

EIGHTY-THIRD SESSION

In re Langelez (No. 6)

Judgment 1649

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr. Jean-Claude Langelez against the European Organization for Nuclear Research (CERN) on 29 June 1995 and corrected on 19 February 1996, CERN's reply of 22 May, the complainant's rejoinder of 13 November 1996 and the Organization's surrejoinder of 20 February 1997;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of a witness;

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

A. Facts relevant to this case appear under A in Judgments 1104, 1172, 1490 and 1551 on Mr. Langelez's first, second, third and fourth complaints.

By a letter of 26 April 1994 the Director of Administration of CERN told the complainant that he was to be dismissed for serious shortcomings in the performance of duty. In a letter of 27 May he asked that he be dismissed on medical grounds and, in one of 8 June, that his case be put to the Joint Advisory Rehabilitation and Disability Board. The Board ruled on 5 July 1994 that his request for dismissal on medical grounds was irreceivable and the Leader of the Personnel Division so informed him in a letter of 8 July.

By a letter of 8 June 1994 the Director of Administration told him on the Director-General's behalf that he would be dismissed at 30 September 1994. On 7 July he lodged an "administrative appeal" with the Director-General against that decision. The Director-General put his appeal to the Joint Advisory Appeals Board and in its report of 21 December 1994 it unanimously recommended rejecting it. By a letter of 16 January 1995 the Director informed the complainant that the Director-General did so and upheld the dismissal. By a letter of 27 January, which the Organization got on 30 January, he again asked the Director-General to put his case to the Disability Board and then to the Appeals Board and to reverse or suspend the decisions of 16 January 1995 and 8 June 1994. He states that he is challenging the implied rejection of those requests.

B. The complainant submits that his claims are not out of time: Articles 6, 7 and 8 of Annex 2 to Administrative Circular No. 14 (Rev.1) allow the filing of a claim up to ten years after the first appearance of the symptoms of service-incurred illness. He contends that the proceedings before the Disability Board were flawed since it gave him no hearing. He maintains that a change made in the shift system in 1985 was in breach of the Staff Regulations. When he protested he was taken off shift work altogether, and that, he says, was "sheer harassment". Citing legal opinion, he contends that his complaint is not time-barred. He seeks "the quashing of all the decisions affecting him ... since 3 October 1988 and to date".

He further seeks:

"1. The quashing of the decisions of 16 January 1995 and 8 June 1994 dismissing the complainant, who was ill at the time and had not been reassigned, on the grounds that the dismissal was improper.

2. Damages for the unlawful dismissal.

3. The joinder of this complaint with his [third, fourth and fifth] complaints, which raise the same issues as have arisen since 1984 from the decisions which have caused him injury.

4. Recognition that the post referred to in the Director-General's decision of 15 January 1991 was abolished (reclassified), and compensation for the injury the complainant suffered because the Disability Board failed to keep continuous watch on the later attempts to reassign him, although the Organization had a duty to reassign him to similar work; and damages.
5. Recognition of the fact that the complainant was not reassigned.
6. Appointment of a medical expert to give an opinion on the state of the complainant's health and the causes and origins of his illness and the possibilities of reassigning him in the Organization, or on medically certified incapacity in accordance with the rules of CERN's Pension Fund, on the grounds that the Director-General implicitly rejected his appeal of 27 January 1995.
7. An award of damages for all the problems and harassment which he has suffered at the hands of CERN or certain senior officers and which caused his illness and had psychosomatic effects which made his health worse.
8. Compensation for loss of earnings since 30 September 1994, when he was unlawfully dismissed.
9. Immediate reinstatement in the Organization and referral of his case to the Disability Board for an expert medical opinion and to the Joint Advisory Appeals Board once the Disability Board has notified its recommendations to the Director-General, as requested by the complainant in his appeal of 27 January 1995 to the Director-General and before that, on 29 September 1994, to CERN's medical service and to the Leader of the Personnel Division under Administrative Circular No. 14; and compensation for the additional injury caused by the fact that all those requests, which were legitimate, went unanswered.
10. Confirmation of his illness in accordance with Administrative Circular No. 14, in particular page 5.
11. Damages for any other injury suffered by the complainant which might come to light in the course of examinations, consultations of experts or other procedures during the Tribunal's consideration of his case.
12. Damages for the particular injury caused by prejudice on his supervisors' part and by the Organization's failure to protect him against such abuse in disregard of the Rules and Regulations (cf. ... decision of 10 April 1985) and its failure to honour promises arising out of that decision, which was itself unlawful and which it imposed on him by trickery, duress and violence."

He asks the Tribunal to order CERN to produce the minutes of the meeting that the Joint Advisory Appeals Board held on 24 November 1994.

C. CERN contends in its reply that its not answering the complainant's letter of 27 January 1995 amounts, "not to rejection, but to mere confirmation of the rejection already notified to him in its letter of 8 July 1994". He may not now challenge that letter because he failed to lodge a timely internal appeal. So his complaint is irreceivable because there is no decision under challenge. It would in any case be irreceivable because he has failed to exhaust the internal means of redress, having lodged no appeal against the supposedly implied decision.

The Organization's pleas on the merits are subsidiary. It submits that of his manifold pleas and claims only his application for referral to the Disability Board is material. There are no medical grounds for such referral. Besides, the rules he cites on proceedings before that Board apply to cases that are already referred to it, not to the receivability of an application for referral.

D. In his rejoinder the complainant argues that the decision of 8 July 1994 declaring irreceivable his application for referral to the Disability Board was "null and void" because it failed to inform him, as the Staff Rules and Regulations required, of his further remedies. So it set off no time limit. Notice of the Organization's intention of dismissing him came from the Director of Administration on 26 April 1994; yet only on 26 May 1994 did the Director get "delegation of authority" from the Director-General to sign correspondence with the complainant. CERN hid the real reason for his dismissal: it was to punish him for seeking office with the Staff Association. Acting through the Leader of the Personnel Division, the Director-General wilfully put pressure on the Disability Board.

CERN has failed to produce, as he asked, the minutes of the Appeals Board's meeting of 24 November 1994. That is an unfair impediment to his right of defence and shows CERN's malice against him. He seeks on that count an award of 200,000 Swiss francs in damages. Over and above reinstatement he wants an award of damages, in an amount he puts at 2 million Swiss francs, "for loss of earnings up to the age of 65 ...".

E. In its surrejoinder the Organization contends that the complainant utterly misconceives the decision he is impugning. What he is in fact challenging is not the implied rejection of his claims of 27 January 1995, as the

complaint form states, but the decision of 8 June 1994 dismissing him and the one of 8 July 1994 rejecting on the grounds of irreceivability his application to the Disability Board for dismissal on medical grounds. Both those decisions are now beyond challenge.

Even before the Director of Administration wrote his letter of 26 April 1994 he had authority to act on the Director-General's behalf. That letter cannot have been an act of reprisal since it was written before the complainant sought office with the Staff Association. CERN gave him a copy of the recording of the hearings before the Appeals Board; so it did meet his request.

CONSIDERATIONS

1. The main issue in this, the complainant's sixth complaint, is the lawfulness of the decision to dismiss him for serious shortcomings in the performance of duty. The factual background was set out under 1 to 3 in Judgment 1490 of 1 February 1996 on his third complaint.
2. By a letter of 26 April 1994 the Organization told him that it intended to dismiss him for unsatisfactory performance and that he might enter comment if he so wished. In his reply of 27 May 1994 he said that the rehabilitation proceedings that had followed CERN's acknowledgment of his disability had come to naught and that the proper way of putting an end to his appointment would be to dismiss him for "medically confirmed incapacity". By a decision of 8 June 1994 the Director of Administration confirmed his dismissal, on the grounds stated earlier, at 30 September 1994. In answer to a letter which the complainant had written on 27 May 1994 the Director explained that his ailments had already formed the subject of medical arbitration in 1988 and so there was no question of allowing his claim to dismissal for medically confirmed incapacity. On 7 July 1994 the complainant filed an internal appeal with the Director-General against that decision and the case went to the Joint Advisory Appeals Board. In its report of 21 December 1994 the Board recommended rejecting it. By a decision of 16 January 1995 the Director-General did so.
3. On 8 June 1994 the complainant had applied to the Organization for referral to the Joint Advisory Rehabilitation and Disability Board. That Board met on 30 June 1994. In its report of 5 July 1994 it observed that the complainant had been declared disabled in 1988, that he had been on regular day-shifts since 1991 and that he was not offering any new medical evidence. Its conclusion was that his claim to dismissal for medically confirmed incapacity was irreceivable. By a letter of 8 July 1994 the Leader of the Personnel Division told him of the Board's report.
4. On 29 September 1994 the complainant again applied for referral to the Disability Board. The Organization did not act on that application. On 27 January 1995 he put new claims to the Director-General to the quashing or suspension of the decisions of 8 June 1994 and 16 January 1995 to dismiss him and to the reconvening of the Appeals Board, after the review by the Disability Board that he had asked for on 29 September 1994. Again the Organization did not answer.
5. The complainant is objecting to the Organization's refusal to allow his claims of 27 January 1995. His main claims are that the Tribunal allow his application of 29 September 1994 for referral to the Disability Board and quash "the decisions of 16 January 1995 and 8 June 1994 dismissing the complainant, who was ill at the time and had not been reassigned".
6. The defendant submits that the complaint is irreceivable on the grounds that it is not challenging any decision to reject the complainant's internal appeals and that he has failed to exhaust his internal remedies. It contends that the absence of a reply to his claims of 27 January 1995 did not amount to rejection, but confirmed both the decision of 8 July 1994 to reject his claim to dismissal on the grounds of medically confirmed disability and the dismissal of 8 June 1994 confirmed on 16 January 1995.
7. There is no need to determine whether, as the complainant submits, there was new evidence in the form of medical certificates to support his application of 27 January 1995 for a new referral to the Disability Board, or whether the rejection of that application was mere confirmation of earlier rejections. All that need be said is that the complaint is challenging both the dismissal of 8 June 1994 confirmed on 16 January 1995 and the implied rejection of his application of 29 September 1994 for referral to the Disability Board.
8. According to Article VII of the Tribunal's Statute -

"1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations.

2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published.

3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration."

Moreover, according to Regulation R VI 1.05 of the CERN Staff Regulations which were in force at the material time a substantiated appeal against any decision by the Director-General must be made within sixty days of the notification of the decision challenged. If the Director-General, on receipt of a written claim, does not act on it within sixty calendar days, the time limit runs from the sixtieth day.

9. If he wished to challenge the final decision of 16 January 1995 confirming the one of 8 June 1994, the complainant had to come to the Tribunal within the ninety days provided for in Article VII(2) above as from the date of notification. Since he had notice of the decision on 20 January 1995, the last day for filing his complaint was 20 April 1995. Since he did not file it until 29 June it is irreceivable.

10. Insofar as the complainant is objecting to the Organization's failure to act on his claims of 29 September 1994, his complaint is again irreceivable. In accordance with the above rules the Director-General had sixty days in which to act on the request. If he failed to do so the complainant had sixty days plus ninety in which to file his complaint. So the deadline for filing his complaint was 26 February 1995. Again it is irreceivable.

11. The conclusion is that the complaint is irreceivable because the time limits in the Tribunal's Statute have not been met. The claims to awards of damages against the Organization must therefore also fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

(Signed)

**Mella Carroll
E. Razafindralambo
Egli
A.B. Gardner**