

## EIGHTY-THIRD SESSION

### *In re Skerhut*

Judgment 1621

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Rudolf Friedhelm Skerhut against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 21 May 1996 and corrected on 24 June, Eurocontrol's reply of 27 September, the complainant's rejoinder of 10 December 1996 and the Organisation's surrejoinder of 7 March 1997;

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. The complainant, a German, is on the staff of Eurocontrol's software team at Karlsruhe. His daughter is covered under the Agency's Sickness Fund. On 19 January 1995 a dentist sent him a bill for filling her teeth and he claimed reimbursement from the Fund. On 3 August 1995 it paid him the maximum allowable amount -- 588.34 German marks -- for "normal" fillings under Annex III.A of Rule of Application No. 10 concerning sickness insurance cover. On 30 October he lodged a "complaint" under Article 92(2) of the Staff Regulations claiming 80 per cent of the cost of the treatment, or another 377.18 marks. On 21 November the Management Committee of the Sickness Fund took up his case and recommended rejection. By a letter of 21 February 1996 the Director of Human Resources endorsed the Committee's recommendation on the Director General's behalf. That is the decision he is challenging.

B. The complainant submits that Eurocontrol is wrong to regard the fillings as "normal". Under the terms of Annex III.A to Rule 10 it should have reimbursed him "at the rate of 80% after consultation of the Dental Adviser".

He wants the Tribunal to quash the impugned decision, order Eurocontrol to refund the treatment at the rate of 80 per cent and award him 4,000 Belgian francs in costs.

C. Eurocontrol contends that the complaint is devoid of merit. In keeping with the applicable rules it decided to refund the complainant at the rate for normal fillings, as the dental adviser had recommended.

D. In his rejoinder the complainant challenges several points in the reply, enlarges on his pleas and presses his claims.

E. In its surrejoinder the Agency maintains that it did not break any applicable rule or general principle. It supplies a report from a dental adviser of the Sickness Insurance Scheme of the European Union institutions confirming that the fillings in question could be classed as "normal".

### CONSIDERATIONS

1. Eurocontrol employs the complainant as an expert in its software team at Karlsruhe.

2. Annex III.A of Rule of Application No. 10 concerning sickness insurance cover provides for reimbursement of 80 per cent of the cost of the following items of dental treatment up to the maximum stated in Belgian francs:

"Normal filling BEF 1,200

Filling with devitalisation of one root BEF 1,600

Filling with devitalisation of more than one root BEF 2,400

Normal extraction BEF 800  
Surgical extraction BEF 1,600  
Extraction of impacted tooth BEF 2,900  
Apectomy BEF 2,400  
Gingivectomy BEF 1,600  
Full scaling and polishing BEF 640  
X-ray of a single tooth BEF 512  
General X-ray BEF 1,600"

**The text adds:**

"Treatment not listed above shall be reimbursed at the rate of 80% after consultation of the Dental Adviser."

**3. The complainant claimed the reimbursement of 80 per cent of the cost of the dental treatment of his daughter. In regard to the cost of several fillings Eurocontrol paid him only the maximum rate specified for "normal" fillings.**

**4. The complainant submitted an internal "complaint" to the Director-General, who referred it to the Management Committee of the Fund for its opinion. He contended that those fillings had not been "normal" ones and, as they had not involved "devitalisation" of a root, had constituted treatment falling within the residual category, for which reimbursement was due at the rate of 80 per cent.**

**5. The Committee consulted the Fund's dental adviser, who expressed the view that a "normal" filling included any that did not involve devitalisation of a root, whatever the size of the filling or the complexity of the treatment.**

**6. The Committee held that Rule No. 10 had been correctly applied and it advised rejecting the "complaint". The Director-General rejected it, and that is the impugned decision.**

**7. The Tribunal agrees with the Committee's interpretation.**

## **DECISION**

**For the above reasons,**

**The complaint is dismissed.**

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

**Delivered in public in Geneva on 10 July 1997.**

**William Douglas  
Mark Fernando  
Julio Barberis  
A.B. Gardner**