

Appeal 20/68

[REDACTED]

Complaints Board of the European Schools

2nd section

Decision of 10 December 2020

In the case of

Mr [REDACTED],

[REDACTED]

[REDACTED],

applicant,

v

the European Schools,

whose offices are located at: rue de la Science 23, B-1040 Brussels,

defendant,

- represented by: Marc Snoeck, lawyer, Avenue Brugmann 403, B-1180 Brussels -

whereby, with the appeal lodged on 13 August 2020 and registered under No 20/68, the applicant seeks, amongst other things, reimbursement of his removal costs to Canada,

the Complaints Board of the European Schools (2nd section) with the following members:

- Mr Andreas Kalogeropoulos, Chairman of the section,
- Dr Mario Eylert, Member of the Board and rapporteur,
- Mr Aindrias Ó Caoimh, Member of the Board,

assisted by Ms Nathalie Peigneur, registrar, and Mr Thomas van de Werve d'Immerseel, assistant,

having regard to the parties' written observations, submitted on the one hand, by the applicant with the appeal of 13 August 2020 and on the other, by Mr Snoeck, lawyer, in the response on behalf of the European Schools,

delivered, the following decision, without an oral hearing as permitted by Article 19 of the Rules of procedure, on 10 December 2020, the grounds for which and the operative part of which appear below:

I. Facts of the case and main arguments of the parties

As from the 2015/2016 school year, the applicant was employed as a locally recruited teacher at the European School, Frankfurt am Main (hereinafter referred to as: ESF). After the fixed-term contracts of employment of 20 May 2015 and of 1 July 2016, on 20 July 2018, the parties agreed on a permanent employment relationship starting from 1 September 2018. The written contract of 20 June 2018 settles the following:

Art. 8: In accordance with Art. 50 and 51 of the Service Regulations for Locally Recruited Teachers, an administrative appeal may initially be lodged against any decision adversely affecting the locally recruited teacher and a contentious appeal may subsequently be lodged with the Complaints Board of the European Schools. The Complaints Board shall have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, to decide in any dispute between the School and the locally recruited teacher.

Art. 9: This contract shall be subject to the Service Regulations for Locally Recruited Teachers in the European Schools, which entered into force on 1 September 2016, in the current version as amended by decision of the Board of Governors of the European Schools. The locally recruited teacher hereby confirms that he has consulted the aforementioned text, published under reference 2016-05-D-11-en-2 on the European Schools' website, www.eursec.org and that he has duly scrutinised it. The Service Regulations shall take precedence over the legal provisions of the legislation of the School's host country. The national legislation of the School's host country shall apply only in the case of an explicit reference thereto in the Service Regulations or in the case of all aspects that are not covered by the aforementioned Service Regulations.

In June 2019, the applicant announced that he was terminating the employment relationship in due time on 31 August 2019. He returned to Canada with his family.

By letter of 12 December 2019, the Director of the ESF refused to bear the costs of the applicant's removal to Canada. The Secretary-General rejected the applicant's administrative appeal of 13 December 2019 – 'dispute Article 37 removal costs/installation costs' – by letter of 12 May 2020.

With his contentious appeal, the applicant appealed against those decisions and followed up on his original request and, furthermore, claimed an installation allowance for a removal in the year 2018. By way of justification he essentially set out the following reasons:

Upon conclusion of his second fixed-term contract in summer 2016, Mr Taybi Saadaoui (Human Resources Administrator of the ESF) explained to him that at the end of the contract he might be able to claim a relocation allowance. Also upon conclusion of the permanent contract in June 2018, the latter told him [the applicant] that he might be entitled to removal costs or an allowance towards the costs after the end of the contract. His attention was not drawn to the change to the 'Service Regulations for Locally Recruited Teachers in the European Schools' (hereinafter

referred to as: SR). Even though the allowance towards removal costs was abolished in favour of an installation allowance in April 2019 – which, moreover, he also did not obtain, without justification, despite moving house to be close to the ESF in 2018 and which he is now claiming – he is still nevertheless entitled to it. The old version of the SR, which provided for the latter, is still applicable to his employment relationship. Moreover, he received a number of incorrect pieces of information from the ESF. Thus, after termination of his contract of employment, Mr [REDACTED] and Ms [REDACTED] (Financial Administrator of the ESF) allegedly informed him that he should obtain three quotes from shipping companies for the transport of his personal belongings. In addition, colleagues allegedly obtained an allowance towards the costs of their removal to America also in the year 2018.

The ES essentially put forward the following reasons justifying their dismissal of the claim: There is no legal reason for payment of the removal costs allowance sought by the applicant. The amended and new version of the 'Service Regulations', which entered into force on 1 September 2018, no longer provides for such an allowance. There was no need for express information about the change made. Locally recruited teachers are required to seek information – on the internet – about possible changes to the 'Service Regulations'. The eligibility criteria for the installation allowance, to which the applicant has now claimed entitlement for the first time, and thus belatedly, do not exist. The applicant already lived in Frankfurt before that removal in the year 2018.

II. Findings of the Complaints Board

The applicant's appeal is unfounded.

1. The Complaints Board is competent, in accordance with the first paragraph of Article 19 of the 'Rules of Procedure for the Complaints Board of the European Schools' (hereinafter referred to as: RP). The applicant's approval thereto was not required in accordance with the procedural rules of the RP.

2. In so far as the applicant is claiming payment of a removal costs allowance, the admissible appeal is unfounded. The applicant has no such entitlement either in accordance with Article 37 SR or on account of an express individual contractual agreement.

2.1 The provisions of the SR applicable here provide, under Article 37 SR, a removal costs advance payment for a locally recruited teacher only for a **removal to the place of the school's location** – hence to Frankfurt am Main – and not for a (further) removal – return to the locally recruited teacher's country of origin.

2.1.1 Article 37 SR, **in the original version** (2016-05-D-11-en-2), provided as follows:

'Removal costs

1. A locally recruited teacher recruited for a minimum period of one year shall, as provided in Article 59 and Article 62 of the Regulations for Seconded Staff Members of the European Schools, be entitled to reimbursement of his removal expenses unless the contract ends within the first 12 months due to circumstances lying in the responsibility of the locally recruited teacher.

2. A locally recruited teacher who changes to another European School in another city following the mobility approach defined in Article 38 will be entitled to the reimbursement of his removal expenses in accordance with Article 62 of the Regulations for Seconded Staff Members of the European Schools."

Those provisions of the SR do not contain a provision on an installation allowance.

Article 37 SR of the amended version applicable with effect 1 September 2018 provides:

"Removal costs

1. A locally recruited teacher recruited for a minimum period of one year and a contract providing a minimum of 16 hours/periods per week shall, as provided in Article 59 and Article 62 of the Regulations for Seconded Staff Members of the European Schools, be entitled to reimbursement of the expenses caused by the removal to the place of the school unless the contract ends within the first 12 months

due to circumstances lying in the responsibility of the locally recruited teacher. The reimbursement of the expenses caused by the removal to the place of the school shall be limited to a maximum amount of 5 000 euro for locally recruited teachers removing from a place outside the territories of the Member States of the European Union.

2. A locally recruited teacher who changes to another European School in another city following the mobility approach defined in Article 38 of these Service Regulations will be entitled to the reimbursement of his removal expenses in accordance with Article 62 of the Regulations for Seconded Staff Members of the European Schools."

2.1.2 The provisions of the SR applicable from 1 September 2018 are crucial for the case in which a decision has to be made.

2.1.2.1 The applicant's last – permanent – written contract of employment contains in Article 9 not only a static but also a dynamic reference clause to the 'Service Regulations for Locally Recruited Teachers'. Article 9 of the contract of employment states that the employment relationship is subject to the 'Service Regulations for Locally Recruited Teachers', "in the **current version as amended** by decision of the Board of Governors of the ES." Thus, the parties to the contract put into operation dynamically and not statically, on a private autonomy basis, the current version as amended of the Service Regulations, in terms of the provision of the SR applicable when the contract was concluded (2016-06-D-11-en-2). This follows from interpretation of the contractual provision in Article 9, which, according to its wording, clearly and unquestionably refers to the "current version" of the SR. Thus, the contract of employment should be dynamically adapted to and aligned with general framework conditions – beyond the contractual main conditions of working hours and remuneration – that changed during an ongoing permanent employment relationship, without the need for an additional express contractual agreement in each individual case.

For the applicant's permanent employment relationship, the provisions of the SR are therefore applicable in the – current – version in force in the case of the dispute.

This means, for the case in which a decision has to be made, for the planned removal in autumn 2019, the SR in the version applicable from 1 September 2018.

2.1.2.2 This conclusion is in no way vitiated by the fact that the original version of the SR foresaw different requirements for the removal costs advance payment. Thus, the restrictive requirement of the later norm, of significance here ("removal to the place of the school"), was unknown in the original version of Article 37 SR (old version).

2.1.2.3 The applicant cannot nevertheless invoke the earlier version of the provision of Article 37 SR. For that purpose, it would have required a 'static' reference in his contract of employment to the specific version of the SR at the time of conclusion of the permanent contract of employment, without further restrictions or expansions. It is true that Article 9 of the contract of employment makes reference to version 2016-05-D-11-en-2 of the SR and that the applicant further confirmed that he had duly scrutinised that version. Hence, it is not just this 'older' version of Article 37 SR, which does not contain any restrictions, that is of significance. For the parties to the contract in fact agreed on a 'dynamic' reference – as explained – to SR 2016-05-D-11-en.

2.1.2.4 The applicant cannot rely either, with respect to the contractual agreements entered into, on the provisions of the SR not being subject to any change. As a result of the dynamic reference clause agreed by the parties to the contract, all provisions of the SR were subject to caveats, not only in terms of improvement but also of deterioration.

2.1.2.5 The applicant's further reference to the fact that he was neither made aware of the change, nor allegedly did the ES draw his attention to it, does not alter the fact that the provisions of the SR in force with effect from 1 September 2018 determine the parties' employment relationship. The ES were not required to make express reference to possible changes to the SR, particularly as the changes and adaptations are published on the internet by the ES and are always accessible to locally recruited teachers.

2.2 Finally, the applicant has no entitlement to payment of a removal costs allowance because of an additional express contractual provision. No such provision was agreed between the parties to the contract of employment. The comments alone of the staff of the ESF do not, according to the applicant's contract, result in an express contractual agreement on payment of relocation assistance – regardless of the provisions of the SR. The applicant does not even contend that – after the change to the SR on 1 September 2018 – he was made a concrete offer at some point, by an authorised member of the staff of the ESF, of an unconditional removal costs allowance (or the extent thereof) in the event of a return to Canada.

3. It remains an open question whether the applicant's request, in so far as a claim for payment of an installation allowance, in accordance with Article 37a SR, for a removal in the year 2018 was expressly made in writing for the first time with his administrative appeal of 13 December 2019, is already inadmissible – as there are many indications that this is the case. The contentious appeal is manifestly unfounded, as the conditions of Article 37a SR are not met.

3.1 **Article 37a SR in the version applicable from 1 September 2018** lays down the following:

"Installation allowance

1. A locally recruited teacher recruited for a minimum period of one year and a contract providing a minimum of 16 hours/periods per week who furnishes evidence of having been obliged to change his/her place of residence and of having actually settled at his/her place of employment in order to comply with Article 27 of these Service Regulations shall be entitled

(a) to an installation allowance equal to two months' basic salary if he/she fulfils the legal requirements of Article 53.2 of the Regulations for Members of the Seconded Staff of the European Schools;

(b) to an installation allowance equal to one month's basic salary if he/she does not fulfil the legal requirements of Article 53.2 of the Regulations for Members of the Seconded Staff of the European Schools or whose family does not settle at the place of the school.

2. The allowance shall be paid at the time of installation on production of documents establishing the fact that the locally recruited teacher has actually settled at the place of the school.

...

4. The installation allowance shall be calculated by reference to the locally recruited teacher's marital status and salary on the date of his/her recruitment.

5.A locally recruited teacher who on recruitment has received an installation allowance and whose contract ends within the first 12 months due to circumstances lying in his/her responsibility shall, on leaving the service, refund part of the allowance, in proportion to the unexpired portion of the initial contract.

6.A locally recruited teacher who changes to another European School in another city

following the mobility approach defined in Article 38 of these Service Regulations will be entitled to the installation allowance in accordance with paragraph 1 to 5 of this Article."

3.2 Pursuant to the above provisions, the applicant has no entitlement to payment of an installation allowance under Article 37a SR. The applicant has never in his approaches provided evidence that he was obliged to change his place of residence in order to settle at the place of his employment. He merely states that he moved house in the year 2018 so as to live closer to the ESF. It already remains unclear in his statement from where and to where he moved house. Should it be a question of a move within Frankfurt or the Rhein-Main region, an installation allowance – which, moreover, needs to be read in conjunction with the provision of Article 37.1 SR – would already therefore not come into consideration, because it is a question of a move "to the place of the school", and the "places" remained the "same" within the meaning of the SR. Nor has the applicant demonstrated that he "was obliged" to change his place of residence because of his employment at the school.

III. Legal and other costs

The parties did not claim costs.

ON THESE GROUNDS,

the Complaints Board has decided as follows:

Article 1: The applicant's appeal, registered under N° 20/68 is hereby dismissed.

Article 2: Notification of this decision will be given as provided for in Articles 26 and 28 of the RP.

M. Kalogeropoulos

M. Eylert

M. Ó Caoimh

Brussels, 10 December 2020

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P.D. Thomas Van de Wervele

pp. The Registry,

Nathalie Peigneur