

INFORMATION

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JUDGEMENT N° 1368 OF THE INTERNATIONAL LABOUR ORGANISATION ADMINISTRATIVE TRIBUNAL (ILOAT)

Summary: after recalling the circumstances, there are some explanations about judgement n° 1368 of the ILOAT – and an attempt is made to answer the following questions: what will happen to the salary scales for 1993? – for the salary scales for 1994? – what are the possible consequences for the future? – In an annex, there is the calendar of the various appeals.

December 1992, decisions concerning indices for 1993

Following our publication in bulletin n° 30/94 of **21 July 1994** of the decisions of the ILOAT, many people have asked questions as to what it means and what will be the consequences.

To answer it is necessary to recall the circumstances leading up to the appeals and the judgement.

During the course of 1992, as each year, the Management prepared a document for Council on the “cost-variation indices”. This document included the proposal to adjust the salary scales.

The proposal of the Director General took into account the results of the method for the annual adjustment – which date from 1979 – and the results of the negotiations of the summer of 1990 resulting from the 1984–1989 5-yearly review¹: namely 3.39% corresponding to the increase in the Geneva cost-of-living plus 1.5% negotiated. This proposal had the full support of the Staff Association.

On 27 November 1992, the German and United Kingdom delegations wrote to the President of Council asking that the budget be frozen, due to economic difficulties in their countries and the

movement of the Swiss Franc against national currencies. They also asked that salaries be frozen².

On 9 December, a special meeting of the Standing Concertation Committee was held in which participated the members of the Directorate and the Staff Association Executive Committee. On the agenda were the above mentioned letters and a draft Protocol tabled by the Association³.

In this Protocol, the Staff Association asked for direct negotiations to be put in place on the various points, but the Director General stated that he did not have the power to sign the Protocol with the Association.

1 this did not stop the Organization, in its submissions to the Tribunal, pretending that the Council had completed the review as from December 1990.

2 an interesting detail: during the reference period, the real salaries (i.e. after taking into account inflation) of the national civil servants had increased by more than 3% for the German civil servants (which was contested by the German delegate even though the figure had been supplied by her Government) and more than 2% for the British civil servants.

3 the minutes of the meeting mention the Protocol, but not the letters from the German and United Kingdom delegations. Innocently the Staff Association approved the minutes, never dreaming that when the letters were attached to the appeals deposited before the Tribunal, the Organization would claim that the Association had obtained them illegally, and ask for them to be withdrawn. The complainants then had to produce the verbatim of the recording of the meeting to show they had acted in good faith.

On 16 December 1992, the Finance Committee examined the proposal of indexation made by the Director General, but did not approve it. That is why the Association repeated the contents of the Protocol in a letter to the President of Council of even date.

The Staff Association stated that it was prepared to prove its solidarity, its maturity and its sense of responsibility in accepting a “solidarity contribution” in a negotiated, not imposed, framework.

On 18 December 1992, the CERN Council examined the proposal of the Director General as well as the result of the discussions of the Finance Committee and Committee of Council. It remained deaf to the requests of the Staff Association for dialogue and choose to adopt a global index of the Personnel Budget of 2.4%.

But there are two indices concerning the personnel: the salary index and the global index of the Personnel Budget. In deciding upon the global index of the Personnel Budget, the Council omitted to decide upon the salary index, and we will return to this further on.

The President of the Staff Association protested during the meeting of the Council against this refusal of social dialogue as reported in bulletin n° 2/93 dated 11 January 1993.

Appeals n° 2

On 10 and 17 March 1993, M. Aymon, D. Ball and M. Borghini lodged internal appeals against the Council's general decision of 18 December 1992 and the individual decisions in their January 1993 pay slips. D. Ball and M. Borghini said they were appealing both as elected staff representatives and individually.

They asked the Director General to recalculate their basic salary, as from 1 January 1993, in conformity with the results of the 5-yearly review and the application of the method for adjusting annually salaries, as presented in the Management document referred to above. They asked for leave to go straight to the Tribunal, without convoking an internal Joint Advisory Appeals Board, if the appeal was rejected.

In other words, they asked that CERN respect its methods and procedures.

On 26 March 1993, the Director General authorised them to go directly to the ILOAT, implying that he had rejected their requests, but giving no reasons.

In June 1993, the Appeals (which we will call Appeals n° 2) were filed by the complainants, against which the Organization replied on 13 October 1993. The complaints had then to file a rejoinder to this reply.

In the meantime, the dismissal of Appeals n° 1 by judgement n° 1329 of the ILOAT

But, on 31 January 1994, the ILOAT delivered its judgement n° 1329 in which they rejected the previous appeals of D. Ball and M. Borghini (which we will call Appeals n° 1) concerning the adjustment of salaries for 1992: it considered that the negotiations of 1990 were only “negotiations” with the Director General which did not bind the CERN Council. We have already talked at length about this⁴.

In the arguments developed by the Organization against Appeals n° 1, it affirms that, each year, the Council decides the salary index and then deduces the expenditure for the following year – in other words, the Council first decides the index for salaries then that for the budget. Moreover, the Staff Rules state that it is the Council which determines and periodically reviews the remuneration scales.

Continuation of Appeals n° 2

In their Rejoinder of Appeals n° 2, the complainants have taken account of the arguments advanced by the Organization in Appeals n° 1 and of judgement n° 1329; they have argued in particular, the point that the Council, in December 1993, had omitted to fix the salary index.

Despite the reply by the Organization that this was current practice, which had gone unchallenged in the past, the Tribunal has upheld this argument and has judged that the pay scales for 1993 had not been set by the competent authority⁵ and hence lack any legal base.

The ILOAT decided that a new salary scale must be set lawfully by the CERN Council.

4 see bulletin n° 8 dated 21 February 1994.
5 but by the Director General who attributed an index of 2.46% to salaries whilst freezing family allowances.

Having thus decided, the Tribunal has not examined the other arguments developed by the complainants, which means, that at this stage, it has neither accepted or dismissed them.

Amongst the pleas, **the complainants emphasise that:**

the first component of the method of annual adjustment of salaries (the Geneva cost-of-living movement) is binding– *“The first component **shall be granted**⁶ in order to maintain the real value (purchasing power) of the agreed salaries”;*

the contested decisions compound a run of measures which have made their financial plight worse and so infringed their acquired rights.

In this connection, the **ILOAT recalls that**, in general,

“especially in times of change material evidence must include evidence on the general context in which the decision has been taken... A run of small amendments may offend against the whole spirit of the rules”.

This reminder is very important and could have consequences in the future. **The ILOAT has also noted that, in December 1992,**

“the focus of debate by the competent bodies [Finance Committee, Committee of Council] was not the “guide”⁷ but the financial plight of CERN and its membership”.

What will happen now?

The CERN Council must now establish the salary scales **for 1993** in accordance with the decision of the Tribunal. We do not know when it will do so, but, because the procedures must be repeated,

the Administration must apply the new decisions and as a consequence retroactively rectify our salaries **since 1 January 1993.**

Our future actions will obviously depend upon the new decisions. We will continue to insist upon the need for dialogue as well as the respecting of methods in force and vested rights. Perhaps this time we will be listened to, which would avoid new disputes.

Appeals n° 3

As far as the decisions on the salary index **for 1994** from which follow the salary scales for 1994, new internal appeals (Appeals n° 3) were lodged in **March 1994**, by G. Antoinet, M. Aymon, D. Ball and M. Borghini. The arguments presented for the moment, and which can be modified or completed, are, once again, that the methods and procedures in force have not been respected.

It remains moreover to see what conclusions the CERN Council draws from judgement n° 1368 concerning not only the **salary scales for 1993, but also those for 1994**, and if it takes decisions upon this subject in the near future.

In the meantime, we have **every reason** to believe that our salaries will continue to be paid according to the existing scales.

6 emphasis by the complainants.
7 this “guide” is the method for the annual adjustment of salaries.

ANNEX CALENDAR OF APPEALS

DATE	n°	ACTIONS
December 1991		decisions on indices for 1992
March 1992	1	internal appeals to the Director General
August 1992	1	internal appeals rejected by Director General
November 1992	1	appeals to ILOAT
December 1992		decisions on indices for 1993
March 1993	2	internal appeals to the Director General
March 1993	2	internal appeals rejected by Director General
April 1993	1	Reply of CERN
June 1993	1	Rejoinder to Reply of CERN
June 1993	2	appeals to ILOAT
September 1993	1	Surrejoinder of CERN in reply to Rejoinder
October 1993	2	Reply of CERN
December 1993		decisions on indices for 1994
January 1994	1	ILOAT judgement n° 1329: dismissed
February 1994	2	Rejoinder to Reply of CERN
March 1994	3	internal appeals to the Director General
April 1994	2	Surrejoinder of CERN in reply to Rejoinder
July 1994	2	ILOAT judgement n° 1368: partially succeeds

- n° 1 against the decisions of salary adjustments for 1992
- n° 2 against the decisions of salary adjustments for 1993
- n° 3 against the decisions of salary adjustments for 1994

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