

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B. (No. 3)

v.

Eurocontrol

120th Session

Judgment No. 3492

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms A. D. B. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 3 September 2012, Eurocontrol's reply of 14 December 2012, the complainant's rejoinder of 26 March 2013 and Eurocontrol's surrejoinder of 28 June 2013;

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 neither party has applied;

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

The complainant takes issue with the fact that her remuneration is lower than that received by a colleague in a lower grade.

The members of the operational staff of the Central Flow Management Unit (CFMU) are divided into two groups: E1 comprising staff ensuring the continuous operation of the CFMU and E2 comprising operational support staff. As of 1 July 2008, following the entry into force of a wide-ranging administrative reform at Eurocontrol, the details of which are to be found in Judgment 3189, a multiplication factor equal to the ratio between the basic salary paid on 30 June 2008 and that shown in the new salary scale resulting from the reform was applied to their remuneration. In most cases this factor was less than 1. Progress

towards a multiplication factor of 1 was to be achieved through promotion and seniority progression, and officials were integrated in the new scale upon reaching factor 1. However, officials recruited after the entry into force of the reform were immediately appointed at factor 1 in the new grade structure. On 1 July 2010, after the transitional period that followed the entry into force of the reform, the grades of CFMU operational staff were converted into FCO grades.

At the material time, the complainant, who had been recruited before the entry into force of the administrative reform, held a post of Technical System Manager at grade FCO8, step 1, in the E1 group. A multiplication factor of 0.8686543 was applied to her remuneration. During August 2011 the complainant learned from the payslip of one her colleagues, Mr R., who held an identical post but was classed in a lower grade, that Mr R.'s remuneration was higher than hers.

On 13 October 2011 the complainant lodged an internal complaint. She requested that her payslip for August 2011 and all her subsequent payslips be cancelled, that the application of a multiplication factor to her basic salary should cease, that her remuneration be recalculated without that factor as from August 2011 and that the additional amount be paid to her as from that date, plus interest for late payment. The Joint Committee for Disputes, to which the case was referred, issued a divided opinion on 3 April 2012 without hearing the complainant. Two committee members recommended that her internal complaint be allowed, since there were no objective criteria warranting a difference in treatment between the complainant and Mr R., while the other two members recommended that it be dismissed, on the grounds that the different treatment was justified by a different career progression.

The complainant was informed by a memorandum of 5 June 2012, which constitutes the impugned decision, that the Director General had dismissed her internal complaint in accordance with the opinion of the latter two members of the Joint Committee for Disputes.

On 3 September 2012 the complainant filed a complaint with the Tribunal in which she asks it to set aside the impugned decision and all her payslips as from August 2011, and to award her costs in the amount of 5,000 euros.

Eurocontrol asks the Tribunal to dismiss all of the complainant's claims as unfounded.

CONSIDERATIONS

1. The purpose of the new grade and step structure and new salary scale which entered into force at Eurocontrol on 1 July 2008 was to modernise human resources management and, in particular, to place greater emphasis on staff members' performance. That being the aim of the reform, the latter was not intended to have an adverse impact on the situation of either operational or non-operational staff. In other words, the new classification of functions was to give all officials who had joined Eurocontrol before 1 July 2008 a grade offering remuneration and scope for increases equivalent to those offered by the grade which they had held under the previous classification.

2. That result was to be achieved by means of 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 is generally lower than 1, progress towards this figure is now made through promotion and seniority progression.

However, officials recruited after the entry into force of the reform are immediately appointed at factor 1 in the new grade structure (see Judgment 3189).

3. All officials in the E1 group, which includes the CFMU operational staff who have a career structure with automatic, predefined progress in grade, received an individual "passport" guaranteeing at least their former prospects of pay increases resulting from the aforementioned automatic promotion in grade, irrespective of the new classification and the new intervals for automatic promotion between the new grades within each career bracket.

4. As a result of this reform, on 1 July 2008, grade B3, which the complainant had reached in the old structure, was converted into the provisional grade B*7, then into provisional grade B*8 after her automatic promotion on 1 June 2010. On 1 July 2010 this grade was finally renamed FCO8 in the FCO5-FCO10 career bracket. The complainant is on the first step of this new grade.

5. The complainant does not contend that this alteration in the classification of her function has worsened her salary status, or that it stymied the prospects of advancement which she enjoyed before the entry into force of the reform. Moreover, she did not contest the classification of her function in the new grade structure in due time.

However, she submits that the multiplication factor applied to her basic salary after the conversion of her grade has led to an unjustified inequality of treatment, since a colleague who, like her, is in the E1 group and in the same professional situation as she, receives a salary higher than hers. From this she infers that Article 7 of Part 2 of Annex XIII to the Staff Regulations governing officials of the Eurocontrol Agency, which sets out the method for calculating this factor, is unlawful in that it has given rise to discrimination against her. The complainant also alleges a breach of Article 66 of the Staff Regulations and of Annex III to these Staff Regulations, which establishes the salary scale applicable to all Eurocontrol officials, although she does not state any particular reasons for this.

6. Eurocontrol submits several documents in support of its argument that, when the reform entered into force, the complainant's salary was already less than that of her colleague, notwithstanding his lower grade. According to Eurocontrol, this disparity stemmed from each person's seniority in grade and their respective career paths. The reform in no way altered the previous relationship existing between the complainant's salary and that of her colleague. As for their expectations, they are now consistent with the system of promotion introduced by the reform.

7. The complainant argues that the discrimination of which she complains is no less real on account of these factors. She too obtained a “competition bonus” similar to that which influenced her colleague’s salary. Although she joined the Organisation later, she is more senior in her grade and her career path is at least equivalent to that of her colleague. The effect of what Eurocontrol alleges will be more rapid promotion is only relative when seen in the context of the time it will take until she reaches a multiplication factor of 1, i.e. on 1 June 2020, whereas her colleague has benefited from it since 1 July 2010.

8. The Tribunal finds that these submissions are more akin to a challenge of the complainant’s salary status in relation to her position in the Organisation than a criticism of Article 7 of Part 2 of Annex XIII to the Staff Regulations and the manner in which it was applied to her. They certainly do not demonstrate that the multiplication factor provided for in the Staff Regulations has had a discriminatory effect on her remuneration.

9. Although the complainant’s duties and those of her colleague within the Organisation might appear to her to be so similar as to warrant the same remuneration, the evidence on file shows that the difference in remuneration between these two persons existed before the entry into force of the reform and that it is probably due to their respective terms of appointment, the merits of which it does not behove the Tribunal to assess in the context of this case.

At all events, the reform, which was to have only formal consequences in the immediate future for employees whose function had been reclassified, cannot result in an automatic increase, unaccompanied by any promotion or seniority progression, in a salary status of which the complainant had not complained before 1 July 2008, or undermine the rights and benefits which her colleague had acquired before that date.

10. It may be concluded from the foregoing that none of the complainant’s pleas is well founded. The complaint must therefore be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 30 April 2015, 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 30 June 2015.

(Signed)

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ