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

NINETY-THIRD SESSION

Judgment No. 2154

The Administrative Tribunal,

Considering the third complaint filed by Mr V. L. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 3 October 2000 and corrected on 30 November 2000, Eurocontrol's reply of 9 March 2001, the complainant's rejoinder of 15 May and the Agency's surrejoinder of 24 August 2001;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case are to be found in Judgment 1880 delivered on 8 July 1999, Judgment 2094 delivered on 30 January 2002, and Judgment 2153 also delivered this day. On the advice of his daughter's doctor, the complainant had her hospitalised in the United States for a serious illness. Eurocontrol's Sickness Fund repaid at the full rate (100 per cent) the costs of her operation and of the treatment that preceded it, except for the costs of the hospital stay which it limited to 20,000 Belgian francs per day. As from June 1997, however, the maximum limits set out in Rule of Application No. 10 of the Staff Regulations concerning sickness and accident insurance cover were strictly applied to all costs incurred after the operation.

By letters of 8 September and 28 December 1999, the complainant's counsel requested the Agency to determine, for the period from 8 September 1996 to 7 September 1997, the amount of the special reimbursement of medical expenditure to which the complainant was entitled under Article 72(3) of the Staff Regulations governing officials of the Eurocontrol Agency and Article 8(2) of Rule of Application No. 10.

On 3 March 2000 the complainant filed an internal complaint against the implied rejection of this request. In the absence of a reply from the Agency, he is challenging the implicit decision to dismiss his internal complaint.

B. The complainant submits that the Sickness Fund, by refusing to grant him special reimbursements, even though no coefficient had been determined taking into account the difference in the cost of care in the United States and Belgium, is in breach of Article 8 of Rule No. 10, the provisions interpreting this Rule, and several principles, including the free choice of practitioner. He adds that the refusal to grant a special reimbursement for medical expenses which, over a period of 12 months, exceeded the complainant's "average" basic monthly salary, on the sole grounds that they are considered "excessive", is in violation of Article 72 of the Staff Regulations and Article 8(2) of Rule No. 10, which contain no restriction or reservation of this ilk. He asserts that the proportion of medical expenses left at his charge was exorbitant. He takes the Sickness Fund to task for basing its reckoning on under-estimated Belgian rates and argues that his daughter could not have obtained equivalent care in Belgium. Lastly, he recalls that in Judgment 1880, under 13, the Tribunal recommended that the Agency ensure that "the interpretation does not rob the original rule - especially Article 72(3) - of its meaning".

The complainant seeks the quashing of the impugned decision and, accordingly, the granting of the special reimbursement of the medical expenses for the period from 8 September 1996 to 7 September 1997. He also claims costs.

C. In its reply, Eurocontrol explains that for non-member States, such as the United States, an equality coefficient

of 100 is applied, meaning that medical expenses are reimbursed on the basis of the rates for equivalent care in Belgium. It denies ever having contested the complainant's right to the free choice of practitioner and argues that the issue, of whether or not the treatment available in the United States was indispensable, is immaterial - under the terms of the staff regulations and rules - to the complainant's right to the reimbursement of the expenses incurred. It submits that Article 72(3) of the Staff Regulations and Article 8(2) of Rule No. 10 apply only to the non-reimbursed portion (15% or 20%, as appropriate) of refundable medical expenses under the rules and not to non-reimbursed expenses in general (excessive costs or non-medical expenses). It affirms that, in the opinion of four doctors, the surgery and, *a fortiori*, the post-operative treatment of the complainant's daughter could have been carried out in Europe. The complainant's initial decision to have the operation done in the United States was taken for reasons of expediency and he may not rely on it to obtain special reimbursement from the Sickness Fund of all the treatment that ensued.

D. In his rejoinder the complainant maintains that the United States was the only place where his daughter could be treated, including after her operation. He submits that contrary to the Agency's interpretation Article 72(3) of the Staff Regulations and Article 8(2) of Rule No. 10 do cover excessive costs. The whole purpose of the mechanism is to determine what should be done with the non-reimbursed portion of medical expenses when the financial burden on the staff member is abnormally heavy. The Tribunal acknowledged as much in Judgment 1880, under 13.

E. In its surrejoinder the Agency asserts that there would be no safeguarding the finances of the Sickness Insurance if its members were able to claim excessive medical expenses by way of special reimbursement.

CONSIDERATIONS

1. Facts relevant to this dispute are set out in Judgment 1880, to which reference is made.

On 3 March 2000 the complainant filed an internal complaint against the implied decision to reject his claim for special reimbursement of the medical expenses incurred, for the period from 8 September 1996 to 7 September 1997, as a result of the hospitalisation in the United States of his daughter for a serious illness. He challenges the implied decision to dismiss his internal complaint.

2. The complainant alleges, firstly, breach of Article 72 of the Staff Regulations, Article 8, paragraphs 1 and 2, of Rule No. 10 and the interpretation of Rule No. 10 set out in Section XV of Annex I to this Rule; and secondly, a clear misappraisal of facts and violation of the principles of the free choice of practitioner, non-discrimination, the guarantee of general social coverage, and proportionality by which the action of institutions must be governed, in view of the refusal by the Sickness Fund to grant the special reimbursements permitted by Article 8, paragraphs 1 and 2, of Rule No. 10, in the absence of an equality coefficient taking into account the significant difference between the cost of medical care in the United States and Belgium.

3. Eurocontrol's main argument against these claims is that in the present case Article 72(3) of the Staff Regulations and Article 8 of Rule No. 10 are only applicable to the portion of refundable medical expenses which have remained at the charge of the insured person. It asserts that Article 8(1) concerns only care to which a ceiling is applied, and not care subject to a limitation by reason of its excessive cost. It adds that, for the few types of care for which a ceiling exists, the ceiling was doubled pursuant to that article.

Eurocontrol asserts that Article 8(2) of Rule No. 10 does not apply either, since the non-reimbursed portion of the medical expenses incurred by the complainant's daughter consists of non-refundable expenses (telephone, television, drinks, etc.) as well as of expenses considered excessive, with the portion of expenses considered excessive after consultation of the medical officer not being taken into account for the special reimbursement envisaged under Article 8(2). It adds that Section XV, paragraph 3, second indent, of Annex I to Rule No. 10 provides that "[t]hat part of expenses considered excessive by the office responsible for settling claims after consultation of the medical officer shall not be reimbursed".

4. The Tribunal recalls that the issue of the special reimbursement under Article 72(3) of the Staff Regulations arose when it examined the case giving rise to Judgment 1880. On that occasion, it found that it was premature to rule on the issue in view of the fact that the twelve-month period had not yet been completed. But it also added the following:

"It is only at the end of this period that the Fund will be able, if needs be, to fix the reimbursement of uncovered expenses which could, under these provisions, give rise to a special reimbursement; it shall examine the application of [rules of interpretation] ... ; it shall ensure that the interpretation does not rob the original rule - especially Article 72(3) - of its meaning."

5. There is no need to entertain again the pleas which were already submitted to the Tribunal and on which it has ruled in Judgment 1880. It only remains to rule on the granting of a special reimbursement under paragraph 3 of Article 72, as the claim now covers a twelve-month period, from 8 September 1996 to 7 September 1997.

6. In refusing the complainant the special reimbursement that he claims, Eurocontrol relies on the interpretation of Article 72(3) of the Staff Regulations and the provisions issued thereunder.

In its submission, the "'non-reimbursed expenses' must be understood as the portion of refundable medical expenses under the rules which have remained at the charge of the member (15% or 20%, as appropriate), and not the total of non-reimbursed expenses under all heads (excessive costs or expenses not related to medical care)".

As indicated in Judgment 2153 also delivered this day, the Tribunal finds that this restrictive interpretation cannot stand. While it is justifiable to set aside expenses not related to medical treatment in determining the expenses which have not been accepted but could be taken into consideration for a special reimbursement, the same does not hold for all expenses considered to be excessive. This would rob of its meaning the basic provision of Article 72(3) of the Staff Regulations, which reads as follows:

"Where the total expenditure not reimbursed for any period of twelve months exceeds half the official's basic monthly salary ... special reimbursement shall be allowed by the Director General ..."

7. The impugned decision, which rejected the complainant's claim for a special reimbursement of the medical expenses incurred for the period from 8 September 1996 to 7 September 1997, based on an erroneous interpretation of the relevant texts, must be set aside.

8. The Agency shall therefore reckon the complainant's average monthly salary for the above period and take into account the portion of expenditure incurred and not reimbursed during that period, except for expenses not related to medical care, in determining whether the complainant may be entitled to the special reimbursement envisaged under Article 72(3) of the Staff Regulations.

9. The complainant is entitled to costs, which are set at 1,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.

2. The Agency shall proceed as indicated under 8 above in determining whether the complainant is entitled to a special reimbursement for the period from 8 September 1996 to 7 September 1997.

3. It shall pay the complainant 1,000 euros in costs.

In witness of this judgment, adopted on 10 May 2002, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 22 July 2002.