

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. (No. 4)

v.

Eurocontrol

127th Session

Judgment No. 4080

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr P. C. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 14 April 2015 and corrected on 1 June, Eurocontrol's reply of 16 September, the complainant's rejoinder of 23 November 2015 and Eurocontrol's surrejoinder of 26 February 2016;

Considering Articles II, paragraph 5, and VII 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 claims that the Organisation has breached its duty of care towards him following an accident at work, involving a contractor, which resulted in national judicial proceedings.

On 23 March 2013, while carrying out maintenance work on the electrical power installations at Eurocontrol's premises in Brussels, Mr C., a contractor for an outside company, suffered a serious accident at work. Following the accident, a judicial inquiry was conducted by the national authorities, during which several persons were interviewed, including the complainant, as the person responsible for the Organisation's electricity network. Upon completion of the inquiry, a report listing the

criminal offences allegedly committed by Eurocontrol was drafted. There were six offences, which included the absence of prevention and protection measures for staff, failure to observe intervention procedures and inadequate certification of staff. The report was submitted to Eurocontrol and to the Labour Prosecutor's Office in Brussels, acting for the Public Prosecutor's Office in Belgian labour courts. The Labour Prosecutor's Office decided to conduct its own inquiry in order to determine the criminal liability of the parties involved, including the complainant. At the same time, on 28 May 2013, pursuant to Article 88(2) of the Staff Regulations governing officials of the Eurocontrol Agency, which deals with disciplinary measures, the Director General decided to conduct an administrative inquiry in the form of an internal audit in order to establish the facts and identify the measures to be taken.

On 29 October 2013, on the basis of Article 92(1) of the Staff Regulations, the complainant wrote to the Director General with a number of requests, which included: to have access to the internal audit report; to be provided with legal assistance at the Organisation's expense in the event of criminal or civil proceedings, pursuant to Article 24 of the Staff Regulations; to have training and certification put in place in line with the applicable legal provisions; and to be kept informed of the intervention plans and procedures to be introduced in the Organisation. All of his requests were rejected on 20 January 2014. The Director General explained to the complainant that since the inquiry which had culminated in the drawing up of the internal audit report had been conducted with a view to establishing the facts, it was not an adversarial inquiry and thus did not require the disclosure of the report in question. The Director General informed the complainant that in the event of national judicial proceedings, all costs relating to the defence of the Organisation would be covered, but that "in order to avoid any potential conflict of interest and given that [the complainant's] personal interests might well ultimately differ from those of the Organisation", he had the possibility of appointing a lawyer at his own expense. Since Article 24(1) of the Staff Regulations provides that the Organisation "shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances or any attack to person or property to which he or a member of his family is subjected

by reason of his position and duties”, the Director General concluded that it was not applicable in this case. Lastly, the complainant was advised that the Organisation was working to ensure that an accident such as that of 23 March 2013 would not recur and that he would be informed in due course of the practical measures that would be taken.

In April 2014 the complainant lodged an internal complaint against the decision of 20 January, basically reiterating his previous requests and requesting financial compensation. The case was referred to the Joint Committee for Disputes, which on 25 November 2014 issued a divided opinion. Two of its members recommended that the internal complaint be dismissed on the grounds that it was unfounded, whereas the two other members recommended that most of all the complainant’s requests be granted. By a memorandum dated 28 January 2015 signed “for the Director General and by delegation”, the Principal Director of Resources informed the complainant that his internal complaint had been dismissed. That is the impugned decision.

In the meantime, on 5 September 2014, the complainant was informed of the proposal by the Labour Prosecutor’s Office to initiate a process of criminal mediation, whereby he would pay Mr C. compensation in return for the waiver of criminal proceedings against him. In January 2015 the Labour Prosecutor’s Office ultimately decided not to take any criminal action against the complainant and to abandon the idea of criminal mediation.

In March 2015 the Director General offered the complainant two proposals for a settlement, whereby he would undertake to pay a sum of money to Eurocontrol in exchange for the Organisation waiving disciplinary action against him and even providing him with protection against any possible criminal action. The complainant rejected the proposals.

On 14 April 2015 the complainant filed a complaint with the Tribunal seeking the quashing of the impugned decision, the defrayal by Eurocontrol of his legal fees from the time of the submission of his request of 29 October 2013, estimated to be 4,000 euros, plus interest at the statutory rate, and the award of moral damages in the amount of 20,000 euros and costs estimated at 5,000 euros. He also requests the

disclosure of “all the documents and reports relating to the accident”^{*} of 23 March 2013.

Eurocontrol requests that the Tribunal dismiss the complaint on the grounds that it is unfounded. In its surrejoinder, the Organisation also asks the Tribunal to dismiss as inadmissible the new “claim”, contained in the complainant’s rejoinder, according to which the procedure followed by the Joint Committee for Disputes was flawed and, subsidiarily, dismiss it as unfounded.

On 3 November 2015, during the proceedings before the Tribunal, the Director General, who in the meantime had been informed of the decision of the Labour Prosecutor’s Office to close the case, decided to bring disciplinary proceedings against the complainant. The internal audit report was forwarded to the complainant on 18 November 2015.

CONSIDERATIONS

1. The complainant requests the quashing of the decision of 28 January 2015 signed by the Principal Director of Resources, dismissing his internal complaint against the decision of 20 January 2014, which rejected his requests, including for the disclosure of the internal audit report and the provision of legal assistance at the Organisation’s expense in the event of criminal or civil proceedings.

2. In support of his request for the quashing of the impugned decision, the complainant argues that the decision was taken without authority as the new Director General, appointed on 1 January 2013, had not delegated any power of signature to the Principal Director of Resources as at 28 January 2015 – the date of the impugned decision. The Organisation submits that by decision No. XI/12 (2009) of 1 February 2009 delegating the power of signature, the Director General in office at that time had delegated authority to the Principal Director of Resources to sign all replies to requests and complaints under Article 92

^{*} Registry’s translation.

of the Staff Regulations. It therefore considers that since the decision of 1 February 2009 was not revoked, it was still valid on 28 January 2015.

3. According to its case law, the Tribunal considers that in an international organisation, a delegation of the power of signature is institutional rather than personal. It hence continues to operate after the delegator has left office and until one of his or her successors decides to withdraw it (see Judgment 3730, consideration 1). Given that decision No. XI/12 (2009) of 1 February 2009 delegating the power of signature had not been revoked by the new Director General, the decision of 28 January 2015 was lawfully signed on that basis by the Principal Director of Resources. This plea must therefore be dismissed.

4. The complainant criticises the Organisation for its restrictive interpretation of Article 24 of the Staff Regulations and hence its refusal to provide him with legal assistance and cover his legal costs in connection with the judicial proceedings initiated by the authorities of the host State following the accident at work in which he was implicated.

5. According to Article 24(1) of the Staff Regulations, “[t]he Agency shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances or any attack to person or property to which he or a member of his family is subjected by reason of his position and duties”. The Tribunal considers that, while it must be recognized that the use of the expression “in particular” means that the list of circumstances given in Article 24(1) is not strictly exhaustive, the scope of the provision does not encompass the situation where criminal proceedings are brought against the official by the competent judicial authorities, which is very different from the circumstances that are mentioned. It follows that this plea is groundless.

6. The complainant alleges that Eurocontrol breached its duty of care by “abandoning” him. In particular he criticises the Organisation for not having kept him abreast of developments in the case, in spite of the stress he suffered following the accident. He also complains about the Organisation’s refusal to disclose the internal audit report it had drafted concerning the accident.

Eurocontrol argues that it persistently sought an extrajudicial settlement and that, as far as possible, it kept the complainant informed of the progress of the case. Regarding the disclosure of the internal audit report, it submits that since the sole purpose of the report was to establish the facts and make recommendations to the Director General, there was no need to disclose it to the complainant. It adds that staff members have the possibility of consulting a social worker and counsellor within the Organisation.

7. The Tribunal notes that the complainant does not deny that he contributed to a report drafted by Eurocontrol's health and safety advisor, received the report on the findings of the judicial inquiry listing the criminal offences allegedly committed by Eurocontrol, was invited to take part in various meetings, in particular a meeting held on 5 September 2014 to discuss the accident, and that he could have availed himself of the psychological support services offered by the Organisation.

8. Regarding the disclosure of the internal audit report, however, the Tribunal notes that although the report was eventually forwarded to the complainant on 18 November 2015, following the Director General's decision of 3 November 2015 to bring disciplinary proceedings against him, the Organisation should have forwarded it to the complainant, under its duty of care towards staff members, at the time when the Belgian Labour Prosecutor's Office was contemplating taking criminal action against him. Indeed, from an extract of the draft internal audit report included in the dossier, it is clear that in all likelihood the report contained information which could have helped the complainant to defend his case in the event of such action.

Moreover, the Tribunal is simply astonished that the complainant was invited to sign two proposals for a settlement requiring him to pay sums of money in exchange for the Organisation waiving disciplinary action against him and providing him with protection against any possible criminal action. Such a conduct is inadmissible.

There is no need to quash the impugned decision insofar as it refused the disclosure of the internal audit report, since that report was

produced subsequently, which has rendered the complainant's claims regarding this matter moot. Nevertheless, it follows from the foregoing that the Organisation breached its duty of care towards the complainant and thereby caused him moral injury, which may be fairly redressed by awarding him compensation in the amount of 10,000 euros.

9. The complainant contends that the decision of 28 January 2015 is unlawful and should be set aside on the ground that the proceedings before the Joint Committee for Disputes were flawed. He submits that the opinion issued by the Committee was flawed, as the management of Eurocontrol had "illegally influenced"* Committee members by producing a report aimed at rejecting all his requests, in violation of the rules and of the spirit of independence and impartiality that should characterise the internal appeal body.

10. The Tribunal notes that Article 5 of Office Notice No. 6/11 of 7 March 2011 concerning the proceedings of the Joint Committee for Disputes provides that the Committee "shall be completely independent in the performance of its tasks [and] collect all the necessary information in order to formulate its opinion". In this case, the submission of the report by the management of Eurocontrol as part of its defence before the appeal body – an act in no way prohibited by the provisions in force – is consistent with the adversarial nature of the proceedings; moreover, the Joint Committee for Disputes could examine the report and take it into consideration, if it deemed necessary, without compromising its impartiality. Consequently, this plea must be dismissed, without there being any need to rule on the objection to receivability raised by the defendant organisation in this connection.

11. The complainant's request for the production of "all the information and reports relating to the accident involving Mr [C.]"*, being couched as it is in excessively broad and vague terms, amounts to a "fishing expedition". The Tribunal has consistently held that it will not order the production of documents on the basis of such a request

* Registry's translation.

(see, for example, Judgments 2497, consideration 15, and 3486, consideration 2). The complainant's request must therefore be dismissed.

12. Since the complainant partially succeeds, he is entitled to costs, which the Tribunal sets at 5,000 euros.

DECISION

For the above reasons,

1. Eurocontrol shall pay the complainant compensation in the amount of 10,000 euros for moral injury.
2. It shall also pay him 5,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 16 November 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ