

APPLICATION N° 35216/97

RENFE (Red Nacional de los Ferrocarriles Españoles) v/SPAIN

DECISION of 8 September 1997 on the admissibility of the application

Article 25 of the Convention · *A public-law corporation (Spain) whose board of directors is answerable to the Government, which has a monopoly and whose internal structure and the manner of carrying out whose business are regulated by statute, is not entitled to introduce an application*

THE FACTS

The applicant is the Spanish national railway company (*Red Nacional de los Ferrocarriles Españoles*, "RENFE") Before the Commission it was represented by Mr Pedro Caudete Valero, a lawyer practising in Madrid.

The facts of the case, as submitted by the applicant, may be summarised as follows

The applicant, which is a public-law corporation, was created by the State, in a Law of 24 January 1941, to run the state rail network as an industrial company. The applicant has its own legal personality, distinct from that of the State, and is administratively independent, but its board of directors is answerable to the Government. The applicant's internal structure and the manner in which it may conduct its business are regulated by a Decree of 22 July 1964, which sanctioned its Articles of Incorporation, and which was amended by a Law of 30 July 1987 (*Ley de ordenación de transportes terrestres*) and by Royal Decree of 28 January 1994 approving the provisions of its Articles.

In a judgment of Madrid Social and Employment Court of 23 February 1993, in an action for the recovery of a sum of money, the applicant was ordered to pay four of its employees the following amounts 585,224 pesetas (ESP) to A ESP 656,364 to B , ESP 662,598 to C and ESP 662,598 to D

The applicant lodged an appeal (*suplicacion*) In a judgment of 28 September 1994, Madrid High Court, with Mr R as the reporting judge, granted the appeal in part as regards three of the four employees, reducing their awards, and granted it in full as regards A

The employees filed an application for interpretation and rectification (*aclaramiento*) of this judgment with the High Court which, in a decision (*auto*) of 12 December 1994, held as follows

" The clerical error which occurred in the drafting of the operative part of the judgment shall be rectified as follows the whole of such operative part shall stand, save as regards employee and plaintiff A , in respect of whom it shall continue to apply" (*sic*)

In the course of proceedings to enforce the substantive judgment, the Social and Employment Court issued an order (*providencia*) on 29 March 1995 informing the parties of the amounts awarded to them, namely ESP 656,364 to B , ESP 662,598 to C and ESP 662,598 to D The sum of ESP 610,224 was awarded to the applicant

On 9 May 1995, the applicant filed an application for revision (*reposicion*) of this order, claiming that the amounts it had been ordered to pay to the three successful employees were not those fixed by the appeal judgment This application was dismissed by a decision (*auto*) of the Social and Employment Court of 30 July 1995 The decision stated that it was necessary to have regard to the legal grounds set out in the decision of interpretation and rectification of 12 December 1994, and not merely to its operative part, indeed, if one looked merely at the operative part, one would have to conclude that all the provisions of the judgment of 28 September 1994 had been upheld, which would make no sense since the very purpose of the decision in question was to rectify that judgment

Consequently, the Social and Employment Court concluded that what had really been upheld by the decision of interpretation and rectification - even though this was not what it had said - were the awards made at first instance, save as regards employee and plaintiff A , in respect of whom the applicant's appeal had had the effect of reversing the first-instance judgment and dismissing his claims

The applicant filed an appeal (*suplicacion*), which was dismissed in a judgment of the High Court of 1 April 1996, with Mr R acting as reporting judge

The applicant filed an application for the protection of fundamental rights (an "*amparo*" application) with the Constitutional Court on the basis of its right to a fair hearing. In a decision of 30 September 1996, the Constitutional Court dismissed the application for lack of constitutional basis, holding that it had no jurisdiction to review the ordinary courts' interpretation of the law and noting that the domestic decisions in question were based on sufficient grounds and that these grounds were sufficiently set out therein.

COMPLAINTS

The applicant complains that its right to a fair hearing has been violated in that the Spanish courts amended a substantive judgment no longer susceptible to appeal by means of an application "for interpretation" in enforcement proceedings. The applicant also points out that the reporting judge who dealt with the case on appeal before the High Court was also the reporting judge when the same court later modified the provisions of that appeal judgment, and that this is in breach of the right to an impartial tribunal. The applicant invokes Article 6 para. 1 of the Convention.

THE LAW

The applicant complains that its right to a fair hearing by an independent and impartial tribunal has been violated and invokes Article 6 para. 1 of the Convention, which provides, in so far as relevant:

"In the determination of his civil rights and obligations, everyone is entitled to a fair hearing by an independent and impartial tribunal."

The Commission considers that it is first necessary to examine whether the Spanish national railway company is entitled to submit an application to the Commission against Spain under Article 25 of the Convention.

According to that provision:

"1. The Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention."

The question is, therefore, whether the applicant may be considered as a non-governmental organisation within the meaning of this provision.

The Commission notes that, under Spanish law, the applicant has its own legal personality, distinct from that of the State, and is administratively independent.

Nevertheless, according to the case-law of the Commission, governmental organisations cannot introduce an application under Article 25 of the Convention at any stage of proceedings (see No 15090/89, Dec 7 1 91, D R 68, p 209, No 13252/87, Dec 14 12 88, D R 59 p 251 and, by inverse implication, Eur Court HR, the Holy Monasteries v Greece judgment of 9 December 1994, Series A no 301-A, p 28, para 49)

In this regard, the Commission notes that the applicant is a public law corporation, created by the State in a Law of 24 January 1941 to run the state rail network as an industrial company. The Commission notes that its board of directors is answerable to the Government and that the applicant is, for the time being, the only undertaking with a licence to manage, direct and administer the state railways, with a certain public-service role in the way it does so. Moreover, the applicant's internal structure and manner of conducting its business are regulated by a Decree of 22 July 1964 sanctioning its Articles of Incorporation, a Law of 30 July 1987 (*Ley de ordenación de transportes terrestres*) and a Royal Decree of 28 January 1984 approving the provisions of its Articles.

It follows that the applicant was not entitled in any capacity to introduce an application under Article 25 of the Convention. Consequently, the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 27 para 2 thereof.

For these reasons, the Commission, by a majority,

DECLARLS THE APPLICATION INADMISSIBLE