

112th Session

Judgment No. 3054

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr J.O. S. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 18 December 2009, Eurocontrol's reply of 5 May 2010, the complainant's rejoinder of 25 June and the Agency's surrejoinder of 29 July 2010;

Considering Articles II, paragraph 5, and VII 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. Facts relevant to this case are given in Judgment 2952, delivered on 8 July 2010. The complainant, a Danish national born in 1966, joined Eurocontrol in July 1995. He was appointed for an unlimited period in May 2002 and, at the material time, he was assigned to the Central Flow Management Unit at Brétigny-sur-Orge, near Paris. In July 2005 he was elected as an alternate member of the Central Committee and, following new elections in 2007, he became a full member of both the Central Committee and the local section of the Staff Committee of Brétigny.

Article 9 of the Staff Regulations governing officials of the Eurocontrol Agency provides inter alia for the creation of a Staff Committee, comprised of a Central Committee and local sections. The composition and procedure of this body are set out in Rule of Application No. 1 of the Staff Regulations. Following consultation meetings between officials of the Agency and its social partners in 2006 and 2007, the Agency amended Rule of Application No. 1, thereby extending the term of office of members of the Staff Committee from two to three years.

In 2007 a new category of staff, known as “contract staff”, was introduced in the Agency. On 19 February 2009 the Director General published an Office Notice informing staff of amendments to the Conditions of Employment of Contract Staff at Eurocontrol with effect from 1 March 2009. Paragraph 1 of Article 4 was amended to the effect that contract staff holding a contract of more than one year would be eligible to vote and stand as candidates for the Staff Committee.

On 19 May the complainant filed an internal complaint with the Director General challenging this amendment, which he considered to be inconsistent with the decision to extend the Staff Committee’s mandate to three years. He requested that “appropriate action” be taken to correct the decision to render contract staff eligible for election to the Staff Committee.

Having received no reply, he lodged a complaint with the Tribunal against the implicit decision to dismiss his internal complaint. In the meantime, the matter had been referred to the Joint Committee for Disputes, which unanimously recommended, in its opinion dated 2 November 2009, that the Director General reject his internal complaint as irreceivable and legally unfounded. It found that the complainant had no cause of action, as he had failed to demonstrate how the additional rights granted to the Agency’s contract staff could negatively affect his own rights as an Agency official. The Principal Director of Resources, acting on delegated authority from the Director General, informed the complainant by a

decision dated 11 January 2010 that taking into account the reasons given in the Committee's opinion his internal complaint was rejected as irreceivable and legally unfounded.

B. The complainant contends that, since the Staff Committee has a three-year mandate, the decision to allow contract staff holding a contract of less than three years' duration to be members of the Committee is contrary to the proper functioning of that body. In his view, that decision is contrary to "democratic principles" endorsed by the Agency's Member States. He argues that the decision at issue is also illegal. Indeed, it should have been incorporated in Rule of Application No. 1, since it is there that the procedures governing the election and functioning of the Staff Committee are described.

He asks the Tribunal to set aside the decision to amend Article 4 of the Conditions of Employment of Contract Staff at Eurocontrol, as announced in Office Notice No. 08/09, and to award him costs.

C. In its reply Eurocontrol objects to the receivability of the complaint on two grounds. First, the complainant has produced no evidence that the new provisions constitute a breach of the Staff Regulations or of general principles of law and, second, he has no cause of action because he has failed to identify how those provisions adversely affect his own rights.

The Agency replies subsidiarily on the merits. It argues that the situation of contract staff is not different from that of officials who are eligible to vote and be represented in the Staff Committee irrespective of the length of their appointment. It points out that any member of the Staff Committee may leave before the end of his or her term, *inter alia* as a result of termination of service or voluntary resignation, and that Article 4 of Rule of Application No. 1 adequately provides for such cases in order to ensure the proper functioning of the Committee and the continuity of its work. Concerning the complainant's argument that the new provision is in breach of democratic principles, the Agency observes that it is in pursuance of basic democratic principles

that the right of association is granted to all staff members, including contract staff. It further submits that there is no general principle of law requiring that the term of an employment contract with Eurocontrol correspond to the length of the term of office of the Staff Committee.

The defendant rejects the complainant's argument that the provision granting contract staff the right to vote and to be represented in the Staff Committee should have been included in Rule of Application No. 1. It states that the provision in question has been included in the Conditions of Employment of Contract Staff, because it concerns the grant of a right to contract staff. The relevant amendment of that text was notified to all the staff by means of an Office Notice, in accordance with the practice of the Agency.

Eurocontrol asks the Tribunal to order that the complainant bear the full costs of the proceedings on the grounds that the complaint is "inappropriate", being clearly irreceivable and unfounded.

D. In his rejoinder the complainant presses his pleas. He argues that his complaint is receivable, as the amendment necessarily affects the functioning of the Staff Committee and hence the rights of all staff members. He emphasises that the rights of contract staff are and have always been defended by the Staff Committee. He points out that he does not object to contract staff being represented through the Committee, but rather to allowing staff with a limited contract duration which does not cover the full length of the Committee's mandate to be elected, as this will jeopardise the continuity of its work.

E. In its surrejoinder Eurocontrol maintains its position. It states that the complaint is irreceivable for the same reasons as the Tribunal mentioned in Judgment 2952, by which it dismissed the complainant's third complaint. It emphasises that he does not allege the non-observance of any of the terms of his appointment, or of any provision of the Staff Regulations applicable to him individually, or as a

member of the Staff Committee, as required by Article II of the Statute of the Tribunal. Further, by challenging the legality of Article 4 of the Conditions of Employment of Contract Staff, he is attacking a general rule and not a “decision” within the meaning of Article VII of the Statute. The complainant therefore has no cause of action.

CONSIDERATIONS

1. The complainant is an official of the Agency, who was appointed for an unlimited period in 2002. Following elections in 2007, he became a full member of the Central Committee and of the local section of the Staff Committee. In 2007 a new category of staff known as “contract staff” was introduced. The conditions of their employment, set out in the Conditions of Employment of Contract Staff at Eurocontrol, were amended by Office Notice No. 08/09 of 19 February 2009. One of the amendments concerned the insertion of a new paragraph in Article 4. The relevant part of the new provisions reads as follows:

“Contract staff holding a contract of more than one year shall be eligible to vote and stand as candidates for the Staff Committee (Officials) or Staff Committee (Servants) provided for in Article 9 of the Staff Regulations and Article 9 of the General Conditions of Employment respectively, depending on their place of employment.”

2. On 19 May 2009 the complainant filed an internal complaint against the Agency’s decision to grant contract staff, holding a contract of more than one year, the right to vote for and be represented in the Staff Committee. He challenged the “additional right given to the Agency’s contract staff” and requested that “appropriate action [be] taken to correct the decision”. On 2 November the Joint Committee for Disputes issued its opinion unanimously recommending the dismissal of the internal complaint as “not admissible and legally unfounded”. The Committee considered that the complainant had no cause of action and stated that he had “failed

to demonstrate how the additional rights granted to the Agency's contract staff could negatively affect his own rights as an Agency's official". The complainant filed a complaint with the Tribunal on 18 December 2009 against the implied rejection of his internal complaint, as at that time he had not yet received any notification of a recommendation by the Committee or a final decision by the Director General. Indeed, it was not until 11 January 2010 that the latter expressly rejected his internal complaint following the opinion of the Joint Committee for Disputes.

3. The complainant requests the Tribunal to quash the decision to amend Article 4 of the Conditions of Employment of Contract Staff at Eurocontrol, as announced in Office Notice No. 08/09, and to award him costs. He grounds his complaint on the fact that the Staff Committee has a three-year mandate and that it is contrary to its proper functioning to allow contract staff to be members of the Committee as their contracts may expire prior to the end of their mandate. He contends that the contested decision is illegal because, in breach of the Staff Regulations, it was not incorporated in Rule of Application No. 1, which describes the procedures governing the functioning of and elections to the Staff Committee.

The Agency asserts that the complaint is irreceivable on the grounds that the complainant has no cause of action, and subsidiarily argues that it is unfounded on the merits. It submits that the new provisions do not constitute a breach of the Staff Regulations or of general principles of law. Moreover, the complainant has not shown that his own rights have been adversely affected by them.

4. Pursuant to Article II of its Statute, the Tribunal's competence is limited to complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations applicable to them. The decision to amend Article 4 is one of general application and not an individual decision. The complaint is therefore manifestly irreceivable. And, as

pointed out in the Tribunal's case law, "a complainant cannot attack a rule of general application unless and until it is applied in a manner prejudicial to him" (see Judgment 2953, under 2, and the case law cited therein). In the present case, the general provision was not applied in a manner prejudicial to the complainant or to any staff members and as such the complaint must be dismissed. Considering this, there is no reason to rule on any other questions of receivability or merit.

5. Eurocontrol requests the Tribunal to order that the complainant bear the costs of the proceedings as it considers his complaint to be vexatious. It stresses that his third complaint was dismissed, in Judgment 2952, as wholly irreceivable for lack of cause of action. Indeed, he did not point to a decision affecting him directly or which could have legal consequences for him individually. The Tribunal recalls that it has the inherent power to impose costs on a complainant (see Judgment 1962, under 4) but, as the present complaint was filed before the delivery of Judgment 2952, this is not an appropriate case for an award of costs against the complainant.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The Agency's counterclaim for costs is also dismissed.

In witness of this judgment, adopted on 10 November 2011, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet