

NINETIETH SESSION

***In re Boivin* (Nos. 3 and 4)**

Judgment No. 2034

The Administrative Tribunal,

Considering the third and fourth complaints filed by Mr Philip Gustaaf Louise Boivin against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 3 October 1999 and corrected on 5 October 1999, the Agency's single reply of 14 January 2000, the complainant's rejoinder of 16 April and Eurocontrol's surrejoinder of 28 July 2000;

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 and the pleadings may be summed up as follows:

A. Facts relevant to this case are set out in Judgments 1768 (*in re Bodar*), 1870 (*in re Boivin*) and 1899 (*in re Boivin* No. 2) delivered on 9 July 1998, 8 July 1999 and 3 February 2000 respectively.

By a decision of 4 March 1996 the complainant's appointment to a post as an expert at the Agency's Institute of Air Navigation Services in Luxembourg was quashed, with effect from 31 August 1996, after another employee of the Agency, Mr Bodar, had challenged it. The complainant was then appointed to the post of "Head of the Accountancy and Personnel Office" of the Institute. Mr Bodar challenged that appointment too and the Tribunal quashed the implied rejection of his internal complaint in Judgment 1768. In executing the judgment, Eurocontrol submitted Mr Bodar's internal complaint to the Joint Committee for Disputes, which, in its opinion of 26 August 1998 unanimously recommended cancelling Mr Boivin's appointment, in the absence of a reasoned report by the Selection Board, and resuming the procedure from the point at which it was flawed. Following that recommendation on the Director General's behalf, the Director of Human Resources cancelled Mr Boivin's appointment by a decision of 10 November 1998, with effect from 1 February 1999.

On 22 December 1998 a new Selection Board examined the files of applicants who were still interested in the post of Head of Accountancy and Personnel. It decided to make its choice on the strength of the files submitted in 1996 and not to count any qualifications or professional experience acquired since then. It found only one candidate suitable. It considered that in 1996 the complainant did not meet the requirement of a university diploma or equivalent experience and lacked enough experience in project accounting and personnel management. The Director of Human Resources notified the Board's conclusions to the complainant by telephone on 14 January 1999. He also informed him that, consequently, the Director General had decided to uphold the decision of 10 November 1998 and that his appointment would be terminated on 31 January 1999; however, because the Agency was "aware of its moral obligations" he invited the complainant to negotiate an amicable settlement. On 18 January 1999 the Director of Human Resources confirmed the decision of 10 November on the Director General's behalf and so informed the complainant by a letter of the same date.

On 25 January 1999 the complainant filed an internal complaint with the Director General challenging the decision of 10 November 1998 to cancel his appointment and the decision of 18 January 1999 dismissing him. He lodged a second internal complaint on 1 February against a decision of the Director General of 17 November 1998 to convene a new Selection Board. On 12 and 13 April 1999 he filed a third and a fourth internal complaint, which he said were linked, against the Selection Board's decision of 22 December 1998 not to put him on the short list and the Director General's decision of 18 January 1999 to dismiss him.

In its opinion of 24 June 1999 on the first, third and fourth internal complaints, the Joint Committee for Disputes unanimously recommended rejecting his claim to the quashing of the decision of 10 November 1998 cancelling his appointment. As to his claim that there had been an obvious misappraisal of his abilities, the Committee considered that it was not in a position to give an opinion because it had not been given the necessary documents. It also found that the notice of dismissal given to the complainant was "unacceptable". By two letters of 2 July 1999 the Director of Human Resources rejected those three internal complaints on the Director General's behalf.

On 7 July 1999 the Committee unanimously found that the second internal complaint was irreceivable. On 17 August 1999 the Director of Human Resources wrote to the complainant on the Director General's behalf rejecting the internal complaint.

B. The complainant has four objections to the lawfulness of the decision of 10 November 1998 to cancel his appointment. The first plea is that there was an obvious misappraisal of the evidence since a substantiated report, in the form of an evaluation sheet on the candidates, was prepared and sent to the Director of Human Resources. He adds that consequently the impugned decision was not properly substantiated. Furthermore, the Agency acted in bad faith and failed in its duty to treat its staff with respect, because it did not let him have his say when the Joint Committee for Disputes was considering Mr Bodar's second internal complaint. Lastly, he considers that the Agency should have submitted the evaluation sheet to the Joint Committee for Disputes.

The complainant has three objections to the Selection Board's decision of 22 December 1998 not to put him on the short list and the Director General's decision of 18 January 1999 insofar as it was a decision "not to appoint [him] to the vacant post". First, he submits that the composition of the new Selection Board was unlawful: the membership was entirely new whereas it should have been as similar as possible to that of the first Board. Moreover, the new Board should have started the procedure again "at the point at which it was flawed", i.e. after the short list was drawn up, at the time when the reasoned report was to be drafted. The short list conferred rights on him and the Agency was wrong to change it. Secondly, he pleads inadequate substantiation or breach of his right to a fair process in that he was not informed of the membership of the new Board or its criteria for assessing candidates. Thirdly, he contends that he did have the necessary qualifications and the Board made an obvious error of judgment or disregarded the notice of competition, and overlooked his good performance in his post.

As to the decision of 18 January 1999 insofar as it terminates his appointment, the complainant alleges that it is unlawful on three counts. First, the Agency broke the Director General's promise - which was "confirmed" following Judgment 1768 - to reinstate him if his appointment was cancelled again. Secondly, the Agency had a duty not to cause him undue hardship and to protect him from any injury arising from the quashing of an appointment he accepted in good faith. The notice and the proposal to negotiate a settlement fell short of that duty. The Agency had a duty to reinstate him in another post or at least to keep him on temporarily. Lastly, he alleges abuse of authority by the Director of Human Resources, who wanted to dismiss him.

The complainant alleges very serious moral and material injury. He asks the Tribunal to quash the decisions of 2 July 1999 rejecting his internal complaints and to order his reinstatement in the Agency or, failing that, to order Eurocontrol to pay him 107,507,260 Luxembourg francs for the damage caused to his career, 500,000 francs - a provisional estimate - for direct material injury and 4,500,000 francs for moral injury. He also seeks 350,000 francs in costs.

C. In its reply the Agency rebuts the complainant's ten pleas. First, it maintains that the only document drawn up by the Selection Board was a list of suitable and unsuitable candidates. The evaluation sheet - prepared by the recruitment service - was no substitute for a reasoned report, so there was no such report. Secondly, the decision of 10 November 1998 was properly substantiated because it referred to Judgment 1768 and the opinion of the Joint Committee for Disputes. Thirdly, this Committee is free to decide whom it will hear. In all likelihood it found it unnecessary to hear the complainant because it found the procedural flaw so glaring. Fourthly, the evaluation sheet had been sent to the Committee, which found that it did not amount to a reasoned report.

Fifthly, Eurocontrol denies that it was bound to convene the same Selection Board. On the contrary, it appeared wiser not to have the same people. Moreover, the new Board was not bound by its predecessor's unsubstantiated ranking of candidates. Sixthly, nothing in the rules on competitions requires notification to candidates of a board's membership. The selection criteria are those set out in the notice of competition and the Board must abide by them. Seventhly, the Agency notes that the Board found that the complainant fell short of three criteria in the notice of competition.

Eighthly, the Agency denies that the Director General made any "promises". He simply gave an "undertaking" to take due account of the complainant's interests in settling the matter, which he did by inviting him to negotiate compensation for injury. But it could not break administrative rules in fulfilling that undertaking. Ninthly, Eurocontrol concedes that it must compensate the complainant for injury since he accepted his appointment in good faith. Lastly, on the complainant's tenth plea, it points out that there can be no presumption of abuse of authority and that the argument the complainant reasserts in this connection was rejected by the Tribunal in Judgment 1870.

Eurocontrol adds that the complainant's monetary claims are exorbitant and that reinstatement, even if the Tribunal orders it, depends on the availability of a suitable post. It asks the Tribunal to dismiss the complainant's claims and to award him material damages in proportion to the length of his appointment, to evaluate moral damages *ex aequo et bono* in accordance with the case law and to take account of its willingness to find an amicable settlement in any eventual awarding of costs.

D. In his rejoinder the complainant presses his pleas. He submits that a staff member is entitled to a hearing before any decision affecting him is taken. Citing the opinion of the Joint Committee for Disputes, he denies that the latter received the evaluation sheet. He expresses surprise that the Selection Board comprised no members of the Institute for Air Navigation, since that was where the vacant post was. The Board found him wanting in "experience of personnel management", yet that was no longer one of the duties of the post, which shows that the Board did not know the requirements of the service. He accuses the Board of adding to the criteria set in the notice of competition. He maintains that his qualifications matched the requirements of the post better than those of the successful candidate. He contends that, taken together, all the facts show that there was abuse of authority. The Director General should have relieved the Director of Human Resources of his role in the matter.

The complainant adds thirteen pleas "taken from the various internal complaints" to those he put forward in this complaint.

In respect of the decision of 10 November 1998 to cancel his appointment to the vacant post, he pleads:

- an error of fact or of law in that the second cancellation of his appointment was the result of an improper dismissal in March 1996. His second appointment having been cancelled, he considers that he is no longer bound by his undertaking not to challenge the cancellation of his first appointment by the decision of 4 March 1996;
- breach of the rules on notice;
- an error of fact or of law in that the decision of 10 November 1998 is based on an alleged procedural flaw that Mr Bodar failed to bring up in his complaint to the Tribunal;
- abuse of authority.

In respect of the decision of 22 December 1998 not to put him on the short list and the decision of 18 January 1999 insofar as it does not appoint him to the vacant post, he pleads:

- an error of fact or of law, in that those decisions are the result of a wrongful dismissal in March 1996;
- an error of fact or of law in that these decisions are the result of the unlawful decision of 10 November 1998 to cancel his appointment;
- inadequate substantiation of the Board's report of 22 December 1998 and/or of the decision of 18 January 1999 not to appoint him to the vacant post, or breach of his right to a fair process;
- failure to take account of essential facts in that the Director General based his decision only on the Board's report of 22 December 1998, overlooking all other evidence relating to the complainant. The Director General was not bound by the Board's report and should have had serious doubts about its conclusions;
- abuse of authority;
- breach of the principle of legitimate trust, good faith and his right to a fair process.

Lastly, in respect of the decision of 18 January 1999 insofar as it dismisses him from the Agency, he pleads:

- an error of fact or of law in that the decision was the result of the unlawful decisions of 4 March 1996 and 10 November 1998 to cancel his appointments, that of 22 December 1998 not to put him on the short list and that of 18 January 1999 not to appoint him to the vacant post;

- breach of the rules on notice;

- breach of the principle of legitimate trust, and his right to a fair process, and of the duty to keep him informed; a flaw in the internal procedure in that he was confronted with a *fait accompli* before being given a say.

He increases his financial claims to a total of 177,866,453 Luxembourg francs.

E. In its surrejoinder Eurocontrol explains that the Director General took the view that a hearing of the complainant could have no influence on his decision by which he only drew the consequences of a fatal procedural flaw. It submits that there is no rule requiring the department with the vacancy to be represented on the Selection Board. It denies that the second Board added new criteria: it complied scrupulously with those set in the notice of competition. It concedes that there were a number of formal flaws and irregularities but denies that they amount to abuse of authority.

Eurocontrol submits that the complainant is barred *ratione temporis* from challenging the cancellation of his first appointment. As to the notice period, it was lawful despite being short. It maintains that the Director General was bound by the short list drawn up by the Selection Board: he may depart from the order of merit established by the Board but may not appoint a candidate not placed on the list.

Eurocontrol observes that to reinstate the complainant would be inappropriate because, among other reasons, it has completely lost confidence in him since he recorded a conversation he had with the Director of the Institute without the latter's knowledge. It informs the Tribunal that it will shortly make over to the complainant 120,000 euros in part payment of the 192,338.28 euros that it proposes for material damages.

CONSIDERATIONS

1. On 6 September 1995 the complainant was appointed for five years from 1 September 1995 to a post as expert at the Institute of Air Navigation Services in Luxembourg. There was no notice of competition published for this post. Another staff member, Mr Bodar, challenged the appointment and the upshot was that the Agency cancelled it on 4 March 1996 with effect from 31 August 1996.

On 1 March 1996 the Agency published a notice of competition for the post of Head of the Accountancy and Personnel Office of the Institute. The complainant applied. He was put on the short list by the Selection Board, and on 28 May 1996 the selection Committee recommended his appointment. He was appointed to the post and took up his duties on 1 September 1996.

On 4 September 1996 Mr Bodar challenged the complainant's second appointment. The Tribunal set aside the implied rejection of his internal complaint (see Judgment 1768 *in re* Bodar) because the Joint Committee for Disputes was not consulted, and sent the case back to the Director General. The Joint Committee for Disputes considered the case and in its opinion of 26 August 1998 observed that the Selection Board had not submitted a substantiated report.

Endorsing the Committee's opinion on the Director General's behalf, on 10 November 1998 the Director of Human Resources cancelled the complainant's second appointment, with effect from 1 February 1999, on grounds of a procedural flaw.

A letter of 17 November 1998 confirmed that decision to the complainant and informed him that a Selection Board was to be convened to resume the procedure at the point at which it was flawed. By a letter of 27 November 1998 the complainant was told that all those who had applied in 1996 for the post of Head of the Accountancy and Personnel Office at Luxembourg were invited to reapply if they were still interested in the post. The complainant did so.

On 22 December 1998 the new Selection Board found him unsuitable for the post. He was informed on 14 January 1999 by telephone that the Director General had decided to endorse the Board's recommendation and not to appoint him, and confirmed his decision of 10 November 1998 cancelling his second appointment. The complainant would therefore cease to be an employee of the Agency as from 31 January 1999. The Director of Human Resources confirmed that in a letter of 18 January 1999, in which he also invited him to contact the Head of the Legal Department through his counsel in order to negotiate the financial and other consequences of his termination.

2. On 25 January 1999 the complainant filed an internal complaint against the decision of 10 November 1998 to cancel his second appointment, and the decision of 18 January 1999 not to re-employ him and to terminate his employment. He sought moral damages and material damages assessed on the basis of a full career at Eurocontrol.

In accordance with the recommendation made by the Joint Committee for Disputes on 24 June 1999, that complaint was rejected by a decision of 2 July 1999.

On 1 February 1999 the complainant lodged another internal complaint against the decision of 17 November 1998 to convene a new Selection Board to start the process again at the point at which it had been flawed. He sought compensation for the injury caused by the decision. That complaint was rejected as irreceivable on 17 August 1999 in accordance with the recommendation made by the Joint Committee for Disputes on 24 June 1999.

The complainant lodged two further internal complaints, both of which sought compensation: one on 12 April 1999 against the decision of 18 January 1999 not to appoint him and to dismiss him as from 31 January 1999, and the second on 13 April 1999 against the Selection Board's decision of 22 December 1998 not to put him on the short list, and against the decision of 18 January 1999.

By decisions of 2 July and 17 August 1999 all his internal complaints were rejected on the following grounds:

- his claims arising from the decision of 10 November were time-barred and so irreceivable;
- his claims arising from the Selection Board's decision of 22 December 1998 and the letter of 27 November 1998 inviting candidates to reapply were irreceivable because they were not decisions adversely affecting him but, respectively, an opinion and a preparatory act; they were also time-barred;
- the pleas in all his internal complaints were devoid of merit.

3. On 3 October 1999 the complainant came to the Tribunal asking it

"Before ruling on the case: to order ... the hearing of witnesses ...

...

In the first instance:

to quash the decision taken on 2 July 1999 by the Director of Human Resources on behalf of the Director General and by delegation, rejecting the complainant's internal complaint of 25 January 1999 against the decision of 10 November 1998 to quash the decision of 2 September 1996 to appoint him to the post of Head of the Accountancy and Personnel Office of the Institute of Air Navigation Services at Luxembourg, and the decision of 18 January 1999 not to reappoint him to that post but to terminate his employment with the Agency;

to quash all the decisions impugned in that internal complaint;

to quash the decision of 2 July 1999 rejecting the internal complaint of 12 April 1999 against the decision of 18 January 1999, and the internal complaint of 13 April 1999 against the Board's decision of 22 December 1998 not to put [him] on the short list, and the decision of 18 January 1999;

to quash all the decisions impugned in that internal complaint;

to order [his] reinstatement in another suitable post at the same level with duties that match his qualifications;

subsidiarily to this last claim:

to order Eurocontrol to pay [him] 107,507,260 Luxembourg francs in compensation for the damage to his career, 500,000 Luxembourg francs as a provisional estimate of direct material injury, and 4,500,000 Luxembourg francs as compensation *ex aequo et bono* for moral injury.

In any event:

to order Eurocontrol to pay him 350,000 Luxembourg francs in costs."

In his complaints the complainant puts forward ten pleas, which he increases to twenty-three in his rejoinder.

4. The Agency submits that the internal complaint of 1 February 1999 was irreceivable in that it was against a procedural measure - the letter of 17 November 1998 informing the complainant that a new Selection Board was to be convened. It adds that the arguments adduced in that complaint were developed at length in the three internal complaints against the cancellation of the complainant's appointment and his dismissal.

The complainant concedes that "all the pleas and claims he made in his internal complaint of 1 February 1999 ... are similar to those in the other complaints".

There is no need to determine the receivability of claims which, as the Agency acknowledges, form an indivisible whole relating to all the impugned measures.

5. Nor need the Tribunal go into the merits of each of the twenty-three pleas set out in B and D above. The gist of the complainant's case is that the Agency failed in its duty to treat its employees with respect, not to cause them unnecessary hardship and to protect them from any injury they might suffer from the quashing of an appointment accepted in good faith.

The Agency does not demur. It states in its submissions that it "does not claim that the way it treated the complainant is above reproach".

It adds that, the appointment of 1 September 1996 having proved to be doubly unlawful, Eurocontrol was not bound either to keep the complainant on in his post or to offer him another one in breach of its rules on the filling of vacancies; it acknowledges that it must however, compensate him for the injury he suffered, since he accepted his appointment in good faith.

6. As the Tribunal already observed in its previous judgments on the disputes between the two parties, the complainant accepted the appointment in good faith and so was entitled to redress for the Agency's administrative mistakes. There is no doubt but that the cancellation of his appointments and his subsequent dismissal are a direct result of procedural flaws for which the Administration was originally responsible.

7. On each occasion the Agency had to resume the recruitment process for the post in question following the quashing of the appointment. But on this last occasion the procedure showed none of the flaws alleged by the complainant. So there are no grounds for his claims to the quashing of the decision to cancel his appointment, or the decision not to put him on the short list, or the decision not to appoint him to the vacant post, or the decision to terminate his employment. However, by rejecting his claims the Agency did fail in its duty to treat him with respect and to protect him from the injury caused by the quashing of an appointment he accepted in good faith. To that extent, the decisions to reject his internal complaints must be set aside.

8. It is plain on the evidence that although the parties concur on the need for redress, they have been unable to reach agreement on its nature or on the amount of any award of damages.

9. The complainant considers that the gravity of the Agency's mistakes entitles him to full redress in the form either of reinstatement or of compensation.

10. He asks the Tribunal to order his reinstatement in another suitable post at the same level, with duties that match his qualifications.

He submits that he is not asking the impossible since he is well-qualified, has always discharged his duties satisfactorily and there should be no shortage of suitable posts in an organisation as large as Eurocontrol.

He denies that reinstatement is inappropriate: even if he and the Director of Human Resources have their obvious differences, he has always had excellent relations with the Agency's management and staff.

Eurocontrol replies that reinstatement presupposes the availability of a suitable post. It points out that, Eurocontrol being essentially a technical organisation, grade A administrative posts, which are specific in nature, are rare, particularly since the staff budget was frozen and existing staff were assigned to the most essential tasks.

Moreover, in view of the complainant's disputes with the Agency and his personal accusations against other officials, Eurocontrol is highly sceptical about the possibility of his "performing harmoniously and in a climate of calm" any new duties it might find for him.

Lastly, the Agency points out that it has lost all confidence in him.

11. The Tribunal has consistently held that reinstatement is subject to two conditions. First, there must be a vacant post and, secondly, the staff member must be qualified for it. The circumstances of the case and the evidence indicate that those conditions are not fulfilled here. But, more importantly, reinstatement is inadvisable when an employer has valid reasons for losing confidence in an employee. And Eurocontrol has.

It is common ground that the complainant recorded and transcribed a conversation he had with the Director of the Institute without the latter's knowledge. Even if he did so in an attempt to support his case, such behaviour is unacceptable and fully warrants the Agency's loss of confidence. That being so, reinstatement is not advisable.

12. The complainant makes subsidiary claims to moral and material damages.

He explains that the moral injury arises from the humiliation he feels at having been declared unfit to perform his duties, the frustration he suffered at having two consecutive appointments cancelled on account of procedural flaws, and the serious damage to his career, and from worry about the repercussions of the serious material injury for himself and his family.

The Agency concedes moral injury but attempts to attenuate its extent by asking the Tribunal to take account of certain facts which show that it acted in good faith and is well disposed towards the complainant. It cites in particular the letter of 16 May 2000 offering him 25,000 euros, the fact that it has decided to make over 120,000 euros in part payment of material damages without awaiting the Tribunal's judgment in early 2001; and its decision not to deduct from the material damages the amounts granted him for unemployment or any income he may have earned from other sources.

13. The Tribunal observes that the Agency has demonstrated its goodwill and positive attitude. But that does not mitigate the obvious gravity of the undeniable moral injury it caused the complainant and for which it must compensate him. Fair redress for that injury amounts to more than the sum it proposed.

14. By way of material damages the complainant seeks compensation for the injury caused directly by all the inconvenience he suffered as a result of having to move from Luxembourg to Belgium, including any costs he may incur in breaking his lease in Luxembourg and moving his possessions to Belgium. He also claims compensation for the injury to his career amounting to the difference between, on the one hand, the amount, after tax and deduction of social security charges, of all the components of the income (remuneration, allowances, benefits in kind, pension, etc.) he would have received as from 1 February 1999 had he stayed at Eurocontrol and, on the other, the amount, after tax and deduction of social security charges, of his income since 1 February 1999, his current earnings in the job he has held in the Belgian private sector since 1 September 1999, or any future income from a job outside the Agency.

15. In direct material damages the complainant provisionally claims 500,000 Luxembourg francs. For the damage to his career he claims 107,507,260 francs. In fact, his main claim was that he had the right to the renewal of his original fixed-term appointment and its conversion to a permanent one within the meaning of the Staff Regulations, or at least an indefinite appointment, in accordance with the promises he had received and with Eurocontrol's general policy. In a subsidiary claim he also observes that he could legitimately expect at least a renewal of his appointment given the promises made to him and the Agency's general policy.

While denying the complainant's allegations the Agency acknowledges that it recruited him for five years and told him on his arrival that he could reasonably expect his appointment to be renewed. But, it says, no competent

authority gave him formal assurances that it would be renewed and even less that it would be converted to a permanent one.

In rebuttal the complainant relies on promises which he alleges were made by the appointing authority and he cites a statement of 22 July 1998 by a former Director of the Institute who held office from June 1991 to May 1996. It says:

"After Mr Boivin's refusal [the appointing authority] confirmed the following terms:

- initial offer of a five-year contract, renewable;
- if the contract is renewed, it will be converted to a permanent contract within the meaning of the Staff Regulations in force at the time of GMD No. 5/95;
- entitlement to renewal is subject to the following conditions:
 - the work performed must not have the form of a project, i.e. having a precise beginning and end;
 - the duties involved must be performed satisfactorily;

Mr Boivin's duties, by their nature, have been recognised as continuous; having received confirmation of the above conditions and the Director General's decision (GMD No. 5/95), Mr Boivin has reconsidered his decision and has accepted the offer of employment on that basis and under those conditions."

16. The Tribunal observes that, even if he was given promises at the time of his first appointment, which was cancelled because of a procedural flaw, the complainant has failed to produce formal proof that they were made by a competent authority and were therefore enforceable. The former Director of the Institute whose statement he produces did not have the authority to enter into formal commitments beyond the initial one. Responsibility for Eurocontrol's employment policy was not his but solely that of the Director General. In any case, he was to leave the office in May 1996.

17. As already stated, the complainant fails to prove that he was to be given a permanent appointment or that the competent authority assured him at any stage that his appointment would be renewed and subsequently converted into a permanent one. However, there are several indications in the evidence on file that he had reason to believe that he had a legitimate expectation that his initial appointment would be renewed on its expiry, and that since the Agency had no quarrel with his performance his contract would in all likelihood have been renewed for at least five years in accordance with the Agency's practice had his successive appointments not been tainted with procedural flaws. On this point the case law holds that a decision not to renew a fixed-term contract does not interfere with any contractual right but merely disappoints expectation of further employment. The conclusion is that it was possible for the Director General, for one reason or another, not to renew the complainant's contract beyond the initial period without impairing any of his contractual rights.

Accordingly, the Tribunal considers that the compensation he should receive instead of reinstatement should comprise, in addition to the amounts awarded for moral damages and direct material damages, an amount equivalent to what he would have earned up until the end of his initial contract had it not been cancelled and an amount in compensation for the injury caused by the loss of a legitimate expectation of continued employment at Eurocontrol.

18. The exact amount of such redress being impossible to determine, in accordance with its case law the Tribunal will award the complainant by way of damages under all heads of injury an amount set *ex aequo et bono* which shall take account of the sums he has already been paid as a result of the early termination of his contract.

The Tribunal considers 220,000 euros to be a fair award. The 120,000 euros that the Agency proposed to make over pending the establishment of damages shall be deducted from the 220,000 euros if they have already been paid.

19. The Tribunal deems the hearing of witnesses unnecessary.

20. Since his claims largely succeed, the complainant is entitled to 3,000 euros in costs.

DECISION

For the above reasons,

1. The impugned decisions are set aside insofar as they reject the complainant's claims for damages.
2. The Agency shall pay the complainant by way of damages for injury under all heads the amount of 220,000 euros minus 120,000 euros, if they have already been paid, as stated under 18 above.
3. The Agency shall pay him 3,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 November 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 31 January 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet