

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

Z. (No. 2)

v.

Eurocontrol

120th Session

Judgment No. 3493

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr R. V. Z. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 24 December 2012, Eurocontrol's reply of 3 May 2013, the complainant's rejoinder of 7 August and Eurocontrol's surrejoinder of 15 November 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 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 his 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 Tactical Network Coordinator at grade FCO10, step 4, in the E1 group. A multiplication factor of 0.8087655 was applied to his remuneration. During October 2011 the complainant learned from the payslip of one of his colleagues, Mr A., who in his opinion held the same position in the same grade but at a lower step, namely step 1, that Mr A.'s remuneration was higher than his because it was subject to a multiplication factor of 0.9774306.

On 17 January 2012 the complainant lodged an internal complaint. He requested that his payslip for October 2011 and all his subsequent payslips be cancelled, that the application of a multiplication factor to his basic salary should cease, that his remuneration be recalculated without that factor as from July 2011 and that the additional amount be paid to him 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 28 June 2012 without hearing the complainant. Two committee members recommended that his internal complaint be allowed, since there were no objective criteria warranting a difference in treatment between the complainant and Mr A., 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 8 August 2012, which constitutes the impugned decision, that the Director General had dismissed his internal complaint in accordance with the opinion of the latter two members of the Joint Committee for Disputes. The complainant states that he received this memorandum on 25 September.

On 24 December 2012 the complainant filed a complaint with the Tribunal in which he asks it to set aside the impugned decision and all his payslips as from October 2011, and to award him costs in the amount of 5,000 euros.

Eurocontrol asks the Tribunal to examine the receivability of the complaint on the basis that it may be time-barred, and 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 B1, which the complainant had reached in the old structure, was converted into the provisional grade B*10. On 1 July 2010 this grade was finally renamed FCO10 in the FCO8-FCO10 career bracket. The complainant is on the fourth step of this new grade.

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

However, he submits that the multiplication factor applied to his basic salary after the conversion of his grade has led to an unjustified inequality of treatment, since a colleague who holds a similar post receives a higher salary, although he is classed three steps lower in grade FCO10. He contends that this colleague accessed the FCO8-FCO10 career bracket only because he passed a competitive examination after the entry into force of the reform, whereas he himself had passed a similar competitive examination 16 years earlier which already enabled him to be entrusted with functions in an equivalent grade bracket in the old structure.

From this the complainant 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 of calculating this multiplication factor, is unlawful in that it has given rise to discrimination against him. He 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 he does not state any particular reasons for this.

6. Eurocontrol submits several documents in order to explain why the salary status of the two persons in question is not the same and comments that administrative errors committed by its services might have given rise to some confusion in that connection.

When the reform entered into force, the complainant had reached the last grade in his career bracket. This was not the case of his colleague, who could therefore be automatically promoted to the higher grade, which increased the multiplication factor. His remuneration nonetheless remained lower than that of the complainant. When this colleague passed a competitive examination after 1 July 2008, he took up duties different to those of the complainant, though they were still classed in the same career bracket; had he not passed the competitive examination his remuneration would have remained lower than that of the complainant for several years. It then overtook it only temporarily as a result not of any change in the multiplication factor, but of an increase in basic salary. In Eurocontrol's opinion, the disparity in remuneration to which the complainant objects is not due to any malfunctioning of the new system for classifying functions. It is lawfully part of this system, one of the consequences of which was that those who were at the top of their career bracket prior to the reform would, for a while, not have the same prospects of promotion as those whose career was less advanced. This consequence, which was known from the outset, will be gradually corrected by virtue of the complainant's individual "passport". He will still benefit from the sizeable step increments in force in the old salary structure, whereas his colleague will move up within the FCO10 grade only in steps of a smaller value in the new structure. It may happen that the remuneration of one will temporarily be higher or lower than that of the other, but by the end of their career in their shared FCO10 grade they will arrive at the same level of remuneration.

This situation has not caused and will not cause the complainant any financial injury, since his remuneration remains at all times that provided for in the "passport" which he received when the reform entered into force and from which he will benefit until the end of his career with the Organisation. As from 1 June 2020 he should also

benefit from the application of the “bonus” for which provision is made in Appendix II, paragraph 3, of the Staff Regulations.

7. None of the arguments put forward by the complainant is sufficient to disprove Eurocontrol’s observations and explanations, or to invalidate the legal conclusions which must be drawn from them.

The Tribunal finds that the initial position of the two persons concerned when the reform entered into force explains the temporary disparity in their remuneration; this disparity does not stem either from the alleged unlawfulness of the method for applying the multiplication factor laid down in Article 7 of Part 2 of Annex XIII to the Staff Regulations, or from the manner in which this factor was applied to the complainant’s basic salary when the reform entered into force.

8. In essence the complainant’s submissions call into question his salary status in relation to his position within the Organisation, rather than objecting to Article 7 of Part 2 of Annex XIII to the Staff Regulations and the manner in which it was applied to him. They certainly do not demonstrate that the multiplication factor provided for in the Staff Regulations has had a discriminatory effect on his remuneration.

9. The Tribunal, bearing in mind the wage neutrality inherent in the wide-ranging reform of grade structures approved by the Permanent Commission of Eurocontrol in 2006 and implemented in 2008, considers that this reform should not, for any reason whatsoever, lead to the award of any financial advantages to any official or category of officials (see Judgment 3189, in particular under 10). It would manifestly upset the balance of this reform, the immediate effects of which are purely formal, if a compensatory allowance were to be granted to officials whose function is classed at the top of a career bracket, on the grounds that their short-term prospects for advancement are more limited than those of officials whose function is classed at a lower step. Such disparities do not breach the principle of equal treatment, since Eurocontrol has introduced corrective mechanisms, in the form of a “passport” and a “bonus”, the effect of which may, in the eyes of the

persons concerned, seem too far-removed in time, but which must be deemed satisfactory in this respect.

10. It may be concluded from the foregoing that none of the complainant's pleas is well-founded. The complaint must therefore be dismissed without there being any need to rule on Eurocontrol's objection to receivability.

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