

CONSEIL DE L'EUROPE— —COUNCIL OF EUROPE

COMMISSION DE RECOURS APPEALS BOARD

Appeal No. 10/1973 (Geneviève ARTZET (II) v. Secretary General)

The Appeals Board, sitting in private in Strasbourg, on 22 and 23 April 1974, under the chairmanship 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, represented by Maître Gérard VIVIER; barrister at the Court of Appeal at Nancy, submitted her appeal on 26 July 1973, on which date it was registered as Appeal No. 10/1973.

The Secretary General represented by Mr H. GOLSONG, Director of Legal Affairs, submitted his comments on 24 October 1973.

The appellant presented a memorandum in reply on 3 January 1974.

The Secretary General submitted further comments on 28 February and 5 April 1974.

2. By letters of 2 and 3 April 1974, the Secretary of the Board duly informed the parties that the Chairman had decided to invite them to appear before the Board at 10.00 a.m. on 22 April 1974.

The public hearing took place as arranged at the Council of Europe in Strasbourg in the presence of the appellant, assisted by Maître Vivier, and of Mr H. Golsong, representing the Secretary General, assisted by Mrs M.-O. Wiederkehr.

The hearing was resumed on the following day for pronouncement of the Board's decision.

Having deliberated in private, the Board rendered the present decision.

THE FACTS

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

3. Mrs Geneviève ARTZET, born on 4 May 1939 in Strasbourg, of French nationality, took up employment with the Council of Europe Secretariat in 1963. At the time of the contested decision, she held a grade B3 post in the Directorate of Education and of Cultural and Scientific Affairs. The appellant is married and the mother of two children, the younger having been born on 20 March 1974.

4. On 28 September 1972, the appellant submitted a first appeal (No. 8/1972) to the Board, against the Secretary General's refusal to grant her the head-of-family allowance, the dependent child's allowance and the rent allowance.

On 10 April 1973, the Board declared null and void the contested decision of 7 July 1972, confirmed by the decision of 1 September 1972, and ruled that the expenses incurred by the appellant should be reimbursed to her by the Council of Europe up to a maximum of one thousand five hundred French francs (for further details see decision of 10 April 1973 concerning Appeal No. 8/1972).

5. Following that decision, the Secretary General proposed to the Committee of Ministers that the relevant texts be amended. A preliminary draft resolution was formally referred to the Committee of Ministers in June 1973. The Secretary General also proposed that the application of the new texts should be back-dated.

At the meeting of the Deputies in January 1974, the Committee of Ministers decided to accept the proposals made by the Co-ordinating Committee of Government Budget Experts for standardizing the system of remuneration for male and female staff in the co-ordinated organisations, with effect from 1 January 1974 (cf. Document Restricted CM (74) 5).

On 27 March 1974, the Committee of Ministers adopted Resolution (74) 11 revising the regulations concerning salaries and allowances of the permanent staff and Articles 15 and 16 of the Staff Regulations following approval of the 93rd report of the Co-ordinating Committee. The provisions of this resolution came into effect as from 1 January 1974. (cf. Article 8 of the Resolution).

The Secretary General's proposal for back-dating the new provisions to 1 January 1973 was not accepted by the Committee of Ministers.

6. On 21 May 1973 the appellant sent the Secretary General a memorandum asking him "to implement the decision on Appeal No. 8/72, notified to him on 27 April 1973, by paying the sums due to her".

The Secretary General replied on 4 June 1973 in a memorandum worded as follows:

“1. In your memorandum of 21 May, you ask me to implement the Appeals Board’s decision of 10 April 1973 on Appeal No. 8/72, by paying you the sums due to you.

2. As you know, the Board decided on this point that ‘the expenses incurred by the appellant shall be reimbursed to her by the Council of Europe up to a maximum of one thousand five hundred French francs’. I have accordingly given instructions for the sum of 1,450 F, representing your counsel’s fees, to be paid to you in compliance with the Appeals Board’s decision.

3. As regards the part of your appeal to the Board concerning the head of family, dependent child’s and rent allowances, you will have noted that the Board did not decide, as you asked it to do in your conclusions, that you should be paid those allowances. The Board decided only to annul the Secretary General’s contested decision.

4. The Appeals Board’s decision does not, therefore, legally enable me to order the payment of the allowances in question; I am accordingly obliged to apply the provisions of Resolution (72) 32, which remains unaffected by the Board’s decision, until such time as it has been amended by the Committee of Ministers.

5. This being so, pending the Committee of Ministers’ decision on any change in the relevant provisions of Resolution (72) 32, a matter which I have already referred to the appropriate authorities, I am able to pay you immediately only the sum mentioned under (2) above. You may rest assured that I shall do all I can to settle this matter satisfactorily as soon as possible.”

7. On 14 June 1973, the appellant requested the Secretary General, by virtue of Article 25, 1 of the Staff Regulations to alter his decision of 4 June 1973.

On 5 July 1973, the Secretary General informed the appellant that he was not able for the time being to comply with her request, for the reasons stated in his memorandum of 4 June 1973. He also drew attention to the following:

“As you know, Resolution (72) 32 will remain in effect until such time as a different text has been adopted by the Committee of Ministers, as acts of the Committee of Ministers lie outside the jurisdiction of the Appeals Board by virtue of the relevant rules drawn up by the Committee of Ministers themselves, in particular Article 25 of the Staff Regulations.

However, as you are also aware, the Appeals Board both recognised that the contested decision of 7 July 1972 complied with Resolution (69) 38. Since become Resolution (72) 32 (para. 25, second sentence, of the Board’s explanation of its decision) and annulled the Secretary General’s decision, but without giving a ruling on the second part of the appellant’s conclusions, still less specifying the criteria by which the Secretary General should be guided in reaching any further decision.

In the circumstances, the only possibility open to me was to take the step of asking the Committee of Ministers to amend the present texts so as to provide a legal basis on which the allowances in question could be paid.

I informed you in my memorandum of 4 June 1973 that I had taken this step. I should like to add that it is my firm hope that a satisfactory result may be obtained by the end of the year.”

8. The present appeal is directed against the decision of 4 June 1973, confirmed by the decision of 5 July 1973.

9. Subsequently to the submission of the appeal, the Secretary General has paid the appellant the allowances in question for the period beginning 1 January 1974.

SUBMISSIONS OF THE PARTIES

I The **appellant's submissions** may be summarised as follows:

10. Article 25 of the Staff Regulations provides for an Appeals Board to deal with disputes of an individual nature. The extent of the Board's authority is defined in Article 2 of its own Statute, which also specifies that any dispute as to the Board's competence shall be decided by the Board itself. The Board's decisions are binding upon the parties and particularly upon the Secretary General, failing which the organizations' whole legal machinery would be jeopardised.

The Secretary General is required to put the Board's decisions into effect, the only exception being the provision in Article 6,2, for the award of compensation, should the Secretary General consider that implementation of the decision might cause internal difficulties for the Organisation.

11. In the case in point, it cannot be argued that, since the Board merely annulled the contested decision, it does not follow that the appellant is entitled to the disputed allowances. The reason why the disputed decision was annulled was precisely that the Secretary General could not legally refuse to pay the appellant those allowances.

Implementing the Board's decision means drawing the consequences of that decision, that is to say, in this particular case, prescribing the payment of the relevant allowances.

12. Furthermore, in accordance with Article 6,1 of the Statute of the Appeals Board, the appellant requests compensation for the damage suffered due to the irregularity committed against her. Such compensation must be not less than the amount of the allowances lost by her, viz, per month:

- head-of-family allowance	163.86 French francs
- dependent child's allowance	220 " "
- rent allowance	75 " "
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	458,86 " "
i.e., for the period June 1972-July 1973 (14 months at 460 FF)	6,440 French francs.

This sum may be rounded off to 8,000 French francs in recognition of the distress caused to the appellant by the unjustified refusal of her claims.

For the period July to December 1973, compensation may be fixed at 460 FF per month.

13. The appellant also asks the Board, should it prove necessary to fix at the same amount the compensation payable, should the Secretary General, returning to legality, avail himself of the possibility offered him under Article 6, 2 of the Board's Statute.

II. The **submissions of the Secretary General** may be summarised as follows:

14. The Secretary General has no comments to make on the admissibility of the appeal. As to the merits, he refers to the arguments advanced with regard to the first appeal (No. 8/1972) and puts forward the following additional arguments.

15. The Secretary General could not act otherwise than he did as regards the implementation of the Board's decision of 10 April 1973. That decision is a ruling not, in the last analysis, on the Secretary General's failure to comply with statutory provisions or regulations, but on the compliance of the contested decision with Resolution (69) 38.

Admittedly, the Board did point out that the disputed decision did not conform to principles whose legal weight is greater than that of the Resolution in question, but it is arguable whether the Board had the right so to decide. The Board has no authority but that vested in it by Article 25 of the Staff Regulations. The present version of that Article provides no legal basis for the decision of 10 April 1973. Furthermore, the Secretary General maintains that the international texts invoked by the Board are either not relevant or are not binding upon all the member states of the Council of Europe.

16. In another appeal which has certain similarities with No. 8/1972, the Appeals Board of the European Space Research Organisation found that the decision taken by the organisation was in strict compliance with the Staff Regulations. The Board concluded that the appeal was unfounded (ESRO/CR/85, judgment of 19 April 1973, Case No. 33 Z v. Organisation). It is true that, in a letter to the Director General of the Organisation, the Board advocated amending the Regulations.

17. The situation giving rise to the dispute originated not in a decision by the Secretary General, but in a text of which he is not the author and which he is not in a position to change. The legal position remained unchanged in this respect after the decision of 10 April 1973.

The Secretary General asked the Committee of Ministers to change the existing texts to such an effect as to meet, in substance, the appellant's claims. He submitted a draft resolution to the Committee of Ministers and proposed that the application of the new provisions be back-dated. He also sought to obtain a consensus from the other five co-ordinated international organisations as to the principles by which the salaries and allowances of female staff should be governed in future. The Budget Experts' proposals were accepted by the Committee of Ministers with effect from 1 January 1974. The Committee of Ministers did not, however, accept the proposal to back-date the new system to 1 January 1973 (cf. para. 5, above).

18. With regard to the appellant's subsidiary request based on Article 5,2 of the Statute of the Appeals Board, the Secretary General points out that he has not made the declaration specified in that provisions.

CONCLUSIONS OF THE PARTIES

19. The **appellant** asks the Appeals Board:

- to annul the decision of 4 June 1973, confirmed by the decision of 5 July 1973;
- to rule that the Council of Europe must pay her the sum of 8,000 French francs in compensation of the damage suffered *by her* up to July 1973, plus 460 French francs per month up to actual payment of the family allowances;
- to fix at the same amounts the compensation payable should the Secretary General avail himself of the possibility offered him by Article 6,2 of the Statute of the Appeals Board;
- to formally acknowledge the appellant's withdrawal of her appeal in respect of the period beginning 1 January 1974;
- to rule that the expenses incurred by the appellant in bringing her appeal shall be reimbursed to her by the Council of Europe up to a maximum of two thousand French francs.

20. The **Secretary General** asks the Appeals Board:

- to refuse the appeal lodged on 26 July 1973 by Mrs G. Artzet.

THE LAW

21. As regards the period **beginning 1 January 1974**, the Board notes with satisfaction that regulations conforming to the principles stated in its decision of 10 April 1973 (Appeal No. 8/1972) have come into effect since the submission of the present appeal (No. 10/1973).

The appellant has now received complete satisfaction and has accordingly requested acknowledgement of her withdrawal of her appeal in respect of the relevant period.

The Board acknowledges the appellant's withdrawal *of her* appeal in respect of the period concerned.

22. With regard to the period **prior to 1 January 1974**, the Board finds as follows:

In its ruling of 10 April 1973, the Board, after recognising that the appellant's first appeal was well founded, annulled the Secretary General's disputed decision refusing to pay the appellant the head-of-family allowance, dependent child's allowance and rent allowance.

The Board found that the decision based on Resolution (69) 38 conformed neither to the Statute of the Council of Europe, nor to general principles of law, the absence of discrimination based on sex and equal pay for workers of either sex constituting, "at the present time", one of those principles.

The Board is of the opinion that, following its decision, the Secretary General was bound to comply with the appellant's request as from the date of that decision.

In her subsequent appeal, the appellant complains of the Secretary General's failure to implement the decision of 10 April 1973, asking the Board to grant her the allowances mentioned in para. 12, above.

Having, in the above-mentioned decision, defined the relationships in law between the parties in respect of the matters referred to it, the Board has fulfilled its function; it accordingly has no authority to deal, in further proceedings, with the implementation of its decision, which does not form part of its judicial function (see *mutatis mutandis* the judgement of the International Court of Justice of 13 June 1951 in the Haya de la Torre case-Reports of Judgments, Advisory Opinions and Orders 1951, page 83).

In these circumstances, in the absence of any declaration by the Secretary General that the execution of the Board's decision of 10 April 1973 "might cause internal difficulties for the Organisation", the Board is not able to give any ruling on the application of Article 6, 1 or 6, 2 of its Statute, as requested by the appellant.

23. With regard to **costs**:

The Board notes that the appellant has obtained satisfaction concerning her claim in respect of the period subsequent to 1 January 1974. The Board finds accordingly, applying Article 6, 4 by analogy and having regard to the important issues of principle involved, that the appellant should be refunded a part of the expenses incurred by her.

Now therefore,

the **Appeals Board**:

1. Acknowledges the appellant's withdrawal of her appeal in respect of the period beginning 1 January 1974;
2. Declares that it has no authority to hear the appellant's claim in respect of the period prior to 1 January 1974;
3. Decides that the Council of Europe shall reimburse to the appellant the expenses incurred by her, up to a maximum of one thousand French francs.

Done in French in Strasbourg, this 23rd day of April 1974.

Chairman

E. HAMBRO

Secretary

K. ROGGE