

SEVENTY-EIGHTH SESSION

***In re* SEISSAU**

Judgment 1416

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Maryse Seissau against the European Organization for Nuclear Research (CERN) on 1 June 1993 and corrected on 15 December 1993, CERN's reply of 11 April 1994, the complainant's rejoinder of 11 August and the Organization's surrejoinder of 24 October 1994;

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

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

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

A. Information relevant to the present dispute is set out, under A, in Judgment 1412 (in re Audria) also delivered this day.

The complainant, a French citizen born in 1940, was at the material time employed by CERN as an "administrative employee" at grade 6 in the Finance Division.

By a letter of 14 February 1992 the Leader of the Personnel Division informed her of a decision to put her on career path III.

In a letter of 25 March to the Director-General she appealed and asked to be placed on path IV. On 30 April 1992 the Director-General told her of the referral of her case to the Joint Advisory Appeals Board.

In its report of 17 December 1992 the Board concluded that "fairness warrant[ed]" putting her on path IV.

By a letter of 3 March 1993, the impugned decision, the Director-General rejected her appeal.

B. Citing the documents dated 21 May and 3 October 1991 to which the above-mentioned judgment refers under A, the complainant submits that CERN failed to comply with "the substantive rules on the initial designation of career paths".

Although the Instructions make age a criterion only for the purpose of the provisional designation, CERN took account of age in its final decision too. What is more, the Administration applied another criterion which is not provided for in the Instructions, namely the fact that she was not at the top step in her grade.

But the Administration failed to take account of the nature of her duties and her division did not propose putting her on a higher path, as it was free to do, for "staff whose present functions and/or future potential are judged to be insufficiently reflected in the provisional designation".

Observing that her responsibilities were not different from those of another official who was put on path IV, she further contends that the decision was unfair.

Lastly, she says the decision leaves her no hope of advancement and that that is very discouraging.

She seeks the quashing of the Director-General's decision of 3 March 1993, assignment to career path IV as from 1 March 1992, moral damages and costs.

C. In its reply CERN contends that the procedure for designating her career path - the purpose of which was not advancement - was carried out according to objective criteria and in compliance with the applicable rules.

It says that neither her age nor the fact that she had not reached the top step in her grade had anything to do with its final decision.

Observing that it has discretion in choosing the career path, the Organization submits that it took account of the level of her duties.

The decision she impugns was fair: in the Director-General's view her duties were only "in part identical to her colleague's".

Prospects of further advancement are a general objective, not a criterion of any relevance to the advancement scheme. In arguing the point she has failed to show what rule CERN may have infringed. In any event, far from dashing hopes, the new scheme enhances prospects of advancement. So there is nothing "discouraging" about it.

Lastly, CERN argues that her claim to moral damages is irreceivable because she puts no figure on it and is, besides, devoid of merit.

D. In her rejoinder the complainant enlarges on her pleas. She maintains that the scheme should not "depreciate" the attainments of staff. She maintains that CERN was bound to abide by the general principles underlying the scheme, denies that the material criteria were objective, and maintains that the impugned decision was unfair.

E. In its surrejoinder CERN contends that it could not apply to her case criteria that were not in the Instructions. It observes once again that her reference to general principles on the designation of career paths is irrelevant: the only issue is whether the Administration followed the proper procedure. It denies having acted unfairly and points out that the conditions for an award of moral damages are not met.

CONSIDERATIONS:

1. The complainant, like several other CERN officials, is challenging a decision to put her on one of the career paths that the Council of the Organization set up under the Merit-Oriented Advancement Scheme it brought in on 1 August 1991. The scheme is described in Judgment 1354 (in re Guyen) and in another judgment delivered this day (No. 1412, in re Audria). The Tribunal refers to that description and need say nothing further here by way of explanation of the scheme.

2. The complainant joined the staff of CERN in 1970 as a clerical employee. When CERN first applied the new scheme she was an administrative employee in category 5c at grade 6, which she had held since 1985. The guidelines on the designation of provisional career paths prescribed path III for anyone in category 5c (office work) and on a grade 6 post "where that grade was attained after age 38". That being the complainant's case, she was put provisionally on path III. With the agreement of the Personnel and Finance Divisions a proposal went to the Director-General to confirm path III. The Director-General so decided and the complainant appealed to the Joint Advisory Appeals Board. The Board asked the Administration to update the grading of her duties and then recommended path IV. The reason it gave was:

"Mrs. Seissau draws direct comparison with a colleague's position. She believes that they do the same work and have the same responsibilities; yet her colleague was put on path IV on a counter-proposal from the [Finance] Division. Her supervisor confirms that both have the same duties and responsibilities and agrees that Mrs. Seissau should be on path IV. The Board holds that Mrs. Seissau's claim is sound for reasons of fairness".

3. In a decision dated 3 March 1993, which she impugns, the Director-General refused to endorse the Board's recommendation on the grounds that it had exaggerated the importance of her work, that the comparison with her colleague was too narrow and that in sum he did not regard her responsibilities as "comparable with her colleague's in level of performance".

4. Her complaint is receivable. She pleads that the impugned decision took account of her age, that it did not pay proper heed to her duties, and that it was unfair to put her on a lower path than someone who was doing the same work and had the same responsibilities. She adds that CERN put her on a career path with no reasonable prospects of advancement and overlooked her interests and need for encouragement.

5. The plea that her age was decisive in putting her on path III fails. Though her supervisor may have mentioned

the point when he saw her, she offers no formal evidence, and there is none in the case records, to suggest any such mistake of law.

6. Nor is there evidence of any obvious misappraisal of her duties in her assignment to career path III, which applies to "skilled crafts, skilled office work, specialised work supervision", even though path IV might not have been out of the question. And in the circumstances there is no reason to allow her plea that path III denied her reasonable prospects of advancement or disregarded her interests or the need to encourage her.

7. But the Tribunal is not satisfied with CERN's rebuttal of her charge that the Organization broke the rules on fair treatment that it has undertaken to abide by. She says that, though she and another official had the same duties and responsibilities, the other official was put on path IV. Her supervisor confirmed that and the Joint Advisory Appeals Board took the point. The Director-General merely replied that the comparison was too narrow, which indeed it may be; but also that he did not consider their responsibilities comparable in "level of performance". There is no evidence to bear out that assertion; certainly the appraisal report of 12 November 1992, on which the Organization relies, does not do so. The Tribunal cannot therefore review the Director-General's reason for declining to put her on the same path as the other official, nor tell whether CERN abided by the rules on fairness. Not having enough evidence to make a ruling, it will quash the impugned decision, though it will not order CERN to put her on path IV as she asks. Her case is sent back to the Organization for a new decision on her career path to be taken in keeping with the material rules.

8. As to her claims to damages, she shows no material injury, and for the moral injury she alleges the quashing of the decision affords her sufficient redress.

9. She is entitled, lastly, to an award of 20,000 French francs in costs.

DECISION:

For the above reasons,

1. The decision taken by the Director-General of CERN on 3 March 1993 on the complainant's appeal is set aside.
2. The case is sent back to CERN for a new decision on the designation of the complainant's career path.
3. The Organization shall pay her 20,000 French francs in costs.
4. Her other claims are dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Pierre Pescatore, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas
Michel Gentot
P. Pescatore
A.B. Gardner