

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

115th Session

Judgment No. 3231

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M.-G. I. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 7 May 2011, corrected on 2 July, and the Agency's reply of 5 October 2011, the complainant having declined to file a rejoinder;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this case are set out in Judgment 3230, also delivered this day.

The complainant, a Romanian national born in 1972, entered the service of Eurocontrol at its Experimental Centre in Brétigny-sur-Orge on 1 March 2001 at grade B3. On 1 July 2005 he was promoted to grade B2. On 1 July 2008, with the entry into force of the administrative reform entailing the establishment of a new grade

structure at Eurocontrol, the A, B and C staff categories were replaced, for a transitional period of two years, by categories A*, B* and C* respectively. At that juncture the complainant was classed in grade B*8.

On 28 April 2009 the Agency sent its staff members a decision informing them of the generic post and the job bracket assigned to them in the new grade structure, with effect from 1 July 2008. The complainant was allocated the job title of Advanced Technical Assistant, in the job bracket B*5-B*8, while retaining his existing grade. Between 12 May and 7 August 2009 numerous officials, including the complainant, lodged an internal complaint. In the complainant's opinion, the procedure followed had been flawed in several respects, especially on account of the fact that the Committee in charge of job management monitoring had not been consulted, in breach of Article 9 of Rule of Application of the Staff Regulations No. 35, concerning job management for the period 1 July 2008-30 June 2010. He held that he had thus been "deprived of the opportunities [he] previously enjoyed for career advancement (through promotion)". He requested assignment to the generic post of Senior Technical Assistant, in the job bracket B*8-B*10. The Joint Committee for Disputes, to which these internal complaints were referred, delivered its opinion on 16 December 2009. It unanimously held that the process of determining the generic posts and the associated job brackets had been flawed and recommended that the decisions of 28 April 2009 should be cancelled and that the Committee in charge of job management monitoring should, "in the case of the complainants only, carry out the examination which was not carried out at the appropriate time".

On 20 January 2010 the Principal Director of Resources, acting on behalf of the Director General, wrote to the staff members who had filed internal complaints to inform them that he had decided to follow the recommendations of the Joint Committee for Disputes. At a meeting held on 5 May, the Committee in charge of job management monitoring reached the conclusion that the principles that had been applied when assigning the new job brackets were in line with Article 9 of the aforementioned Rule of Application. On 5 July 2010

the “complainants” were sent a memorandum enclosing the new decision taken that same day, confirming their job bracket classification that had come into effect on 1 July 2008. Between 23 September and 6 October 2010 some of them lodged another internal complaint. In his second internal complaint, dated 30 September 2010 but filed on 1 October 2010, the complainant sought the setting aside of the decision of 5 July 2010 and asked to be classified in job bracket B*8-B*10. On 7 May 2011, considering that his internal complaint had been implicitly dismissed, he filed a complaint with the Tribunal.

B. The complainant explains that he had intended to file his complaint by the end of April 2011, but he was hospitalised between 25 and 28 April for surgery which entailed sick leave until 8 May. He asks the Tribunal to take account of these circumstances in examining the receivability of his complaint.

On the merits, the complainant submits that the opinion delivered by the Committee in charge of job management monitoring and the decision of 5 July 2010 failed to take account of his real functions, his experience, or his training as an engineer. He also takes issue with the fact that, since the entry into force of the administrative reform and of the new Article 45 of the Staff Regulations, officials who, like him, have reached the highest grade in their job bracket are no longer eligible for promotion, whereas those who were previously in grade A7 have been assigned to the job bracket above his one and thus still have the possibility of promotion. Lastly, he contends that, despite doing the same work at the same grade, officials who, like himself, were promoted before the entry into force of the reform, are paid a salary at least 10 per cent lower than that received by those who were promoted later.

The complainant asks the Tribunal to set aside the decision of 28 April 2009, confirmed by the decision of 5 July 2010, to award him damages on the grounds that since 2008 he has no longer been eligible for promotion, and to recognise the “salary and career discrimination” between the various categories of staff. He also asks to be assigned

to the generic post of Senior Technical Assistant and requests the Tribunal to require the Agency, “when assigning [job] brackets, to respect its obligations in the matter of qualifications and experience”.

C. In its reply Eurocontrol submits that the implied rejection of the internal complaint filed on 1 October 2010 occurred on 2 February 2011 and that the complainant then had 90 days in which to apply to the Tribunal, i.e. until 3 May 2011. However, since he did not file his complaint until 7 May, he is time-barred. It cites the Tribunal’s case law in order to demonstrate that the complainant did not find himself in any of the situations where the time bar might have been waived. The complainant could have filed his complaint form between 24 April and 3 May and corrected it afterwards. Moreover, the Agency contends that several of his claims are irreceivable because they are new, since they were not included in his internal complaint. Lastly, it produces the opinion delivered by the Joint Committee for Disputes concerning the internal complaints filed with it in September-October 2010 and the memorandum of 14 June 2011 by which the Principal Director of Resources, acting on behalf of the Director General, informed the complainant that his internal complaint had been dismissed.

On the merits and subsidiarily, the Agency argues that the classification of the complainant in the new grade structure was made in accordance with the applicable rules, including Rule of Application No. 35. The reference in Article 9 of that Rule to the allocation of a job title to each official did not require an individual review in order to determine whether the functions performed in the categories A*, B* or C* fully matched those performed in the previous A, B or C categories. The Committee in charge of job management monitoring had to ascertain that the generic post descriptions matched the job brackets. The Agency points out that, notwithstanding his training as an engineer, in 2000 the complainant applied for a post at grade B3/B2, and it submits that, for this reason, he may not now claim that the Agency is bound to classify him at a level corresponding to his training, without regard to the tasks he continues

to perform. In its view, the complainant is in fact challenging the version of Article 45 of the Staff Regulations that entered into force on 1 July 2008. Although previously it was theoretically possible for an official in categories B and C to advance through promotion from the lowest to the highest grade in his category without any change in functions, this is no longer the case. The Agency emphasises that this is a question of human resources management policy for which it is alone responsible. It asserts that the complainant is not in the same situation as his colleagues who were previously assigned to grade A7, and he cannot therefore rely on the special measures taken in their case. It adds that the arguments relating to the new salary scale are irrelevant.

CONSIDERATIONS

1. Article VII, paragraph 3, of the Statute of the Tribunal reads as follows:

“Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days [within which the complaint must be filed] shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.”

2. As the Tribunal has often had occasion to state, time limits are binding and an objective matter of fact. The Tribunal should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. The only exceptions to this rule are where the complainant has been prevented by *vis major* from learning of the impugned decision in good time, or where the organisation has misled the complainant, concealed some paper from him or her or has otherwise deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith (see, in particular, Judgments 1466, under 5, and 2722, under 3).

3. In the instant case, it was on 1 October 2010 that the complainant filed his internal complaint against the decision of 5 July 2010 which he asks the Tribunal to set aside. Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency stipulates that the Director General must notify the official of his reasoned decision “within four months from the date on which the complaint was lodged” and the parties appear to believe that this time limit applied in this case. As the Tribunal has already stated, for example in Judgments 1095 and 1096, once an organisation has accepted the Tribunal’s Statute, it may not derogate from Article VII, paragraph 3, thereof by dint of its own internal rules. Under that Article, the Administration therefore had sixty days to reach a decision on the complainant’s internal complaint. Once that time limit had expired, the complainant not only could, but had to refer the matter to the Tribunal within the following ninety days, i.e. within 150 days of his or her internal complaint being received by the Agency, otherwise his complaint before the Tribunal would be irreceivable (see Judgments 456, under 2, and 2901, under 8 and 9). It has been established that this time limit had expired long before the complaint was filed on 7 May 2011.

4. In his submissions the complainant explains that he was unable to refer the matter to the Tribunal within the time limit laid down in the Statute because he was in hospital from the evening of 25 April 2011 until midday on 28 April 2011.

In the Agency’s opinion, he still had six days after he left hospital to file his complaint, and he could have done so by simply filing a complaint form filled up in the essential points. He could then have corrected his complaint as is permitted by the Rules of the Tribunal.

The Tribunal finds that the complainant is not in one of the situations where the case law allows a departure from the peremptory rule laid down in the last sentence of Article VII, paragraph 3, of its Statute.

5. At all events, as stated under 3, above, the complaint was filed long after the time limit prescribed by the Statute of the Tribunal had expired.

The complaint is therefore out of time and, accordingly, irreceivable. It must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed as irreceivable.

In witness of this judgment, adopted on 2 May 2013, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Seydou Ba
Claude Rouiller
Giuseppe Barbagallo
Catherine Comtet