

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

## **COMMISSION DE RECOURS APPEALS BOARD**

**Appeal No. 9/1973 (Neville MARYAN GREEN v. Secretary General)**

The Appeals Board, sitting in Strasbourg on 5 November 1973, under the presidency of Mr E. HAMBRO, Chairman, and in the presence of:

MM. G.H. van HERWAARDEN, Deputy Chairman, and  
H. DELVAUX, Member

assisted by:

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

Having deliberated.

### **PROCEDURE**

1. The appellant, Mr N. MARYAN GREEN, introduced the present appeal on 16 March 1973. The appeal was registered on the same day under file No. 9/1973.
2. The Secretary General, represented by Mr H. GOLSONG, Director of Legal Affairs, submitted his comments on the appeal on 21 May 1973. The appellant's reply was received on 16 July and the Secretary General's further comments arrived on 5 September 1973.
3. An oral hearing was held before the Board, in the presence of the appellant and the Secretary General's representative, on 5 November 1973.

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

### **THE FACTS**

4. The facts of the case are not in dispute between the parties. They may be summarised as follows:

5. Mr Neville MARYAN GREEN, a British citizen born in 1936, was appointed as a member of the staff on 16 December 1963. He resigned with effect as from 31 January 1973.

6. Under Art. 16 of the Pension Scheme Regulations, the appellant was entitled to a leaving allowance. The Secretary General decided on 30 January 1973 that this allowance should amount to 116,727 francs.

7. On 8 February 1973 the appellant asked the Secretary General, under Art. 25 (1) of the Staff Regulations, to amend the decision of 30 January. He submitted that the leaving allowance had been wrongly calculated and that it should amount to 142,249 francs.

8. This request was refused by the Secretary General on 22 February 1973.

## SUBMISSIONS OF THE PARTIES

9. The submissions made by the parties may be summarised as follows:

10. The **appellant** submits that the Secretary General, in fixing the leaving allowance, misinterpreted Art. 16 (b) of the Pension Scheme Regulations. He considers that the reference in this provision to “the last monthly remuneration on which contributions were paid” includes “the total net remuneration, that is to say, including both salary and other emoluments, less social security contributions and contributions to the Pension Fund”.

11. The appellant supports this interpretation by reference to:

- the meaning of the term “remuneration”;
- the expression “contributions” in Art. 16 (b );
- the absence of a cross reference to Art. 49 of the Pension Scheme Regulations in Art. 16 (b );
- the contra preferentem principle; and
- the principle of estoppel.

12. The **Secretary General** submits that the expression “the last monthly remuneration on which contributions were paid” in Art. 16 (b) refers to “the basic salary and any cost of living allowance, excluding any other element of remuneration such as expatriation allowance, head of family allowance, etc ... on which contributions are not paid”.

13. The Secretary General supports this interpretation by reference to Art. 49 of the Pension Scheme Regulations which provides that officials shall pay “a contribution of 7 % of their basic salary and any cost-of-living allowance”, He considers that the word “contributions” in Art. 16 (b) refers only to contributions to the Pension Fund.

## CONCLUSIONS OF THE PARTIES

14. The **appellant** requests the Board to order the Secretary General to pay the appellant, within a stated period, a sum to be specified plus interest at a rate to be determined by the Board.

15. The **Secretary General** requests the Board to declare the appeal ill-founded.

## THE LAW

16. Art. 16 of the Pension Scheme Regulations provides:

“An official who leaves the service for a reason other than death or disablement and who is not entitled to a service pension or to benefit under article 13 above shall be entitled on leaving to payment of:

a. the total of the contributions paid by him to the Pension Fund, together with compound interest at the rate of 3.5 % per annum;

b. a leaving allowance proportionate to the length of his service after these regulations came into force, without prejudice to the provisions of article 77 and taking account of any service reckonable pursuant to article 14, the allowance to be, for each year's service, 1 1/2 times the last monthly remuneration on which contributions were paid;

c. one third of the total of any sums transferred to the Pension Fund in accordance with article above, together with compound interest at the rate of 3.5 % per annum.”

17. The parties disagree over the interpretation of Art. 16 (b). The appellant submits that the expression “the last monthly remuneration on which contributions were paid” (in the French text: « la dernière rémunération soumise à retenue ») means “the total net remuneration, that is to say, including both salary and other emoluments, less social security contributions and contributions to the Pension Fund”. The Secretary General, on the other hand, submits that the said passage in Art. 16 (b) refers to “the basic salary and any cost of living allowance, excluding any other element of remuneration such as expatriation allowance, head of family allowance, etc ... on which contributions are not paid”.

18. The Board has duly considered the submissions made by the parties in support of their respective points of view. In spite of the very full and detailed arguments presented by the appellant, it finds it clear that Art. 16 (b) must be interpreted in the sense suggested by the Secretary General.

19. It is not disputed between the parties that the term “remuneration” in Art. 16 (b) must be read in conjunction with the following words “on which contributions were paid”. The Board considers that these words constitute a qualification of the preceding term “remuneration”, in the sense that only that part of the remuneration, on which contributions were paid, is relevant in this context.

20. The question then remains whether the term “contributions” refers only to contributions to the Pension Fund, as submitted by the Secretary General, or whether it also includes payments for social security, as suggested by the appellant. The Board finds for the narrower interpretation.

21. As recognised by both parties, Art. 16 (b) must be interpreted in the overall context of the Pension Scheme Regulations<sup>i</sup>. It follows that the term “contributions” in this provision can

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<sup>i</sup> This is a general principle of interpretation which, in the opinion of the Board, is valid not only in regard of treaties but also in respect of statutory provisions such as the present Regulations. The Board refers in this

only mean contributions to the Pension Fund. It is true that the English text of Art. 16 (b) does not speak of “a contribution” but of “contributions” in the plural. This language is explained by Art. 49 of the Pension Scheme Regulations from which it results that a monthly contribution to the Pension Fund, corresponding to a percentage of the basic salary and any cost-of-living allowance, is not only paid by the official but also by the Organisation.

22. An interpretation of the French text of Art. 16 (« la dernière rémunération soumise à retenue ») confirms the conclusion reached on the basis of the English text, although the language used may appear to be slightly different. For it results also from the French text that the last (monthly) remuneration (« la dernière rémunération ») is only to be taken into account insofar as it is « soumise à retenue », that is to say to the extent that it is subject to a contribution to the Pension Fund. This, as already stated, is only the basic salary and any cost of living allowance, excluding any other element of remuneration such as expatriation allowance, head of family allowance, etc., on which contributions to the Pension Fund are not paid.

23. The Board concludes that Art. 16 (b) has been properly interpreted by the Secretary General in the calculation of the appellant’s leaving allowance.

Now therefore the Appeals Board:

1. Decides to declare the appeal ill-founded and rejects it;
2. Decides that each party shall bear its own costs.

Chairman

E. HAMBRO

Secretary

K. ROGGE