

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G.-S.

v.

Eurocontrol

131st Session

Judgment No. 4372

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A.-G. G.-S. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 9 September 2017 and corrected on 21 September 2017, Eurocontrol's reply of 17 January 2018, the complainant's rejoinder of 30 April, corrected on 14 May, and Eurocontrol's surrejoinder of 20 July 2018;

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 classify him in the type of post "Assistant".

With effect from 1 March 2016, the complainant was appointed "Senior Technical Assistant" at grade AST9, in the career bracket AST8-AST10, within the Network Operations Management Directorate.

On 1 July 2016 a reform of the Staff Regulations governing officials of the Eurocontrol Agency entered into force. It involved a new classification of officials. Paragraph 2 of Article 19 of Part 2 of Annex XIII to the Staff Regulations relevantly provides as follows:

"With effect from 1 July 2016, the Director General shall classify officials in service on 30 June 2016 in function group AST in types of posts as follows:

[...]

- b) Officials who were on 30 June 2016 in a post classified in the career bracket AST8/9/10 and who were in the grade AST8 or AST 9 shall be assigned to the type of post 'Assistant'. Nonetheless, they may be promoted, pursuant to Article 45 of the Staff Regulations, up to grade AST10, maintaining the type of post of 'Assistant'."

By a decision of 2 July 2016 the complainant was informed that, pursuant to the above provisions, he was classified, as from 1 July, in the new type of post "Assistant", within the career bracket AST8-AST10, while retaining his grade and step. He was informed that he could be promoted to grade AST10, in accordance with Article 45 of the Staff Regulations.

On 23 September the complainant lodged an internal complaint against this decision. He requested to be classified in the type of post "Senior assistant" or, in the alternative, to remain at grade AST9 with the title of senior assistant. The Joint Committee for Disputes, which heard the parties, issued its opinion on 20 March 2017. It unanimously concluded that the complainant had been correctly classified in the type of post "Assistant". On 23 May 2017 the Director-General informed the complainant that, in accordance with the Committee's conclusion, he had decided to dismiss his internal complaint. That is the impugned decision.

The complainant seeks the quashing of that decision and an award of 7,500 euros in costs.

Eurocontrol submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. This complaint arises from the implementation of the administrative reform of the Staff Regulations governing officials of the Eurocontrol Agency that came into force on 1 July 2016. The complainant was one of three successful candidates for the three vacant posts advertised in competition NM-2015-AST/101 in November 2015. Effective 1 March 2016, the complainant was appointed to the generic post of "Senior Technical Assistant", grade AST9 step 1, within the career bracket AST8-AST10. The job title of the vacant posts was "Real-Time Simulation Assistant".

2. Following the 1 July 2016 implementation of the administrative reform, in his 2 July 2016 decision, the Director General classified the complainant in the new type of post “Assistant” at his current grade and step. The decision also stated that the complainant could be promoted pursuant to Article 45 of the Staff Regulations, up to grade AST10 while remaining assigned to the type of post “Assistant”.

3. The complainant lodged an internal complaint against this decision. In the complaint, based on his view that he carried out the same job as a senior assistant, the complainant claimed that he should be classified in the type of post “Senior Assistant” or, alternatively, remain in grade AST9 with the job title “Senior Assistant”. In his 23 May 2017 decision, the Director General endorsed the Joint Committee for Disputes’ analysis and conclusion and dismissed the complaint as unfounded. This is the impugned decision.

4. The complainant submits that the impugned decision violates the principles of equal treatment and non-discrimination. The complainant points out that he and the two other colleagues selected in the competition NM-2015-AST/101 were classified in the type of post “Assistant” even though they were doing the work of “Senior Assistant”. At the same time, all the officials at grade AST9 who were successful candidates in competitions for posts of Senior Assistant were classified in the type of post “Senior Assistant”. The complainant argues that this amounts to discrimination against him and the other two colleagues and constitutes a violation of the principle of equal treatment. The complainant adds that, pursuant to paragraph 5 of Article 1b of the Staff Regulations, in circumstances such as these, where the facts on which direct or indirect discrimination may be presumed to exist have been established, it is for the Organisation to prove that there has not been a violation of the principle of equal treatment. The complainant observes that in this case the Organisation did not prove that all the Senior Technical Assistants with equal qualifications and functions and at the same grade were treated in the same way.

5. This submission is fundamentally flawed. The Organisation has submitted in evidence in this proceeding the list of the officials at grade AST9 who were classified in the type of post “Assistant” effective 1 July 2016. In contrast, the complainant has not identified any official

at grade AST9 who has been classified in the new type of post “Senior Assistant”. The complainant’s reliance on paragraph 5 of Article 1b of the Staff Regulations is misplaced. As the complainant has not established any facts on which direct or indirect discrimination may be presumed, the burden of proof was not shifted to the Organisation as contemplated in paragraph 5 of Article 1b of the Staff Regulations. Rather, as the complainant was making the allegation that the Organisation violated the principle of equal treatment, the burden of proof remained with him to prove the alleged violation, which he did not do.

6. The complainant also submits that Article 19, paragraph 2b), of Annex XIII – Part 2 to the Staff Regulations (“Article 19, paragraph 2b)”) is unlawful as it does not provide any transitional provisions applicable to successful officials in competitions for posts of “Senior (technical) Assistant” in the career bracket AST8-AST10 for classification in the type of post “Senior Assistant” and not “Assistant”. In support of this position, the complainant points out that the job description of “Real-Time Simulation Assistant”, as stated in the vacancy notice relating to competition NM-2015-AST/101, the function he still carries on, is identical to a “Senior Assistant” job description. The complainant also notes that the vacancy notice and the job description include functions relating to management and coordination in the preparation, development and execution of the Network Regional FAB and local airspace real-time simulation. The complainant also observes that all the officials assigned to Senior Assistant posts prior to the administrative reform were classified in the “Senior Assistant” type of post with the exception of the three officials who applied for the posts advertised in competition NM-2015-AST/101. These three individuals of which he was one saw their “job title” downgraded to that of assistant.

7. This submission is unfounded. In his submission, the complainant erroneously equates the new type of post “Senior Assistant” implemented on 1 July 2016 with the job title of the post “Senior Technical Assistant” prior to 1 July. Article 5 of the Staff Regulations in force prior to the July 2016 reform provided that “posts” covered by the Staff Regulations were classified, according to the nature and importance of the duties, in one of two function groups, “AD” for managers or administrators and “AST” for assistants or other specific functions referred to in Annex I to the Regulations. Annex I listed the 11 AST

grades (AST1-AST11) and for each grade identified posts that an “assistant” could occupy. For example, in each of the grades AST8, AST9 and AST10, under the heading “Function Group AST”, it stated “Assistant working for example as: Senior Administrative Assistant, Senior Technical Assistant, Senior Supervisor, Work Package Leader”. In contrast, in Annex I to the Staff Regulations that came into force on 1 July 2016, under the rubric “Function group AST”, there are two types of posts, “Senior Assistant” within the career bracket AST10-AST11, and “Assistant” within the career bracket AST1-AST9. As the Organisation observes in its pleadings, after the implementation of the reform, “Senior Assistant” was reserved for the new type of post within the career bracket AST10-AST11 that did not exist prior to the reform. As well, the title “Senior Technical Assistant” was no longer used in the type of post “Assistant”. It follows that the use of the word “Senior” in the title of the complainant’s generic post before the implementation of the reform has no link with the word “Senior” in the new type of post “Senior Assistant”. Thus, the fact that the title of the complainant’s former type of post contained the word “Senior” cannot accord him a right to be classified in the newly created type of post “Senior Assistant”.

8. As to the submission relating to Article 19, paragraph 2b), set out in consideration 6 above, given that on 30 June 2016 the complainant held a post at grade AST9 step 1 within the career bracket AST8-AST10, the complainant’s classification in the type of post “Assistant” was, in accordance with Article 19, paragraph 2b), correct and objective. It follows that the complainant could not have benefited from any transitional measure of the type he describes. His submission is therefore unfounded.

9. Accordingly, the Tribunal concludes that the complaint is without merit and will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 17 December 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 18 February 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ