

INFORMATION

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Association
du personnel
CERN

Staff
Association
CERN

STAFF_ASSOCIATION@MACMAIL.CERN.CH

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Personnel Budget and the Accounts of the Organization

Summary: We recall that in both 1992 and 1993, the Organization made substantial economies in the personnel budget. Now we show that it was the same in 1994. At the same time CERN had to pay an important sum to three firms following a judgement by an arbitration tribunal.

Last year¹, we have reported that:

- **in 1992**, the Organization had spent **5.37 millions of Swiss francs**, MCHF, less for the personnel than foreseen in the budget, of which 3.4 MCHF had been paid to EUROLEP;
- **in 1993**, the Organization had spent **11.22 MCHF** less for the personnel than foreseen in the budget, of which 3.9 MCHF had been paid to EUROLEP.

The Accounts for the Financial Year 1994² have been approved by the CERN Council at the end of June 1995. It appears that, **in 1994**, the Organization has spent **10.29 MCHF** less than foreseen in the personnel budget approved in December 1993.

Moreover, on page 124 of this document, under the section *Notes on the Balance Sheet*, sub-section *ASSETS*, point 5 headed *Debtors*, appears the following enigmatic statement amongst *Sundry debtors*:

"j) an amount of 5.4 MCHF concerns the costs of arbitration associated with the contractors X, Y, Z³."

Intrigued, we have made enquiries.

It turns out to be the result of a dispute between CERN and three contractors, two of whom had contracts with CERN, and one of whom was a sub-contractor to firms having contracts with CERN. These contractors had requested arbitration on 30 November 1989. An arbitration tribunal had been setup in the middle of 1990. We will not enter into the details of the dispute which is complex and which took the Tribunal several years to study.

¹ see bulletin n° 39/94 dated 26 September 1994.

² document CERN/2087 – CERN/FC/3775.

³ the document gives the initials of these contractors, it is not necessary to give them here.

Nevertheless, in the judgement of the Tribunal dated 13 October 1994, appears⁴:

"In conclusion, the Arbitration Tribunal considers that CERN has in effect infringed its contractual and precontractual obligations of good faith[...]."

A little further on the Tribunal specifies *"in effect [CERN], as has been shown above, has acted contrary to the spirit of good faith, in interpreting the regulations [...] or having the authorities apply them contrary to their text [...], then, wrongly, harbouring grievances against the [firms] who contested the chosen interpretation, and then progressively evicting them from its territory [...] because they would not yield to the conditions that were being imposed upon them. [...]."*

This behavior, also taking into account the position of CERN, of its status as an international organization, must be judged contrary to the obligations of loyalty and good faith incumbent [upon CERN] with respect to [these firms] who therefore are entitled to seek redress for the harm done [...]."

As a consequence the Arbitration Tribunal has condemned CERN to pay to these firms the profits they would have made if they had been granted the contracts which they did not get, and if they had supplied the services which they did not supply.

With interest, at 9% per year, costs and fees of the arbitration (half of 490,000 CHF), CERN had to pay the 5.4 MCHF mentioned in the 1994 Accounts. Even though this sum is considerably less than the claims of the firms, which were around 40 MCHF, it is a lamentable way of spending the budget of the Organization. The Finance Committee, the Council and even the External Auditors have been unusually discreet about this matter.

⁴ our translation from the original French text.