

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

115th Session

Judgment No. 3218

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr H. C. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 13 October 2010 and corrected on 25 October 2010, the Agency's reply of 27 January 2011, the complainant's rejoinder of 21 March and Eurocontrol's surrejoinder of 12 May 2011;

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, a German national born in 1944, joined the Eurocontrol Agency in 1972. He worked in Brussels for the whole of his career. When he retired, on 31 December 2004, he had reached grade A4. On 1 January 2006 he took up residence in Switzerland.

According to Rule of Application No. 10 of the Staff Regulations governing officials of the Agency, which concerns sickness insurance, Eurocontrol's sickness insurance scheme operates through a Management Committee, a Central Office, a Medical Council and a number of Settlements Offices. The duties of the latter include

receiving and processing applications for reimbursement of medical expenses submitted by members registered with them, and making the relevant payments. On 5 February 2010 the complainant, who had always been registered with the Brussels settlements office, received from the settlements office in Brétigny-sur-Orge (France) a letter dated 1 February which stated, in pertinent part:

“You are hereby informed that in accordance with Article 26 of Rule of Application No. 10 [...], you are registered from today’s date with the **BRÉTIGNY settlements office.**”

Article 21.2

‘[...] Persons covered by this Scheme who reside in a country in which a Settlements Office exists shall normally be registered with that office.’”

In an e-mail of 6 February the complainant declared that he “formally refuse[d] to register with the office in question”. He alleged that the decision of 1 February was flawed because no reason had been given for it, and because the reference to Article 21 was incorrect, given that he was not living in a country in which a settlements office had been established. He also explained his concerns and criticised the failure to inform him, for example, how hospital charges would be reimbursed. The reply sent to him two days later, with the intention of reassuring him, stated that “in order to retain a service”, the Central Office had had to alter the allocation of work among the various settlements offices.

On 21 April the complainant lodged an internal complaint. On the basis of the second paragraph of Article 26(2) of Rule of Application No. 10, according to which “[p]ersons covered by this Scheme who reside in a country in which no Settlements Office exists shall be registered with an office designated by the Central Office”, he argued that the settlements office had no authority to issue the letter of 1 February. The Management Committee, to which the case was referred, stated in its opinion that, as the complainant had rightly pointed out, the paragraph he had quoted was the one applying to his case. He had, however, been over-literal in his analysis, since

the settlements offices operated under the supervision of the Central Office, and the office in Brétigny-sur-Orge was thus fully authorised to inform him of a transfer. In the paragraph containing its conclusions, the Committee recommended dismissing his complaint as unfounded, in the absence of any decision adversely affecting him. At the same time, the Committee explained that when there was a change of settlements office it was important to include with the decision some explanation of the reasons for it, and to provide assurances as to the continuing standard of the service provided. By a letter of 14 July 2010, which is the impugned decision, the Principal Director of Resources, acting on behalf of the Director General, told the complainant that the conclusions of the Management Committee were “fully justified” and that his complaint was therefore rejected.

B. The complainant criticises the decision of 1 February 2010 for its suddenness and its retroactive effect. He also contends that the reference in that letter to Article 21 of Rule of Application No. 10 did not justify his being registered with the settlements office of Brétigny-sur-Orge, and that that office had not been “designated by the Central Office”, as required by the second paragraph of Article 26(2).

The complainant points out that the settlements office of Brétigny-sur-Orge explained the contested decision by the need to “retain a service”, while the Management Committee referred to a reduction in staff at the Brussels settlements office, and he invites the Agency to clarify its position in this respect. In his view, Eurocontrol should have made a fresh decision in the light of the conclusions reached by the Management Committee, particularly with regard to the need to provide reasons, since it had admitted that those conclusions were “fully justified”.

The complainant’s principal claim is that the Tribunal should set aside the decision of 1 February 2010 as to its form, and should refer the case back to Eurocontrol for it to make a fresh decision which would be “correct and in due and proper form”. Subsidiarily, he asks the Tribunal to set aside the decision on its merits, and if his complaint is dismissed, to order the Agency to place on his file “all

the documents pertaining to this dispute”. Lastly, he claims damages and costs.

C. In its reply Eurocontrol explains that between the end of 2009 and the beginning of 2010 a considerable change took place in the distribution of staff among the various settlements offices. Because of a staff reduction at the Brussels office, which was by far the largest one, the Central Office decided that in order to maintain a high standard of service and, in particular, to avoid prolonging the time taken for reimbursements, the pensioners in the scheme would be redistributed among the various settlements offices. As a result, those residing in Switzerland were transferred from the Brussels office to the office in Brétigny-sur-Orge. According to the defendant, although the reference in the letter of 1 February 2010 to Article 21 of Rule of Application No. 10 was indeed incorrect, as a member of the Central Office, the author of that letter was competent to notify the complainant that he had been registered with a different settlements office.

The Agency also informs the Tribunal that on 20 January 2011 the Central Office sent the complainant a fresh decision confirming the substance of the letter of 1 February 2010, and repeating the reasons given in the course of the internal procedure. In these circumstances, it takes the view that the complainant’s first claim has become moot. Since he did not explain in what way the settlements office of Brétigny-sur-Orge would be less capable than the Brussels office to deal with claims from a pensioner residing in Switzerland, Eurocontrol contends that the decision of 1 February is not detrimental to him. It therefore sees no reason to set it aside on its merits or, in consequence, to award the complainant damages and costs. Lastly, it states that it does not understand the complainant’s claim seeking to have the documents relating to this case placed on his file.

D. In his rejoinder the complainant abandons his subsidiary claims, conceding that he has albeit belatedly, obtained satisfaction through the adoption of the decision of 20 January 2011 in the course of the

proceedings. This, he believes, proves that he has suffered moral harm, and he wishes the Tribunal to rule accordingly. He also repeats his claim for costs.

E. In its surrejoinder the Agency states that the complainant has not suffered any moral injury, and since his complaint is without merit there are no grounds on which to award him costs.

CONSIDERATIONS

1. The complainant, a former official of Eurocontrol, is domiciled in Switzerland. Having been registered throughout his career with the Brussels settlements office, he was informed by a letter of 1 February 2010 that his sickness insurance file would now be handled by the office in Brétigny-sur-Orge, in France. On 6 February he wrote back, refusing to be registered with that office and querying the consequences of such a transfer, particularly for the treatment of his claims. He was told in reply that the transfer, which did not affect the service provided to members of the scheme, had come about because of a staff reorganisation.

2. The complainant was not satisfied with these explanations, and on 21 April he lodged an internal complaint. It was transmitted to the Management Committee of Eurocontrol's sickness insurance scheme, which recommended that it should be dismissed as unfounded, in the absence of any decision adversely affecting the complainant. At the same time, the Committee emphasised the importance of attaching to decisions on a change of settlements office some explanation of the reasons for the change, and assurances as to the continuing high standard of the service provided.

By a letter of 14 July 2010 the complainant was informed that his internal complaint had been dismissed. That is the decision referred to the Tribunal.

3. The Tribunal finds that it is the decision to transfer responsibility for the sickness insurance file of the complainant, who resides in Switzerland, from the Brussels settlements office to the office in Brétigny-sur-Orge, which lies at the heart of this dispute. In this case, the complainant has not established that the transfer adversely affects any personal interest worthy of protection. Since the impugned decision does not adversely affect him, his complaint is irreceivable and must therefore be rejected in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 26 April 2013, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet