

EIGHTY-EIGHTH SESSION

In re Palma (No. 7)

Judgment 1919

The Administrative Tribunal,

Considering the seventh complaint filed by Mr Francesco Palma against the European Southern Observatory (ESO) on 27 June 1998, the ESO's reply of 21 September, the complainant's rejoinder of 17 October and the Observatory's surrejoinder of 10 November 1998;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, an Italian born in 1948, served on the staff of the ESO from 1 September 1989 to 31 August 1995. Information on his career and other material facts are set out in Judgment 1665 of 10 July 1997 on his complaint against the European Organization for Nuclear Research (CERN), in Judgment 1718 of 29 January 1998 on his first complaint against the ESO and in Judgment 1785 (*in re* Palma No. 2) of 28 January 1999.

On 28 June 1995, the complainant was informed of the decision to place him on special leave with immediate effect while an investigation was conducted into an allegation of fraud against him. He had to leave the Observatory's premises immediately. The ESO asserts that no disciplinary measures were taken in the case because the complainant's fixed-term contract was coming to an end.

By a letter of 18 February 1998, the complainant requested the Director General of the ESO to disclose to him copies of any documents concerning the investigation conducted in July and August 1995. He received no reply. On 14 April 1998 he lodged an internal appeal with the same objective. Having received no reply within the period of sixty days which he had given the Director General to answer, he states that he is contesting the "implied negative decision" concerning his appeal.

B. The complainant contends that the requested documents would prove that he had committed no fault. His placement on special leave was, therefore, unlawful and the implementation of that decision was in breach of his fundamental rights; he refers in particular to those set out in the Universal Declaration of Human Rights. He accuses the Head of Contracts and Procurement, the Head of the Personnel Department, the Head of Administration and the Director General of having condemned him to "exile".

He requests the Tribunal to set aside the impugned implicit decision, order the disclosure and delivery of the requested documents and grant him costs.

C. In its reply the Observatory argues that the complainant does not allege an infringement of the terms of his contract of employment nor the provisions of the ESO Staff Regulations, as required by Article II, paragraph 5, of the Statute of the Tribunal. It submits that the Tribunal is not competent to order the discovery of documents.

It contends that staff members, and *a fortiori* former staff members, do not have access to files other than their personal administrative file. The complainant consequently has no right to obtain the information requested.

It adds that the complainant never challenged the decision of 28 June 1995 to place him on special leave and that he is now time-barred from doing so.

D. In his rejoinder the complainant asserts that the ESO's statement, that no disciplinary measures were taken in his case in view of the termination of his contract, is a lie. The fact that the Observatory offered on 30 June 1995 to pay him all the indemnities to which he was entitled upon the termination of his contract proves, in his view, that the allegations of fraud were not well-founded. He takes the ESO to task for its bad faith and accuses it of endeavouring to obstruct justice. He refers to Article I 3.07 of the International Staff Rules regarding the obligation of the ESO to protect staff members. He accuses the Director General of failing in his duty by not convening the Joint Advisory Appeals Board. Finally, he expresses the view that the issue of the receivability of his complaint does not arise, since the acting Head of Administration informed him on 28 July 1995 that he could not appeal against a disciplinary measure which had not been taken.

E. In its surrejoinder the Observatory submits that the legal issue raised in the present complaint has already been submitted for review by the Tribunal in the complainant's second complaint. It denies that the acting Head of Administration discouraged the complainant from appealing. Finally, it asserts that the requested documentation does not exist.

CONSIDERATIONS

1. The complainant entered the service of the ESO on 1 September 1989. His first contract, of a duration of three years, was followed by another, also for three years, which expired on 31 August 1995. The Head of Personnel informed him, in a letter of 26 January 1995, that his contract would not be extended beyond 31 August 1995.

2. The Tribunal, in Judgment 1665 (*in re* Palma) under 10, found that the complainant had not challenged that decision and that he was, therefore, time-barred from doing so.

3. On 28 June 1995 the Observatory decided to place the complainant on special leave with immediate effect while an investigation was conducted into an allegation of fraud against him. This decision was not challenged by the complainant.

4. In a letter of 18 February 1998 the complainant requested the Director General to provide him with a copy of any documentation concerning the above investigation. This letter remained unanswered.

5. On 14 April the complainant lodged an internal appeal with the Director General and, having received no reply, filed the present complaint on 27 June 1998 under Article VII, paragraph 3, of the Statute of the Tribunal. He requests the Tribunal:

(a) to quash the implied decision to dismiss his internal appeal and to order the Observatory to disclose and deliver all the documentation requested;

(b) to order the reimbursement of a fair and adequate amount in costs.

6. The Tribunal observes that the complainant's claims are identical to those covered by a previous complaint, which was dismissed in Judgment 1785 (*in re* Palma No. 2). The complainant has no grounds for challenging a decision which is *res judicata*.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Julio Barberis, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

(Signed)

Michel Gentot
Julio Barberis
Seydou Ba

Catherine Comtet

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