

The Administrative Tribunal,

Considering the thirty-eighth complaint filed by Mr F.P. against the European Southern Observatory (ESO) on 16 September 2003, ESO's reply of 8 January 2004, the complainant's rejoinder of 4 March, and the Observatory's surrejoinder of 30 April 2004;

Considering Articles II, paragraph 5, and VII 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. The complainant, an Italian national, served on the staff of ESO from 1 September 1989 to 31 August 1995. Further information about his career and facts relevant to this case are set out in Judgment 1665 delivered on 10 July 1997 on his first complaint against the European Organization for Nuclear Research (CERN) and in Judgment 1718 delivered on 29 January 1998 on his first complaint against ESO.

By a letter of 31 July 2002 the complainant asked the Director General of ESO to review his disabilities "of ESO origin" for the purpose of health insurance and an incapacity pension; he based his claim on three medical certificates. The Head of Administration rejected this request on 2 December 2002. On 21 July 2003 the complainant wrote to the Head of Administration, submitting new medical certificates which he said established a causal link between his service with ESO and his state of health. The Head of Administration replied on 7 August 2003, maintaining the decision taken on 2 December 2002. On 8 August 2003 the complainant appealed to the Director General, asking for "a serious reconsideration of [his] case". By a letter of 11 August 2003 the Head of Administration informed him that, since he was no longer a staff member, his appeal was not receivable. That is the impugned decision.

B. The complainant submits that the law to be considered in this case is the Tribunal's Statute. Quoting Article II(6)(a) of the Statute, which provides that the Tribunal shall be open to the official even if his employment has ceased, he argues that ESO cannot assert that the internal appeal procedure is open only to staff members who are still "active" in the organisation. Furthermore, the same Article of the Statute states that the Tribunal is "competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of his employment". He contends that his complaint is one concerning a disability incurred during the course of his employment and that, as a pensioner, he is still subject to the applicable Staff Rules and Regulations.

He asks the Tribunal to quash the impugned decision and to give a "clarifying ruling" on the issues of its Statute "in conformity to the points drawn up" in his brief. He also claims costs.

C. The Observatory replies that under the Staff Rules and Regulations the right to an internal appeal is reserved for staff members. Consequently, the Head of Administration was correct to reject the complainant's appeal as not receivable. Furthermore, as far as the complainant is challenging the decision taken on 2 December 2002, his complaint is time-barred. Concerning his additional claims, it considers them to be irreceivable as they relate to "abstract issues of law rather than to individual decisions or to the failure to take an individual decision upon any claim of [the] complainant".

It asks the Tribunal to join the 36th and 38th complaints.

D. In his rejoinder the complainant confirms that the decision he challenges is that of 11 August 2003.

He submits that the Staff Rules and Regulations are at odds with Article VII(1) of the Tribunal's Statute which reads as follows:

“A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.”

In his view, the decision he impugns is final and it is “irrelevant” whether “the person concerned” is a staff member. He accuses ESO of bad faith and refutes that his claims are “abstract”.

The complainant states that he has no objection to the joinder of his complaints.

E. In its surrejoinder the Observatory submits that the complainant is not seeking any relief that the Tribunal may grant under Article VIII of its Statute. It presses its objections to receivability.

CONSIDERATIONS

1. The complainant challenges a decision of the Observatory which refers to his letter of appeal dated 8 August 2003. The impugned decision is dated 11 August 2003 and states that since the complainant is no longer a staff member “the internal appeal is not receivable” according to Article R VI 1.02 of the Staff Regulations.
2. The organisation is correct. The Staff Regulations do not give him any right of internal appeal. The Tribunal finds that no error of law has been made by the Observatory.
3. The complainant alleges a contradiction between ESO’s Staff Rules and Regulations – about the non-receivability of internal appeals by those who are not members of staff, as stated in the impugned decision – and Article VII(1) and (2) of the Tribunal’s Statute. In fact, the language of the Tribunal’s Statute does not specifically require the organisation to provide specific internal remedies, it only requires that those actually existing be exhausted.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet