

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**116th Session**

**Judgment No. 3271**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 2938 filed by Mr B. J. on 9 November 2011, the reply of the European Organisation for the Safety of Air Navigation (Eurocontrol) of 16 February 2012, the complainant's rejoinder of 22 March and Eurocontrol's surrejoinder of 5 July 2012;

Considering the application for execution of Judgment 2938 filed by the complainant on 15 March 2012, Eurocontrol's reply of 22 June, the complainant's rejoinder of 3 August and Eurocontrol's surrejoinder of 8 November 2012;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

#### CONSIDERATIONS

1. The complainant, who had been working for Eurocontrol for more than ten years and who was performing the duties of a system controller at grade B4, had been granted leave on personal grounds from 1 March 2005 to 28 February 2007. At the end of that leave, he

had asked to be reinstated in an equivalent position. His applications for various system controller and junior system controller posts, which had been advertised in April and October 2007, had been rejected on the grounds that the duties which now had to be performed by the holders of those posts necessitated special safety awareness training which he could not have been given within a period of time compatible with the smooth operation of the services concerned. On 1 April 2009 the complainant was therefore reinstated at a grade equivalent to that which he held previously, but in a position which was unrelated to the duties of a system controller.

In Judgment 2938 delivered on 8 July 2010, the Tribunal found that Eurocontrol had failed in its duty to reinstate the complainant on his return from leave in accordance with Article 40 of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre, even if that meant that he had to be given suitable training. Eurocontrol was therefore invited to offer him a system controller post for which he possessed the requisite qualifications, as soon as one became available (consideration 8, *in fine*). For that reason, Eurocontrol reinstated the complainant in a system controller post as of 1 September 2010. This point is not in dispute.

2. Under point 2 of the decision in Judgment 2938, Eurocontrol was ordered to pay the complainant, as appropriate, material damages, as indicated in consideration 9 of that judgment, which reads:

“The Agency will pay the complainant, as appropriate, compensation equal to the difference between the remuneration which he would have received had he been reinstated in the first system controller post which fell vacant at the end of his leave on personal grounds and the sums which he will have actually received as salary, allowances and all professional earnings until his reinstatement in a system controller post.”

3. The complainant has filed two applications with the Tribunal, the first seeking the interpretation of that consideration and the second its execution. Both applications are based on the same line of argument and both are concerned with the determination of certain elements to be taken into account when calculating the difference

between the remuneration which the complainant would have received if he had been reinstated in the first system controller post which fell vacant at the end of his leave on personal grounds and the sums which he actually received as salary, allowances and all professional earnings until his reinstatement in a system controller post.

As the two applications are largely interdependent, they shall be joined to form the subject of a single judgment. That, indeed, is what Eurocontrol requests and the complainant states that he has no objection thereto.

4. An application for interpretation cannot relate to the grounds for a ruling, but only to the decision itself. It may, however, additionally concern the grounds of a ruling if the decision refers to them explicitly, in which case they must be seen as part of the latter (see Judgment 2483, under 3).

From this point of view, in principle the complainant may request the interpretation of consideration 9 of Judgment 2938. Such a request would, however, be receivable only if the meaning of this consideration were uncertain or ambiguous to such an extent that it precluded the execution thereof (see Judgments 1306, under 2, and 3014, under 3). This is not the case here and the application for interpretation must be dismissed.

5. The only issue to be resolved is whether point 2 of the ruling in Judgment 2938, which has *res judicata* authority, has been correctly executed by Eurocontrol (see Judgments 1887, under 8, and 2889, under 6 and 7).

6. In calculating the difference in remuneration to which reference is made in consideration 9 of Judgment 2938, Eurocontrol distinguished between two periods. The first stretched from 1 March 2007, when a system controller post became available, to 1 April 2009, when the complainant was effectively reinstated as a staff member of Eurocontrol in a different post. The second period stretched from 1 April 2009 to 1 September 2010, when the

complainant returned to a post equivalent to that which he would have held by that time if he had not taken leave on personal grounds on 1 March 2005 and his career had followed its normal course. Eurocontrol immediately paid the complainant a provisional advance of 80,000 euros calculated on the basis of an attestation drawn up by his accountant pending the detailed calculation of the final amount. As this detailed calculation, which was sent to the complainant on 18 March 2011, showed that, in Eurocontrol's opinion, the advance which had been paid was some 25,000 euros in excess of the amount due pursuant to Judgment 2938, Eurocontrol proposed that a recovery plan in instalments be agreed with the complainant.

7. The complainant disputes the calculation and takes Eurocontrol to task for failing to take into account the step increments to which he would have been entitled had he been appointed to a system controller post on 1 March 2007.

The evidence on file indicates that in that case, prior to his effective reinstatement in a system controller post on 1 September 2010, the complainant would have received two step advancements, one on 1 July 2008 and the other on 1 July 2010, since biennial step advancement had been suspended during his leave on personal grounds in accordance with Article 40(3) of the General Conditions of Employment. These advancements would have increased the remuneration to which reference is made in consideration 9 of Judgment 2938. Eurocontrol should therefore have taken them into account when calculating the system controller's salary as required for the execution of the aforementioned judgment. This also means that, as the complainant submits, his salary after his effective reinstatement on 1 September 2010 should have been that of a system controller at grade AST6, step 3, according to Eurocontrol's new grading structure.

The application for execution must succeed in this respect.

8. The application must also be allowed insofar as it seeks to have the complainant's pension rights included in the income which he should have received during the first period taken into

consideration by Eurocontrol, since the purpose of Judgment 2938 is to ensure that the complainant suffers no economic loss owing to the fact that he was not reinstated as he ought to have been at the end of his leave on personal grounds.

9. The complainant criticises Eurocontrol for having deducted his earnings from other activities from the salary which he should have received had he been appointed to a system controller post in March 2007. In this connection, the complainant is correct in saying that his earnings from the activity in which he was authorised to engage alongside his duties within Eurocontrol should not have been deducted by Eurocontrol, since he would have continued to engage in it had he not taken leave on personal grounds. On the other hand, Eurocontrol rightly considered that any other earned income from outside sources should be deducted.

10. The complainant must be awarded compensation in the amount of 1,000 euros for the injury which he suffered as a result of Eurocontrol's incorrect execution of Judgment 2938.

11. As he succeeds in part, the complainant is entitled to costs, which shall be set at 1,500 euros.

#### DECISION

For the above reasons,

1. The application for interpretation is dismissed.
2. Eurocontrol shall execute Judgment 2938 as indicated under 7 to 9, above.
3. It shall pay the complainant compensation in the amount of 1,000 euros for the injury suffered.
4. It shall also pay him 1,500 euros in costs.
5. All other claims in the application for execution are dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller  
Seydou Ba  
Patrick Frydman  
Catherine Comtet