

EIGHTY-SECOND SESSION

In re Hill

Judgment 1587

The Administrative Tribunal,

Considering the complaint filed by Mr. Robin Anthony Hill against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 4 April 1996 and corrected on 18 April, Eurocontrol's reply of 26 July, the complainant's rejoinder of 1 September and the Agency's surrejoinder of 25 October 1996;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 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. The complainant, who is British, joined Eurocontrol's staff in January 1992 as a senior technical officer at grade B3. He was assigned to the Agency's Experimental Centre at Brétigny-sur-Orge, in France. A motor accident that occurred on 13 February 1992 caused permanent damage to his sinus. By a memorandum of 14 September 1994 he told the Administration that his doctor had advised him on that account not to travel by air.

In August 1994 he applied for a post of project leader announced in a "vacancy notice/notice of competition", No. CE-94-AO/106 of 12 August 1994 at "grade A.5/A.6/A.7". By a letter of 15 June 1995 the head of the Recruitment Section told him that though the Selection Board had found him "suitable" the Director General had decided to appoint a candidate who suited the post "better".

By a letter of 11 September 1995 he lodged a "complaint" with the Director General under Article 92.2 of the Staff Regulations asking him to reopen the competition. He impugns the rejection he infers from Eurocontrol's failure to answer his claim.

B. The complainant submits that he was "more than qualified" for the post. The Administration should at least have interviewed him before appointing someone else. In any event it ought to have told him whether the reason why it was denying him promotion was his unfitness for air travel.

He wants the Tribunal to order "the reopening of Eurocontrol vacancy notice CE-94-AO/106, and the associated post" and a full explanation from Eurocontrol as to why it did not interview him for the post. He seeks a "statement confirming the limits on my future Eurocontrol career, including promotion, because of the Eurocontrol statement that I am not allowed to fly" and awards of material and moral damages.

C. In its reply Eurocontrol argues that the complaint is irreceivable on two counts: first, the complainant is now claiming "direct appointment" to post CE-94-AO/106 and other remedies that he omitted to seek in the past; and, secondly, his claims are "tantamount to requesting the Tribunal to issue orders to or even to supplant the Organisation".

In subsidiary comment on the merits the Agency observes that instead of arguing his case he merely describes the background and implies that he has a right to promotion. He has no such right. Nor was Eurocontrol free to give him duties he was plainly "unable" to carry out.

The Agency wants the Tribunal to order that the complainant pay "all costs".

D. In his rejoinder the complainant answers points of fact in the reply and offers further information about his case. He says he never claimed direct appointment to post CE-94-AO/106.

E. In its surrejoinder Eurocontrol comments on the rejoinder and presses its pleas.

CONSIDERATIONS

1. The complainant joined the staff of the Organisation on 2 January 1992 as a senior technical officer at grade B3, step 1. He was assigned to subdivision B1.4, which is in charge of "simplified fast-time simulations" (SIMMOD), at Eurocontrol's Experimental Centre at Brétigny-sur-Orge.
2. On 13 February 1992 he suffered serious injury in a motor accident and is still suffering from the physical effects of it. Between then and 15 September 1995 he took some 290 days' sick leave.
3. By a notice dated 12 August 1994 Eurocontrol advertised a vacancy for a project leader at "grade A.5/A.6/A.7" in SIMMOD. The notice read:

"An initial selection will be made on the basis of a first assessment of qualifications and experience of all candidates. Thereafter, those candidates considered suitable may be invited in a final selection procedure consisting of assessment and interviews. Further details will be given to candidates who are invited to participate."

The outcome of "initial selection" was a short list of two candidates. One of them was the complainant and the other an external candidate. By a minute of 5 December 1994 the head of the Recruitment Section at headquarters in Brussels sent the Director of the Centre the short list and asked him to "carry out interviews as appropriate".
4. It is not in dispute that the post carried duties similar to those the complainant was already performing, though it was at a higher grade. Nor is it in dispute that the other candidate was qualified.
5. On 14 September 1994 the complainant had told his superiors that an ear-nose-and-throat consultant had certified the tissue of his right sinus to be irreparably damaged and contributing to sinusitis and, to reduce the pain, had advised that he "should not fly in aircraft". The complainant had said, however, that he was "willing to accept the pain and inconvenience" to do his work at Eurocontrol. After further medical examinations and reports the Director of Personnel told him in a minute of 14 March 1995 that he had been found unfit to travel by air.
6. The complainant's duties required travel to many airports in Europe at which simulation exercises were conducted with local controllers of air traffic. He himself concedes that because of the ban on his travelling by air he could not discharge the duties of his old post and even had to be transferred in May 1995 to a department dealing with "real-time" instead of fast-time simulations.
7. By a letter of 15 June 1995 the head of the Recruitment Section informed him on the Director-General's behalf that he had not been selected for the post. Although the successful candidate had been interviewed he himself had not; and by a letter of 11 September 1995 he asked the Director-General to reopen the competition, contending that the failure to interview him was contrary to the rules. Having received no answer, he filed a complaint with the Tribunal on 4 April 1996 under Article VII(3) of its Statute asking for the "reopening" of the vacancy notice and for the other relief set out under B above.
8. Although he had been put on the short list after the initial selection, it was obvious at the time of the final selection that he would be unable to perform the duties of the post. Interviewing him would have been a useless formality and might indeed have given him false hopes of success. As he admits in his rejoinder, he fully understood that because of the ban on his travelling by air he would be unable to do the work: it is common ground that travel by air was essential even though the notice of vacancy did not expressly say so. It is unnecessary to consider whether the failure to interview the complainant was in breach of the rules: even if it was he did not thereby suffer any actionable injury. His principal claim, to the reopening of the competition, therefore fails.
9. His claim to an award of damages fails because it is subsidiary to the principal one. His other claims are irreceivable because they fall outside the scope of his internal appeal and he has therefore neglected to exhaust the internal means of redress as Article VII(1) of the Tribunal's Statute requires.
10. In line with its consistent practice the Tribunal disallows the defendant's claim to an award of costs against the complainant.

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 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.