

CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

COMMISSION DE RECOURS APPEALS BOARD

Appeal No. 3/1971 (Siro Paolo PADOLECCHIA v. Secretary General)

The Appeals Board, sitting in Strasbourg, on 14 October 1971, under the presidency of Mr G.H. van HERWAARDEN, Deputy Chairman, and in presence of:

MM. S. CANTONO di CEVA and
H.J. von OERTZEN, Substitute Members

assisted by:

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

Having deliberated.

PROCEDURE

1. The appellant, who is represented before the Board by Mr N. MARYAN-GREEN, Administrative Officer in the Directorate of Human Rights, introduced the present appeal on 6 January 1971. The appeal was registered on 25 January 1971 under file No. 3/1971.

The Secretary General, represented by Mr. H. GOLSONG, Director of Legal Affairs, submitted his comments on the appeal on 12 March 1971.

Written observations on the admissibility of the appeal were filed by the appellant on 21 April and by the Secretary General on 15 June 1971.

2. At its session on 28 June 1971, the Board considered the written submissions of the parties and decided:

- that an oral hearing of the parties should be held on 13 and, if necessary, 14 October 1971;
- that this hearing should be public and that it should deal both with the question of the admissibility and with the merits of the appeal;
- that the parties should in the meanwhile submit written observations on the merits and that the appellant should explain why the report of his hierarchical superiors, whose production he requested, should be considered useful for the examination of the appeal.

Written observations on the merits were filed by the appellant on 19 and 27 July and by the Secretary General on 13 September 1971. The Secretary General also submitted the report of the appellant's hierarchical superiors. Further submissions in writing were made by the appellant on 23 September 1971.

3. The oral hearing was held before the Board, in the presence of the appellant and the parties' representatives, on 13 and 14 October 1971.

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. Siro Paolo PADOLECCHIA, an Italian citizen born in 1928, was on 1 June 1970 appointed a permanent staff member, grade A4, and received a fixed term contract for a period of two years. According to Article 19 of the Staff Regulations, such a contract "shall only become final at the end of six months' probation".

By letter of 29 October 1970 from the Director General of Administration and Finance, the appellant was informed that the report made by his hierarchical superiors at the end of his first five months in the service of the Secretariat General did not permit the confirmation of his appointment and that his contract would consequently be terminated on 30 November 1970.

The decision to terminate the contract of 1 June 1970, and the offer of a new contract to the appellant, were subsequently the subject of discussions which took place between the Political Director, Mr. Leleu, the Deputy Director for Administration, Mr. Hunt, and the appellant on 9 November and between the Secretary General and the appellant on 20 November 1970.

By letter of 20 November 1970 from the Head of the Establishment Division, the appellant was formally offered a four months' temporary contract, from 1 December 1970 until 31 March 1971. He accepted this offer and subsequently received a further temporary contract for two months, from 1 April to 31 May 1971.

5. On 2 December 1970, the appellant addressed the following note to the Deputy Secretary General:

"Further to my various written and verbal requests to yourself, to the Secretary General, to Mr. Leleu and to Mr. Hunt. I still have not yet received copy of the Report of my Hierarchical Superiors, which, according to the Administrative Director's note of October 29, has motivated the decision for terminating my 2 years Contract, at the end of the six months probatory period.

Contrary, the Administration has now asked me to sign a new 4 months temporary contract, which was offered to me by the Secretary General in view to have a little more time at my disposal to search for a new occupation.

As I have already mentioned, I don't consider, in any case, that this 'act of charity' shall exempt the Secretariat to forward to me the copy of the incriminating Report, as it is my right to defend my dignity

and my interests against any possible accusations or judgments which determined the mentioned severe disciplinary measure, which I honestly feel not to have deserved. At the same time, as exists some kind of confusion between the motivations given by Mr. Leleu and Mr Hunt (as they have invariably declared, according to the note of Oct. 29, that my dismissal was decided because of reasons concerning my character and not my professional activity or ability), and those given by yourself and the Secretary General (for whom the termination of my contract was decided upon the necessity of discontinuing the Operational Survey and Planning exercise, for which I was employed, owing to the opposition existing amongst some Directors and Delegates), I feel I have the right to *a.* know what is the real reason for so abruptly terminating my 2 years contract and *b.* have finally the access to reading my Hierarchical Superiors' Report.

This very partial and confused procedure used for enforce such a severe disciplinary measure against my person, not simply causes me a relevant damage and prejudice, both socially and professionally, but is not acceptable neither in the principle nor in the fund and it is additionally contrary to even the principles of the Right of Men, whose Chart is actually sponsored by the Council of Europe, as it impedes me to make use of my right of defence and appeal to protect my interests and my dignity.

I am confident you shall intervene accordingly, otherwise I shall feel obliged to appeal against both the decision and the procedure to safeguard my person and my professional status against this defamatory and abusive measure adopted and decided by the Secretariat.

I take this opportunity to beg you to confirm that for the coming period I shall be transferred to other Directorate, as you have verbally announced to me, as I don't want to serve any longer in the Direction of Political Affairs."

SUBMISSIONS OF THE PARTIES

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

As to the admissibility of the appeal

6. The **appellant** submits that his appeal is admissible and that, in particular, he has complied with Art. 3 (1) of the Statute of the Appeals Board, which provides that no appeal shall be admissible unless the appellant has previously filed an application in accordance with Art. 25 (1) of the Staff Regulations.

His note of 2 December 1970 to the Deputy Secretary General constituted such an application, in that it requested the withdrawal or amendment of the decision of 29 October 1970 to terminate his contract of 1 June 1970.

7. As regards the provision in Art. 25 (1) that the application to the Secretary General shall be made within thirty days of the date of notification of the decision in question, the appellant states that he received the decision of 29 October on the same day and that his note of 2 December was written thirty-four days later. He considers, however, that the running of the period of thirty days laid down in Art. 25 (1) was in the present case suspended or interrupted, and he refers in this connection to his discussion with the Secretary General on 20 November 1970.

The appellant states that, during his interviews, he was informed that, his original contract having been terminated as a result of the decision to discontinue the activity for which he had been engaged, it was envisaged offering him a new contract in another Directorate. This information was confirmed by the letter of 29 November 1970 from the Head of the Establishment Division. The letter, however, did not reach the appellant until

30 November and it offered a temporary contract for four months only. Thus only on 30 November 1970 was he in a position to decide whether or not to institute an appeal.

8. The **Secretary General** submits that the appeal is inadmissible and that, in particular, the appellant failed to comply with Art. 3 (1) of the Statute in conjunction with Art. 25 (1) of the Staff Regulations. The appellant's note of 2 December 1970 to the Deputy Secretary General did not by its terms constitute an application for the withdrawal or amendment of the decision of 29 October 1970. It was also out of time, the appellant having failed to observe the strict time-limit of thirty days laid down in Art. 25 (1).

9. The appellant's submission, that the running of this period was interrupted or suspended as, until 30 November 1970, he was not in a position to decide whether or not to appeal, is without foundation. Already during his discussions with the Political Director and the Deputy Director for Administration on 9 November, he had been reminded that the Secretary General's decision of 29 October was to terminate his two *year* contract; it had also been indicated that the offer of a new contract of four months' duration was only made in order to help him find suitable alternative employment.

With regard to his interview with the appellant on 20 November 1970, the Secretary General states:

"On 20 November I saw Mr. Padolecchia at his request.

I informed him that his probationary contract of six months would not be renewed. There was no real necessity to give Mr. Padolecchia any reason for this, but for the sake of courtesy I mentioned that the work on which he was engaged was unlikely to be continued.

For humanitarian reasons-to give him a chance to find other employment- he was offered a temporary contract of three or four months at the termination of the probationary contract. Under this contract certain work was allocated to him, but in fact this second contract was a humanitarian gesture only."

As to the merits of the appeal

10. **The appellant** submits that the decision of 29 October 1970 to terminate his contract, of 1 June was taken for an improper motive, that it was unreasonable, tainted by bias and procedurally irregular.

He alleges a violation of Art. 19 of the Staff Regulations.

11. **The Secretary General** submits that, during the probationary period provided for in Art. 19, he was free to terminate the appellant's contract and not obliged to motivate such a decision. Moreover, his decision of 29 October to terminate the contract was objective and the reasons given were valid.

Conclusions of the parties

12. **The appellant** requests the Board:

- to declare his appeal admissible,
- to annul the Secretary General's decision of 29 October 1970; and
- to award him compensation.

13. The Secretary General requests the Board:
- to declare the appeal inadmissible or, subsidiarily,
 - to reject it as ill-founded.

THE LAW

14. Art. 3 of the Statute of the Appeals Board provides that no appeal shall be admissible unless the appellant has previously filed an application in accordance with Art. 25 (1) of the Staff Regulations.

Art. 25 (1) of the Staff Regulations states as follows:

“A staff member... may apply to the Secretary General, on the grounds of non-observance of the Staff Regulations, the administrative rules or the conditions of employment, for the withdrawal or amendment of an individual decision applicable to him.

The application shall be made in writing within thirty days of the date of notification of the decision in question...”

15. It is disputed between the parties whether the appellant’s note of 2 December 1970 to the Deputy Secretary General (para. 5 above) constituted by its terms an application for the withdrawal or amendment of the decision of 29 October to terminate the appellant’s contract of 1 June or, 30 November 1970.

The Appeals Board does not find it necessary to decide this question. Even if the appellant’s note of 2 December constituted such an application, it was made after the expiry of the time-limit of thirty days laid down in the second sub-paragraph of Art. 25 (1).

16. The appellant submits that the running of this period was interrupted or suspended. The Board has carefully examined this question. In this connection, it has also had regard to Art. 3 (3) of the Statute which lays down the time-limit for the introduction of appeals with the Board. Art. 3 (3) states as follows:

“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. This period shall, however, be increased to ninety *days* if an appeal is lodged by a rightful claimant to the staff member’s estate. In the absence of a decision by the Secretary General concerning the application, the period shall run from the date of expiry of the time-limits within which, under Article 25 of the Staff Regulations, the Secretary General may decide on the application.

In exceptional circumstances, however, the Appeals Board may declare admissible an appeal lodged after the expiry of these periods.”

The Board does not find it necessary in the present case to decide whether the provision of the second sub-paragraph of Art. 3 (3) of the Statute should *mutatis mutandis* be applied to the time-limit of thirty days laid down in Art. 25 (1) of the Staff Regulations for applications to the Secretary General. Even if it should be so applied, the appellant has failed to show the existence of any exceptional circumstances which might entitle the Board to admit his appeal although his application to the Secretary General was lodged after the expiry of this time-limit.

In this connection, the Appeals Board has had particular regard to the statements made by the parties concerning the discussion which took place on 20 November 1970 between the Secretary General and the appellant. The Board is satisfied that, at this interview, the appellant was not left in any doubt as to the significance of the decision of 29 October to terminate his contract of 1 June one 30 November 1970, and of the offer of a new temporary contract.

17. It follows that the appellant, having failed to satisfy the provision of Art. 25 (1), second subparagraph, of the Staff Regulations, has not complied with Art. 3 (1) of the Statute, and that the appeal is therefore inadmissible.

18. The Board does not find that the appeal constituted an abuse of procedure within the meaning of Art. 6 (3) of the Statute.

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.

Chairman

G.H. van HERWAADEN

Secretary

K. ROGGE