

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F.

v.

Eurocontrol

122nd Session

Judgment No. 3662

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr N. F. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 25 November 2013, Eurocontrol's reply of 14 March 2014, the complainant's rejoinder of 18 April and Eurocontrol's surrejoinder of 25 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 to another post.

At the material time, the complainant was assigned to the generic post of Advanced Technician, at grade AST4, in the Information and Communication Services of the Engineering Division, at the Maastricht Upper Area Control Centre.

In May 2013 the complainant met with his immediate superiors, who broached the question of his possible transfer to the Centre Services of the above-mentioned division in order to replace an official who had died. The head of this division officially requested his transfer by a memorandum of 29 May.

The complainant was informed by a decision of 11 June 2013 that he had been transferred to the Centre Services as of 1 June 2013, under Article 7 of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre, according to which the Director General has the authority to transfer a servant, solely in the interest of the service, to a post in his function group corresponding to his grade. It was made clear that the complainant would retain his generic post, as well as his grade and step.

On 12 July 2013 the complainant lodged an internal complaint requesting a review of this decision. He expressed his surprise at the fact that he still had to perform his former duties on a 50 per cent basis, although they had been taken away from him as a result of the decision in question.

On 25 November 2013 he filed a complaint with the Tribunal in which he impugned the implied decision to dismiss this internal complaint and sought the setting aside of the decision of 11 June 2013, his reinstatement in the duties he had been performing before 1 June 2013, compensation in the amount of 3,000 euros and 3,000 euros in costs. On 1 February 2014 he was assigned to the Centre Services on a full-time basis.

In its reply, Eurocontrol submits that the complaint should be dismissed as groundless. It informs the Tribunal that the Joint Committee for Disputes delivered its opinion on 20 December 2013. Two of its members considered that the internal complaint was well founded. In their view, Eurocontrol should have filled the post which had become vacant by holding a competition in accordance with Article 30 of the General Conditions of Employment, and not by transferring the complainant against his will. The other two members recommended that the internal complaint should be dismissed on the grounds that the complainant's transfer was consistent with the aforementioned Article 7. Eurocontrol adds that on 11 March 2014 the Principal Director of Resources, acting on the delegated authority of the Director General, notified the complainant that he had decided to dismiss his internal complaint as unfounded, in accordance with the recommendation given by the latter two members of the Committee.

In his rejoinder the complainant presses his claims.
In its surrejoinder Eurocontrol maintains its position.

CONSIDERATIONS

1. The complaint, which was initially directed against an implied decision dismissing the complainant's internal complaint, must be deemed to impugn the explicit decision taken on 11 March 2014, while proceedings were under way before the Tribunal, by which the Director General confirmed the decision of 11 June 2013 transferring the complainant as of 1 June.

2. The complainant first submits that insufficient reasons were given for the transfer decision to which he objects, in that it merely referred to Article 7 of the General Conditions of Employment. He adds that his transfer was decided unilaterally by Eurocontrol in breach of his right to be heard. He contends that the fact that this decision provided no information about the nature of his new job was a breach of the principle of good faith and that it also breached the rule against retroactivity, since he was notified of it on 11 June 2013, whereas it had taken effect on 1 June 2013.

3. The second paragraph of Article 25 of the General Conditions of Employment provides that any decision relating to a specific individual which is taken under the Conditions of Employment shall at once be communicated in writing to the servant concerned and that any decision adversely affecting a servant shall state the grounds on which it is based. On the other hand, this provision does not require Eurocontrol to indicate the reasons in the decision itself as notified to the official.

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. In the instant case, the decision of 11 June 2013 to transfer the complainant referred first to the aforementioned Article 7, according to which a transfer must be in the interest of the service, and to Rule of Application No. 35a, concerning job management, which deals with job descriptions, the tasks pertaining to each generic post and the grade bracket of each of them. Apart from that, the decision mentioned only a request made on 30 May by the Director of the Maastricht Centre.

The Tribunal finds that the reasons given to the complainant for 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, possibly, 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 given might, at first glance, appear insufficient to inform the complainant of the grounds for this decision.

5. This is not the case, however, if one examines the context in which the transfer occurred.

A meeting was organised on 7 May 2013 between the complainant and his immediate superiors, and two other meetings of the same kind were held on 28 May and 10 June before his transfer. During these meetings, the complainant was informed in detail of the reasons why Eurocontrol was planning to transfer him to another unit and various arrangements were suggested to him. The complainant immediately questioned the need for this measure and asserted that the post to which he was to be transferred was not at the same level as that which he was holding, a view which he reiterates in his complaint. At the meeting on 10 June 2013, in other words the day before that on which he was notified in writing of the transfer decision, the complainant was informed that henceforth he had to temporarily divide his working time between

his former tasks and those of his new post, since the management of the Maastricht Centre had concluded, on the one hand, that his former tasks were steadily dwindling and no longer warranted the full-time employment of a servant and, on the other, that he was the best person for the tasks which were going to be assigned to him.

This sequence of events is not disputed.

It follows from the foregoing that the complainant had been given explanations enabling him to comment on his new duties in detail and in full knowledge of the facts before the decision of 11 June 2013. That decision therefore satisfied the requirements of the Tribunal's case law regarding the need to provide reasons (see Judgments 1817, under 6, 2391, under 7, or 2850, under 8).

In view of the circumstances surrounding the above-mentioned facts, there can be no question of any breach of the right to be heard or of the principle of good faith.

6. The complainant also objects to the fact that Eurocontrol effected his transfer under what he regards as the exceptional procedure set forth in Article 7 of the General Conditions of Employment, whereas under the "general rule" laid down in Article 30 of these General Conditions, the post to which he was transferred should have been filled by means of a competition. He submits that the Organisation thus breached the principle of *tu patere legem quam ipse fecisti*.

This plea, which reflects the opinion expressed by two members of the Joint Committee for Disputes, is devoid of merit. Indeed, it is clear from the submissions in the file and from the facts recalled above that the disputed transfer occurred because of a redistribution of tasks entailing a partial redeployment of staff. Even if the transfer procedure provided for in the above-mentioned Article 7 of the General Conditions were to be regarded as exceptional in nature, as the complainant alleges, it must be found that, in the circumstances of the case, Eurocontrol was in a situation permitting it to resort to a transfer without competition in order to avoid an unduly complicated procedure and not to jeopardise the redeployment that had been decided in the interest of the service (see Judgment 1757, under 11).

7. Lastly, the complainant contends that Eurocontrol undermined his dignity and deprived him of any prospect of career advancement. In his view, his transfer was really “a demotion” because the new duties assigned to him were not at the same level as his previous tasks, even though his grade and remuneration remained unchanged.

8. It must be first be noted that there is nothing in the file to indicate that the disputed transfer was a disguised disciplinary measure. It was decided in pursuance of the above-mentioned Article 7 which gives the Director General the authority to transfer a servant, solely in the interest of the service, to a post in his function group corresponding to his grade.

9. As the Tribunal has consistently held, every transfer must respect the general principles governing decisions affecting an official’s status. In order to respect the official’s dignity, it is not enough for the person concerned to retain her or his grade and remuneration; care must also be taken to ensure that the new post provides her or him with work of the same level as that which she or he performed in her or his previous post and matching her or his qualifications (see, in particular, Judgment 2856, under 10).

10. In its submissions before the Tribunal, Eurocontrol has produced the job descriptions of the complainant’s former post, his new post and a post of engineer to which he aspired and to which he says he can no longer accede owing to his transfer.

It is plain from these documents and Eurocontrol’s explanations that in his new post the complainant has not only retained the grade and salary which would have been his if he had kept his previous job, but his duties are similar to those he performed in his former post. These duties remain those of an Advanced Technician comprising the tasks of planning, coordination and maintenance which, though sectoral, are nevertheless important, with the same range of responsibilities.

This information also shows that the above-mentioned post of engineer was never within the complainant's reach, because he does not possess the specific training and skills required for it.

The complainant has therefore not shown that, on account of the disputed transfer, he has been "demoted", that his dignity has been undermined or that he has lost all prospect of progress in his career.

As the complainant has suffered no injury, his plea that the rule against retroactivity was breached because the decision of 11 June 2013 took effect on 1 June is of no avail (see, for example, Judgments 1130, under 2, 1979, under 5(h), and 2963, under 9).

11. The complaint must therefore be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is 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