

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**W. (No. 8)**

**v.**

**Eurocontrol**

**122nd Session**

**Judgment No. 3667**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr J. W. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 26 September 2013 and corrected on 30 November 2013, Eurocontrol's reply of 9 April 2014, the complainant's rejoinder of 15 July and Eurocontrol's surrejoinder of 17 October 2014;

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 may be summed up as follows:

The complainant challenges the fact that he was not promoted during the 2013 promotion exercise.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, the details of which are to be found in Judgment 3189. At that juncture, non-operational staff categories B and C were replaced, for a two-year transitional period, by categories B\* and C\*. On 1 July 2010, at the end of this transitional period, these two categories were merged in the Assistant group (AST), which comprises 11 grades (AST1 to AST11) arranged in various grade brackets. At the material time, the complainant, an official who had previously been in B category and who was the President of the *Union Syndicale Eurocontrol France* (USEF)

and a member of both the Central and Local Staff Committees (at Brétigny-sur-Orge), was classed at grade AST8 in the AST5-AST8 bracket.

Office Notice No. 1/13 was published on 7 February 2013. In essence it announced that a procedure for grade promotion would be organised for 2013 and, for that purpose, the list of staff eligible for promotion would comprise those officials and servants who in 2013 had at least two years' seniority in their grade and were not yet in the last grade of their respective career brackets as defined in their job descriptions. The list of Eurocontrol staff eligible for promotion was published on 8 February 2013. As the complainant's name was not on it, he lodged an internal complaint on 30 April. He requested, amongst other relief, that the decision to exclude him from the above-mentioned list should be cancelled and that the possibility of promoting him should be examined on the basis of his merit alone.

When he filed his complaint with the Tribunal on 26 September 2013, the complainant had not yet received a reply to his internal complaint. He impugns what he takes to be an implied decision dismissing his internal complaint and he seeks the cancellation of this decision, the inclusion of his name on the list of staff members eligible for promotion in the 2013 exercise and the examination of his case. He also claims moral damages and costs.

In the meantime, the complainant's internal complaint had been forwarded to the Joint Committee for Disputes, which delivered its opinion on 13 December 2013. Two of its members recommended that the internal complaint should be allowed in accordance with the "principle of legitimate expectations" and the "right to a career", whereas the other two recommended that it should be dismissed on the grounds that the complainant had reached the last grade in his grade bracket and was thus not eligible for promotion under Rule of Application No. 4 concerning the procedure for grade promotion provided for in Article 45 of the Staff Regulations governing officials of the Eurocontrol Agency.

The complainant was informed by a memorandum of 17 March 2014 that his internal complaint had been dismissed by the Director General.

Eurocontrol asks the Tribunal to dismiss all the complainant's claims as groundless, to join this complaint with two other cases and to order the complainant to bear costs.

### CONSIDERATIONS

1. The complainant challenges the non-inclusion of his name on the list of staff members eligible for promotion in the 2013 exercise, which was published on 8 February 2013.

This complaint, which was originally directed against the implied decision to dismiss his internal complaint, must now be deemed to impugn the explicit decision of 17 March 2014, taken in the course of the proceedings, by which the Director General confirmed the non-inclusion of the complainant's name on the above-mentioned list.

2. Eurocontrol requests the joinder of this complaint with two other cases forming the subject of Judgments 3664 and 3666 also delivered on this day. However, as these three cases raise legal issues that are partly different, the Tribunal will not grant this request (see, in particular Judgment 3620, under 2).

3. The complainant first submits that the Office Notice of 7 February 2013 is unlawful, and likewise Rule of Application No. 4 on which it is predicated in order to define the staff members eligible for promotion during 2013. As it completely excludes the promotion of officials and servants of Eurocontrol who have reached the highest grade in their grade bracket, in the complainant's opinion it conflicts with Article 45 of the Staff Regulations, which permits the Director General to depart from the exclusion principle established by that same article.

4. In Judgments 3404 and 3495 the Tribunal found that, quite apart from the fact that officials may always participate in a competition or request the reclassification of their post, the Director General had not breached Article 45 of the Staff Regulations or the complainants' right

to career advancement by excluding them from the list of staff members eligible for annual promotion on the grounds that they had reached the top of their career bracket. None of the arguments put forward by the complainant would justify a departure from that precedent in the instant case.

5. Article 45 of the Staff Regulations establishes the exclusion principle which is challenged by the complainant, who has reached the highest grade in the bracket to which his current post belongs. This principle is consistent with the aims of the administrative reform carried out in 2008, namely to end the practice of automatic promotion while not ruling out the possibility of making exceptions in order to enable particularly well-qualified officials to move up to a higher grade in the next bracket.

6. In the structure introduced by the administrative reform which entered into force at Eurocontrol on 1 July 2008, officials are classed in hierarchical grade brackets, each of which corresponds to a clearly defined category of functions. In the same way that an official who has reached the pinnacle of her or his career can no longer hope for promotion, a Eurocontrol official who has reached the top of her or his grade bracket does not, in principle, have any possibility of moving into a higher grade.

7. The possibility of an exception stemming implicitly from Article 45 of the Staff Regulations should not, of course, be abolished by a rule of lesser rank than the Staff Regulations. But this is not the case here, since the defendant organisation accepts that, despite the apparently categorical wording of the second paragraph of Article 1 of Rule of Application No. 4, it has a duty to apply this provision in a manner that is consistent with Article 45 of the Staff Regulations and it has no intention of relying on this rule in order to exclude any possibility of promotion in cases where there are grounds for departing from the principle embodied in the Staff Regulations.

8. The exception to this rule allowed by Article 45 of the Staff Regulations is a matter for the discretion of the Director General, which he must exercise within the limits established by the Rules of Application of the Staff Regulations (see Judgment 3666, also delivered this day). There is nothing in the file to suggest that the impugned decision involved abuse of the Director General's discretion, or a breach of the principles or duties which international organisations must observe in their staff management.

In particular, it is impossible to see how the different treatment of officials who have attained the highest level of their grade bracket and those who can still progress naturally within the framework of their duties and expertise would constitute discrimination. Moreover, when the administrative reform entered into force, officials could not have been unaware of the fact that their transition to another grade bracket would be possible only if it was justified on special grounds.

The complainant's first plea must therefore be dismissed.

9. Secondly, the complainant contends that the refusal to place his name on the list of staff members eligible for promotion in 2013 is "the result of flawed official consultations". He states that contrary to the requirements of the memorandum of understanding between the Administration and the trade unions, the Administration abruptly broke off negotiations aimed at "a more liberal promotion policy" which were about to reach a successful conclusion and which would have applied to 2013. However, the Tribunal finds that the complainant's submissions in this connection do not establish any causal link between the breakdown of these negotiations and his non-promotion.

This plea is therefore also groundless.

10. Lastly, the complainant submits that when Eurocontrol excluded him from the list of staff members eligible for promotion in 2013, it failed to take account of his particular situation, especially the fact that his career advancement was completely blocked because 50 per cent of his working hours were devoted to his duties as President of the USEF and member of the Central and Local Staff Committees (at Brétigny-sur-Orge).

There is nothing in the applicable rules to prevent a part-time job being reclassified as a full-time job. The complainant's submission is therefore groundless, since as a part-time worker he is subject to periodic appraisals and can always request a review of his job description as provided for in Article 6 of Rule of Application No. 35, concerning job management.

11. It follows from the foregoing that the complaint must be dismissed in its entirety.

12. There are, however, no grounds for granting Eurocontrol's counterclaim that the complainant be ordered to bear costs.

#### DECISION

For the above reasons,

The complaint is dismissed, as is Eurocontrol's counterclaim.

In witness of this judgment, adopted on 3 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

*(Signed)*

CLAUDE ROUILLER    GIUSEPPE BARBAGALLO    PATRICK FRYDMAN

DRAŽEN PETROVIĆ