

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D.

v.

Eurocontrol

122nd Session

Judgment No. 3660

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr E. D. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 21 October 2013, Eurocontrol's reply of 24 January 2014, the complainant's rejoinder of 28 March and Eurocontrol's surrejoinder of 4 July 2014;

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:

The complainant challenges his transfer. He complains that he was ousted from his job, without notice or prior consultation, and assigned to a "fictitious job".

At the material time the complainant held the post of Head of the Information and Communication Services, at grade AD12, in the Directorate of Resources.

At a meeting on 18 June 2013, the Agency Board agreed that a study be undertaken concerning the possibility of centralising various information technology services within the Organisation, including that headed by the complainant (hereinafter "the study"). During the

meeting the Director General said that the complainant had been invited to take part in the study as a member of the Project Board.

All the staff of the Directorate of Resources were informed by an e-mail of 25 June 2013 that the complainant would henceforth be working on the study full time and that another official would be performing his former duties ad interim.

By a decision of the same date, the Head of the People Management Division, to whom the Director General had delegated authority, notified the complainant that, in accordance with Article 7 of the Staff Regulations governing officials of the Eurocontrol Agency – which gives the Director General the authority to transfer an official, solely in the interest of the service, to a post in his function group corresponding to his grade – he had been transferred within the Directorate of Resources and assigned with immediate effect to a generic post of Principal Expert at the same grade and step.

On 7 August 2013 the complainant lodged an internal complaint in which he alleged that the “transfer and appointment procedures had not been respected”. He also contended that he had been removed from his duties “without notice or [...] explanation”, that he was henceforth “not assigned to a real job”, that his transfer was a hidden sanction and that he had thus been subjected to psychological harassment. He therefore requested the cancellation of the decision of 25 June 2013 which, in his opinion, had undermined his dignity, professional reputation and health. He also requested reinstatement in the job which he had held before 25 June 2013, compensation for moral injury, the reimbursement of all future medical expenses and costs.

In the complaint which he filed with the Tribunal on 21 October 2013, the complainant impugns the implied decision to reject this internal complaint and requests his reinstatement in the job which he held before 25 June 2013 “without a break in seniority or promotion”, moral damages in the amount of 100,000 euros and 7,500 euros in costs. He also asks that Eurocontrol be ordered to defray all “medical and assistance costs” incurred to date or in the future as a result of the decision of 25 June 2013.

In its reply Eurocontrol submits that the complaint should be dismissed as unfounded.

In the meantime, on 13 December 2013, the Joint Committee for Disputes had delivered its opinion. In its view, the decision to transfer the complainant had been decided hastily and without prior consultation, which had placed the complainant in an “embarrassing” situation. Moreover, Eurocontrol had not shown why this decision was necessary or appropriate. The Committee had therefore recommended that the complainant should be reinstated in the job which he held before 25 June 2013, but that his other claims should be dismissed.

On 17 March 2014 the Director General informed the complainant that he did not share the Committee’s opinion and that he had decided to dismiss his internal complaint as, in his opinion, the decision of 25 June 2013, which was based solely on the interest of the service, was sufficiently detailed and was consistent with the Tribunal’s case law, especially with regard to the right to be heard.

In his rejoinder, to which he appends the opinion of the Joint Committee for Disputes and the decision of 17 March 2014, the complainant presses his claims.

In its surrejoinder Eurocontrol maintains its position.

CONSIDERATIONS

1. The complaint, which was initially directed against an implied decision to dismiss the complainant’s internal complaint, must be deemed to impugn the explicit decision of 17 March 2014, taken in the course of the proceedings, by which the Director General upheld the decision of 25 June 2013 to transfer the complainant with immediate effect.

2. The complainant first submits that no reasons were given for the decision to transfer him and that it was taken in breach of his right to be heard. He asserts that he was informed of it without prior consultation by the assistant of the Principal Director of Resources, who announced to him orally that he was being removed from his duties with

immediate effect and that he should immediately leave his previous office and move into the new one.

3. Article 25(2) of the Staff Regulations stipulates that any decision relating to a specific individual which is taken under the Staff Regulations shall at once be communicated in writing to the official concerned and that any decision adversely affecting an official shall state the grounds on which it is based.

As the Tribunal has consistently held, the reasons for any decision having an adverse effect, such as a transfer decision, must be stated. The reasons may be contained in the notice given to the official of the decision or in some other document. The Tribunal also accepts that the reasons may be provided in prior proceedings, or orally, or may be conveyed in response to a subsequent challenge. (See Judgments 1590, under 7, 1757, under 5, and 3316, under 7.)

4. The complainant's transfer was in fact the subject of a written decision of 25 June 2013, by which the Head of the People Management Division, who stated that he was acting on behalf of the Director General, informed him of his new assignment and of the fact that in it he would retain "his current grade and step". This decision referred to Article 7 of the Staff Regulations, which gives the Director General the authority to transfer an official, solely in the interest of the service, to a post in his function group corresponding to his grade. It also contained an equally general reference to Rule of Application No. 35, concerning job management, which deals with job descriptions, the tasks assigned to each generic post and the grade bracket of each of them. Apart from that, the decision mentioned only a request made on the same date by the Principal Director of Resources.

The Tribunal notes that the reasons given to the complainant in this document to justify the decision to transfer him are confined to very general references to the applicable provisions. Such references are, however, meaningless if they are not accompanied by more precise information enabling the official and, as the case may be, the judge to comprehend the real grounds underpinning the decision taken,

especially in the case of a measure, such as that of transferring an official, which should be hedged with safeguards.

The reasons for the transfer, as set out in the decision of 25 June 2013, were not sufficient to enable the complainant to know the grounds for it.

Nor can it be inferred from the circumstances in which the decision was taken that the obligation to state the reasons for it was respected.

According to the case law, for the sake of proper management and mutual trust, an organisation must treat its staff fairly. To this end, it must give an official the opportunity of a fair hearing. (See Judgments 2226, under 20, and 1234, under 19.)

The Tribunal finds that the plea that the complainant's right to be heard has been breached is well founded, because although he had been contacted about participating in the study, there is no evidence that he was ever informed – and given an opportunity to express his views on this matter – that his participation would entail his transfer from a head of service post which, as Eurocontrol itself admits, suited him perfectly, to a post with only vaguely defined duties.

5. Furthermore, it is plain that the manner in which the decision was conveyed to the complainant, who had been in the service of the Organisation for nearly 20 years at the material time and whose excellent performance had been recognised by it, was likely to hurt, shock and upset him.

6. The Tribunal therefore finds that the complainant's immediate transfer was decided in breach of his right to be heard and of the obligation to state the grounds for a decision embodied in Article 25 of the Staff Regulations. In addition, by acting as it did on 25 June 2013, Eurocontrol committed a serious breach of its duty of care and undermined the complainant's dignity.

It follows that the complaint must be allowed on these grounds and that the decision of 17 March 2014 must be set aside, without there being any need to examine the other pleas regarding the lawfulness of that decision.

7. The complainant also alleges that he was the victim of psychological harassment.

It is unnecessary for the Tribunal to determine whether this plea is well founded having regard to Article 12(a)(3) of the Staff Regulations, which defines psychological harassment as improper conduct that takes place over a period and is repetitive or systematic. However, the Tribunal observes that the complainant entered this plea at the outset in his internal complaint of 7 August 2013 and that Eurocontrol gave no consideration whatsoever to it, arguing that it the complainant ought to have submitted a harassment complaint in accordance with the existing provisions.

It must be recalled that the Tribunal “has consistently stressed the serious nature of allegations of harassment in the workplace and the need for international organisations to investigate such allegations promptly and thoroughly. This is a function of the organisation’s duty of care to its staff members to uphold their dignity. [...] It is in relation to this obligation that the Tribunal [...] stated that international organisations have to ensure that an internal body that is charged with investigating and reporting on claims of harassment is properly functioning.” (See Judgment 3337, under 11 and 12.)

Eurocontrol’s duty of care required it to forward the harassment complaint on its own initiative to the bodies which, it says, are competent to entertain it, or at least to provide the complainant with guidance as to the procedure to be followed, since the legal possibilities it mentions are far from clear to the servants concerned. In failing to do so, the Organisation neglected its duties. In the circumstances of this case, there are no grounds for referring the case back to the Organisation in order that it may examine the harassment complaint. Its conduct will, however, be taken into account when assessing the injury suffered by the complainant.

8. Having regard to all the circumstances of the case, there are no grounds for allowing the claim that the complainant should be reinstated in his former post.

9. Owing to the treatment to which he was subjected in the instant case, the complainant unquestionably suffered serious moral injury which must be redressed.

The Tribunal considers it appropriate to set the compensation to which he is entitled to redress this injury at 20,000 euros.

10. The Tribunal cannot accept the complainant's claim for the defrayal of all "medical and assistance expenses" incurred to date or in the future as a result of the decision of 25 June 2013, since these expenses are unsubstantiated and no figures are given.

11. As he largely succeeds, the complainant is entitled to costs which will be set at 5,000 euros.

DECISION

For the above reasons,

1. The decision of 17 March 2014 is set aside.
2. Eurocontrol shall pay the complainant moral damages in the amount of 20,000 euros.
3. Eurocontrol shall also pay him 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 27 April 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