

NINETY-FOURTH SESSION

Judgment No. 2188

The Administrative Tribunal,

Considering the complaint filed on 5 April 2002 by Mr J. T. B. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency), the Agency's reply of 5 July, the complainant's rejoinder of 18 September and Eurocontrol's surrejoinder of 25 October 2002;

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

Having examined the written submissions and decided not to order hearings, 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, who was born in 1965 and has Dutch nationality, joined Eurocontrol in September 1993 as a Clerical Assistant 2nd class, at grade C5. He is currently a Helpdesk Operator, at grade C2, at the Central Flow Management Unit (CFMU).

Technical support for the CFMU must be provided sixteen hours a day and seven days a week. This is achieved by rotating teams which work an early shift (from 6.30 a.m. to 3.20 p.m.), a day shift (from 8 a.m. to 4.50 p.m.) or a late shift (from 2.30 p.m. to 11.20 p.m.). In addition, the teams are regularly placed on stand-by. Under Article 8 of Rule 29 of the Staff Regulations governing Officials of the Agency, an allowance, expressed in points, is paid in respect of stand-by duty. No allowance is paid for stand-by duty at home unless such duty is scheduled to last at least 14 hours.

The complainant was placed on stand-by on 8 and 23 March, 2 and 3 April and 1 and 3 May 2001. As shown by his shift allowance reports for the three months in question, he was awarded no points for these hours of stand-by duty, which, according to the complainant, were worked both at home and at his place of work. He therefore submitted an internal complaint to the Director General on 27 July 2001. In its opinion of 30 November, the Joint Committee for Disputes concluded that his internal complaint should be rejected on the grounds that the conditions for stand-by duty at the place of work were not satisfied and that there had been nothing unusual in the scheduling and performance of the stand-by duty at home. By a memorandum of 11 December 2001, which is the impugned decision, the Director of Human Resources, acting on behalf of the Director General, informed the complainant that his internal complaint had been dismissed.

B. The complainant's case is based solely on an alleged breach of Article 8 of Rule 29. He asserts that on the six days in question, from 6.30 a.m. to 11.20 p.m. he was continuously on stand-by duty, partly at home and partly at his place of work, although he carried out his normal day-shift duties for a few hours. Consequently, Eurocontrol wrongly failed to award him any points and to pay him any allowance.

The complainant asks the Tribunal to set aside the impugned decision, his shift allowance reports for March, April and May 2001 and the corresponding pay slips for May, June and July 2001. He also asks to be awarded the points to which he considers himself entitled, and to be paid the corresponding allowances, with interest at an annual rate of 8 per cent, as well as 2,500 euros in costs.

C. In its reply Eurocontrol states that on 23 March, and on 2 and 3 April 2001 the complainant was on stand-by at home when he was summoned to replace absent colleagues; these replacements were paid as overtime.

On 8 March, and on 1 and 3 May 2001 he was on stand-by at home from 6.30 a.m. to 8 a.m. and from 4.50 p.m. to 11.20 p.m.; he also performed his normal day-shift duties. Given that he was not asked to remain at his place of work without actually having to work, Eurocontrol considers that he did not satisfy the conditions for being on stand-by at work. Thus, it considers that it applied the provisions of Rule 29 correctly. It adds that nobody in the CFMU is placed on that type of stand-by.

D. In his rejoinder the complainant acknowledges that he was paid for the overtime he worked when he had to replace a colleague on 23 March and on 2 and 3 April 2001. He therefore no longer seeks compensation for his stand-by duty on those days and alters his claims accordingly. However, for the three other days, he reiterates that he was placed on both types of stand-by. He disputes the assertion that no employee working at the CFMU is placed on stand-by at the place of work and emphasises that Article 8 does not exclude the fact that an employee who is placed on such stand-by may be performing his normal duties at the same time.

E. In its surrejoinder Eurocontrol maintains that the work carried out by teams working shifts and stand-by duty at the place of work are two different tasks which cannot be performed simultaneously: they are mutually exclusive. To grant employees an allowance in respect of stand-by duty at work in addition to their remuneration for day-shift duties would be tantamount to granting them an undue advantage.

CONSIDERATIONS

1. The complainant is currently a Helpdesk Operator, at grade C2, at the Central Flow Management Unit (CFMU). He is a member of a team which provides technical support for the CFMU sixteen hours a day and seven days a week. The work is organised in shifts.

In order to provide such technical support at all times, and particularly to ensure that colleagues temporarily dispatched to other teams can be replaced if need be, employees are given certain stand-by duties. Employees placed on stand-by are paid an allowance in accordance with Article 8 of Rule 29 of the Staff Regulations, which provides, in part, as follows:

"An official subject to the present Rule who is regularly on stand-by duty in keeping with Article 56, paragraph 4, of the Staff Regulations shall be entitled to an allowance to be calculated as follows:

a) the allowance shall be expressed in points, one point being equivalent to [...] 0.029% of the basic salary attaching to grade C4, 1st step, for officials of C category. The cost-of-living weighting referred to in Article 64 of the Staff Regulations shall be applied to the allowance.

b) the number of points shall be:

- per hour on stand-by duty at the place of work: 11 on weekdays and 22 on Saturdays, Sundays and public holidays;

- per hour on stand-by duty at home: 2.15 on weekdays and 4.3 on Saturdays, Sundays and public holidays.

c) no allowance is payable for stand-by duty at home when the said duty is not scheduled to cover at least 14 hours".

The complainant was placed on stand-by on 8 and 23 March, 2 and 3 April and 1 and 3 May 2001, but he received no allowance for those days. Consequently, he submitted an internal complaint to the Director General.

The matter was referred to the Joint Committee for Disputes, which concluded unanimously that the internal complaint should be dismissed. It pointed out that a staff member working shifts at the CFMU who is carrying out his duties in accordance with the normal schedule for the day shift (8 a.m. to 4.50 p.m.) may, depending on the needs of the unit, be required to leave other duties he was performing in order to replace a colleague who is unexpectedly absent during that same period. The Committee considered that "the replacement of a colleague during normal working hours is part of the normal conditions of employment". It also considered that on each occasion in question, the complainant had carried out his day-shift duties in the normal manner, whilst remaining prepared to replace a colleague, if the need arose. Since the conditions governing stand-by at the place of work

were not satisfied, no stand-by allowance was due.

On 11 December 2001 the complainant was informed that his internal complaint was dismissed.

In his complaint before the Tribunal, the complainant mainly seeks the quashing of that decision, an award of the points to which he considers himself entitled, "it being noted that the hours of work must also be taken into account in calculating the hours of stand-by duty", and an order against Eurocontrol for payment of the stand-by allowance for the above-mentioned days.

Eurocontrol explains that it has never resorted to the practice of stand-by at the work place at the CFMU. When an employee is at home, he can be placed on stand-by at home and receive an allowance on that basis provided that the requirements of Rule 29 are satisfied. However, when he is placed on stand-by during his working hours, he is not considered to be on stand-by at the place of work. Indeed, stand-by at the place of work implies that the employee is not working and is ready to intervene if need be. An employee placed on stand-by during his work is paid for the work he is doing. If he is required to replace a colleague, and such replacement involves working hours in excess of his normal schedule, he will be paid overtime; but in any case, under Rule 29 the stand-by allowance is not payable cumulatively with overtime.

In his rejoinder the complainant acknowledges that he was paid overtime for the additional hours he worked on 23 March, and on 2 and 3 April 2001; consequently, he withdraws his claim for compensation in respect of those days. However, he does not share Eurocontrol's interpretation of Rule 29. He considers that stand-by at the place of work is commonly used at the CFMU, and he asserts that he is regularly placed on such stand-by as well as on stand-by at home. He adds that it would be fair and in keeping with the right to equal treatment that the additional service provided by an employee who agrees to be on stand-by at the place of work should also be remunerated: indeed, the employee has to be available not only during his working hours (early shift from 6.30 a.m. to 3.20 p.m., day shift from 8 a.m. to 4.50 p.m., or late shift from 2.30 p.m. to 11.20 p.m.) but also throughout the day, from 6.30 a.m. to 11.20 p.m., given that stand-by at the place of work is usually preceded and followed by a period of stand-by at home. Lastly, the complainant points out that for stand-by at home, employees usually fall short of the 14-hour period which would entitle them to an allowance.

2. The parties differ as to how the expression "stand-by at the place of work" should be interpreted.

At first sight, the wording of Article 8 of Rule 29 allows both interpretations. However, its internal logic favours Eurocontrol's interpretation. As stated by the complainant, although stand-by at home occurs outside working hours, it is remunerated only if it lasts at least 14 hours. Furthermore, the number of points awarded, resulting in the payment of an allowance for such service, is lower than that which applies to stand-by at the place of work, which, unlike the former carries a large number of points and has no minimum duration. The more favourable treatment of stand-by at the place of work under the Staff Regulations would make no sense if employees were placed on such stand-by during their working hours, that is to say during periods for which they receive their normal remuneration. The complainant argues that the daily duration of stand-by duty exceeds that of the normal day's work, which can justify additional remuneration. However, stand-by at home is remunerated only if it exceeds a certain number of hours; this also accounts for the fact that when an employee is placed on stand-by during his normal working hours, the additional hours resulting from stand-by duty are not sufficient to justify additional remuneration. It is inconceivable that the stand-by duty imposed on an employee who is working should be better remunerated than that which is imposed on one who is not working.

The complainant refers in vain to the right to equal treatment and to considerations of equity. Indeed, the general salary level for a type of activity which includes stand-by duties ought to result in an overall pay package which reflects those duties, when compared to other types of activity requiring no such duties. Neither is it inequitable, in a situation such as this, that a special allowance should be awarded to the employee only on condition that the stand-by exceeds a certain duration. In accordance with the principle that an employee is entitled to be remunerated for service rendered (see Judgments 391, under 8, and 463, under 4), there is no reason to grant additional remuneration for normal work which may include a duty to replace absent colleagues. The way in which Article 8 of Rule 29 has been applied is consistent with that interpretation.

Consequently, the complaint is unfounded.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2002, 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 3 February 2003.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet