

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

COMMISSION DE RECOURS APPEALS BOARD

Appeal No. 1/1967 (Marie-Thérèse TERRAIN v. Secretary General)

Session of the Appeals Board held on 20 August 1968, in Strasbourg.

Present: MM. E. HAMBRO, Chairman
 G.H. van HERWAARDEN, Deputy Chairman
 M. RECKINGER, Member

assisted by:

Mr. K. ROGGE, Secretary to the Appeals Board

The Appeals Board, having regard to:

- The appeal lodged on 7 November 1967, by Marie-Thérèse TERRAIN against the Secretary General of the Council of Europe, supplemented by the appeal form of 16 November and registered on 20 November 1967;
- The Secretary General's observations of 23 February 1968;
- The appellant's réplique of 5 May 1968;
- The Secretary General's further observations of 15 July 1968;
- The appellant's letters of 2 January and 7 June 1968, stating that she is not in a position to appear at a hearing before the Appeals Board;
- The Secretary General's declaration of 15 July 1968, that he does not wish to avail himself of a hearing insofar as the admissibility of the appeal is concerned;
- The appellant's letter of 24 July, 1968;
- The Secretary General's reply of 7 August 1968.

THE FACTS

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

The appellant, having first served as a temporary staff member, was on 9 March 1967, appointed a permanent staff member with effect of 1 April 1967, and received a fixed term contract as typist in the Secretariat of the Council of Europe.

On 19 May- 1967, a discussion took place between the Deputy to the Head of the Establishment Division and the appellant.

By letter of 25 May, the Secretary General informed the appellant in writing of his decision to terminate her contract on 25 June 1967.

By letter of 12 June 1967, the appellant applied to the Secretary General for the withdrawal or amendment of his above decision. The Secretary General, while in principle upholding his decision, nevertheless, having learned that his letter of 25 May had not reached the appellant until 2 June, decided on 22 June that her contract should expire on 1 July, instead of 24 June 1967. This decision was communicated to the appellant on 24 June 1967.

From 20 May until 13 November 1967, the appellant received sickness insurance benefits.

Between 28 June and 4 September 1967, she wrote the following letters to the Secretary General:

1. Letter of 29 June 1967, concerning payment of her salary;
2. Letter of 29 June 1967, requesting information regarding her sickness insurance;
3. Letter of 25 July 1967, requesting a statement of her salary;
4. Letter of 31 July 1967, requesting:
 - a. a statement of the periods of her employment with the Council of Europe as a temporary and as a permanent staff member; and
 - b. a statement to the effect that, following the Secretary General's decision of 22 June, she has ceased to be a staff member on 2 July 1967;
5. Letter of 9 August 1967, concerning various questions arising in connection with her former employment in the Council of Europe; and
6. Letter of 3 September 1967, referring to her above application of 12 June to the Secretary General and contesting the terms of her dismissal.

Submissions of the parties

Whereas the submissions made by the parties may be summarised as follows:

As to the admissibility of the appeal

The appellant states that, by reason of her illness (sciatica), she was unable to seize the Appeals Board, in accordance with Article 3, paragraph (3), of its Statute, within thirty days of 24 June 1967, the date of notification of the Secretary General's above decision of 22 June 1967. She submits that her state of health prevented her from introducing her present appeal before 7 November 1967, and argues that this appeal, although lodged out of time, should be admitted by the Board on the ground of the above exceptional circumstances.

After the close of the written proceedings, the appellant addressed on 24 July 1968, a further letter to the Appeals Board in which she stated *inter alia*:

"I assume that the assistants of the Legal Directorate have had the honesty to report the conversation they had with me in June 1967, when they tried to make me abandon the idea of an appeal, emphasizing that the Board could not challenge a decision of the Secretary General. Having the contrary opinion, I retorted that I would bring this appeal if the Secretary General confirmed a decision which seemed to me unjust and abusive."

The Secretary General submits that the appeal should be rejected under Article 3, paragraph (3), of the Statute as having been lodged out of time. He argues that, in the present case, there are no "exceptional circumstances" within the meaning of this provision and states in particular that the appellant's illness did not prevent her from writing several letters concerning other administrative matters during the thirty days following notification of his decision of 22 June 1967, which the appellant received on 24 June.

In reply to the appellant's above letter of 24 July 1968, the Deputy to the Legal Director of the Secretariat, acting on behalf of the Secretary General, declared in his letter of 7 August 1968:

"Only Mr Golsong and myself are competent, within the Legal Directorate, to give an opinion on disputes which may arise between an agent and the Council of Europe. In the present case, neither Mr Golsong nor I have been approached by Mme Terrain. If Mme Terrain has sought advice from one or more agents in the Legal Directorate, such conversation must be regarded as a purely private matter.

In any event, it is unlikely that a lawyer could have advised Mme Terrain that 'the Board could not challenge a decision taken by the Secretary General'.

The allegation in her letter of 24 July 1968 is probably the result of a confusion on her part concerning certain rules in the Statute of the Appeals Board, in particular Article 3, paragraph 1, which provides that 'no appeal shall be admissible unless the appellant has previously filed an application in accordance with Article 25, paragraph 1, of the Staff Regulations'."

As to the merits of the case

The appellant states that she was on sick leave when she received the written notice of her dismissal. She refers to Regulation No. 61 of 12 June 1950, concerning sick leave and argues that, in accordance with Articles 1 and 5 of this Regulation, her contract could not be terminated by the Secretary General before 2 October 1967.

The Secretary General states that notice was given to the appellant orally on 19 May 1967, i.e. during her period of probation and before she fell ill on 20 May. Consequently, under Article 19 of the Staff Rules, her contract could be terminated by one month's notice.

Object of the appeal

Whereas, in her appeal form of 16 November 1967, the appellant claims her full salary, after deduction of the amount received from her insurance, for the period from 2 July until 1 October 1967.

THE LAW

Whereas, first, with regard to the parties' submissions in general, it is to be observed that the appellant's letter of 24 July 1968, was addressed to the Appeals Board after the written proceedings had been terminated; whereas, in examining the question whether this letter should nevertheless be considered in the examination of the appeal, account has been taken of the appellant's declaration that's he is not in a position- to appear at a hearing before the Appeals Board; whereas, in these circumstances, the Board has decided to take into consideration her written observations of 24 July, as well as the Secretary General's reply of 7 August 1968;

Whereas, further, concerning the admissibility of the present appeal, Article 3, paragraph (3), of the Statute of the Appeals Board provides:

"Appeals shall be lodged with the Secretariat of the Appeals Board within thirty days of notification of the Secretary General's decision to reject the application ... In exceptional cases, however, the Appeals Board may declare admissible an appeal lodged after the expiry of these periods."

Whereas, regarding the first sentence of this provision, it is not disputed between the parties that the decision concerned was communicated to the appellant on 24 June 1967; that the present appeal was lodged with the Secretariat of the Appeals Board on 7 November 1967; and that, consequently, it was introduced after the expiry of the prescribed time-limit.

Whereas, however, it remains to be examined whether there are in the present case any "exceptional circumstances" in which an appeal filed out of time may nevertheless be declared admissible by the Board under Article 3, paragraph (3), *in fine*;

Whereas, in this respect, the appellant submits that her illness prevented her from observing the time-limit laid down in the first sentence of Article 3, paragraph (3); whereas, this allegation is contested by the Secretary General;

Whereas the Appeals Board, having regard to the documents submitted by the parties, finds that there is evidence to show that the appellant was in fact ill during the thirty days following notification of the Secretary General's decision of 22 June 1967; whereas, however, she has failed to establish that this illness prevented her from seizing the Appeals Board during this period; whereas it is indeed not disputed between the parties, that, during the same period, the appellant wrote several letters on other administrative matters to the Secretary General;

Whereas, further, it does not appear from the appellant's own submissions of 24 July 1968, that her delay in introducing the present appeal was in any way due to the information allegedly given to her by members of the Legal Directorate;

Whereas, in conclusion, the Appeals Board holds that there are in the appellant's case no exceptional circumstances in which an appeal filed out of time may be declared admissible under Article 3, paragraph (3), *in fine*, of its Statute;

Whereas, indeed, application of the above clause in cases like the present one would render ineffective the time-limit laid down in the first sentence of Article 3, paragraph (3);

Whereas, concerning the costs, it is possible that the appellant entertained an expectation, even though unjustified, that her appeal would be successful and in these circumstances the Board is of the opinion that the appeal cannot be considered as really abusive within the meaning of Article 6, paragraph (3) of the Statute; whereas, moreover, the Secretary General has not applied for costs against the appellant.

Now therefore the Appeals Board:

1. decides to declare the appeal inadmissible and rejects it;
2. decides that each party shall bear its own costs.

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

Chairman of the
Appeals Board

E. HAMBRO

Secretary to the
Appeals Board

K. ROGGE