

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**119th Session**

**Judgment No. 3403**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed against the European Organisation for the Safety of Air Navigation (Eurocontrol) by Mr B. B. (his third), Ms C. S. (her third) and Mr R. Z. on 24 April 2012, and by Ms C. B., Mr M. C. (his third), Ms J. C., Ms N. D.-E. (her second), Mr S. D. (his second), Mr K. E. (his fourth), Ms C. G., Ms G. G. (her fifth), Ms V. M. (her fifth), Mr M. M. (his second), Ms C. M., Ms Y. R., Mr L. S., Mr Y. V. P. (his second) and Mr K. Z. on 26 April 2012, the complaints of Ms S. and Mr Z. having been corrected on 30 May, Eurocontrol's reply of 6 September, the complainants' rejoinder of 13 December 2012 and Eurocontrol's surrejoinder of 28 March 2013;

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 none of the parties has applied;

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

A. Office Notice No. 15/11 containing the list of Eurocontrol staff members promoted in 2011 was published on 14 June 2011. The complainants, who were not on the list, each lodged an internal complaint in September. Although in its opinion of 2 December 2011 the Joint Committee for Disputes concluded that the complainants

were not eligible for promotion and that their internal complaints were therefore unfounded, it invited the Administration to give them moral satisfaction, since it considered that their names should have been included on the list of staff members eligible for promotion. By memorandums of 27 January 2012, which constitute the impugned decisions, the complainants were informed that the Director General had decided to reject their internal complaints.

B. The complainants submit that, by not including them of the list of staff members eligible for promotion, although they should have been on it, since they met the requisite conditions of length of service and had not reached the last grade in their function group, Eurocontrol breached their right to career advancement and its duty of care. They maintain that they did not enjoy treatment equal to that of colleagues who were considered for promotion. The complainants, who are in the last grade of their career bracket, say that Article 45 of the Staff Regulations governing officials of the Eurocontrol Agency – or, as appropriate, Article 46 of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre – has been infringed in that it does not rule out promotion to a grade in a higher career bracket and that, if the Tribunal were to construe Rules of Application Nos. 35 and 35a concerning job management as prohibiting such promotion, it should declare them to be unlawful.

The complainants request the setting aside of the impugned decisions and the promotion list published in Office Notice No. 15/11. They also claim damages for moral injury and costs.

C. In its reply Eurocontrol submits that the complaints are time-barred, because the complainants did not challenge the lists of staff members eligible for promotion which had been published on 16 February 2011.

On the merits Eurocontrol draws attention to the Tribunal's case law according to which there is no right to promotion. It considers that it is free to choose the means by which it provides the possibility of career advancement for its staff and it emphasises that, while promotion to a higher career bracket is not prohibited, it must remain

an exception. Since all staff members are subject to the condition that, in order to qualify for promotion, they must not hold the last grade in their career bracket, there can be no question of any infringement of the principle of equal treatment.

D. In their rejoinder the complainants maintain that drawing up lists of staff members eligible for promotion is merely a preparatory step and that it would be contrary to the principle of procedural economy to require staff members to challenge each stage in the procedure leading to the adoption of the final promotion list.

On the merits they acknowledge that they do not have a right to promotion, but contend that they met the conditions for having their cases considered during the annual promotion process.

E. In its surrejoinder Eurocontrol maintains its position.

#### CONSIDERATIONS

1. The complainants impugn the decisions of 27 January 2012 by which the Director General of Eurocontrol rejected their internal complaints directed against the final list of staff members promoted in 2011, which was published in Office Notice No. 15/11 of 14 June 2011.

2. Facts relevant to this case are to be found in Judgment 3189, delivered on 6 February 2013, and under A, above.

3. In this case it may be recalled that the entire staff was notified of the lists of staff members eligible for promotion in 2011 by a message from the Principal Director of Resources on 16 February 2011. None of the complainants was on these lists. The final list of staff members who had been promoted in 2011 was published in the aforementioned Office Notice No. 15/11.

4. When they found that they were not on the list of officials and servants who had been promoted, the complainants lodged internal complaints between 8 and 13 September 2011.

The Director General rejected these internal complaints in accordance with the first part of the opinion issued by the Joint Committee for Disputes. However, he decided not to follow the second part of that opinion where the Committee had considered that in keeping with the “principle of legitimate expectations”, the complaints should nevertheless have been included “on the list of promotion candidates”.

5. Each of the complainants filed a complaint with the Tribunal seeking not only the setting aside of the 2011 promotion list published in Office Notice No. 15/11 of 14 June 2011, but also the setting aside of the decision of 27 January 2012 rejecting his or her internal complaint and the payment of compensation for moral injury.

6. As all the complaints have the same purpose and employ the same arguments, it is convenient that they be joined in order that they may form the subject of a single judgment.

7. The defendant organisation asks the Tribunal to dismiss the complaints as irreceivable on the grounds that the complainants did not challenge the “list of promotion candidates” published on 16 February 2011.

It submits that, in order that an official’s file may be examined by the Promotion Board in pursuance of Rule of Application No. 4, the name of that person must first have been placed on the “list of promotion candidates” and “if their name is not included, their file is not considered, no proposal is made by the Promotion Board and *in fine* no promotion is possible”.

8. Article 45 of the Staff Regulations and Article 46 of the General Conditions of Employment stipulate that “[a] Rule of Application shall lay down the criteria and the processes applicable for promotion”.

In accordance with Article 6 of Rule of Application No. 4 and Article 9 of Rule of Application No. 20 concerning the promotion procedure, only officials entered on the promotion lists previously published may be promoted.

9. It is clear from the applicable provisions that the Promotion Board, which must be consulted by the Director General before he draws up the final list of officials who will be promoted, decides on the merits of officials solely in the light of the previously established lists which are sent to it.

10. It is not disputed that, as far as the 2011 promotion exercise was concerned, the complainants' names were not on the previously published promotion lists and, for that reason, the Promotion Board did not have to consider their case with a view possibly to proposing their promotion in 2011 to the Director General. The complainants did not lodge their internal complaints until after the publication on 14 June 2011 of the final list of officials and servants who had been promoted.

11. The Tribunal finds that the complaints must be dismissed without there being any need to rule on the pleas raised, which are all of no avail.

12. As the complainants were not on the lists of staff members eligible for promotion, they could not be promoted unless they had been previously proposed to the Promotion Board, which reaches a decision in the light of the lists sent to it, as stated in consideration 9, above.

13. The evidence on file shows that no internal complaint was lodged within the prescribed time limit in order to challenge the lists of staff members eligible for promotion in 2011, which were published on 16 February 2011. The complaints must therefore be dismissed.

## DECISION

For the above reasons,  
The complaints are dismissed.

In witness of this judgment, adopted on 14 November 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

*(Signed)*

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ