

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B. (No. 5)

v.

Eurocontrol

(Application for execution)

122nd Session

Judgment No. 3656

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3230 filed by Mr B. B. on 1 April 2014 and corrected on 8 May, the reply of the European Organisation for the Safety of Air Navigation (Eurocontrol) of 5 September, the complainant's rejoinder of 24 December 2014 and Eurocontrol's surrejoinder of 9 April 2015;

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;

Considering that the facts of the case may be summed up as follows:

On 28 April 2009, during the transitional period that followed the entry into force on 1 July 2008 of the wide-ranging administrative reform at Eurocontrol, details of which are to be found in Judgment 3189, the complainant was assigned to the generic post of Senior Technical Assistant, in job bracket B*8-B*10. On 29 June 2009 he requested promotion to grade B*11, on the grounds that his profile matched that of the generic post of Principal Technical Assistant in job bracket B*11. He was advised by a memorandum of 15 January 2010 that his request would be submitted to the Committee in charge of job management monitoring and that he would be informed of the outcome as soon as

the Committee had issued its opinion. By a decision of 12 July 2010 the Director General notified him that, since the end of transitional period of the reform on 1 July, his post had been classified in the assistant (AST) function group, at grade 10, in the AST8-AST10 job bracket. On 28 July 2010 the complainant lodged an internal complaint seeking a promotion to grade AST11 (formerly grade B*11). After this internal complaint was dismissed by the Director General on the basis of the opinion of the Joint Committee for Disputes, the complainant filed a complaint with the Tribunal.

In Judgment 3230, delivered in public on 4 July 2013, the Tribunal found that, on receipt the memorandum of 15 January 2010, the complainant had good reason to expect the Committee in charge of job management monitoring to issue an opinion. As he had still not received that opinion when he was notified of the decision of 12 July 2010, he could legitimately take it to be a decision refusing his request for promotion, because it confirmed his grade. The Tribunal set aside the decision dismissing his internal complaint and referred the case back to the Organisation, which was required “to submit to the competent bodies the complainant’s request for promotion to grade AST11”.

In response to his queries of 10 July and 17 September regarding the measures which Eurocontrol intended to take pursuant to Judgment 3230, the complainant was informed by a letter dated 20 September 2013 that the Director General had decided to submit the question of his promotion to the Committee in charge of job management monitoring and, if appropriate, to the Promotion Board.

On 27 September 2013 the Directorate of Resources initiated the consultation procedure with the Committee in charge of job management monitoring and on 12 February 2014 it examined the description of complainant’s functions. On 18 July he was invited to attend an interview with an external company whose assessment of the level of his post was to be submitted to the Committee in charge of job management monitoring. The complainant declined the invitation to the interview, since he was not satisfied with the answers he had received to his request for details of the company in question.

In the meantime, on 1 April 2014, the complainant had filed this application for execution with the Tribunal, requesting that Eurocontrol be ordered to execute Judgment 3230 and to pay him 5,000 euros in compensation for moral injury and 3,000 euros in costs.

On 5 September 2014 Eurocontrol filed its reply to the application for execution. It raised an objection to receivability on the grounds that internal means of redress had not been exhausted and it asked the Tribunal to take note of the measures which it had adopted in pursuance of Judgment 3230 and to dismiss the complainant's pecuniary claims.

The external company delivered its report on 6 October 2014 and on 24 October the Committee in charge of job management monitoring forwarded its opinion to the Director General, recommending that the complainant's post should remain in job bracket AST8-AST10.

On 24 December 2014 the complainant filed his rejoinder, maintaining all his claims.

In its surrejoinder of 9 April 2015, Eurocontrol asserts that Judgment 3230 has been executed, as on 26 January 2015 the complainant was informed that the Director General had decided to endorse the opinion of the Committee in charge of job management monitoring and therefore to maintain his post at grade AST10. It asks the Tribunal to examine the receivability of the application and to dismiss the complainant's claims as unfounded.

CONSIDERATIONS

1. In Judgment 3230 the Tribunal set aside the Organisation's decision dismissing an internal complaint lodged by the complainant against the refusal to grant him the promotion to which, in his opinion, the description of his functions entitled him after the reorganisation of functions within Eurocontrol. The case was referred back to the Organisation in order that it might submit the disputed request for promotion to the competent bodies. In his application for execution the complainant contends that Eurocontrol has not taken the necessary steps to submit his request to the aforementioned bodies.

By a decision of 26 January 2015, which was taken and communicated to the complainant while his application for execution was pending, the Director General dismissed his request for promotion on the basis of the opinion issued on 14 October 2014 of the Committee in charge of job management monitoring, an advisory body set up under Article 7 of Rule of Application No. 35 concerning job management as from 1 July 2010 (the end of the transitional period following the entry into force of the administrative reform at Eurocontrol).

2. It is unnecessary to determine whether this new decision essentially renders the application for execution moot. Nor is it necessary to examine the objection to receivability raised by Eurocontrol, which submits that, before resorting to the Tribunal, the complainant ought to have initiated internal appeal proceedings against the “decisions” contained in the letter of 20 September 2013 in which the Organisation announced the measures that it was going to take to execute Judgment 3230.

Indeed, as will be shown below, the application for execution was completely unfounded from the outset.

3. The Tribunal’s judgments carry the authority of *res judicata* and must be executed as ruled. The parties must work together in good faith to this end. Judgments must be executed within a reasonable period of time. In order to ascertain whether this is the case, all the circumstances of the case must be taken into account, especially the nature and the scope of the action which the organisation is required to take (see, in particular, Judgments 2684, under 4 and 6, and 3066, under 6).

4. Judgment 3230 was delivered on 4 July 2013. Before the end of September, the complainant was informed by Eurocontrol that it was embarking upon consultations with the Committee in charge of job management monitoring. The description of the complainant’s functions was examined on 12 February 2014. This means that, when the application for execution was filed on 1 April 2014, the procedure was following the normal course laid down in the applicable rules and, having regard to its specific purpose, it had not been excessively delayed.

While there is no evidence in the file to show that Eurocontrol informed the complainant of all the steps it was taking to execute the judgment, this does not signify that it thus acted in breach of the principle of good faith. On the contrary, it must be found that there was nothing to prevent the complainant from inquiring as to what progress had been made with these deliberations before complaining to the Tribunal of an alleged failure to act on the part of the Organisation.

5. It follows from the foregoing that the application for execution must be dismissed.

DECISION

For the above reasons,
The application for execution is dismissed.

In witness of this judgment, adopted on 6 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ