

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F. d. S.

v.

Eurocontrol

128th Session

Judgment No. 4166

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. F. d. S. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 25 November 2015 and corrected on 9 December 2015, Eurocontrol's reply of 14 April 2016, corrected on 4 May, the complainant's rejoinder of 28 June and Eurocontrol's surrejoinder of 21 October 2016;

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 Eurocontrol's decision to recover various sums which it considers were unduly paid to him.

The complainant joined Eurocontrol in 1990. On 2 May 2000 he informed the Administration of his marriage, which took place on 15 April 2000, and requested that his wife's son be recognised as a dependent child, a request which was granted on 14 July 2000. In 2003 the complainant and his wife had a daughter. On 3 March 2009, however, they were divorced. On 17 September 2009 the complainant sent the Administration a change of family status form to notify it of the date of the divorce. He did not complete the sections of the form entitled

“Dependent child(ren)”* and “No longer dependent child(ren)”* but designated his former spouse’s son and their daughter as beneficiaries of the health insurance scheme as dependent children “within the meaning of Article 2 of Rule of application No. 7” concerning remuneration. The two children thus continued to benefit from top-up cover under the Eurocontrol health insurance scheme.

In March 2014, at the request of the Administration, the complainant submitted, for his former spouse’s son, a certificate of schooling together with a certificate of enrolment in a school for the 2013/2014 school year. On 14 May he was informed that based on the information in his file, he was not entitled to family allowances for the two children beyond the date of the divorce, namely 3 March 2009. He was therefore asked to provide any document proving that the two children were in fact his dependants. The complainant replied that he had provided all relevant documents in 2009 and that he inferred from the fact that he was receiving family allowances for his daughter that they had been recorded in his file. According to him, if his file was incomplete, this was because some documents had been lost.

On 11 July 2014 the complainant was informed that, following his divorce, his former spouse’s son could no longer be considered a dependent child and that Eurocontrol would therefore have to recover undue payments. The complainant replied that his former spouse’s son had been recognised by Eurocontrol as a dependent child on 14 July 2000 and that, if, as a result of his divorce, the latter’s administrative status had changed, the Organisation should have informed him of this. According to him, Eurocontrol had to take responsibility for its errors.

By letter of 15 October 2014 the Directorate of Resources informed the complainant that, since his former spouse’s son could no longer be considered as a dependent child, the recovery of undue payments would be made in respect of all the benefits paid to him for that child since the date of his divorce, amounting to a total of 36,926.16 euros, in accordance with Article 87 of the Staff Regulations governing officials of the Eurocontrol Agency.

* Registry’s translation.

On 7 January 2015 the complainant lodged an internal complaint against the decision of 15 October 2014, which he considered unlawful in light of the provisions of Article 87. On 14 July 2015 the Joint Committee for Disputes issued a divided opinion. Two of its members considered that there had been a breach of the “duty of good administration”, since the complainant had not been asked to provide documents proving that his former spouse’s son had remained dependent on him after his divorce in 2009. They took the view that it would be appropriate to request additional evidence of the child’s maintenance and custody before making a decision regarding the recovery of undue payments. The other two members considered that the internal complaint was unfounded because the complainant could not have been unaware of the statutory provisions concerning the conditions under which his former spouse’s child could be considered as a dependant. They therefore felt that a recovery of the undue payments was justified.

On 27 May 2015 the complainant was asked to provide, before the end of June 2015, a document proving that, following his divorce, he had custody of his former spouse’s son or had a maintenance obligation towards him by virtue of a court decision, and to clarify the situation with regard to the payment of national family allowances. Having received no reply, the Director General sent the complainant a letter dated 29 July 2015 rejecting his internal complaint on the grounds that he had not proved that he had a maintenance obligation towards his former spouse’s son in accordance with the provisions of Article 2 of Rule of application No. 7 and that this child could not therefore be recognized as being dependent on him. Consequently, the Director General had decided to apply Article 87 of the Staff Regulations on the recovery of undue payments received during the last five years. That is the impugned decision.

The complainant asks the Tribunal to set aside the decision of 15 October 2014 to recover the sum of 36,926.16 euros and to award him a sum of 36,900 euros by way of moral damages and costs.

Eurocontrol asks the Tribunal to reject the complainant’s claim for moral damages as irreceivable and to dismiss all his claims as unfounded.

CONSIDERATIONS

1. The complainant asks the Tribunal, firstly, to set aside the decision of 15 October 2014 to recover the sum of 36,926.16 euros and, secondly, to order Eurocontrol to pay an overall amount of 36,900 euros in compensation for the moral injury he considers he has suffered and for his costs.

2. Eurocontrol submits that the claim for moral damages, which was not raised in the internal appeal proceedings, is inadmissible.

3. Under article 87 of the Staff Regulations:

“Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.

The request for recovery must be made no later than five years from the date on which the sum was paid. Where the Agency is able to establish that the recipient deliberately misled the administration with a view to obtaining the sum concerned, the request for recovery shall not be invalidated even if this period has elapsed.”

4. The complainant first contends that he could not have known that his former spouse’s child could no longer be considered as a dependent child following the divorce with her in March 2009.

But the Tribunal recalls that, according to its case law, “staff members are expected to know their rights: ignorance of the law is no excuse” (see Judgment 1700, consideration 28). The Tribunal thus held that “a staff member is deemed to know the regulations and rules governing her or his appointment” (see Judgment 3878, consideration 12).

Article 2, paragraph 2, of Rule of application No. 7, concerning remuneration, provides:

“Dependent child means the legitimate, natural or adopted child of an official, or of his spouse, who is actually being maintained by the official. [...] Any child whom the official has a responsibility to maintain under a judicial decision based on Member States’ legislation on the protection of minors shall be treated as a dependant child.”

It is clear from the above provisions that a child of an official's former spouse cannot be considered a dependent child unless the official has a maintenance obligation resulting from a court decision.

The complainant does not allege that he has a maintenance obligation towards his former spouse's child. Although he asserts that he pays for the education of that child, this fact cannot in any event be taken into consideration, since only the existence of a maintenance obligation resulting from a court decision makes it possible to consider the child concerned as a dependent child within the meaning of those provisions.

Since, by virtue of the abovementioned case law, the complainant must be deemed to have been aware of the provisions in question, it must be considered that he was aware of the irregularity of the payments which he received unduly. Accordingly the Organisation was entitled, pursuant to the first paragraph of Article 87 of the Staff Regulations, to proceed with the recovery of the sums concerned.

While the complainant criticises Eurocontrol for not notifying him of a decision that it did not recognise this child as being his dependant, there was no provision requiring the Organisation to notify him of such a decision before taking the decision to recover the undue payments.

5. The complainant's second plea is based on the limitation period applicable to the contested claim. He explains that, in accordance with Article 87 of the Staff Regulations, the request for recovery must be made no later than five years from the date on which the sum was paid, i.e. before March 2014.

Eurocontrol argues that, pursuant to Article 87(2), no limitation period applies because the complainant deliberately misled the Organisation. However, the Tribunal finds that, while it is established that the Organisation was indeed misled by the complainant, in particular because, on 17 September 2009, he incorrectly completed a form concerning a change of family status, Eurocontrol has not proved that he did so deliberately.

Eurocontrol also argues that the limitation period did not begin to run until it became aware of the irregularity, in March 2014, after it asked the complainant, on 8 January 2014, to provide it with documents proving that his former spouse's son was a dependent child. However, contrary to its allegations, it is clear from Article 87(2) that the limitation period begins to run from the date on which the payments were made and not from the date on which their irregularity was discovered. In the present case, since the request for recovery was only made on 15 October 2014, the Organisation cannot claim the recovery of any undue payments made before 15 October 2009.

Since the undue payment of the disputed sums began in April 2009, the complainant considers that the request for recovery is time-barred pursuant to Article 87(2), as it was made after March 2014 (on 15 October 2014). However, in the case of periodic payments, Article 87(2) must be interpreted as meaning that the request for recovery of each undue payment is time-barred within five years of that payment.

6. It follows from the foregoing that the impugned decision must be set aside only to the extent that it concerns the recovery of the sums unduly received by the complainant during the period prior to 15 October 2009.

7. The complainant claims moral damages. In view of the fact that, as stated above, it is established that the origin of the undue payments is attributable to him as he misled the Organisation, the Tribunal considers that there is no reason to grant him compensation in this respect.

8. As he succeeds in part, the complainant will be awarded 300 euros in costs.

DECISION

For the above reasons,

1. The impugned decision is set aside to the extent that it concerns the recovery of the sums unduly received by the complainant during the period prior to 15 October 2009.
2. Eurocontrol shall pay the complainant 300 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2019, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakit , Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dra en Petrovi , Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKIT 

YVES KREINS

DRA EN PETROVI 