

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S.

v.

Eurocontrol

122nd Session

Judgment No. 3664

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. B. S. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 2 October 2013 and corrected on 30 November 2013, Eurocontrol's reply of 9 April 2014, the complainant's rejoinder of 15 July and Eurocontrol's surrejoinder of 17 October 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 the fact that she was not promoted during the 2013 promotion exercise.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, details of which are to be found in Judgment 3189. At that juncture, non-operational staff categories B and C were replaced, for a two-year transitional period, by categories B* and C*. On 1 July 2010, at the end of this transitional period, these two categories were merged in the Assistant group (AST), which comprises 11 grades (AST1 to AST11) arranged in various grade brackets. At the material time, the complainant, an official who had previously been in C category, was classed at grade AST3 in the AST1-AST3 bracket.

Office Notice No. 1/13 was published on 7 February 2013. In essence it announced that a procedure for grade promotion would be organised for 2013 and, for that purpose, the list of staff eligible for promotion would comprise those officials and servants who in 2013 had at least two years' seniority in their grade and were not yet in the last grade of their respective career brackets as defined in their job descriptions. The list of Eurocontrol staff eligible for promotion was published on 8 February 2013. As the complainant's name was not on it, she lodged an internal complaint on 7 May. She requested, amongst other relief, that the decision to exclude her from the above-mentioned list should be cancelled and that the possibility of promoting her should be examined on the basis of her merit alone.

When she filed her complaint with the Tribunal on 2 October 2013, the complainant had not yet received a reply to her internal complaint. She impugns what she takes to be an implied decision dismissing her internal complaint and she seeks the cancellation of this decision, the inclusion of her name on the list of staff members eligible for promotion in the 2013 exercise and the examination of her case. She also claims compensation, with interest, for moral and financial injury, and costs.

In the meantime, the complainant's internal complaint had been forwarded to the Joint Committee for Disputes, which delivered its opinion on 13 December 2013. Two of its members recommended that the internal complaint should be allowed in accordance with the "principle of legitimate expectations" and the "right to a career", whereas the other two recommended that it should be dismissed on the grounds that the complainant had reached the last grade in her grade bracket and was thus not eligible for promotion under Rule of Application No. 4 concerning the procedure for grade promotion provided for in Article 45 of the Staff Regulations governing officials of the Eurocontrol Agency.

The complainant was informed by a memorandum of 17 March 2014 that her internal complaint had been dismissed by the Director General.

In its reply Eurocontrol asks the Tribunal to dismiss all the complainant's claims as groundless and to join this complaint with two other cases.

In her rejoinder the complainant presses all her claims and asks to be “considered eligible for promotion as from 2013”.

In its surrejoinder Eurocontrol maintains its position.

CONSIDERATIONS

1. The complainant challenges the non-inclusion of her name on the list of staff members eligible for promotion in the 2013 exercise, which was published on 8 February 2013.

This complaint, which was originally directed against the implied decision to dismiss her internal complaint, must now be deemed to impugn the explicit decision of 17 March 2014, taken in the course of the proceedings, by which the Director General confirmed the non-inclusion of the complainant’s name on the above-mentioned list.

2. Eurocontrol requests the joinder of this complaint with two other cases forming the subject of Judgments 3666 and 3667, also delivered this day. However, as these three cases raise legal issues that are partly different, the Tribunal will not grant this request (see, in particular, Judgment 3620, under 2).

3. The complainant first submits that the Office Notice of 7 February 2013 is unlawful, and likewise Rule of Application No. 4 on which it is predicated in order to define the staff members eligible for promotion during 2013. As it completely excludes the promotion of officials and servants of Eurocontrol who have reached the highest grade in their grade bracket, in the complainant’s opinion it conflicts with Article 45 of the Staff Regulations, which permits the Director General to depart from the exclusion principle established by that same article.

4. In Judgments 3404 and 3495 the Tribunal found that, quite apart from the fact that officials may always participate in a competition or request the reclassification of their post, the Director General had not breached Article 45 of the Staff Regulations or the complainants’ right

to career advancement by excluding them from the list of staff members eligible for annual promotion on the grounds that they had reached the top of their career bracket. None of the arguments put forward by the complainant justifies a different approach by the Tribunal in the instant case.

5. Article 45 of the Staff Regulations establishes the exclusion principle which is challenged by the complainant, who has reached the highest grade in the bracket covering her current post. This principle is consistent with the aims of the administrative reform carried out in 2008, namely to end the practice of automatic promotion while not ruling out the possibility of making exceptions in order to enable particularly well-qualified officials to move up to a higher grade in the next bracket.

6. In the structure introduced by the administrative reform which entered into force at Eurocontrol on 1 July 2008, officials are classed in hierarchical grade brackets, each of which corresponds to a clearly defined category of functions. In the same way that an official who has reached the pinnacle of her or his career can no longer hope for promotion, a Eurocontrol official who has reached the top of her or his grade bracket does not, in principle, have any possibility of moving into a higher grade.

7. The possibility of an exception stemming implicitly from Article 45 of the Staff Regulations should not, of course, be abolished by a rule of lesser rank than the Staff Regulations. But this is not the case here, since the defendant organisation accepts that, despite the apparently categorical wording of the second paragraph of Article 1 of Rule of Application No. 4, it has a duty to apply this provision in a manner that is consistent with Article 45 of the Staff Regulations, and it has no intention of relying on this rule in order to exclude any possibility of promotion in cases where there are grounds for departing from the principle embodied in the Staff Regulations.

8. The exception to this rule allowed by Article 45 of the Staff Regulations is a matter for the discretion of the Director General, which he must exercise within the limits established by the Rules of Application of the Staff Regulations (see Judgment 3666, also delivered this day). There is nothing in the file to suggest that the impugned decision involved an abuse of the Director General's discretion, or a breach of the principles or duties which international organisations must observe in their staff management.

In particular, it is impossible to see how the different treatment of officials who have attained the highest level of their grade bracket and those who can still progress naturally within the framework of their duties and expertise would constitute discrimination. Moreover, when the administrative reform entered into force, officials could not have been unaware of the fact that their transition to another grade bracket would be possible only if justified on special grounds.

The complainant's first plea must therefore be dismissed.

9. Secondly, the complainant contends that the refusal to place her name on the list of staff members eligible for promotion in 2013 is "the result of flawed official consultations". She states that contrary to the requirements of the memorandum of understanding between the Administration and the trade unions, the Administration abruptly broke off negotiations aimed at "a more liberal promotion policy" which were about to reach a successful conclusion and which would have applied to 2013. However, the Tribunal finds that the complainant's submissions in this connection do not establish any causal link between the breakdown of these negotiations and her non-promotion.

This plea is therefore also groundless.

10. Lastly, the complainant submits that Eurocontrol failed to take account of her particular situation when it excluded her from the list of staff members eligible for promotion in 2013. In her view, the tasks that she was carrying out and her performance justified her promotion.

The Tribunal considers, however, that the complainant offers no proof that she was in one of the situations warranting promotion on special grounds.

11. The complainant presented a new claim in her rejoinder. As the Tribunal has consistently held, a complainant may not, in her or his rejoinder, enter new claims not contained in her or his original complaint (see, for example, Judgments 1768, under 5, or 2996, under 6). This new claim must therefore be dismissed.

12. It follows from the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint 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