

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**B.**

**v.**

**Eurocontrol**

**122nd Session**

**Judgment No. 3655**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. C. B. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 14 September 2013, Eurocontrol's reply of 24 January 2014, the complainant's rejoinder of 25 April and Eurocontrol's surrejoinder of 8 August 2014;

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 fact that she was not promoted in the 2013 promotion exercise.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, details of which are to be found in Judgment 3189. At that juncture, non-operational staff categories B and C were replaced, for a two-year transitional period, by categories B\* and C\*. On 1 July 2010, at the end of this transitional period, these two categories were merged in the Assistant group (AST), which comprises 11 grades (AST1 to AST11) arranged in various grade brackets. At the material

time, the complainant, an official who had previously been in C category, was classed at grade AST5 in the AST2-AST5 bracket.

Office Notice No. 1/13 was published on 7 February 2013. In essence it announced that a procedure for grade promotion would be organised for 2013 and, for that purpose, the list of staff eligible for promotion would comprise those officials and servants who in 2013 had at least two years' seniority in their grade and were not yet in the last grade of their respective career brackets as defined in their job descriptions. The list of Eurocontrol staff eligible for promotion was published on 8 February 2013. As the complainant's name was not on it, she lodged an internal complaint on 26 April. She asked the Director General to "confirm [her] eligibility for promotion up to grade AST7" in accordance with the provisions of Article 9(1) of Part 2 of Annex XIII to the Staff Regulations governing officials of the Eurocontrol Agency and to redress the injury that she considered she had suffered during 2013.

When the complainant filed her complaint with the Tribunal on 14 September 2013, she had not yet received a reply to her internal complaint. She impugns what she takes to be an implied decision to reject it and she requests her "re-inclusion" in the list of staff members eligible for promotion in the 2013 exercise. She also claims damages for the moral and financial injury resulting, in her view, from the fact that she was unable to participate in the 2013 promotion exercise, that her career has been frozen and that the quality of her performance has not been recognised. Lastly, she requests an award of costs.

In the meantime, the complainant's internal complaint had been forwarded to the Joint Committee for Disputes, which gave its opinion on 13 December 2013. Two of its members recommended that the internal complaint should be allowed in accordance with the "principle of legitimate expectations" and the "right to a career", whereas the other two recommended that it should be dismissed on the grounds that the complainant had reached the last grade in her grade bracket and was thus not eligible for promotion under Rule of Application No. 4 concerning the procedure for grade promotion provided for in Article 45 of the Staff Regulations.

Eurocontrol submits that the complaint is irreceivable, in that the complainant's claim for compensation for the financial injury stemming from her non-promotion in 2013 is tantamount to asking the Tribunal to order it to promote her. It adds that, insofar as the complainant claims compensation for injury due to the alleged freezing of her career, her complaint is irreceivable as it is time-barred and because the issue of her being classed in one of the grade brackets in the AST category is already the subject of another complaint pending before the Tribunal. Eurocontrol asks the Tribunal to dismiss all the other claims as unfounded. Lastly, it requests the joinder of this complaint with two other cases concerning the same issue.

The complainant was informed by a memorandum of 17 March 2014 that her internal complaint had been dismissed by the Director General.

In her rejoinder, filed the following month, she presses all her claims and asks that her name be included in the list of staff eligible for promotion in the 2014 exercise.

In its surrejoinder Eurocontrol asks the Tribunal to dismiss the complainant's claim regarding the 2014 promotion exercise because internal means of redress have not been exhausted.

## CONSIDERATIONS

1. The complainant challenges the failure to include her name on the list of staff eligible for promotion in the 2013 exercise, which was published on 8 February 2013.

The complaint, which was originally directed against an implied decision to reject her internal complaint, must now be deemed to impugn the explicit decision of 17 March 2014, taken in the course of the proceedings, by which the Director General confirmed the non-inclusion of her name on the above-mentioned list.

2. Eurocontrol requests the joinder of this complaint with two other cases forming the subject of Judgments 3664 and 3667, also delivered this day. However, as these three cases raise legal issues that

are partly different, the Tribunal will not grant this request (see, in particular, Judgment 3620, under 2).

3. The complainant first submits that Eurocontrol has not complied with the terms of Article 45(1) and (2) of the Staff Regulations. Moreover, she considers that Eurocontrol is tending to create discrimination by excluding persons who are in the top grade of their bracket from the promotion exercise and not proposing any other means of rewarding their merits.

4. Article 45 of the Staff Regulations establishes the principle of exclusion which is challenged by the complainant, who has reached the highest grade in the bracket covering her current job. This principle is consistent with the aims of the administrative reform carried out in 2008, namely to end the practice of automatic promotion while not ruling out the possibility of making exceptions in order to enable particularly well-qualified officials to move up to a higher grade in the next bracket.

5. In the structure introduced by the administrative reform which entered into force at Eurocontrol on 1 July 2008, officials are classed in hierarchical grade brackets, each of which corresponds to a clearly defined category of functions. In the same way that an official who has reached the pinnacle of her or his career can no longer hope for promotion, a Eurocontrol official who has reached the top of her or his grade bracket does not, in principle, have any possibility of moving into a higher grade.

6. The exception to this rule allowed by Article 45 of the Staff Regulations is a matter for the discretion of the Director General, which he must exercise within the limits established by the Rules of Application of the Staff Regulations (see Judgment 3666, also delivered this day). There is nothing in the file to suggest that the impugned decision involved an abuse of the Director General's discretion, or a breach of the principles or duties to international organisations must observe in their staff management.

In particular, it is impossible to see how the different treatment of officials who have attained the highest level of their grade bracket and those who can still progress naturally within the framework of their duties and expertise would constitute discrimination. Moreover, when the administrative reform entered into force, officials could not have been unaware of the fact that their transition to another grade bracket would be possible only if justified on special grounds.

The complainant's first plea must therefore be dismissed.

7. Secondly, the complainant contends that she had been recruited for a post in a grade bracket enabling her to be promoted up to grade AST6. While it is true that the administrative reform has no effect on the duties and level of responsibility of the post to which she was appointed, this is of no relevance in the instant case, because the reform classed the complainant's grade in a system of brackets where promotions are governed by new rules.

8. Lastly, the complainant is wrong to rely on a provision allowing the possibility for officials whose post, like hers, was classed in the former staff category C, to be promoted or appointed up to grade AST7. This was a transitional provision which ceased to apply on 1 July 2010.

9. The complainant submitted a new claim in her rejoinder. However, as the Tribunal has consistently held, a complainant may not, in her or his rejoinder, enter new claims not contained in her or his original complaint (see, for example, Judgment 1768, under 5, or Judgment 2996, under 6). This new claim must therefore be dismissed.

10. It may be concluded from the above that the complaint must be dismissed in its entirety, without there being any need to rule on the objections to receivability raised by Eurocontrol.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2016, 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 6 July 2016.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ