

EIGHTY-EIGHTH SESSION

In re Salard (No. 4)

(Application for execution)

Judgment 1892

The Administrative Tribunal,

Considering the application for the execution of Judgment 1814 filed by Mr Jean-Claude Salard on 1 April 1999 and corrected on 16 April, the reply of 11 June from the European Organisation for the Safety of Air Navigation (Eurocontrol Agency), the complainant's rejoinder of 28 June and Eurocontrol's surrejoinder of 30 July 1999;

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

Having examined the written submissions;

CONSIDERATIONS

1. In Judgment No. 1814 delivered on 28 January 1999 on two complaints filed by Mr Salard, the Tribunal set aside a decision of the Director General of Eurocontrol rejecting the complainant's appeal to have his mother treated in the same way as a dependent child. It sent the case back to the Organisation and ordered the latter to pay Mr Salard 35,000 Belgian francs in costs. In a complaint filed with the Office of the Registrar of the Tribunal on 1 April 1999, he submits that Eurocontrol has failed to execute the judgment, in particular point 3 of the decision ordering the Organisation to bear the costs. In addition to these costs plus 10 per cent interest, he asks that the Organisation be ordered to pay him 50,000 francs in costs and 500,000 francs in moral damages.
2. Eurocontrol contends that it has fully executed the judgment: on 21 February 1999 it paid Mr Salard costs and resubmitted the initial claims, which had resulted in the quashed decision, within a reasonable time to the Joint Committee for Disputes. Eurocontrol deems that the suit is vexatious and intended to involve it in needless costs. It requests that the complainant be ordered to reimburse expenses charged to it following the Tribunal session.
3. The Tribunal can only express surprise that on 1 April 1999 the complainant should file a suit to obtain payment of a sum of money which had been transferred to his bank account on 21 February 1999, barely three weeks after the judgment had been delivered. In an e-mail message of 4 May 1999, the complainant admits that he had been "unaware" that the payment had been made and that the problem had been settled "promptly". In these circumstances it is difficult to understand why he did not withdraw claims which were clearly unfounded and obviously must be dismissed.
4. As to the claims relating to the failure to execute the judgment sending the case back to the Organisation for a new ruling on his appeal, they too must be disallowed because the matter was referred back to the Joint Committee for Disputes within a reasonable time. The Committee met on 23 March 1999 and issued a negative recommendation on 21 April 1999. The Director General endorsed it, dismissing the appeal on 5 May 1999. The procedure necessitated by the judgment quashing the original decision was therefore implemented swiftly. As the Organisation emphasises, it was appropriate to resume the procedure by referring the matter back to the Joint Committee for Disputes because it was the unlawful nature of the latter's opinion that led to the quashing of the decision. However, proper execution of the judgment did not necessarily imply recognition that the complainant's appeal was sound: all that was required was a new decision taken after due process. The question of the lawfulness of this new decision is dealt with in another complaint ruled on this day (*in re* Salard No. 5, Judgment 1893), but the complainant's objections to the time limits observed by the Organisation in resuming the procedure to execute Judgment 1814 can only be

dismissed.

5. In view of the foregoing, the Organisation's claim that the suit filed by the complainant be considered as vexatious and pointless should be examined closely. The Tribunal believes that it must fail because a letter of 30 March 1999 sent by the Director of Human Resources to the complainant may have misled him as to the Organisation's intention to execute the judgment. This letter merely indicated that Mr Salard's complaint would be "sent back to the Joint Committee for Disputes", whereas the Committee had in fact met on 23 March. Furthermore, taking account of the rules applying at the time when his mother had become a "long-term" patient, the execution of the judgment was to remain "virtual". It is possible that such an expression, which the Organisation admits was "unfortunate", could have led the complainant to doubt its intention to execute the judgment and to file an application for its execution, however slim the grounds. Therefore, the claim to an award of costs against the complainant must be dismissed.

DECISION

For the above reasons,

- 1. The application is dismissed.**
- 2. Eurocontrol's counterclaims are dismissed.**

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

**Michel Gentot
Mella Carroll
James K. Hugessen**

Catherine Comtet