

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session

Judgment No. 3276

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints against the European Organisation for the Safety of Air Navigation (Eurocontrol) filed by Ms S. A., Ms V. D., Mr K. E. (his third), Ms G. G. (her fourth), Mr J.-C. P. and Mrs C. W. (her third) on 24 September 2011, Ms B. M. on 26 September, Ms C. S. (her second) on 27 September, Ms V. M. (her fourth) on 28 September, Messrs M. C. (his second) and Y. V.d.P. on 1 October and Mr M. M. and Ms P. T. on 3 October 2011, Eurocontrol's reply of 19 January 2012, the complainants' rejoinder of 20 April and Eurocontrol's surrejoinder of 19 July 2012;

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 none of the parties has applied;

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

A. Facts relevant to this dispute are to be found in Judgments 3274 and 3275, also delivered this day. It should be recalled that on 1 July 2008 an administrative reform entered into force at Eurocontrol entailing, inter alia, the introduction of a new grade structure. As part of that reform, Rule of Application No. 35 of the Staff Regulations governing officials of the Eurocontrol Agency was adopted on job management during the period from 1 July 2008 to 30 June 2010 (hereinafter “the transitional period”). That text included the following provisions:

“Article 6

Updating/creation of job descriptions and evaluations

Reviews of existing job descriptions and evaluations may be requested by line management. [...]

[...]

In both cases described above, reviews and newly-created posts, the Service/Directorate concerned shall present a duly reasoned request for change or creation, with supporting evidence, to the Section in charge of job management at the Directorate in charge of human resources. This Section shall examine, in conjunction with the line management concerned, the content of the job description and/or job evaluation, to be created or amended. The criteria shown in Article 4 of the present Rule of Application shall be examined and assessed to determine the value of the function and its grading. A final proposal shall be presented to the Committee constituted as set out in Article 7 below. The cases for review shall be presented to the Committee by both the line manager concerned and a member of the job management team.

Article 7

Composition of the Committee in charge of job management monitoring

[...]

The role of the Committee shall be to issue, on the basis of the documents presented, a reasoned opinion to the Director General on the validity of the request as regards the content of the job description/evaluation and the grading of the post.

[...]

Article 9

With effect from 1 July 2008, the administrative situation of each official in the ‘General Service’ shall be reviewed on the basis of the following principles:

- the grade held on 30.6.08 by each official shall be renamed and converted [in the new grade structure],
- the official shall be allocated a job title, according to the nature of his/her functions, [...] corresponding to his grade and professional speciality [...],
- the official shall be assigned by the Director General, after the latter has consulted the Committee [in charge of job management monitoring], to a generic post [...],
- [...]”

During the transitional period the A, B and C staff categories were replaced with categories A*, B* and C* respectively.

On 28 April 2009 Eurocontrol sent its staff members a decision informing them of the generic post and corresponding career bracket assigned to them in the new grade structure, with effect from 1 July 2008. Between 12 May and 7 August 2009 numerous officials, including the complainants – who were in categories B* and C* – submitted an internal complaint. The Joint Committee for Disputes delivered its opinion on 16 December 2009. It unanimously held that the process of determining the generic posts and career brackets had been flawed and it 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 its meeting 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 career brackets were in line with Article 9 of Rule of Application No. 35. On 5 July 2010 the persons concerned were sent a memorandum enclosing the new decision taken that same day, confirming their career bracket classification that had come into effect on 1 July 2008. Between 23 September and 6 October 2010 some of those persons, including the complainants,

lodged a second internal complaint. In its opinion of 28 April 2011 the Joint Committee for Disputes stated that its members were unable to reach a unanimous decision. Two members considered that the internal complaints were well-founded since the Committee in charge of job management monitoring had not carried out “an analysis allowing a possible reassessment of the posts”, whereas the other two were of the opinion that the Committee had “correctly verified the transposition of grades into the new career brackets”. By memorandums of 14 June 2011, which constitute the impugned decisions, the Principal Director of Resources, acting on behalf of the Director General, informed the complainants that their internal complaints had been rejected as unfounded.

B. The complainants plead a breach of Articles 6, 7 and 9 of Rule of Application No. 35. First, they take the Principal Director of Resources to task for merely forwarding their reclassification requests to the Committee in charge of job management monitoring and therefore failing to review the content of their job descriptions and/or job evaluation, or to propose the slightest revision thereof to the Committee. Secondly, they tax the Committee with failing to examine the “applicable classification criteria” or to provide a reasoned opinion of the validity of their requests.

They also deplore the fact that no reasons were given for the decisions of 28 April 2009 and they state that Eurocontrol has committed an obvious error of judgement by assigning them a generic post and career bracket which do not match the nature of their functions. They add that the decision to classify them in the highest grade of their career bracket adversely affects their “inalienable right to career advancement” and deprives them of any chance of promotion, because this is possible only within a bracket. They infer from this that they are victims of discrimination, particularly in comparison with officials who may be promoted within their career bracket. As she was classified one grade below the highest grade of her career bracket, Mrs W. complains that she can aspire to only one promotion.

Lastly, as several career brackets overlap, the complainants challenge what they regard as the arbitrary decision to classify them in the lower bracket when the grade assigned to them in the new structure would equally have warranted their classification in the higher bracket.

Each complainant asks the Tribunal to set aside the decisions of 5 July 2010 and 14 June 2011 and to award him or her 1,500 euros to redress the moral injury suffered and costs in the amount of 7,500 euros.

C. In its replies Eurocontrol contends that the complainants' classification in the new grade structure complied with the applicable texts, in particular Rule of Application No. 35. In its opinion, the reference in Article 9 of that Rule to the allocation of a job title to each official did not mean that each official's individual situation had to be reviewed in order to determine whether their functions in categories A*, B* or C* were completely in line with those which they had been performing in categories A, B or C. In this connection, it explains that, in May 2010, the Committee in charge of job management monitoring, whose task it was to verify that the description of generic posts corresponded with their career brackets, confirmed that they had been correctly transposed into the new structure. It maintains that in fact the complainants are 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 officials in categories B and C to advance through promotion from the lowest to the highest grade in their categories without any change in functions, now once an official has reached the highest grade in his or her bracket, he or she will be unable to progress unless he or she applies for a job in a higher bracket, or his or her current job has changed to such an extent that it must be re-evaluated. Eurocontrol emphasises that this is a matter of human resources management policy for which it alone is responsible. Insofar as Article 16a of Rule of Application No. 2 permits officials to change career brackets, it considers that the administrative reform has not called into question the principle of the right to career advancement.

Eurocontrol asks for the joinder of the complaints now before the Tribunal with several other complaints pursuing the same claim. It considers that the claim for costs – in an amount totalling 97,500 euros – is “exorbitant” in view of the fact that the complaints are worded in almost identical terms.

D. In their rejoinders the complainants enlarge upon their pleas. They hold that their prospects of promotion to a grade in a higher bracket are virtually non-existent, since Eurocontrol holds few competitions. They ask the Tribunal to award them costs in a total amount of at least 22,750 euros.

E. In its surrejoinders Eurocontrol reiterates its position. It states that the claim for costs still appears to be unreasonable, but leaves this matter to the discretion of the Tribunal.

CONSIDERATIONS

1. Since the 13 complaints are similar, they shall be joined in order that they may form the subject of a single judgment. They concern the classification of posts at Eurocontrol, which was introduced in pursuance of new rules ensuing from the administrative reform which entered into force on 1 July 2008 (see Judgment 3189). On 1 July 2010 the duties performed by non-operational staff, who during the transitional period from 1 July 2008 to 30 June 2010 had been classed in the categories B* and C*, which had replaced the former categories B and C, were classified definitively in the new function group for assistants (AST).

2. Article 5(1), (2) and (7) of the Staff Regulations governing officials of the Eurocontrol Agency, as amended for the purposes of this reform, read as follows:

“1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in a function group for managers or administrators (hereinafter ‘AD’) and a function group for assistants or other specific

functions referred to in Annex I to these Staff Regulations (hereinafter 'AST').

2. Function group AD shall comprise twelve grades, corresponding to administrative, advisory, executive and management duties, as well as to linguistic duties. Function group AST shall comprise eleven grades, corresponding to duties involving the application, supervision and execution of technical, operational or clerical tasks.
7. A summary table showing the types of posts is given in Annex I.

By reference to this table, the Director General shall define the duties and powers attaching to each type of post and its level expressed in grade(s) after consulting the Staff Committee. He shall do this taking account inter alia of the need to harmonise and ensure consistency between the services.

For that purpose, the Director General shall take into account the principles of job management (payment in line with responsibility) i.e.

- a) every post shall have a job description;
- b) every post, defined on a specific or generic basis, shall be graded in line with the level of responsibilities by making reference to grades as set out in Annex I;
- c) responsibilities/grade of a post may be reviewed as necessary;
- d) if a change reduces one or more of the grades attaching to a post, this shall apply only to new vacancy notices;
- e) if a change entails an increase of one or more grades, the post-holder can be promoted within the scope of the provisions of the Staff Regulations;
- f) The implementation provisions shall be laid down in a Rule of Application.

The Rule of Application mentioned above shall lay down in particular:

- the types of generic posts including the specificities of posts,
- the criteria for evaluation of a job,
- the maintenance of such evaluation,
- the process for revision of a job description/job evaluation and possible promotion, further to such revision,
- a mechanism to examine individual cases, involving management and Staff Committee representation.

[...].”

However, Article 1(1) of Section 1 of Part 2 of Annex XIII to the Staff Regulations stipulated that:

“For the period from 1 July 2008 to 30 June 2010, paragraphs 1 and 2 of Article 5 of the Staff Regulations shall be replaced by the following:

- ‘1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in 3 categories A*, B* and C*, in descending order of rank.
2. Category A* shall comprise twelve grades, category B* shall comprise nine grades and category C* shall comprise seven grades.’”

3. In accordance with these provisions, on 27 June 2008 the Director General published a rule of application concerning job management during the transitional period from 1 July 2008 to 30 June 2010 (hereinafter “Rule of Application No. 35”). Article 3 of this Rule established the principle that posts at Eurocontrol should be grouped according to three professional specialities – including a “General Service” – in order to reflect specific recruitment and career conditions and that the “General Service” job titles shown in Annex XIII.1 to the Staff Regulations were to be organised into generic posts according to the nature and level of the functions. A table appended to Rule of Application No. 35 determined for the “General Service” the correspondence between the job titles set out in the aforementioned annex and the generic posts, and the correspondence between job titles (or generic posts) and the grades shown in that annex.

Article 9 of Rule of Application No. 35 stated:

“With effect from 1 July 2008, the administrative situation of each official in the ‘General Service’ shall be reviewed on the basis of the following principles:

- the grade held on 30.6.08 by each official shall be renamed and converted, as provided for by of Annex XIII, Part 2, Article 2, paragraph 1,
- the official shall be allocated a job title, according to the nature of his/her functions, from the job titles set out in Annex XIII.1, corresponding to his grade and professional speciality (General, CFMU [Central Flow Management Unit], Military Service),
- the official shall be assigned by the Director General, after the latter has consulted the Committee [in charge of job management monitoring], to a generic post as provided for in Article 3 of the present Rule of Application,

- as a transitional measure, officials assigned on 30 June 2008 to a post corresponding to the career-bracket A7/A6/A5 shall be assigned to the career-bracket A*11/10/9/8, while keeping their current grade.”

An office notice accompanying Rule of Application No. 35 explained that specific measures had been taken to ensure that grade progression possibilities within the statutory career brackets which existed prior to the administrative reform were maintained.

4. The longest-serving among the 13 complainants entered the service of Eurocontrol in 1983 and the most recently recruited in 2004. They have worked throughout their career at Eurocontrol’s Headquarters in Brussels, at the Experimental Centre or the CFMU in Brétigny-sur-Orge, at the Institute of Air Navigation Services in Luxembourg or at the Maastricht Upper Area Control Centre, apart from two of them who began their career in the CFMU before being transferred to Eurocontrol’s Headquarters.

On 1 July 2008 eight of them were in category B – following normal promotion or a competition – in descending order in grades B2 (career bracket B3/B2), B4 or B5 (career bracket B5/B4) which on that date provisionally became grades B*8, B*6 and B*5. On 28 April 2009 the Director General decided to assign these complainants to career brackets B*5-B*8 or B*3-B*6.

On 1 July 2008 the five other complainants were in category C, in descending order in grades C2 (career bracket C3/C2) and C4 (career bracket C5/C4) which on that date provisionally became grades C*5 and C*3. On 28 April 2009 the Director General decided to assign these complainants to career brackets C*2-C*5 or C*1-C*3.

The generic posts assigned to the complainants by the decisions of 28 April 2009 are defined and classified as follows, in accordance with the table appended to Rule of Application No. 35:

- Administrative Support in career bracket C*1-C*3 during the transitional period (AST1-AST3 in the new nomenclature);
- Advanced Administrative Support in career bracket C*2-C*5 during the transitional period (AST2-AST5 in the new nomenclature);

- Advanced Technician in career bracket C*2-C*5 during the transitional period (AST2-AST5 in the new nomenclature);
- Supervisor in career bracket B*3-B*6 during the transitional period (AST3-AST6 in the new nomenclature);
- Advanced Administrative Assistant in career bracket B*5-B*8 during the transitional period (AST5-AST8 in the new nomenclature);
- Advanced Technical Assistant in career bracket B*5-B*8 during the transitional period (AST5-AST8 in the new nomenclature);
- Technical Assistant in career bracket B*3-B*6 during the transitional period (AST3-AST6 in the new nomenclature);
- Advanced Supervisor in career bracket B*5-B*8 during the transitional period (AST5-AST8 in the new nomenclature).

The decisions of 28 April 2009 made it clear that each of the complainants retained their previous grade.

5. The complainants submitted internal complaints in which they claimed that these decisions were unlawful and asked to be assigned to a generic post at a higher level in a correspondingly higher career bracket.

As on 16 December 2009 the Joint Committee for Disputes issued an opinion which was in part favourable, the decisions at issue were rescinded. However, in new decisions dated 5 July 2010 the Director General confirmed the disputed classifications, relying in particular on the opinion of the Committee in charge of job management monitoring.

Between 23 September and 6 October 2010 the complainants submitted new internal complaints disputing the evaluation procedure followed when establishing their new job descriptions and determining the equivalence of their old and new grades. All asked to be classed in a higher grade or career bracket.

The Joint Committee for Disputes delivered a divided opinion on 28 April 2011. Two members considered that the Committee in charge

of job management monitoring had not carried out an analysis allowing a reassessment of the posts, while the other two held that the Committee had verified the transposition of the complainants' grades into the new career brackets in accordance with Article 9 of Rule of Application No. 35.

By decisions of 14 June 2011 the Director General rejected the internal complaints as unfounded and endorsed the opinion of the latter two members of the Joint Committee for Disputes.

6. It is not disputed by the complainants that the implementation of Rule of Application No. 35 cannot lead to changes in the conditions for promotion or eligibility for competitive recruitment. However, they submit, first, that they have not obtained a position equivalent to that which they held prior to 1 July 2008, because the Committee in charge of job management monitoring failed to carry out a detailed examination.

The classification of posts necessarily involves the exercise of a value judgement as to the nature and extent of the duties and responsibilities pertaining to the posts. Accordingly, the Tribunal will not substitute its own assessment or direct a new assessment unless certain grounds are established. Save when the impugned decision was taken without authority or shows some procedural or formal flaw, the Tribunal will interfere with the decision only if it is based on a mistake of fact or of law, overlooks some material fact, is an abuse of authority, or draws a clearly mistaken conclusion from the facts (see Judgments 1281, under 2, and 3016, under 7). It is therefore understandable that the complainants rely only on errors of judgement and the overlooking of material facts when a comparison was made of their respective powers and tasks in their old and new posts.

The complainants' arguments are not sufficient to convince the Tribunal that, as they contend, the disputed classification decisions breach the principle of equivalence underpinning the administrative reform. This principle is set forth in the penultimate paragraph of section 2 of the office notice accompanying Rule of Application

No. 35, which states that “[i]n practice, staff will be assigned with effect from 1 July 2008 to a new generic post with its associated grade-bracket corresponding to their former career bracket”. Nor have they established that when Eurocontrol transposed their grades it should have promoted them to a higher grade or classified their posts in a higher career bracket on account of their work and experience. On the contrary, it appears from the documentation produced before the Tribunal that Eurocontrol’s decision-making and advisory bodies which were responsible for introducing the new classification proceeded in accordance with the applicable rules.

7. The complainants further submit that the new classification of their duties has deprived them of all objective possibility of promotion.

This assessment of the consequences of the administrative reform at issue is mistaken. The reform has not had the effect of unreasonably restricting the promotion possibilities of the officials concerned, nor was it intended to do so. Section 1 of the office notice accompanying Rule of Application No. 35 makes this quite clear by stating that “[s]pecific measures have been taken to ensure that grade progression possibilities within the statutory career brackets which existed prior to the Administrative Reform are maintained”. The Tribunal finds no evidence in the complainants’ files that the transposition of their grades into the new career brackets had an adverse effect on their career or that, as they contend, their jobs no longer make them eligible for promotion. Inasmuch as under the old system there was an objective prospect of promotion to a higher grade, their assignment to a generic post in another classification system has not deprived them of that prospect.

The procedure for implementing the administrative reform which entered into force on 1 July 2008 and the new classification it entailed is summarised in the office notice accompanying Rule of Application No. 35. It may be inferred from this notice, from Rule of Application No. 35 and from Article 5(7) of the Staff Regulations that, by

including most job titles and generic posts in a career bracket and by defining jobs on the basis of main tasks and well-defined criteria, such as training, experience and skills, the administrative reform altered the former rules on promotion which established the principle of career advancement without changing job, functions or tasks. The reform changed this method of promotion by placing greater emphasis on performance, skills and the nature of the tasks pertaining to the various grades within a bracket. In particular, officials who have reached the highest grade in their career bracket can progress further in their career only by being appointed following a competition, in accordance with the terms and conditions set forth in Article 16a of Rule of Application No. 2 of the Staff Regulations, to another post in a new bracket, or through a job review justifying the reclassification of their post in a higher bracket.

The new rules on job classification have not therefore deprived the complainants of the prospect of career advancement within Eurocontrol. They can still be promoted in either of the circumstances outlined above.

It must be recalled that the Tribunal is not competent to review the advisability or merits of the changes which Eurocontrol has introduced in its staff management, for they form part of general employment policy which an organisation is free to pursue in accordance with its general interests (see Judgment 3225, under 6).

8. None of the complainants has furnished any proof that he or she would have been entitled to promotion when the change in his or her job title and grade was adopted. It was, however, only on this condition that the Director General would have had a duty to review the grade assigned to the person in question subject to the particular conditions laid down by Article 6 of Rule of Application No. 35, after obtaining the opinion of the Committee in charge of job management monitoring.

9. The complaints are therefore groundless and must be dismissed.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet