

CONSEIL DE L'EUROPE—— ——COUNCIL OF EUROPE

COMMISSION DE RECOURS APPEALS BOARD

Appeals Nos. 48 and 49/1978 (William WORSDALE (II and III) v. Secretary General)

The Appeals Board, sitting in private in Strasbourg, on 30 April 1980, under the chairmanship of Mr H. DELVAUX and in the presence of:

Mr H. KITSCHENBERG, Deputy Chairman, and
Mr S. CANTONO DI CEVA,

assisted by:

Mr A. PLATE, Secretary, and
Miss D. COIN, Substitute Secretary,

Having deliberated,

PROCEDURE

The appellant, represented by Maîtres A. LYON-CAEN, F. FABIANI and L. LIARD, barristers at the Council of State and the Paris Court of Cassation, lodged an appeal on 4 September 1978. The appeal was registered on 5 September 1978 under file No. 48/1978.

The appellant lodged a second appeal on 15 October 1978. That appeal was registered on 24 October 1978 under file No. 49/1978. The appellant filed further pleadings on 12 February 1979.

By order of 29 March 1979, the Chairman of the Appeals Board decided the joinder of Appeals Nos. 48/1978 and 49/1978, in accordance with Rule 21 of the Rules of Procedure of the Appeals Board.

The Secretary General submitted his observations on 11 June 1979.

The appellant answered these observations in a reply dated 4 February 1980.

On 7 March 1980, the *Secretary* General submitted further observations.

The public hearing was held at Strasbourg on 29 April 1980, in the presence of the appellant, assisted by Maitre A. Lyon-Caen, and of Mr E. Harremoes, representing the Secretary General, assisted by Mrs C. Apprill.

THE FACTS

The facts as submitted by the parties, which are not in dispute, may be summarised as follows:

Mr William Worsdale is a British citizen, born in Stoke-on-Trent (Great Britain) on 26 June 1927. He took up employment with the Council of Europe Secretariat on 12 June 1961 and, at the time of the disputed decision, was an interpreter on grade LI 4.

When he was appointed to the Council of Europe Secretariat, the Secretary General sent him, on 4 May 1961, a letter of appointment which stated that he would be entitled to two further steps in the salary scale when he had acquired a third working language. As from 1973, the appellant was required to work in a third language and he informed the Head of the Establishment Division orally of his intention to ask that the two steps be awarded.

In reply, he was told that, having already reached the last step in his grade, the possibility no longer existed.

In a memorandum dated 20 December 1977 to the Head of the Establishment Division, the appellant asked to be granted an allowance corresponding to two steps in his grade by virtue of his knowledge of German.

In a memorandum dated 10 March 1978, the Director General of Administration and Finance rejected this request on the grounds that the grant of such an allowance was not provided for in any of the Regulations.

On 17 March 1978 the appellant wrote to the Secretary General asking him to instruct the Administration to reverse its decision and grant him the allowance he claimed.

On 17 April 1978 the Secretary General replied that it was no longer possible to grant him the supplementary steps since he had reached the last step in his grade.

On 21 April 1978 the appellant asked the Secretary General to bring the matter before the Advisory Committee on Disputes.

On 11 May 1978 the Advisory Committee on Disputes gave its opinion that amendments to the relevant Regulations meant that it was no longer possible to award supplementary steps in mid-career. It nevertheless invited the appellant to apply to the Secretary General for an allowance on the basis of Article 18 of the Staff Regulations concerning the remuneration for "special responsibilities".

Referring to that opinion, the appellant applied to the Secretary General on 17 May 1978 for an allowance by virtue of the provisions of Article 18 of the Staff Regulations.

In a memorandum of 9 August 1978, the Secretary General rejected this request.

On 4 September 1978, the appellant lodged a first appeal which was registered on 5 September 1978 under file No. 48/1978.

On 7 September 1978, the appellant requested the Secretary General to reverse his decision. The same day he wrote to the Secretary of the Appeals Board asking him to take the necessary steps to suspend the examination of his appeal pending the outcome of his latest approach.

On 28 September 1978 the Secretary General informed the appellant that, in the absence of fresh facts, his refusal stood.

On 15 October 1978, the appellant lodged a second appeal, which was registered on 24 October 1978 under file No. 49/1978.

The present appeals are against the Secretary General's refusal to grant the appellant an allowance for a third working language.

SUBMISSIONS OF THE PARTIES

As to the admissibility of Appeal No. 48/1978

The appellant points out that the two appeals have a single purpose and that Appeal No 48/1978 is based not merely on the Secretary General's failure to observe of contractual undertakings but also on his misinterpretation of Article 18 of the Staff Regulations.

The appellant supports his argument by referring to the "somewhat irregular" procedure preceding the lodging of that appeal which had caused the delay and terminated in the Secretary General's decision of 9 August 1978. In his view, it is that decision which constitutes the rejection referred to in Article 32 of the Staff Regulations.

The Secretary General alleges the inadmissibility of Appeal No. 48 for failure to observe the time-limits laid down in Article 32. The rejection referred to in Article 32 is in reality the Secretary General's reply of 17 April 1978, and not the decision of 9 August as the appellant claims. From this he infers that the appeal of 4 September was entered out of time.

The merits

A. The **appellant's submissions** may be summarised as follows:

The appellant bases his request for an allowance on two factors: firstly, the Secretary General's undertaking in the letter dated 4 May 1961; secondly, Article 18 of the Staff Regulations which provides for the possibility of remuneration for "special responsibilities". With regard to the Secretary General's undertaking to grant him two supplementary steps when he had acquired a third working language, the appellant sees two possible interpretations. Either this undertaking was consistent with the Staff Regulations and, the texts on this point having remained unchanged in that the principle of continuous advancement from one step to the next was already operative in 1961, the promise remains valid. Or the

promise was contrary to the Regulations, in which case it constituted a fault on the part of the Administration which would entitle him to compensation.

The appellant opts for the first interpretation and infers from it that the promise of two steps could refer only to an allowance corresponding to two such steps.

Besides, do not the steps themselves amount in any case to an allowance?

It cannot therefore be argued that no step can be awarded to the appellant because he has already reached the last step in his grade. As regards the system for remunerating the knowledge of additional languages, which takes account only of knowledge acquired before taking up duties and not during a career, the appellant points out that the system is both discriminatory, in that officials performing similar duties are treated differently, and prejudicial to the Council, since there is no incentive for officials to acquire further knowledge and above all to put it at the Council of Europe's disposal.

Article 18 of the Staff Regulations provides that: "The Secretary General may award a special allowance to members of the staff performing duties of special responsibility beyond that normal for their rank".

The appellant submits that non-official languages put at the disposal of the Council of Europe constitute special responsibilities within the meaning of Article 18.

The appellant bases this allegation on the job descriptions which require interpreters to have two working languages. If the interpreters had no languages other than the official languages, recourse would have to be had to other interpreters, since Italian and German are working languages.

Since the Secretary General has discretionary powers, he cannot take refuge behind an impossibility based on the texts. Furthermore, the special responsibility allowance is the only means of remedying the discrimination referred to above.

B The Secretary General's submissions may be summarised as follows:

On the argument based on the letter of 4 May 1961:

The appellant confuses fixing of salary at the time of appointment and promotion.

The steps referred to in the letter of 4 May 1961 were part of the conditions of appointment and do not therefore relate to the promotion from one step to the next. It cannot therefore be submitted that the Secretary General's promise can only correspond to an allowance. Furthermore, the terms of the letter are clear: it speaks of steps and not allowances.

It assumed that steps were still available, since no text provides for going beyond the steps laid down.

The argument based on failure to observe the undertakings in the letter of 4 May 1961 therefore seems to him to be without foundation.

On the argument based on the principle of non-discrimination:

The principle implies that persons in a similar situation, both in fact and in law, be treated equally in the eyes of the law.

But the allegation that some interpreters receive an allowance for a third language and others not is incorrect.

The difference in salary is merely the consequence of the conditions of employment, and this possibility was granted to the appellant.

What is more, if such an allowance were in fact granted, it would amount to discrimination with respect to the other categories of officials.

On the argument based on Article 18 of the Staff Regulations:

The extra duties required of the appellant cannot be considered “special responsibilities” within the meaning of Article 18. The duty to put one’s abilities at the disposal of one’s employer is a principle inherent in the civil service. It can be regarded only as a factor to be taken into account when promotion is being considered.

Moreover, in the notification of vacant posts, it is clearly stated that qualifications over and above the minimum required are desirable.

Furthermore, such duties do not entail extra work outside of normal hours.

To the argument that this Article would enable a remedy to be found for discriminatory treatment arising from the application of the system, the Secretary General objects that it would lead to another form of discrimination since some duties would be assimilated to special responsibilities and others not.

FINAL SUBMISSIONS OF THE PARTIES

The appellant requests the Appeals Board:

- To set aside the Secretary General’s decisions;
- To recognise his right to an allowance for his services in a third language.

The Secretary General requests the Appeals Board:

- Principally to declare Appeal No. 48 inadmissible;
- Alternately to declare it ill-founded and to dismiss it;
- To declare Appeal No. 49 ill-founded and to dismiss it.

THE LAW

Admissibility

It emerges from the above statement of the facts final, by seising the Advisory Committee on Disputes at the appellant's request, the Secretary General implicitly, but not necessarily, accepted that his decision of 17 April 1978 was not yet to be considered final within the meaning of Article 32, paragraph 3, of the Staff Regulations, in that according to paragraph 2 of that Article, the opinion of the Advisory Committee on Disputes must precede that decision. It follows that the appellant was justified in considering that the decision against which one could appeal could only be the one taken after the Advisory Committee on Disputes had given its opinion, i.e. the decision of 9 August 1978.

In lodging his appeal on 4 September 1978, the appellant was within the time-limits laid down in Article 3, paragraph 3, of the Statute of the Appeals Board and his appeal is therefore admissible.

With regard to his second appeal, its admissibility has not been contested.

The merits

To justify his request for the awarding of an allowance for his knowledge, appellant relies in the first place on the promise made in the latter of 4 May 1961 to grant him two extra steps when he had acquired a third working language.

The Appeals Board considers that the appellant's argument cannot be accepted, since the steps referred to are part of the conditions of appointment and cannot be construed as giving rise to an allowance; moreover, that, having reached the last step in his grade in 1972, it is no longer possible to grant him two extra steps.

The appellant relies secondly on the discrimination said to result from the fact that certain of his colleagues, who are required to perform similar duties to his own, have been awarded extra steps.

It should be pointed out that those steps are the consequence of the conditions of appointment of the officials concerned, which are identical to the appellant's own and are an advantage which they will lose on reaching the last step in their grade.

The argument based on the principle of non-discrimination cannot therefore be accepted.

The appellant relies on thirdly Article 18 of the Staff Regulations, according to which "the Secretary General may award a special allowance to members of the staff performing duties of special responsibility beyond that normal for their rank" by submitting that his services in a third language constitute such special responsibility.

The Board considers that this argument cannot be accepted, since Article 18 does not give officials a right to such an allowance, which is left to the Secretary General's discretion.

It follows that, the appeals are without foundation.

Now, therefore, the Appeals Board,

1. Declares the appeals admissible;
2. Declares them ill-founded and dismisses them;
3. Decides that each Party shall bear its own costs.

Done in French at Strasbourg on 30 April 1980.

The Chairman of the
Appeals Board

H. DELVAUX

The Secretary to the
Appeals Board

A. PLATE