

FIFTY-SEVENTH ORDINARY SESSION

In re JANSEN (No. 4)

Judgment No. 684

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) by Mr. Günter Gerhard Jansen on 14 December 1984 and corrected on 21 December, Eurocontrol's reply of 13 March 1985, and the complainant's letter of 14 April 1985 to the Registrar of the Tribunal stating that he did not wish to rejoin;

Considering Articles II, paragraph 5, and VIII, of the Statute of the Tribunal and Articles 26, 43, 48 and 91 of the General Conditions of Employment of officials of the Eurocontrol Agency and Eurocontrol Rule 3 relating to the establishment of the periodic staff report;

Having examined the written evidence and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant was a programmer in the software section of the Engineering Division of an air navigation control centre at Karlsruhe, in the Federal Republic of Germany. Information on his career in Eurocontrol appears in Judgments 637, 638 and 639, under A. His employment with the Agency was terminated on grounds of invalidity as from 1 April 1984 under Article 48 of the General Conditions of Employment. By a letter of 25 October 1983 the head of the Engineering Division sent the complainant the report on his performance -- his "staff report" -- for the period from 1 July 1981 to 30 June 1983. On the first page it said that his immediate supervisors had been consulted but, because of his protracted illness, the complainant himself had not. Like earlier ones, the report itself was in several respects unfavourable. On 2 November 1983 the complainant appealed to the Director of the control centre, the "appeal assessor". On 5 December the Director confirmed the report, but invited him to attach his own comments. On 7 December he asked that the matter be referred to the joint Committee on Staff Reports, and the Director General so referred it on 3 January 1984. In its report of 29 March all but one of the members of the Committee held that there were no grounds for altering the report.

By a letter of 16 April the Director General informed him that he confirmed the staff report. On 22 June the complainant lodged an internal appeal and, having received no reply within the four months' time limit set in Article 91 of the General Conditions of Employment, he is challenging the implied decision to reject that appeal.

B. The complainant submits that his immediate supervisor was not consulted about his staff report, contrary to Article 2 of Rule 3 relating to the establishment of the periodic staff report; that, contrary to Article 6, the original assessor, the head of the division, did not consult him; and, contrary to Article 8, neither did the appeal assessor, the Director. In breach of Article 26 of the General Conditions of Employment, which says what papers shall be put in a staff member's personal file, the Committee took account of a tendentious minute of 14 November 1983 from the head of the division to the Director of which the contents were unknown to him. He submits that the criticisms of him in the report were mistaken. He asks the Tribunal to declare that the staff report is contrary to the rules and not objective.

C. The Agency replies that the complaint is irreceivable. The report as notified to the complainant on 16 April 1984 did not affect him adversely because by then he had left the staff. Staff reports matter only to staff who may be in line for promotion or at risk of dismissal for poor performance. Besides, the claims are not couched in terms precise enough to enable the Tribunal to make an enforceable decision. Even if the complaint were allowed, his administrative status would remain the same, since he has been invalided out.

Subsidiarily, the Agency contends that the complaint is devoid of merit. There were no serious flaws in the reporting procedure. The complainant's supervisors were in fact consulted. It is true that neither the original assessor nor the appeal assessor gave him a hearing, but the reason was, as the report said, that he was on sick leave from 23 January 1983. Rule 3 does not require the Committee to give the staff member a hearing. The minute of 14 November 1983 mentioned by the complainant does not come within the scope of Article 26 of the General

Conditions of Employment. The report was objective, and the complainant provides no evidence in support of his charges of bias. The Agency discusses the complainant's performance record and submits that the criticisms in the report were justified.

CONSIDERATIONS:

Article VIII provides that the Tribunal, if satisfied that a complaint is well-founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding or performance is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him.

The complainant does not request any of these remedies nor does he seek substantial relief in any form. He asks the Tribunal to decide, first, that the staff report, to which he objects, infringes certain provisions which he cites in the General Conditions of Employment; and, secondly, that the report is "not objective".

As to the first, the Tribunal may exceptionally in cases where it is inconvenient or inappropriate to order substantial relief, make a purely declaratory order. It may, for example, when the meaning and effect of a staff rule is in dispute, define the rights and obligations of the parties without at the same time ordering any substantial relief. It does not see any good reason in this case for taking this exceptional course. If the staff reports were not made in accordance with the correct procedure, the complainant has not shown that any injury has resulted and he is no longer in the employ of the Organisation.

As to the second, the Tribunal will not in any event decide, either by way of a declaration or otherwise, points which are not determinative of rights and obligations.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner