

Decision of the Appeals Board of 25 September 1992
Appeal No. 169/1992 (NILSSON v. Secretary General)

The Appeals Board, composed of:

Mr Carlo RUSSO, Chairman,
Sir Donald TEBBIT, member, and
Mr Kåre HAUGE, substitute member,

assisted by:

Mr Michele de SALVIA, Secretary and
Mr Christos GIAKOUMOPOULOS, Deputy to the Secretary,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant lodged his appeal on 13 March 1992. It was registered on the same day in the register of the Appeals Board under number 169/1992.
2. The Secretary General's observations were submitted to the Board on 6 May 1992.
3. The appellant's reply is dated 12 May 1992.
4. On 26 June 1992 the Board decided to ask the Secretary General to produce the minutes of the meeting of the Transfers and Promotions Panel, which she did on 21 July 1992.
5. The appellant defended his case himself; the Secretary General was represented by Mr P. MAHONEY, Head of Establishment Division. The parties gave notice of their intention to waive oral proceedings in this case.

THE FACTS

6. The appellant entered the Council of Europe's service on 1 September 1986. He is a permanent member of staff and currently holds a post (grade A3) in the Directorate of Legal Affairs.
7. On 5 September 1991 the Secretary General opened for internal competition, by Vacancy Notice n° 92/91, a post of Principal Administrative Officer in the Directorate of Legal Affairs, for which the appellant and eight other officials applied.

8. On 29 October 1991 the appellant was informed that Mr C. de SOLA had been appointed to the post in question.

9. On 31 October 1991 the appellant and four other candidates asked the Administration to state how far the candidate appointed met two of the conditions required in the Vacancy Notice, namely “wide professional experience in the legal field” and “practical experience of the work of committees and commissions”.

10. On 21 November 1991 the Administration confirmed that the Transfers and Promotions Panel had recommended the appointment of Mr C. de Sola after taking into consideration all the qualifications required by the Vacancy Notice.

11. On 27 November 1991 the appellant lodged an administrative complaint. The complaint was rejected on 5 February 1992.

THE LAW

12. The appellant’s appeal is directed against the decision whereby the Secretary General appointed Mr C. de Sola to a post of Principal Administrative Officer (grade A4) in the Directorate of Legal Affairs, declared vacant by Vacancy Notice No. 92/91, of 5 September 1991.

13. The appellant, having been informed of the decision in a memorandum dated 29 October 1991, considers that it was based on a manifest error of judgment in assessing the professional experience of the candidate appointed and the other candidates in the legal field.

He also argues that the Transfers and Promotions Panel and the Secretary General attached too much importance to the length of service of the candidate appointed, whereas, under the terms of Article 22 of the Regulations on Appointment, length of service is only to be taken into consideration when the candidates are of equal merits.

14. The appellant alleges that the legal experience of the candidate appointed dated back a considerable time and was in fact of short duration. It had been acquired in the Secretariat of the Committee of Ministers, and was different from that required by work with committees of experts in the Directorate of Legal Affairs.

15. According to the appellant, the experience acquired by the candidate in his work, first in the Secretariat of the Committee of Ministers and subsequently in the Establishment Division, could not be described as “wide professional experience in the legal field”. Administrative officers attached to the Committee of Ministers did not perform the work of lawyers, and frequently had no legal training. While the duties carried out by the successful candidate in the Establishment Division presented aspects of a lawyer’s work, to some extent, they were principally administrative and were not such as to have given him “professional” experience - let alone “wide” professional experience - in the legal field.

16. The Secretary General recalls her discretionary power regarding personnel management. She considers that the only issue arising in the present case is whether she overstepped her

discretionary power. She argues that she clearly did not do so. The Secretary General therefore calls for the appeal to be rejected.

17. The Board notes that the present case is a dispute concerning promotion. In this connection, the following principles arise from the Board's case-law.

18. The Secretary General's broad discretionary powers in the field of "personnel management" stem from the fact that, having been vested with the power to appoint (Article 36c of the Statute of the Council of Europe, and Article 11 of the Staff Regulations) and being principally responsible for the organisation of the Secretariat, she is the best qualified to ascertain and assess the Organisation's need. When it comes to appointments, she has a broad margin for judging factual elements, not only the necessities of each department of the Secretariat, but also the professional skills of staff members.

However, the power of free assessment must always be exercised within legal limits. The decisions have to be taken with due regard for the forms and procedures laid down in the regulations in force. The administrative authority must also have taken account of all the essential factors, not have drawn mistaken conclusions from documents in the file, and not have committed any abuse of power.

19. In the present case, the appellant does not dispute that the decision in question was reached with due regard for the forms and procedures laid down in the relevant regulations. He considers that the limits of the Secretary General's discretionary powers have been overstepped. In support of this argument, he states that the candidate selected clearly did not have the "wide professional experience in the legal field" required by the Vacancy Notice in question.

20. The Board has examined all the facts and documents put to it by the parties, including the minutes of the meeting of the Transfers and Promotions Panel of 14 October 1991. Having regard to the confidential nature of the minutes, the Board has examined them without notifying the appellant of their contents; the appellant expressed certain reservations on this point, but finally agreed to respect the Board's judgment.

21. The minutes show that the Board carefully examined the different candidates' qualifications in the light of the requirements of the post to be filled. The appointment of the selected candidate was recommended by the Panel, which was fully informed of the aspects relating to the candidates' qualifications. The Board has not noted any factor liable to show that the decision in question was based on manifestly incorrect conclusions.

22. The Board is not required to replace the Secretary General's assessment of the candidates' qualifications and merits by its own assessment. The Board considers that the conclusion that a person having the professional experience of the candidate appointed could be regarded as having "wide professional experience" does not in any way appear arbitrary. The Board has taken account of the fact that the candidate appointed was a trained lawyer, had performed legal duties before entering the Organisation and had worked in sectors which - although necessitating skills of a mainly administrative nature - frequently demanded legal qualifications as well.

23. The appellant has observed that, in the absence of any genuine assessment system for

Council of Europe staff members, it would be reasonable to demand that decisions reached after comparing merits should be based on objective criteria. Otherwise, decisions were liable to become arbitrary.

24. The Board has already criticised the lack of an assessment system in its decision No. 157/1989, *Cunha v. Secretary General*. The Board has pointed out that “the lack of an effective assessment system is likely to create a serious handicap in applying and monitoring an appointments system equitably” (above-mentioned decision, paragraph 63). The Secretary General has indicated her intention of co-operating with the Staff Committee in this matter. The Board emphasises the urgent need for a solution to this problem.

25. However, in the present case, the appellant does not criticise the professional abilities and skills of the successful candidate - factors which might have appeared in an assessment report. He only disputes the legal nature of the experience of the candidate appointed, acquired in the course of his career in the Organisation.

26. In fact, the lack of an assessment system has prevented neither the Transfers and Promotions Panel nor the Secretary General from assessing, in a fully informed manner, the nature of the successful candidate’s experience.

27. Accordingly, the facts of the case do not disclose any appearance of unlawfulness.

For these reasons, the Appeals Board:

Declares the appeal unfounded;

Dismisses it; and

Decides that each party shall bear its own costs.

Delivered in Strasbourg, on 25 September 1992, the French text of the decision being authentic.

The Secretary of the
Appeals Board

M. de SALVIA

The Chairman of the
Appeals Board

C. RUSSO