

## **NINETY-THIRD SESSION**

**Judgment No. 2167**

The Administrative Tribunal,

Considering the twenty-third and twenty-fourth complaints filed on 14 December 1999 by Mr F. P., the twenty-fifth complaint filed on 13 July 2000 and the thirty-third complaint filed on 31 October 2000 against the European Southern Observatory (ESO);

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

### **CONSIDERATIONS**

1. The career of the complainant, who worked for the ESO from 1989 to 1995, is outlined in the first of the numerous judgments rendered on the successive complaints filed by him. He now submits four new complaints concerning his relations with the organisation, which the Tribunal will join.
2. In his twenty-third complaint the complainant asks the Tribunal to set aside the implied decision of rejection which he infers from the Observatory's failure to respond to the letter he addressed to both the Director General and Head of Administration on 26 July 1999, following the publication of Judgment 1843, asking that "detailed rules and procedures" be established to enable him to provide substantiated evidence of a link between his state of health and his duties at the ESO. In fact, the Head of Administration did reply to that letter on 9 August 1999, confirming to the complainant that if he were able to provide substantial evidence, such as new medical opinion concerning his disease and the results of further medical examinations establishing a link between his state of health and his duties, the organisation would be willing to examine very carefully any claims that might arise from it. The complainant considers that the ESO did not provide him with the information that would have enabled him to submit the evidence it required. However, this straightforward letter of information received from ESO contained nothing that would be liable to cause him any injury and its reply to his request can clearly not be criticised by the Tribunal.
3. In his twenty-fourth complaint the complainant asks the Tribunal to quash the implied decision to reject his request of 30 July 1999 that the organisation resubmit his case to the Rehabilitation Board pursuant to the above-mentioned Judgment 1843. In fact, the Head of Administration replied to him by a second letter of 9 August 1999. In that letter he simply reiterated that Judgment 1843 had made it clear that "Articles R II 1.25 to 1.27 of the Staff Regulations do not apply to former staff members, and that therefore the Director General was not obliged to appoint a Rehabilitation Board". He also said that ESO would not reopen any internal procedure in connection with his case. This reply did not satisfy the complainant. However, he submits no legal argument challenging the refusal that was expressed in that letter and confirmed by implied decisions to reject his further requests for review contained in letters to ESO dated 13 August, 7 October, 18 October and 17 November 1999. The complaint is therefore clearly devoid of merit.
4. In his twenty-fifth complaint the complainant asks the Tribunal to set aside the decision of rejection that is implicit in the ESO Director General's failure to respond to an "appeal" initiated by the complainant in a letter of 10 March 2000 requesting the implementation of the assurances and promises allegedly made to him in a letter of

28 July 1995. He also seeks an award of damages against the ESO for the material and moral harm suffered by him since 1993 as a result of the organisation's attitude. In his brief, he goes over his past career and reiterates all his grounds for recrimination.

However, firstly, the claims presented in his brief have already been examined and duly answered by the Tribunal; secondly, the letter of 28 July 1995 did not contain any promise. The Observatory merely stated in that letter that it had to act according to the given facts and protect its own interests. Furthermore, although it regretted the situation, it assured the complainant that it acted "objectively and, where possible, in [his] favour". The complainant cannot therefore invoke any commitment allegedly made in his favour. Lastly, the criticisms he makes against Judgment 1718, which was delivered by the Tribunal on 29 January 1998 on his first complaint, are barred under the principle of *res judicata*.

5. In his thirty-third complaint the complainant asks the Tribunal to set aside the implied decision to reject a request submitted in a letter of 16 August 2000, in which he asked that all his future claims relating to his disability be dealt with in accordance with the CERN Pension Fund Rules and that his "future medical expenses" be covered by the insurance brokers, Van Breda. The complaint is based for the most part on pleas that have already been examined and rejected by the Tribunal in previous judgments, particularly Judgments 1665, 1718, 1948 and 2001. Consequently, under the principle of *res judicata*, the complainant's arguments cannot be taken into account.

6. Since the four complaints are clearly devoid of merit, the Tribunal dismisses them in accordance with the summary procedure provided for in Article 7 of its Rules.

## DECISION

For the above reasons,

The complaints are dismissed.

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

Delivered in public in Geneva on 15 July 2002.

*(Signed)*

Michel Gentot

Seydou Ba

James K. Hugessen

Catherine Comtet