

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

COMMISSION DE RECOURS APPEALS BOARD

Appeal No. 6/1971 (David Follett PUGSLEY (II) v. Secretary General)

The Appeals Board, sitting in Strasbourg on 2 December 1971, under the presidency of Mr. G. H. van HERWAARDEN, Deputy Chairman, and in the presence of:

MM. H. DELVAUX, Member, and
S. VEROSTA, Substitute Member

assisted by:

MM. K. ROGGE, Secretary, and
T. GRUBER, Substitute Secretary

Having deliberated.

PROCEDURE

1. The appellant, Mr D.F. PUGSLEY, introduced the present appeal on 27 August 1971. The appeal was registered on the same day under file No. 6/1971.

2. The Secretary General, represented by Mr. H. GOLSONG, Director of Legal Affairs, submitted his comments on the appeal on 27 September 1971.

The appellant's observations in reply were received on 28 October 1971.

3. By letters of 29 November 1971 the parties informed the Board that they did not wish to avail themselves of an oral hearing in this case.

After having deliberated in private, the Board has given the present decision.

THE FACTS

The facts not in dispute between the parties may be summarised as follows:

4. David Follett PUGSLEY, a British citizen born in 1944, was on 1 October 1969 appointed a temporary staff member for a period of three months. This contract was renewed

in December 1969 for a further period of one year and in January 1971 for a further period of six months. On 1 July 1971 the appellant was appointed a permanent staff member, grade A2, and received a fixed term contract of two years' duration. His resignation from the Council of Europe will take effect on 14 February 1972.

5. As a permanent staff member, the appellant was under Art. 6 of the Regulations Concerning Salaries and Allowances of the Permanent Staff entitled to a settling-in allowance which, in his case, amounted to one-twelfth of his basic annual salary. This allowance was duly paid.

6. On 27 July 1971 the appellant requested the payment of a corresponding cost-of-living allowance, but this was refused by the Finance Division.

7. On 28 July he made an application to the Secretary General, under Art. 25 (1) of the Staff Regulations, requesting a decision "that I am entitled to a cost-of-living allowance equal to 15 % of the proportion of my basic annual salary which I have received as a settling in allowance".

On 24 August this request was, in the name of the Secretary General, refused by the Director General of Administration and Finance.

Submissions and conclusions of the parties

8. The **appellant** submits that, under Art. 4 bis of the Regulations Concerning Salaries and Allowances of the Permanent Staff, he is entitled to a cost-of-living allowance equal to 15 % of his settling-in allowance.

He asks the Board to decide, as a matter both of interpretation and of justice, that he is entitled to this allowance.

9. The **Secretary General** submits that the applicant's claim finds no basis whatsoever in the above Regulations.

He requests the Board to declare that the appeal is totally without foundation.

THE LAW

As to the procedure

10. The Board notes the parties' declarations of 29 November 1971, made in conformity with Rule 9 (1) of its Rules of Procedure, that they do not wish to avail themselves of an oral hearing in the present case; it accepts this renunciation.

As to the appeal

11. The appellant claims a cost-of-living allowance equal to 15% of his settling-in allowance. He invokes Art. 4 bis of the Regulations Concerning Salaries and Allowances of the Permanent Staff which provides that a cost-of-living allowance of 15% of the following components of remuneration shall be granted to the permanent staff:

- basic salary;
- head-of-family allowance;
- allowance in respect of dependent children or other dependants;
- proportional part of the expatriation or residence allowance.

12. The appellant's claim cannot be based on Art. 4 bis. It follows from the text of this provision that the cost-of-living allowance is calculated with reference to four components only, namely, basic salary, head-of-family allowance, allowance in respect of dependants, and proportional part of the expatriation or residence allowance.

The settling-in allowance is not included in this list and the Board does not find that it could-as suggested by the appellant-be added by way of an interpretation. Such an interpretation would be contrary not only to the clear wording of Art. 4 bis but also to the context.

The Board observes in this connection that the components mentioned in Art. 4 bis are all dealt with in the preceding articles-basic salary in Art. 1, head-of-family allowance in Art. 2, allowance in respect of dependants in Art. 3 and proportional part of expatriation or residence allowance in Art. 4. They thus distinguish themselves from the allowances provided for in the subsequent Arts. 5 to 10, including the settling-in allowance referred to by the appellant, which is based on Art. 6 (cf. para. 5 above).

The Board also notes that there is an essential difference between the cost-of-living allowance mentioned in Art. 4 bis and that claimed by the appellant, in that the former constitutes part of the monthly salary while the latter, if it were granted, could be claimed only once.

The Board finds that there is consequently no analogy-either between the components mentioned in Art. 4 bis and the settling-in allowance, or between the cost-of-living allowance provided for by Art. 4 bis and the allowance claimed by the appellant-which could conceivably justify the appellant's interpretation of Art. 4 bis-an interpretation which would be contrary to the clear wording of this provision and to the context.

13. The Board concludes, therefore, that the appellant's claim is without any foundation.

As to costs

14. The Board notes that the Secretary General has not applied for costs against the appellant. It considers that the appeal cannot be regarded as really abusive within the meaning of Art. 6 (3) of the Statute.

Now therefore the Appeals Board

1. Accepts the parties' declaration that they do not wish to avail themselves of a hearing;
2. Declares the appeal admissible;
3. Decides that the appeal is ill-founded and rejects it;
4. Decides that each party shall bear its own costs.

Done in English and French, the English text being authentic.

Deputy Chairman

G.H. HERWAADEN

Secretary

K. ROGGE