

E.

v.

Eurocontrol

131st Session

Judgment No. 4335

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms C. E. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 27 February 2019 and corrected on 20 June, and Eurocontrol's reply of 4 October 2019, no rejoinder having been submitted by the complainant;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the amount of the allowance she received during her parental leave.

On 30 September 2017 the complainant, who is an air traffic controller at the Maastricht Upper Area Control Centre, submitted three requests for parental leave (for the months of June, July and September 2018) pursuant to Article 42a of the General Conditions of Employment (GCE) governing servants at the Eurocontrol Maastricht Centre. She requested to be considered as a single parent. At that time, Article 42a relevantly provided that during parental leave a servant was entitled to an allowance. For a servant on full-time parental leave, the standard rate of the allowance was 1,035.76 euros per month, but the rate for single parents was 1,381.02 euros per month. The Implementing Provisions for Article 42a were set out in Office Notice No. 29/08.

On 8 March 2018 the complainant was informed that, having regard to the Implementing Provisions for Article 42a of the GCE and Office Notice No. 26/17, which had entered into force on 1 January 2018 and amended the definition of “single parent”, she was granted the requested leave and the allowance would be paid at the standard rate. On 1 April the complainant lodged an internal complaint against that decision stating that, pursuant to Office Notice No. 29/08, the allowance should be paid at the single parent rate.

On 17 September 2018 the Joint Committee for Disputes, to which the dispute had been referred, issued its opinion. A majority of its members concluded that the complaint was unfounded as the complainant was not a single parent under the provisions of Office Notice No. 26/17 which, according to them, was applicable to the case.

On 17 October 2018 the complainant was informed that, in accordance with the conclusion of the majority of the Joint Committee for Disputes, her complaint was dismissed. That is the impugned decision.

The complainant requests before the Tribunal to be paid the difference between the sum she would have received had she been paid at the single parent rate and the allowance she actually received at the standard rate. She also asks to be paid her social contributions during her leave and a “decent sum” for costs and for the emotional stress she has suffered.

Eurocontrol asks the Tribunal to dismiss the complaint as entirely unfounded.

CONSIDERATIONS

1. The central question which this complaint raises for determination is whether the impugned decision, dated 17 October 2018, in which the Head of Human Resources and Agency Services, acting by delegation of power from the Director General, accepted the opinion of the majority of the Joint Committee for Disputes to dismiss the complainant’s internal complaint against the decision of 8 March 2018, should be set aside and Eurocontrol be ordered to pay her the related amounts and costs which she claims.

2. On 30 September 2017, the complainant submitted requests for parental leave as a single parent for the months of June, July and September 2018. The communication of 8 March 2018 informed her that the Director General had decided that, having regard to Office Notice No. 26/17, which amended the Implementing Provisions for Article 42a of the GCE regarding parental leave (and in particular the definition of single parent), she was granted one month of parental leave at the standard half-time rate for June and September 2018 and at the standard full-time rate for July 2018. In her internal complaint, dated 1 April 2018, in which she sought a review of that decision, the complainant argued, in effect, that her requests for parental leave were incorrectly decided under Office Notice No. 26/17. This Notice was published on 17 November 2017 and entered into force on 1 January 2018, after she had submitted her requests for parental leave. The complainant insisted that the requests should have been decided under Office Notice No. 29/08 and the attached Implementing Provisions for Article 42a of the GCE, which was in force at the time when she made her requests on 30 September 2017. She submitted that under that Notice she was entitled to parental leave paid at the single parent rate rather than at the standard rate which she was granted.

3. The reasons stated in the impugned decision for dismissing the complainant's internal complaint are in the following terms:

"I follow the opinion of the [majority] members [of the Joint Committee for Disputes] who consider your complaint as unfounded: you are not effectively a single parent, since your factual situation does not reflect that of a single parent who bears the sole personal and financial responsibilities towards [her] child.

In addition, the provisions of Office Notice No. 26/17 have been correctly applied. All requests for parental leave for periods falling after 1 January 2018 shall be examined under Office Notice No. 26/17, even where such requests were submitted before the publication of that Office Notice on 17 November 2017, as is your case. Any other interpretation of [Section] 3 of the said Office Notice would not be judicious."

4. In the present complaint, the complainant repeats her argument that inasmuch as at the time when she submitted her requests for the subject parental leave Office Notice No. 29/08 was in force, her requests should have been examined according to this Notice as under it she fell into the definition of "single parent" entitling her to the allowance for parental leave as such. This, she stated, was because she was not married;

she was not in a non-marital partnership; and she was not in a partnership recognized by Eurocontrol or in one contemplated in Office Notice No. 26/17 as reflected in Article 4 of the Implementing Provisions for Article 42a of the GCE attached to Office Notice No. 26/17.

5. Eurocontrol states that it does not dispute that the complainant would have been entitled to the parental leave allowance as a single parent under Office Notice No. 29/08. It however insists that her requests were correctly determined under Office Notice No. 26/17 and that the complainant was not deprived of her right to parental leave even though she does not qualify as a single parent thereunder. Article 4 of the Implementing Provisions for Article 42a of the GCE attached to Office Notice No. 26/17 relevantly states as follows:

“Article 4 - Single parent

For the purposes of Article 42a of [...] the General Conditions of employment, a single parent is deemed to be an official with a dependent child who raises the child alone full-time and provides for its needs with no financial support.
[...]

It is not disputed that if the complainant’s requests fell to be determined under Office Notice No. 26/17 she would not fall into this definition, and, as a result, the decision that she was entitled to be paid for her parental leave at the standard rate would be correct. However, the resolution of the question as to the complainant’s entitlement for parental leave lies in Section 3 of this Notice.

6. Section 3 of Office Notice No. 26/17, which is under the rubric “ENTRY INTO FORCE”, relevantly states as follows:

“The provisions of the present Rule will enter into force as from 1 January 2018. Consequently, any requests for parental leave after 1 January 2018 already submitted or submitted between the date of publication and the date of entry into force of the present Office Notice will be examined in accordance with the present Office Notice. Requests for parental leave before 1 January 2018 will continue to be governed by Office Notice No. 29/08 dated 27.06.08 [...] This Office Notice supersedes Office Notice No. 29/08 dated 27.06.08 [...] on the date of its entry into force.”

7. In the context of the present case, the purport of this section is that a request for parental leave which was submitted before the publication of the subject Notice for a period of parental leave to be taken after

1 January 2018 (as in the present case) is to be examined in accordance with Office Notice No. 26/17, as the Director General correctly determined.

8. The application of Office Notice No. 26/17 to determine the complainant's requests for parental leave was not excluded in that Notice. Rather, it was stipulated therein. Additionally, the Tribunal discerns no circumstances on which to hold that the application of Office Notice No. 26/17 to determine the requests resulted in a breach of the requirements of the principle of good faith. The complainant's argument that the Director General had "retroactively" applied the revised definition of "single parent" contained in the above-mentioned Article 4 of the Implementing Provisions for Article 42a of the GCE is rejected. The Tribunal's case law states, in Judgment 2315, consideration 23, for example, that in general terms, a provision is retroactive if it effects some change in existing legal status, rights, liabilities or interests from a date prior to its proclamation, but not if it merely affects the procedures to be observed in the future with respect to such status, rights, liabilities or interests.

9. Moreover, the complainant cannot rely on the notion of acquired rights to support her claim. The Tribunal's case law states that most of the conditions of employment laid down in the provisions of the staff rules and regulations in force at the time when a staff member of an international organisation is recruited can be altered during their employment as a result of amendments to those provisions but that the position is different if, having regard to the nature and importance of the provision in question, the complainant has an acquired right to its continued application. However, the case law has established that the amendment of a provision governing an official's situation to her or his detriment constitutes a breach of an acquired right only when such an amendment adversely affects the balance of contractual obligations, or alters fundamental terms of employment in consideration of which the official accepted an appointment, or which subsequently induced her or him to stay on. In order for there to be a breach of an acquired right, the amendment to the applicable text must therefore relate to a fundamental and essential term of employment within the meaning of Judgment 832 (see, for example, Judgment 3074, consideration 15). The condition for the payment of parental leave, which is at issue in the present case, plainly does not have this character.

10. In the foregoing premises, the complaint is unfounded and will be dismissed. It is unnecessary to hold an oral hearing as requested by the complainant. The written material provided by the parties has been sufficient to enable the Tribunal to resolve this complaint without such a hearing.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 20 October 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ