

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

H.

v.

Eurocontrol

121st Session

Judgment No. 3570

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. H. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 2 May 2013, Eurocontrol's reply of 20 August, the complainant's rejoinder of 13 September and Eurocontrol's surrejoinder of 13 December 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 challenges the decision to end his service on grounds of invalidity and requests his reinstatement.

The complainant entered the service of Eurocontrol on 1 April 2004 and was assigned to the Maastricht Upper Area Control Centre, in the Netherlands, as Local Adviser for the Service for Protection and Prevention at Work.

On 1 July 2011 the Principal Director of Resources decided, in view of the complainant's total number of days of absence owing to sickness, to convene the Invalidity Committee.

On 22 November 2011 Ms D., Head of Section in the Directorate of Resources, informed the complainant that, in accordance with the Invalidity Committee's finding that he "[was] suffering from total permanent invalidity preventing [him] from performing the duties attaching to a post in [his] career bracket" and with the General Conditions of Employment Governing Servants at the Maastricht Centre, the complainant was obliged to end his service with Eurocontrol as from 30 November 2011. She further informed him that the Invalidity Committee had decided that his case would be reviewed after one year.

On 31 May 2012 Eurocontrol published a vacancy notice for the post previously held by the complainant. On 1 June the complainant told Eurocontrol that he was fit to resume his service. He stated that he would provide medical evidence if required.

On 15 June Eurocontrol asked the complainant to provide its Medical Adviser with a detailed medical report by his treating doctor with a view to ending his invalidity status and reinstating him. That same day, the Medical Adviser contacted the medical centre where the complainant had been treated to ask its opinion on the complainant's health and possible reinstatement.

On 19 July 2012 the complainant filed an internal complaint with the Director General challenging the publication of a vacancy notice for his post and seeking reinstatement. The Director General referred the matter to the Joint Committee for Disputes.

On 26 July, after receiving a medical report on the complainant from the medical centre that had treated him, the Medical Adviser explained to the complainant's supervisor that even if the complainant's reinstatement were possible, he could not resume the duties that he performed before his invalidity had been recognised.

On 27 August the nurse and welfare officer at the medical centre wrote a letter to the complainant's treating doctor informing him that the complainant's treatment would end the next day.

By a letter of 29 August, the complainant's treating doctor informed Eurocontrol's Medical Adviser of the following: "The [complainant] has felt better over recent months; he does not complain any more

during consultations and is motivated to work again.” On the same day, Eurocontrol’s Medical Adviser examined the complainant and found that he was fit to resume work but that he should be assigned to another post. He added that the complainant’s return to work was strongly recommended in the interests of his health.

On 5 October 2012 the Principal Director of Resources wrote to the complainant – who did not agree with the Medical Adviser’s findings – informing him that he had decided to request an independent examination of the complainant’s fitness to resume his duties.

The complainant objected to this procedure in an e-mail of 12 October.

On 7 December 2012 the Joint Committee for Disputes delivered a divided opinion. Two members of the Committee held that the complainant should be reinstated in his previous post. The other two members considered that the complainant could not resume the same duties in light of the Medical Adviser’s opinion.

On 6 February 2013 the Principal Director of Resources, acting on behalf of the Director General, informed the complainant that his internal complaint of 19 July 2012 had been dismissed. That is the impugned decision.

On 2 May 2013 the complainant filed a complaint with the Tribunal, asking it to quash the decision of 22 November 2011 ending his service on grounds of invalidity, to order his reinstatement as from 1 December 2011 and to order Eurocontrol to pay his entire salary and emoluments with interest; failing this, to quash the decision of 6 February 2013 dismissing his internal complaint, to order his reinstatement as from 1 June 2012 and to order Eurocontrol to pay his entire salary and emoluments with interest; and, in any event, to order the correction of his pay slips and his file as from the date of his reinstatement, and to order Eurocontrol to pay moral damages in the amount of 10,000 euros and costs.

Eurocontrol submits that the complaint is irreceivable insofar as it concerns the complainant’s request for the quashing of the decision to recognise his invalidity. It further argues that the complaint should

be declared unfounded in its entirety. Lastly, it requests the Tribunal, if necessary, to order the disclosure of the complainant's medical file.

CONSIDERATIONS

1. By a decision of 22 November 2011, the complainant's service was ended on grounds of invalidity for a period of one year. Considering that he was fit to resume work, on 1 June 2012 he asked to be reinstated in his post. On 19 July 2012 he filed an internal complaint with the Director General, which was finally dismissed on 6 February 2013.

Receivability of the claims relating to the decision to end the complainant's service on grounds of invalidity

2. Under Article VII, paragraph 1, of the Statute of the Tribunal, "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations". The only exceptions allowed under the Tribunal's case law to this requirement that internal means of redress must have been exhausted are cases where staff regulations provide that decisions taken by the executive head of an organisation are not subject to the internal appeal procedure, where there is an inordinate and inexcusable delay in the internal appeal procedure, where for specific reasons connected with the personal status of the complainant he or she does not have access to the internal appeal body or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted (see Judgment 2912, under 6, and the case law cited therein).

According to the Tribunal's case law concerning the requirement that internal means of redress be exhausted, a complainant may enlarge on the arguments presented before internal appeal bodies, but may not submit new claims to the Tribunal (see Judgment 3420, under 10).

3. In the instant case, the complainant's claims regarding the decision to end his service on grounds of invalidity were presented for the first time before the Tribunal; they have therefore not formed the subject of a previous internal complaint, and none of the aforementioned exceptions to the requirement that internal means of redress be exhausted applies. They are hence irreceivable.

The complainant's reinstatement

4. As the decision to end the complainant's service on grounds of invalidity has thus become final, the complainant cannot, prior to the expiry of the one-year period during which he has been removed from his duties, request his reinstatement, either in his previous post or, indeed, in any other post. Accordingly, the decision to dismiss his internal complaint was well founded.

5. It follows that the complaint must be dismissed in its entirety, without it being necessary to order, as the Organisation requests, the disclosure of the complainant's medical file.

6. However, the Tribunal observes that it is not apparent from the file whether the review of the complainant's health stipulated in the decision of 22 November 2011 actually took place. If it did not, the Organisation will have to ensure that this review takes place within a period of two months as from the date of the public delivery of this judgment.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The matter is remitted to the Organisation for further action, if necessary, as indicated under 6, above.

In witness of this judgment, adopted on 11 November 2015, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ