruling, in Judgment 1660, was delivered on 10 July. On 8 July it had paid the award of costs. By a letter of 22 August it told the complainants that its "Supervisory Body at Seven" had agreed to cover any costs incurred by allowing repurchase of the three-and-a-half years' contributions at the rate of 21.3 per cent of reference salary; but it also said that Rentes genevoises and Van Breda International, the insurance brokers, would have to concur before final agreement on the repurchase price might be announced. The complainants were offered the agreed figure of 21.3 per cent on 15 September 1997 and they accepted on 4, 8 and 10 November 1997. According to their letter of 10 March 1998 withdrawing some of their claims, Rentes genevoises gave them formal notice in February 1998 of acknowledgement of their pension entitlements.

6. All that goes to show that the complainants are mistaken. Although things did take a long time, the Association was prudent to await the Tribunal's ruling on their own and other complaints challenging the lawfulness of the contract with Rentes genevoises. Had the Tribunal set aside the new pension arrangements they would have found themselves in stalemate. In any event the Association may be deemed to have executed Judgment 1613 by 15 September 1997 when, subject to their consent, it announced a repurchase price that was in line with the Tribunal's decision. The delay in execution, though in other circumstances it might have warranted redress, was both short and understandable. What is more, it was not to the detriment of the complainants, whose sole entitlement was a deferred pension and who sustained no material injury whatever by having to wait until early 1998 for acknowledgement of their pension rights. They claim moral damages for the anxiety they attribute to uncertainty about their position, but there is not a shred of evidence to support the claim. There being no grounds for questioning EFTA's good faith, the Tribunal dismisses the claims they have not withdrawn, including the one to costs.

7. The Association contends that their complaints are vexatious and makes a counterclaim to payment of its own costs. The claim fails. The complainants were entitled to find surprisingly long the delay in executing the judgment in their favour. Though their claims have failed, they committed no abuse of process.

DECISION

For the above reasons,

1. The withdrawal of suit by Miss Maurer is recorded.
2. The withdrawal of the claims by Miss Evalet Arsène and Mr. Haeberli to the execution of Judgment 1613 is recorded.
3. The remaining claims by Miss Evalet Arsène and Mr. Haeberli are dismissed.
4. The Association's counterclaim is dismissed.

In witness of this judgment, adopted on 15 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

(Signed)

Michel Gentot
Julio Barberis
James K. Hugessen

A.B. Gardner