

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T.

v.

Eurocontrol

128th Session

Judgment No. 4168

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr D. T. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 5 July 2016 and corrected on 26 July, Eurocontrol's reply of 28 October 2016, the complainant's rejoinder of 6 February 2017 and Eurocontrol's surrejoinder of 12 May 2017;

Considering Articles II, paragraph 5, and VII 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 retroactive calculation of his salary after he was promoted.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, aiming to modernise human resource management by, in particular, placing emphasis on staff performance; details of this reform are explained in Judgment 3189. The reform involved the establishment of a new structure comprising more grades and fewer steps and, therefore, of a new salary scale. Given the aim of the reform, it was intended to have no adverse effect on the situation of staff members. Accordingly, under Article 7 of Part 2 of Annex XIII to the Staff Regulations governing officials of the Eurocontrol Agency, all

officials recruited before 1 July 2008 were to have, in the new classification of functions, a grade offering remuneration and scope for increases equivalent to those offered by the grade which they had held under the previous classification. That result was to be achieved by applying a multiplication factor equal to the ratio between the basic salary paid before that date and that shown in the new salary scale. As the multiplication factor was generally lower than 1, progress towards this figure was made through promotion and seniority progression. Officials recruited after the entry into force of the reform were immediately appointed at factor 1 in the new grade structure (see Judgments 3189, 3492 and 3493).

The above-mentioned reform entered into force over a transition period of two years during which each official's grade was converted. On 1 July 2008 the complainant was assigned grade A*8, step 2. A multiplication factor of 0.8789597 was applied to his remuneration. On 1 July 2009 the complainant was promoted to grade A*9, step 1, and a new multiplication factor (of 0.9040820) was determined. As from 1 July 2010, the date on which the transition period ended, his grade was transposed into the new structure and converted to AD9, step 1. The multiplication factor applicable to the complainant was adjusted to 0.9420534 as of 1 July 2011, then to 0.9816196 as of 1 July 2013, and reached 1 on 1 July 2015.

On 26 October 2015 the complainant was promoted to grade AD10, step 1, with retroactive effect from 1 July 2015 and was advised that his new remuneration would be determined in accordance with the provisions of Article 7(4) and (5) of Part 2 of Annex XIII to the Staff Regulations. In his pay slip for November 2015, dated 31 October 2015, the multiplication factor was returned to 0.9816196 with effect from 1 July, the date on which his promotion took effect, and his remuneration recalculated accordingly.

On 12 December 2015 the complainant lodged an internal complaint in which he challenged his pay slips from July 2015 onwards and asked for them to be corrected; he objected to the fact that the Administration had not granted him a step advancement. On 28 January 2016 he lodged a "supplementary" internal complaint in which he

challenged the reduction of the multiplication factor applied in the pay slip dated 31 October 2015 and subsequent pay slips and asked that they be cancelled.

The complainant filed his complaint with the Tribunal on 5 July 2016. He indicates that he impugns the implicit decision to dismiss his internal complaint of 12 December 2015, as supplemented on 28 January 2016, and asks the Tribunal to set aside that decision, his pay slip of 31 October 2015 and all his subsequent pay slips insofar as they did not apply the multiplication factor of 1 in his case. He also claims 5,000 euros in costs.

Eurocontrol submits that the complaint should be dismissed as groundless.

CONSIDERATIONS

1. The complainant impugns the implicit decision of the Director General of Eurocontrol to dismiss his internal complaint of 12 December 2015, as supplemented on 28 January 2016. He asks for his pay slip of 31 October 2015 and subsequent pay slips to be set aside insofar as the multiplication factor applied in his case was reduced from 1 to 0.9816196 on his promotion to grade AD10 with retroactive effect from 1 July 2015.

2. The Tribunal considers it regrettable that the complainant's internal complaint was not examined. Firstly, since Article VII, paragraph 1, of the Statute of the Tribunal does not permit the filing of a complaint before the Tribunal unless the complainant has exhausted internal means of redress, officials are entitled to expect that the organisation which employs them will deal with their appeals without requiring them to file a complaint with the Tribunal in order to assert their claims. Secondly, as the Tribunal has often recalled, one of the main justifications for the mandatory nature of an internal appeal procedure is to enable the Tribunal, in the event that a complaint is ultimately filed, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies. Appeal

bodies play a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from their composition and their extensive knowledge of the functioning of the organisation (see Judgments 4072, under 1, and 3424, under 11(b)). In this case, it appears to the Tribunal that the input of an internal appeal body would have been particularly helpful given the highly technical nature of the case.

3. Complex transitional provisions, adopted in the context of a major reform of the structure of grades and steps and the salary scale, provide that a multiplication factor will be applied to the basic monthly salary of officials recruited before the entry into force of the reform on 1 July 2008. That factor is determined on the first promotion after that date and then every two years, the period at the end of which a step advancement normally occurs.

It was against this background that on 1 July 2009 the complainant was promoted to grade A*9 (which became AD9 in 2010 at the end of the transition period that followed the implementation of the administrative reform), step 1, with a multiplication factor of 0.9040820. On 1 July 2013 he was kept at that step with a multiplication factor of 0.9816196. As of 1 July 2015, the date on which his step advancement within grade AD9 was due, that factor increased to 1.

By a decision of the Director General of 26 October 2015, the complainant was promoted to grade AD10, step 1, with retroactive effect from 1 July 2015. At that juncture, the multiplication factor which was applied in his case was put back to 0.9816196.

4. The complainant contends that by reducing retroactively the multiplication factor that had been assigned to him, Eurocontrol breached Article 7(6) of Part 2 of Annex XIII to the Staff Regulations and the general principle of respect for acquired rights. He considers that as of 30 June 2015 he had acquired the two years of seniority in his step and that, as a result, the multiplication factor of 1 was applicable to him as of 1 July 2015 and should have been applied when he was promoted.

In this case, the two-year period began to run on 1 July 2013 and expired at midnight on 30 June 2015. Under Article 7(6), the new multiplication factor must be calculated on step advancement. This was due to occur on 1 July 2015. The multiplication factor was indeed recalculated on that date and reached the level of 1, but, for a reason that is not clear from the file, the step advancement was not granted.

From 1 July to 26 October 2015 the complainant received a salary to which the multiplication factor of 1 was applied, which had been assigned to him in accordance with the applicable rules. Eurocontrol could not retroactively reduce it without breaching the principle of the non-retroactivity of administrative acts (see Judgment 3185, under 7(b)).

It follows that the plea is well-founded.

5. The implicit decision of the Director General to dismiss the complainant's internal complaint must therefore be set aside without there being any need to examine the other pleas. The same applies to the pay slip of 31 October 2015 and to subsequent pay slips insofar as the multiplication factor applied was reduced from 1 to 0.9816196. Eurocontrol shall ensure that the complainant's remuneration is calculated as if the multiplication factor of 1 had been applied in his case from 1 July 2015.

6. As the complainant succeeds, he is entitled to costs, which the Tribunal sets at 5,000 euros.

DECISION

For the above reasons,

1. The Director General's implicit decision to dismiss the complainant's internal complaint of 12 December 2015, as supplemented on 28 January 2016, is set aside.

2. The pay slip of 31 October 2015 and subsequent pay slips are set aside insofar as the multiplication factor was reduced from 1 to 0.9816196, and Eurocontrol shall proceed as indicated in consideration 5, above.
3. Eurocontrol shall pay the complainant 5,000 euros in costs.

In witness of this judgment, adopted on 9 May 2019, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ