

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**A. M. (No. 5)**

**v.**

**Eurocontrol**

**130th Session**

**Judgment No. 4279**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms M. J. A. M. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 21 June 2018 and corrected on 2 July, Eurocontrol's reply of 12 October 2018, the complainant's rejoinder of 15 April 2019 and Eurocontrol's surrejoinder of 25 July 2019;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the decision to reject her internal complaint of psychological harassment.

At the material time, the complainant was assigned to the Directorate of Resources and had been engaged in staff union activities since 1993. By a letter of 15 December 2015, she made a complaint of psychological harassment against the Principal Director of Resources, Mr V., to the Director General. In particular, she related an incident that had taken place on 23 March 2015 while she was participating in a consultation meeting with the Administration in her capacity as President of the *Union Syndicale Eurocontrol France*.

In March 2016 the Director General appointed two investigators who, at the material time, held positions of responsibility within Eurocontrol. The complainant was interviewed on 3 May 2016 and 16 January 2017. Mr V. was interviewed on 12 and 13 January 2017.

In their report of 31 January 2017, the investigators concluded that the harassment complaint was unfounded. They found that the incidents reported did not satisfy the cumulative criteria establishing harassment, that is to say abusive behaviour that occurs on a regular basis, over a long period of time, is intentional and causes prejudice. Specifically with regard to the incident of 23 March 2015, the investigators found that it could not constitute harassment within the meaning of Article 12a of the Staff Regulations governing officials of the Eurocontrol Agency. They considered that no disciplinary sanction should be applied, and recommended that the Director General put in place as soon as possible the rule of application setting out arrangements for implementing the provisions of the Staff Regulations concerning harassment, including detailed guidelines on how investigations should be conducted.

By letter of 15 May 2017, the Director General dismissed the harassment complaint as unfounded. However, he considered that some of the allegations reflected inappropriate conduct by the Principal Director of Resources, one instance of which he regarded as misconduct. As a result, the Director General decided to impose on Mr V. the disciplinary sanction of a written reprimand. The Director General also proposed to the complainant that she be transferred to another directorate, and stated that he had taken steps to ensure that investigations would be conducted by external investigators in future.

On 5 July 2017 the complainant lodged an internal complaint against the decision of 15 May. She requested that appropriate measures be taken against Mr V. immediately, and that she be guaranteed normal working conditions when performing both her professional and staff union duties.

The Joint Committee for Disputes delivered its opinion on 21 December 2017. Two of its four members considered the internal complaint partly irreceivable in respect of facts which the complainant had not mentioned in her harassment complaint. Two members considered that the internal complaint was well founded, since the investigation had been conducted by individuals whose impartiality was open to question, and because there was a discrepancy between the findings of the investigation report and the Director General's decision to impose a disciplinary sanction on Mr V., which showed that elements of reprehensible conduct were present. The two other members took the view that the investigation procedure had been followed properly and

that the internal complaint was unfounded. Three members were of the opinion that the complainant should be quickly transferred to a department that was not under Mr V.'s authority.

On 22 December 2017 the Director General decided to transfer the complainant to another directorate with effect from 1 January 2018.

The complainant was advised by an internal memorandum of 19 March 2018 that the Director General endorsed the findings of the members of the Joint Committee for Disputes who held that her internal complaint should be dismissed as partly irreceivable and unfounded. He considered that the investigation procedure had been conducted in compliance with the applicable provisions and practices. That is the impugned decision.

The complainant asks the Tribunal to aside the decision of the Director General of 19 March 2018. In her brief, she requests that the Director General appoint one or more investigators with a certain degree of experience to conduct an investigation into the events complained of, during which she and particular witnesses should be interviewed. The complainant claims the symbolic sum of one euro for the moral injury suffered as a result of the harassment and the impact of the length of the internal procedure on her health. She also seeks an award of costs.

Eurocontrol asks the Tribunal to dismiss all the complainant's claims as unfounded.

## CONSIDERATIONS

1. The complainant impugns the decision of 19 March 2018 by which the Director General of Eurocontrol dismissed her internal complaint against the decision of 15 May 2017 rejecting her complaint of psychological harassment against the then Principal Director of Resources, Mr V.

In essence, that harassment complaint concerned conduct which the complainant – who at the material time was assigned to the Directorate of Resources and was thus in the reporting line to Mr V. – considered he had subjected her to in the performance of the staff union responsibilities that she also performed as President of the *Union Syndicale Eurocontrol France* (USEF).

2. Article 12a of the version of the Staff Regulations in force at the time, which lays down the principle of the prohibition of all forms of harassment within Eurocontrol, defines psychological harassment as “any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person”.

The procedure for dealing with harassment complaints was, at the material time, set out in the Policy on Protecting the Dignity of Staff at Eurocontrol, issued pursuant to Office Notice 10/98 of 25 June 1998.

3. In support of her complaint, the complainant submits, first, that the two investigators who were appointed by the Director General to investigate her complaint, and whose report concluded that it was unfounded, did not offer the requisite guarantees of impartiality.

However, contrary to the view expressed by two of the four members of the Joint Committee for Disputes in the latter’s opinion of 21 December 2017, this argument cannot be accepted.

The investigators appointed in this case were the Director of the Maastricht Upper Airspace Control Centre (MUAC) and the Agency’s Head of Internal Audit. Since the departments headed by those two senior Eurocontrol’s officials did not come under the Directorate of Resources, the complainant is plainly wrong in contending that they were under the authority of Mr V. The Tribunal notes, moreover, that the officials in question considered it important to certify in their report that they did not have a reporting relationship with any of the parties to the dispute. While it is true that they were answerable to the Director General for the performance of their ordinary professional duties, that did not preclude them, in this case, from being entrusted with the investigation of the complaint in question, which was not directed against the Director General.

4. Theoretically, it would doubtless have been preferable, as the Director General himself admitted in his decision of 15 May 2017, to entrust the investigation into the harassment complaint against the Principal Director of Resources to a person outside Eurocontrol. The investigators in fact acknowledged that they had experienced some “discomfort” in having to investigate Mr V.’s conduct. It is furthermore

regrettable that the Rule of Application, which, under the Article 12a of the Staff Regulations, was to lay down the implementing provisions for that article, had not yet been adopted when the harassment complaint at issue was made, as the Rule did not come into force until 23 May 2017.

However, the fact remains that these two officials – who had, in compliance with the requirements of Article 4.8 of the aforementioned Policy, received training in conducting an investigation before they took on that assignment – provided all the guarantees necessary to assume the responsibility entrusted to them.

In this regard, the Tribunal points out that, contrary to what the complainant appears to argue in referring to Judgments 3071, 3337 and 3660, which she misinterprets, its case law does not require investigations into harassment to be entrusted to a standing investigative body specifically established for that purpose. For the relevant requirements to be met, it suffices that such investigations are carried out by completely independent investigators.

That was the case here, since the arguments, put forward in passing by the complainant, that the independence of one of the investigators was compromised by his holding an appointment for a limited period or that he was disqualified from conducting an investigation because he himself had been the subject of a harassment complaint in the past, are irrelevant.

Moreover, the excerpts from the investigation report and the records of the interviews on the file lead the Tribunal to consider that the complaint was investigated by the investigators with complete impartiality.

5. The complainant further submits that her right to be heard was not respected during the investigation and the internal appeal procedure.

The complainant, first, takes issue with the fact that the investigators did not allow her to submit comments on the evidence gathered or to inspect the file compiled during the investigation before they completed their report. However, the investigators were not required to do so. In addition, the Tribunal observes that the complainant, who had already been interviewed by the investigators for the first time on 3 May 2016, was, in fact, re-interviewed at the end of the investigation, as she was given a second interview on 16 January 2017, shortly before the investigation report (which was sent to the Director General on 31 January) was drawn up. It should be noted that the complainant was informed of the

substance of the report, as required under the Tribunal's case law, after it was submitted, since the Director General's decision of 15 May 2017 contained a detailed summary of the report and was accompanied by a full copy of the part of the report setting out the investigators' findings.

The complainant also objects to the fact that the Director General did not hear her before taking his final decision of 19 March 2018. She contends that she should have been given the opportunity, at that stage in the procedure, to present her case again and to submit comments on the opinion of the Joint Committee for Disputes. However, the Tribunal observes that such a hearing, which is not provided for by the provisions in force governing the internal appeal procedure, was not required.

That argument will therefore be dismissed in its entirety.

6. On the merits, the complainant disputes the validity of the findings of the investigation, which the Director General accepted, that her allegations of harassment against Mr V. should be dismissed as unfounded.

7. In this regard, it should be recalled that it is not for the Tribunal, in view of the very nature of its role and the stage at which it intervenes in the disputes referred to it, to review all the findings of fact and assessments of evidence made by an internal investigative body which has gathered, as near as possible to the events, the information necessary to establish the truth of the matters at issue and, in particular, has heard the statements of the parties and various relevant witnesses at first hand. Under its settled case law, the Tribunal will only interfere with the findings of such a body, provided they have been made in the course of a properly-conducted procedure complying with the applicable rules of law, if they involve an obvious error of judgement (see, for example, Judgments 3593, under 12, 3682, under 8, 3831, under 28, or 3995, under 7).

8. The complainant's harassment complaint of 15 December 2015 shows that her allegations against Mr V. mainly related to an incident which occurred on 23 March 2015 on the fringe of a consultation meeting between the Director General and Eurocontrol's unions at the Organisation's headquarters.

According to the written submissions, during an informal meeting between the complainant and Mr V. which took place, at his initiative, in the corridor next to the meeting room before work recommenced

after the lunch break, Mr V. sharply criticised the complainant, as the USEF President, for not having distanced herself from a joint demand made by the various unions that one of her closest colleagues, Ms F., be relieved of her responsibilities. Mr V. had emphasised that the complainant, in his view, should have opposed that demand “as a woman”, since it was mainly based on accusations concerning Ms F.’s private life, which he considered were defamatory and disgraceful.

Owing to both their content and their tone, Mr V.’s remarks on that occasion were undoubtedly highly offensive to the complainant, especially since they appear to have been accompanied by related criticisms disparaging her ability to perform her staff union duties properly. The Tribunal is therefore satisfied that Mr V.’s conduct was indeed inappropriate and, in particular, that he showed a regrettable clumsiness in addressing the complainant specifically as a woman.

The evidence also shows that when, during a subsequent meeting on 9 June attended by the Director General, the complainant took Mr V. to task for his behaviour, Mr V. declined the Director General’s invitation to respond to her accusations, which appears to indicate a degree of embarrassment about this matter.

9. However, the precise circumstances which led Mr V. to make those inappropriate remarks on 23 March 2015 – and which, as the investigators rightly noted, had been unjustifiably passed over by the complainant in her harassment complaint and during her first interview – lead the Tribunal, if not to excuse that incident, at least to put its seriousness into perspective.

More fundamentally, it cannot, in any event, be found that Mr V.’s conduct on that occasion is sufficient to establish psychological harassment nor to demonstrate, as the complainant submits, that he was guilty of misogyny. Moreover, although the complainant maintains that Mr V. had already treated her in a highly discourteous manner at a consultation meeting two years earlier, that allegation cannot invalidate this finding, in particular since, according to the witness statements gathered by the investigators, Mr V.’s language on that previous occasion did not overstep the bounds of what is permissible in this kind of meeting between the Administration and staff unions, and the complainant herself did not appear to have been shocked by it at the time.

10. In view of the amount of information gathered by the investigators on the various incidents described above, the Tribunal considers that to conduct hearings, as requested by the complainant, of two witnesses – one of whom was interviewed during the investigation – would not affect the assessment of those facts. The complainant's request to that end will therefore be refused.

11. The Tribunal further observes that the complainant is wrong to believe there is a contradiction between the dismissal of her harassment complaint and the Director General's decision to issue a written reprimand to Mr V. after the investigation report was submitted.

It is true that Mr V. received a reprimand on 24 July 2017, even though the investigators had found that there was no need for a disciplinary sanction in this case. In view of the requirements inherent in the principle of equal treatment, the Director General considered that he should treat Mr V.'s behaviour in specifically addressing the complainant as a woman during the incident on 23 March 2015 as misconduct. The Director General also deemed Mr V.'s failure to account for that conduct when he was questioned about it during the meeting on 9 June as inappropriate, given the duties owed by the Principal Director of Resources to staff unions.

Needless to say, it is not for the Tribunal to rule on whether the sanction imposed on Mr V. was warranted, since it has not been impugned before it. However, the Tribunal observes that, in any event, the misconduct of which Mr V. is accused, identified above, cannot be regarded as constituting psychological harassment of the complainant. There is therefore no contradiction between the imposition of that sanction and the rejection of the internal complaint of 15 December 2015 seeking recognition of such harassment.

12. In support of her allegations of harassment, the complainant also complained that she encountered recurring difficulties in obtaining approval for the costs of the missions that she went on as part of her staff union responsibilities from Mr S., the head of the unit to which she belonged at the material time.

However, the investigation report shows that the complainant's requests in this regard were generally approved on the same day as they were entered into the software application intended for that purpose or,

at most, within three days. The only real incident in that regard of which the truth has been established is that, when the complainant submitted such a request with a view to attending the aforementioned meeting of 23 March 2015, Mr S. pointed out that the complainant was being transferred to another unit and sought to have that unit cover the costs of the mission in question. However, that reaction – which appears quite natural from a manager who is anxious to protect his unit’s budget – cannot be regarded as evidencing harassment of the complainant.

Furthermore, the Tribunal notes that the complainant’s accusations against the Principal Director of Resources in respect of the incidents in question rest, according to her harassment complaint of 15 December 2015, solely on the contention that Mr S. would not have behaved in that way “without the approval of Mr V., whose direct subordinate he [was]”\*. However, there is no evidence that Mr V. personally gave Mr S. any instructions to that effect.

13. Finally, in her harassment complaint, the complainant stated that, since her assignment to the Directorate of Resources in 2008, she had been transferred three times in the interest of the service pursuant to Article 7 of the Staff Regulations, which had resulted in frequent changes of line manager. She submitted that those decisions were “deliberate acts [seeking] to undermine [her] administrative situation and [her] staff union activities”\*. In her view, the sole aim of those repeated transfers was to force her constantly to readapt to new duties and to render her professional duties excessively difficult.

However, the evidence shows that, during her initial interview with the investigators, the complainant acknowledged that the first transfers in question had taken place for legitimate reasons relating to the service, and she clearly implied that those measures had not, in fact, particularly affected her. It is clear that the complainant’s contention in this regard really relates only to her last transfer, to Procurement, which was announced on 16 March 2015 with retroactive effect from 1 March. However, it is apparent, inter alia, from an exchange of e-mails between the complainant and Mr S., that that transfer was likewise legitimately justified in the interest of the service and, although it is true that the decision ordering that transfer was not implemented in optimal conditions owing to administrative errors, there is nothing to suggest that the

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\* Registry’s translation.

decision arose from any intention to undermine the complainant's professional situation or to hinder her performance of her staff union activities. Moreover, contrary to what the complainant appeared to insinuate during the investigation, that transfer was not connected with the incident on 23 March 2015 because, although the complainant received final confirmation of the transfer on the following day, 24 March, she had in fact known since early December 2014 that it was imminent.

14. Having regard to these various considerations, the Tribunal is satisfied that the findings of the investigation report, which are based on a full, rigorous and thorough examination of the facts, are not tainted with any obvious error of judgement.

It follows that, as the Director General rightly considered, the complainant has no grounds for alleging that she was subjected to psychological harassment, as defined by the Article 12a of the Staff Regulations, by Mr V.

In addition, the Tribunal considers, in the light of the evidence, that the complainant's allegations that there was an infringement of her right to engage in staff union activities, recognised by Article 24a of the Staff Regulations, and that she was discriminated against on the ground of sex, in breach of Article 1b thereof, are unfounded.

15. The complainant asks that Eurocontrol be ordered to pay her symbolic compensation of one euro in redress for the various injuries that she contends that the Organisation has caused her.

Insofar as that claim is based on the existence of the alleged harassment or on the alleged unlawfulness of the impugned decision, the foregoing considerations provide sufficient grounds for it to be dismissed.

However, insofar as the complainant also contends, in support of the same claim, that the investigation and internal appeal procedure were inordinately long, the Tribunal must examine the merits of her arguments on that point.

16. Regarding the duration of the investigation, it should first be observed that the complainant is wrong to contend that the Director General took an excessively long time to open the investigation.

The evidence shows that the complainant and Mr V. were notified of its opening on 31 January 2016 and that the investigators – the selection of whom obviously required prior consideration owing to the nature of Mr V.'s duties – were appointed on 6 March 2016, whereas the complainant's harassment complaint, dated 15 December 2015, had been received by Eurocontrol on 17 December. In the Tribunal's view, these time frames show that the Organisation acted with sufficient diligence in view of the circumstances of the case.

It is true that the investigation itself took an unusually long time as the investigators did not submit their report until 31 January 2017. However, the evidence shows that the delay was solely due to Mr V.'s absence on medical grounds for most of 2016, which prevented him from being interviewed by the investigators in conditions that would allow him duly to exercise his rights. Since Mr V. was interviewed as soon as he returned from sick leave, on 12 and 13 January 2017, and the report was subsequently submitted less than 20 days later, the Tribunal finds that there is no reason to consider, in this case, that the delay in the investigation warrants redress, especially since Mr V.'s absence, by definition, protected the complainant against the harassment of which she accused him.

Furthermore, although the Director General's decision on the harassment complaint was not taken until 15 May 2017, the three-and-a-half-month period thus taken by the Organisation to act upon the findings of the investigation does not appear unreasonable, in particular having regard to the sensitivity of the matter in question and the great care taken to state the grounds for the decision.

17. Finally, as regards the length of the internal appeal procedure, the Tribunal observes that the period of eight and a half months cannot be regarded as excessive, especially since the complainant was transferred to another directorate on 1 January 2018 and thus no longer reported to Mr V.

18. It follows 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 30 June 2020, Mr Patrick Frydman, President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ