

EIGHTY-FIRST SESSION

Judgment 1538

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. P. G. W. against the European Organization for Nuclear Research (CERN) on 22 March 1995, CERN's reply of 11 July, the complainant's rejoinder of 8 September and the Organization's surrejoinder of 16 October 1995;

Considering Articles II, paragraph 5, and VII, paragraph 3, 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. Facts relevant to this case are set out, under A in Judgment 1537 on Mr. G. W.'s first complaint. This one is about his entitlement to unemployment benefits under Article V 1.01 of CERN's Staff Rules, which at the material time said that "A social security scheme shall safeguard: a) the members of the personnel against the economic consequences of unemployment and old age ..." and administrative circular 4 (rev. 3) of October 1993, which lays down the conditions for payment of unemployment benefits to staff after termination.

On 31 August 1994 CERN terminated the complainant's appointment. On a form headed "Expenses claim" which he submitted to the Organization on 1 December 1994 he sought payment of unemployment insurance benefits for September, October and November of that year. In a letter of 9 March 1995 the Director of Administration told him that CERN could not entertain his claim until he had met his obligations towards the authorities of France, where he was resident.

By a letter dated 14 March 1995 the complainant protested to the Director-General against the withholding of benefits due to him and said he had no problems with the French customs.

He is impugning the rejection he infers from the Administration's failure to answer his claim of 1 December 1994.

B. The complainant submits that CERN's failure to pay him unemployment benefits is unlawful. He observes that since he has met all the requirements of the rules neither his dispute with it over the nature of his appointment nor the completion of customs formalities warrants any delay in payment.

He wants the Tribunal to order CERN to pay him for the months of September, October and November 1994 19,440 Swiss francs by way of unemployment insurance benefit, 2,595 francs in premiums for health insurance, 828 in family allowance and 1,824 in child allowances, plus interest on all those sums as from the due dates. He claims moral damages and costs.

C. In its reply the Organization submits that the complaint is devoid of merit. Payment of termination indemnities and unemployment benefits is subject to the completion of end-of-service formalities. Since the complainant has refused to comply with instructions in a document headed "When you leave CERN", his claim to the termination indemnities is premature; and according to circular 4, unemployment insurance benefits are not payable before termination indemnities.

In any event his failure to comply with the rules on the registration of vehicles in France is in breach of Articles I 3.04 and I 3.05 of the Staff Rules, which in the Organization's own interest require officials to comply with national law.

D. In his rejoinder the complainant seeks to shed light on the facts and describes his efforts to meet his obligations towards the French authorities.

E. In its surrejoinder CERN disputes the complainant's version of the facts and presses its earlier pleas.

CONSIDERATIONS:

1. CERN employed the complainant on a fixed-term contract for three years from 1 April 1989. It renewed his contract twice, up to 30 April 1993. On 7 July 1993 it granted him a term contract for sixteen months, from 1 May 1993 to 31 August 1994. By a letter dated 21 December 1993 the Director of Administration of CERN gave him notice that that contract would not be renewed or extended. In his first complaint he contests unsuccessfully both the terms of the contract and the decision not to renew it.
2. By a letter of 20 May 1994 the Leader of the Personnel Division sent him a "termination check sheet" and asked him to complete "the formalities indicated before leaving the Organization so that clearance may be given authorizing final pay action".
3. After the expiry of his contract he submitted to the Organization monthly attestations of unemployment. In a letter of 27 October 1994 the Director of Administration pointed out to him that "with regard to entitlement to unemployment benefits" he had been "informed on several occasions" that he "must first comply with all the required termination formalities (e.g. returning all issued documents, car plates etc.)".
4. A letter of 5 October 1994 to him from Personnel Administration had contained the same information. Though sent to him by registered post, it was returned to the Organization, the complainant not having collected it. The reason why the letter was not delivered is immaterial because in any event the letter of 27 October 1994 told him what to do to get payment.
5. On 1 December 1994 he submitted an "Expenses claim" form to CERN. He claimed payment of 19,440 Swiss francs in unemployment insurance benefit for September, October and November 1994, 2,595 francs to pay for health insurance coverage, 828 francs in family allowance and 1,824 francs in allowances for two children for the same period, making a total of 24,687 francs.
6. More than sixty days having elapsed before he received the reply dated 9 March 1995 from the Director of Administration, he was free to appeal directly to the Tribunal against implied rejection under Article VII(3) of the Tribunal's Statute. He lodged this complaint on 22 March 1995, claiming payment of the 24,687 Swiss francs, plus interest, and awards of damages for moral injury and costs.
7. The Director's letter of 9 March again informed him, as to his claim to unemployment benefits, that he "must first settle the issue of [his] car registration plates with the French customs" and that CERN had "not yet been given clearance by the authorities".
8. The French authorities had given the complainant green K-series licence plates of the kind that they issue for vehicles of members of CERN staff who have international status in France. In mid-March 1995 he discovered that the serial number of his motor car had been wrongly registered in France. Though the French customs attested on 23 March that his car had been re-exported to Germany, they informed CERN that he had not yet returned the licence plates and that his file therefore still remained open. On 15 May he told CERN officials orally that he had lost the licence plates somewhere in Germany. The Organization did not hear directly from him thereafter. It suggested to the French customs relieving him of the requirement that he hand in the plates. The answer from the French customs was that they would accept a written declaration from him of loss of the plates and evidence that his car had been re-registered in Germany. CERN so informed his counsel on 19 June. Shortly thereafter his counsel informed the Organization orally that he was unwilling to provide any further written statement on the matter. In June 1995 the competent office of vehicle registration in France corrected the serial number of his car; he completed the formalities in Germany on 4 July; and the French registration of his car was cancelled on 13 July.
9. On 11 July 1995, the day on which CERN filed its reply to his complaint, the Leader of its Personnel Division wrote a letter to his counsel to say that it would let him have "by means of advance payment only, part of the amount which will be due to him by the Organization once he has finally completed the termination formalities, whilst retaining the remaining part until the date of such completion". It paid him 50,000 Swiss francs on 10 August and 12,091 francs on 28 August 1995.
10. The complainant says in his rejoinder that he understood from the "termination check sheet" that the removal of his personal belongings and the formalities over his car licence plates were to be completed within two years of his leaving the Organization, and he cites in support Regulation R IV 1.42 of the Staff Regulations as in force at the material time. On that score he is, as CERN points out, mistaken: Regulation R IV 1.42 relates only to the time limit for the payment of removal expenses.

11. He observes that for eleven months he had no income and he submits that CERN's attitude was disproportionately strict, not to say untenable. The Organization retorts that the payment of end-of-service indemnities depends on the employee's completing the formalities of termination and that the payment of unemployment benefits is subject to prior payment by the Organization of such indemnities: it cites Article R V 1.01 of the Staff Regulations and paragraph 5 of administrative circular 4 of October 1993. It further observes that it did make payments to the complainant from the date of his departure until April 1995, when he stopped letting the Organization have documents in support of his claims. It says that by consistently refusing to execute his obligations in regard to the registration of his motor car he caused trouble to the Organization, which has a duty to co-operate with the host States, France and Switzerland. It quotes Article XVIII of the Agreement it concluded with France on 16 June 1972, which reads:

"The Organization shall co-operate with the competent French authorities in order to facilitate the proper administration of justice ... and avoid any abuse in connection with the immunities and facilities provided for by the present Agreement.

12. The Organization was right to treat seriously the complainant's failure to deal with the matter of the licence plates: it has a duty to ensure the strict observance of obligations towards the governments of the host countries. The matter of the plates was not sorted out until 13 July 1995, while the case was pending before the Tribunal. The Organization had, however, agreed on 11 July to pay in advance part of the entitlements that had accrued, and it actually paid within a reasonable time far more than the amount the complainant has claimed. In the circumstances its actions cannot be faulted. No question of payment of interest arises: no payment was due in law until the complainant had completed the formalities of termination. The conclusion is that the complaint must fail in its entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner