Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

117th Session **Judgment No. 3320**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms I. G. B. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 2 September 2011, Eurocontrol's reply of 16 December 2011, the complainant's rejoinder of 17 February 2012 and Eurocontrol's surrejoinder of 23 May 2012;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a French national, was recruited by Eurocontrol's Experimental Centre at Brétigny-sur-Orge, in the Paris region, as a member of the contract staff, on 1 September 2007. As her contract was not renewed when it expired on 31 August 2010, the next day she registered with *Pôle emploi*, the French governmental agency assisting job seekers, and was granted the job seeker's allowance.

Pursuant to a decision of the Director General of Eurocontrol, the complainant was granted an unemployment allowance as of

1 September 2010 for a maximum period of 12 months. Article 4 of that decision in substance repeated the contents of Article 15(1), second subparagraph, of the Conditions of Employment of Contract Staff at Eurocontrol, which stipulates that when a former member of staff in receipt of such an allowance is "entitled to unemployment benefits under a national scheme, he shall be obliged to declare this to the Agency". In such cases, the amount of these benefits is deducted from the allowance paid by Eurocontrol. In the instant case Eurocontrol deducted the sum paid to the complainant by the competent French authorities, less notional tax on it, from its unemployment allowance.

The complainant asked *Pôle emploi* to defer the payment of its benefits until the end of the period during which she would receive an allowance from Eurocontrol, but she was advised that her registration with the governmental agency automatically led to the payment of the job seeker's allowance. On 2 January 2011 *Pôle emploi* issued her with a statement indicating that this allowance had been paid in consequence of the termination of a previous employment contract dated 31 May 2007. Having thus ascertained that this payment was not connected with the non-renewal of her contract with Eurocontrol, she considered that the latter should not take account of it when calculating her unemployment allowance, and on 14 January 2011 she therefore requested the reimbursement of the sums which, in her opinion, had been wrongly deducted from that allowance. Eurocontrol replied that the deductions had been made in accordance with the above-mentioned Article 15(1), second subparagraph, since for most social security benefits it applied the principle that benefits of the same kind from different sources could not be combined. The payment of the job seeker's allowance ended in February 2011.

On 15 February the complainant submitted an internal complaint to the Director General in which she repeated her request for reimbursement. In its opinion of 28 April, the Joint Committee for Disputes concluded that the internal complaint was unfounded, considering that the two allowances were of the same nature. The complainant was informed by a letter of 9 June 2011, which constitutes

the impugned decision, that the Director General had decided to endorse the Committee's opinion and that her internal complaint had been dismissed.

B. The complainant submits that, since the allowances she received did not confer the same rights, and since they concerned two different periods of employment during which she had received two different salaries and contributed to two schemes which, in the absence of an agreement between France and Eurocontrol on the "transfer of rights to unemployment benefit", were completely independent of each other, they were not of the same nature. She points out that there is no reference to the notion of allowances of the same nature in the Conditions of Employment of Contract Staff, and she takes issue with the fact that, although she contributed to two schemes, in the end she received only one benefit.

Amongst other relief, she seeks the reimbursement of the deductions from the unemployment allowance paid by Eurocontrol, moral damages and costs.

C. In its reply Eurocontrol maintains that, although the allowances drawn by the complainant came from two independent schemes, they were of the same nature because their purpose was to ensure that she had a substitute income during a period of unemployment, and that, in accordance with Article 15 of the Conditions of Employment of Contract Staff, the amount of the job seeker's allowance therefore had to be deducted from the unemployment allowance which it was paying. It explains that the principle whereby similar allowances from different sources cannot be combined was incorporated in the texts because the purpose of the unemployment insurance which it has put in place is not "to replace national unemployment insurance or to supply supplementary insurance" but to "fill any gap" due to the fact that contract staff cannot contribute to national social security schemes. It points out that the monthly deduction was only temporary, because it ended in February 2011 when the payment of the allowance from *Pôle emploi* ceased.

D. In her rejoinder the complainant presses her pleas. She adds that, had she not received the job seeker's allowance until after the period of compensation by Eurocontrol had ended, she would have been covered for 17 and a half months instead of only 12 months. She gives an example to show that, because the deduction made by Eurocontrol was "temporary", it was "discriminatory".

E. In its surrejoinder Eurocontrol reiterates its position. It states that the complainant received the sums to which she was entitled from both schemes and that the example she quotes does not point to any discrimination. In its opinion, it is "natural" that in exchange for the payment of the unemployment benefit, it requires former staff members to register as a job seeker with the relevant national authorities.

CONSIDERATIONS

1. The complainant was employed by Eurocontrol as a member of the contract staff from 1 September 2007 to 31 August 2010. Her contract was not renewed at the end of that period and, pursuant to a decision of the Director General of 14 September 2010, she was granted an unemployment benefit for a maximum period of one year as from 1 September 2010. However, as under the French unemployment insurance scheme she received a job seeker's allowance from the latter date until February 2011 from the governmental agency *Pôle emploi*, throughout that period the amount of that allowance was deducted from that paid by the Organisation.

2. The complainant challenged the lawfulness of that deduction and now impugns before the Tribunal the decision of 9 June 2011 by which the Director General, endorsing the unanimous opinion of the Joint Committee for Disputes, dismissed her internal complaint. In addition to the setting aside of this decision, she seeks the reimbursement of the sums deducted, an award of moral damages and costs.

3. In the version applicable to the instant case, Article 15(1) of the Conditions of Employment of Contract Staff at Eurocontrol reads: "A former member of the contract staff who becomes unemployed when his service with the Agency is terminated and [who meets certain conditions] shall be eligible for a monthly unemployment allowance […]. Where he is entitled to unemployment benefits under a national scheme, he shall be obliged to declare this to the Agency. In such cases, the amount of those benefits shall be deducted from the allowance paid under paragraph 3." The latter paragraph specifies that the unemployment allowance paid by Eurocontrol is "set by reference to the basic salary attained by the former member of the contract staff at the time of the termination of his service" and it lays down the various rates of the allowance.

4. The reasoning behind this deduction is plainly the same as that which governs the amounts set for most of the social allowances paid by Eurocontrol, namely that the amount thereof is reduced *pro tanto* to the allowances of the same nature granted by national authorities.

5. The job seeker's allowance, which has been introduced under compacts between the French social partners, is a financial assistance granted to job seekers who have contributed to unemployment assurance for a certain length of time in the context of their previous professional activity. It is calculated on the basis of the beneficiary's former wages and its purpose is to ensure that workers who become involuntarily unemployed have a substitute income for the time needed to look for a new job, or at least for some of that time. It is therefore plainly an "unemployment benefit under a national scheme" within the meaning of the aforementioned Article 15. It follows that, in accordance with that article, despite the fact that it does not expressly refer to the notion of allowances "of the same nature" – the argument put forward by the complainant – the Organisation is entitled to deduct the amount of the job seeker's allowance received by a French national from the unemployment allowance which it pays to that person.

6. It is to no avail that the complainant tries to argue to the contrary that there is no agreement between France and Eurocontrol which provides for a "transfer of rights to unemployment benefit" or that the job seeker's allowance and the Organisation's unemployment allowance "do not confer the same rights", for example with regard to the possibilities of deferring payment or of attending training courses. Indeed, the above-mentioned Article 15 does not stipulate that the deduction for which it provides can take place only if an agreement has been signed between the Organisation and the country concerned or if the two allowances in question provide equivalent benefits.

7. The complainant contends that, in her case, the unemployment allowance paid by Eurocontrol and that received from *Pôle emploi* did not correspond to rights acquired during the same period of work, since the job seeker's allowance was granted to her on the basis of contributions made during employment prior to her recruitment by the Organisation. She considers that, in these circumstances, the contested deduction was unlawful.

However, this argument is contrary not only to the letter of Article 15, which makes no provision for any such limitation of its scope, but also to the spirit of the unemployment insurance scheme for Eurocontrol contract staff. Indeed, the very fact that such deductions are provided for under the aforementioned article shows that the purpose of these arrangements is not to offer former members of the contract staff benefits which will necessarily supplement those to which they may be entitled under a national scheme, but only to ensure a minimum substitute income for a given period after they leave the Organisation, while they seek a new job. It is therefore natural that, if the former staff member concerned receives, during the same period, an unemployment allowance under the law applicable in that person's country of residence, this allowance should be deducted from that granted by Eurocontrol, irrespective of the basis on which the national allowance is paid and, in particular, of the period of work in respect of which the entitlement to the allowance accrued.

Moreover, the complainant's situation, where the allowances from Eurocontrol and from a national scheme were paid in respect of contributions made in different jobs, is by definition the most common case. If the complainant's line of reasoning were to be accepted, this would deprive the provisions in question of most of their scope.

8. The complainant emphasises that, because of the deduction for which the aforementioned Article 15 provides, she is disadvantaged by the fact that her two unemployment allowances were paid simultaneously, whereas it would have been of greater benefit to her if "the two periods of compensation had been put end to end in terms of both amounts and duration". She considers that she contributed to Eurocontrol's unemployment insurance scheme without receiving the "corresponding entitlement" and, "worse still", that she "contributed twice to two different schemes for two different periods", but was "compensated only once". Lastly, she argues that the disputed deduction is "discriminatory" insofar as it would not have been made if her personal situation had been different after she left Eurocontrol.

The fact that the terms of payment of the two unemployment allowances in question were not combined in the most advantageous manner for the complainant – and this is partly due to the conditions of entitlement to the job seeker's allowance, which are obviously beyond Eurocontrol's control – does not *per se* have any bearing on the lawfulness of the deduction. As stated earlier, this deduction was in accordance with Article 15. Moreover, the complainant did in fact receive allowances under both of the schemes to which she contributed and she has no grounds for submitting that the deduction from the allowance paid by the Organisation was in breach of her entitlement to receive compensation from it, because the provisions defining the extent of these rights actually included the possibility of such a deduction. The fact that the unemployment allowance paid by Eurocontrol in fact varies depending on the individual situation of the former staff member receiving it does not constitute discrimination, since this difference in treatment is precisely due to a difference in

situation in respect of entitlement to compensation, and Article 15 is applied in the same way to all the members of the Organisation's contract staff.

9. Even if the complainant's submissions were to be construed as challenging the lawfulness of Article 15 itself, this plea would in any case be groundless, as nothing forbids an international organisation from stipulating that deductions may be made from the amount of allowances granted to the members of their personnel depending on the benefits which they receive from national social security schemes.

10. It may be concluded from the above that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN

DRAŽEN PETROVIĆ