

The Administrative Tribunal,

Considering the complaint filed by Mr J. S. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 27 April 2005, Eurocontrol's reply of 29 July, the complainant's rejoinder of 28 October 2005 and the Agency's surrejoinder of 10 February 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is of Danish nationality and was born in 1966. He joined Eurocontrol in July 1995 as a clerical assistant 2nd class, at grade C5, and was assigned to the Flight Data Operations Division – in IFPU2 – at Brétigny-sur-Orge, near Paris. He was promoted several times, attaining grade C2 with effect from 1 January 2002. From 1 May 2002 his appointment was converted into an appointment for an unlimited period.

The complainant and one of his colleagues each received a memorandum from the Director of the Central Flow Management Unit (CFMU) asking them to come to his office, in Brussels, on 19 March 2004 for a discussion. The memorandum indicated that it was regarding aspects of their “behaviour in the service in the recent past”. That meeting could not take place, and they each received another invitation, dated 11 May, asking them to attend on 28 May. The complainant and his colleague replied by e-mail on 27 May declining to attend on the grounds that, despite requests they had made, they had not been told the “true motivation” for the meeting.

They then each received a memorandum dated 28 May 2004 from the Director of Human Resources, who said that their refusal to come to Brussels represented an “act of insubordination” and, in conjunction with “various serious incidents”, constituted “serious misconduct” within the meaning of Article 90 of the Staff Regulations governing officials of the Eurocontrol Agency. He informed each of them that it was the Director General's intention to suspend them from duty with effect from 1 June to prevent them from “continuing to cause disruption in the service”. He said that, acting on behalf of the Director General, he would meet with them, in Brussels, on 1 June to hear what they had to say, prior to the decision regarding their suspension being taken. The meeting took place as scheduled. The complainant then received a decision dated 1 June 2004 indicating that “following an allegation of serious misconduct”, he was suspended from duty until further notice. A similar decision was sent to his colleague.

The complainant wrote to the Director General, asking to be provided with the details of the “various serious incidents” held against him. The Director of Human Resources informed the complainant by letter of 9 June that he would soon receive the information requested and that a hearing was due to take place the following week. By a letter of 15 June 2004 he asked the complainant to attend a hearing in his office on 17 June. Attached to the letter was a report listing the incidents and informing the complainant of the charges against him. It was indicated that the charges were “based on a report made by Director CFMU to the Director General”. The complainant attended the hearing on 17 June and submitted a short written statement.

Several other decisions were subsequently issued concerning the complainant. By one issued on 9 July the suspension decision was revoked and he was asked to resume work on 16 July; it was stipulated that until further notice he would work “normal office hours”, but would continue to be paid the transitional allowance, related to shift work. By one of 16 July he was given a reprimand, and informed that if his behaviour did not change “more severe disciplinary measures” would follow. Then by a further one dated 14 September, the decision to assign the complainant to office hours was revoked and he was placed in a different team.

Meanwhile, on 25 August 2004 the complainant had filed an internal complaint seeking the annulment of the decisions to suspend him from duty, to assign him to office hours and to impose the reprimand. It was referred to the Joint Committee for Disputes. In its Opinion of 3 January 2005 the Committee concluded that the complaint

should be rejected as unfounded. However, it found that the complainant had not been paid the transitional allowance while he was suspended from duty, and recommended paying him the sum due, as well as interest for late payment. By a memorandum of 31 January 2005, the Director of Human Resources, acting on behalf of the Director General, rejected the complainant's internal appeal as legally unfounded, but agreed to the payment of the transitional allowance for the period from 1 June to 15 July 2004. That is the impugned decision.

B. The complainant puts forward several pleas. First, he alleges "administrative and moral harassment". He submits that for a "considerable period" he suffered various forms of harassment by his superiors at his workplace. He says that following an incident in November 2002, he and other staff members filed a complaint with the Director General about their supervisor's behaviour, but did not receive any reply. When a new supervisor took over, the complainant and his colleague began to experience "direct personal harassment" from that official. He contends that the "discrimination and ridiculing" which he experienced had the effect of undermining his dignity. The Organisation allowed the situation to continue without making any effort to remedy it and neglected its duty to maintain a healthy work environment. In his opinion, he and his colleague were victimised for having brought "discrepancies within the Agency" to the attention of management.

The complainant also submits that Eurocontrol failed to act in accordance with its own procedures as it took no steps to assist him when he sought action under the Agency's "Policy on Protecting the Dignity of Staff". Ultimately it set in motion the disciplinary sanctions, without him being able to seek redress through the said policy.

In addition, the complainant takes issue with the disciplinary measures imposed on him, arguing that the Organisation misused its authority, acted in breach of good faith and failed to respect his dignity. It appears to him that the Agency had been compiling its list of accusations against him over a long period of time. Citing Article 88(3) of the Staff Regulations, which specifies that a "single offence shall not give rise to more than one disciplinary measure", he argues that in breach of that provision "multiple measures" were taken against him, and his colleague, given that they faced suspension, the imposition of office hours, a reprimand, a warning and also a "team transfer".

Lastly, he alleges further breach of due process, particularly because he was allowed insufficient time to prepare for the hearings that took place on 1 June and 17 June. Regarding the latter hearing he points out that the charges against him were only communicated to him on 16 June, which meant that he had less than 24 hours in which to prepare his defence and travel to Brussels for the meeting. He also disputes the validity of the Opinion of the Joint Committee for Disputes, arguing in particular that the Committee did not include any members officially nominated by the Staff Committee.

The complainant asks that the decision of 16 July 2004, imposing the reprimand, be quashed, and that all related entries be deleted from his personal file. He claims 50,000 euros in moral damages and 4,000 euros in costs.

C. In its reply Eurocontrol points out that the complainant's internal complaint was directed against three decisions, whereas his complaint before the Tribunal is directed only against the decision of 16 July imposing the reprimand. It thus assumes that the complainant is no longer challenging the decisions by which he was suspended from duty and then assigned to office hours, as communicated to him on 1 June and 9 July 2004, respectively.

It submits that the complainant's arguments cannot stand in law. First, with regard to the decision to impose the reprimand, Eurocontrol holds that it was legally correct in form and substance. It is clear from Article 88(1) of the Staff Regulations that if a staff member fails to comply with his obligations under the Staff Regulations, he shall be liable to disciplinary action. One such disciplinary measure was the reprimand. In the complainant's case he was repeatedly "insubordinate" and disrespectful to his superiors, and this caused disruption to the service. Events culminated in his refusal to attend the meeting in Brussels.

The Agency argues that it complied with its obligation to hear the complainant. Moreover, the complainant knew from the letter of 9 June 2004 that a hearing would take place the following week; he was well aware of the charges made against him, and could have arranged for legal assistance. A four-page document detailing the charges against him was attached to the letter of 15 June by which he was asked to attend the hearing, and it included a page of written testimonies by officials in CFMU management. He was heard before the decision to reprimand him was taken.

It rejects the complainant's argument that multiple disciplinary measures were taken against him. Of those he mentions, only the reprimand is a disciplinary measure within the meaning of Article 88(3).

Referring to the successive decisions to suspend the complainant from duty and then assign him to office hours, the Organisation explains that they were necessary in order to maintain the proper functioning of the service and to avoid any disruption. With regard to the decision to suspend him from duty, it submits that the Staff Regulations do not specify that an official has to be heard before such action is taken.

It denies that there was any irregularity in the composition of the Joint Committee for Disputes. It points out that, as provided for in Office Notice No. 6/95, two full members had been "appointed by the Central Staff Committee". They had been nominated in March 2004 and were appointed for the whole year; they were thus members of the Joint Committee for Disputes when it met on 7 December 2004 to hear the complainant's case.

D. In his rejoinder the complainant develops his pleas. He asserts that a newly elected Staff Committee sat on 7 December 2004 and could not have appointed members to the Joint Committee for Disputes that heard his case that day. In addition, he questions the validity of the Opinion of the Joint Committee, since it was not issued within the two-month time limit specified in Article 4 of Office Notice No. 6/95.

The complainant contends that one page was missing in the documentation attached to the letter of 15 June 2004. He points out that he did not receive the page containing statements from the CFMU officials.

He confirms that he is seeking redress against "all decisions subsequent to and including the [decision of] 1 June 2004". He amends his claim to moral damages – now seeking 150,000 euros to compensate for the injury he suffered.

E. In its surrejoinder the Agency maintains its position and considers that there are no grounds for the complainant's claim for damages.

Regarding the composition of the Joint Committee for Disputes, it states that the term of office of members proposed by the Staff Committee is not interrupted if Staff Committee elections are held in the course of a year. It also points out that the Opinion of the Joint Committee for Disputes does not indicate on which date the complainant's case was referred to the Committee, and, in any event, nothing in the relevant rules indicates that an Opinion delivered after the two-month period would lose all value.

The Agency concedes that, through an error on its part, one page was missing from the report annexed to the letter of 15 June 2004 sent to the complainant.

CONSIDERATIONS

1. The complainant has been employed by Eurocontrol since 1995 in its Flight Data Operations Division, in IFPU2, at Brétigny-sur-Orge. Apparently, there had been dissatisfaction with conditions in IFPU2 for some years, including with respect to duty rosters. According to the complainant, he and his colleague, the complainant in Judgment 2546, "endeavoured to raise problems encountered with the duty roster over a number of years". A problem with the roster led to an incident in November 2002 which resulted in an internal complaint by the Eurocontrol section of the European Civil Service Federation (FFPE-Eurocontrol). Thereafter, the complainant and his colleague experienced difficulties with their supervisors. The complainant and his colleague subsequently claimed in joint communications that they were the subject of "administrative harassment".

2. In early March 2004, the complainant and his colleague each received a memorandum from the Director of the Central Flow Management Unit (CFMU), stating that he would like them to come to his office in Brussels, on 19 March, for a discussion with him and the Head of IFPU2. It was said that this followed "several reports from Head IFPU2 regarding aspects of [their] behaviour [...] in the recent past". As it happened, the meeting could not then take place. The Director of the CFMU renewed his request in the same terms on 11 May 2004, nominating 28 May for the meeting. Apparently, the complainant and his colleague forwarded e-mails to the Director requesting information as to the behaviour in question but received no reply. They jointly forwarded an e-mail to him at 6.45 p.m. on 27 May claiming that his failure to inform them of the nature of the meeting could "only be seen as having no other purpose except intimidation and discrimination against our persons". They stated that, that being the case, they felt "obliged to decline to attend". Their e-mail concluded with the statement that they found "the idea of

three people travelling to Brussels [...] for two 30 minutes ‘discussions’ [...] to be both illogical and an excessive use of the apparent limited resources within the CFMU’s budget”. Accordingly, the complainant and his colleague reported for work at Brétigny-sur-Orge on 28 May in accordance with their duty roster.

3. On 28 May the complainant and his colleague were separately informed by memorandum that their refusal to attend the meeting with the Director of the CFMU was an act of insubordination and that, in conjunction with other “serious incidents”, it constituted serious misconduct. They were also informed therein that the Director General intended to suspend them with pay from 1 June “in order to prevent [them] from continuing to cause disruption in the service”. They were invited to be heard by the Director of Human Resources before “the decision regarding [their] suspension” was taken. The complainant and his colleague attended that meeting and, thereafter, were given formal notices of suspension.

4. The complainant wrote to the Director General on 3 June stating that it had not been his intention to be insubordinate or to cause disruption. He also asked for details of the “serious incidents” referred to in the memorandum of 28 May. He was informed by letter of 9 June that he would be heard by the Director of Human Resources, before his case was referred to the Disciplinary Board, and that he would be provided with the facts and the charges before the hearing took place. He was provided with that information by a letter dated 15 June 2004. Although it was apparently missing one page, the documentation attached to the letter detailed various incidents which were said to constitute “behaviour that [was] in breach of the obligations [...] to conform [...] to orders given by [the] hierarchy and [...] to standards of respect and politeness”. The letter also requested him to attend a meeting on 17 June before the Director General decided on “the follow up to be given to the procedure”.

5. The letter of 15 June did not reach the complainant until the afternoon of 16 June. He did not ask that the meeting be postponed. Instead he asserted at the meeting that he had not had sufficient time to prepare a proper response. He also made a formal statement claiming that he had only reacted to the “unpleasantness” aimed at him and his colleague by their supervisors. In this regard, he provided a note dated 25 May 2003 in which his supervisor said that no “early goes” were being granted to the complainant and his colleague and asked other supervisors to adopt the same course. The complainant considered that the situation had escalated thereafter.

6. On 9 July 2004 the Director General revoked the complainant’s suspension but directed that he be assigned to duties during office hours. Later, on 16 July, he issued the complainant with a reprimand and directed that he be informed that, if his behaviour did not change, more serious disciplinary measures would be taken. Thereafter, the complainant lodged an internal complaint against the decisions to suspend him, to assign him to duties during office hours and to reprimand him. On 14 September the complainant was restored to rostered duties but on a different team. He was informed on 15 September that his complaint would be referred to the Joint Committee for Disputes.

7. The Joint Committee met on 7 December 2004 and delivered its opinion on 3 January 2005. So far as is presently relevant, it expressed the view that the suspension appeared to be necessary in the light of the matters alleged and that the reprimand was justified and commensurate with those matters. Subject to one matter that is not presently relevant, it recommended unanimously that the internal complaint be rejected as unfounded. That recommendation was accepted by the Director General on 31 January 2005. That decision is the subject of his complaint to the Tribunal.

8. The complainant contends that he was denied due process both in relation to the decision to suspend him and the subsequent decision to issue him with a reprimand. In this regard, he points to the short notice that he was given in respect of the hearings of 1 and 17 June, respectively, and claims that he did not have adequate time to prepare for them. Additionally, he emphasises that the charges and facts upon which the decisions were based were not provided to him until the day before the hearing of 17 June; that he was not provided with any documentary evidence; and, also, that he was not provided with any reports on his conduct, prior to his suspension.

9. In addition to his arguments with respect to due process, the complainant claims that he was subject to multiple sanctions in breach of Article 88(3) of the Staff Regulations, which provides that “a single offence shall not give rise to more than one disciplinary measure”. In this respect, the complainant contends that in addition to the official reprimand, he was subject to disciplinary measures in the form of suspension, the imposition of office hours, the issuing of a warning and, after his appeal was filed, his transfer to another team.

10. The complainant also contends that the Joint Committee for Disputes was improperly constituted in that it

did not contain members nominated by the Staff Committee constituted on 7 December 2004. He also argues that its proceedings were “invalidated” because, contrary to Article 4 of Office Notice No. 6/95, the Committee did not provide its Opinion within two months.

11. The assertion that the complainant was the victim of harassment and that Eurocontrol failed to respect his dignity is maintained in the complaint. In that context, the complainant claims not only that the decision of 16 July 2004 to issue him with a reprimand should be set aside but, also, that he should be awarded substantial moral damages. He seeks reimbursement of costs in the sum of 4,000 euros.

12. It is convenient to deal first with the complainant’s contention that he was denied due process with respect to the suspension and reprimand decisions. There is no doubt that, in respect of each decision, very little time was allowed to him to prepare his response and that the detailed allegations of fact and the resulting charges against him were not provided until late in the afternoon of 16 June. He also claims that that involved unequal treatment as other staff members were given longer notice in respect of proposed disciplinary measures. However, it should be pointed out that due process requires that a person whose rights or interests are at risk be provided with a reasonable opportunity to challenge the case against him or her and to answer that case. Thus, and because each case is different, the requirements of due process will vary from case to case.

13. Apart from making one allegation of aggressive behaviour, the complainant has not at any time challenged the facts alleged against him. Further, he makes no complaint as to the missing page in the documentation sent with the letter of 15 June 2004. Rather, he has at all times argued that his actions were an appropriate response to what he claims was “administrative harassment”. It is not clear whether that claim was accepted to any extent. However, that claim could neither justify the complainant’s refusal to attend the scheduled meeting with the Director of the CFMU on 28 May 2004 nor the disrespectful tone of the joint e-mail forwarded to the Director. Nor has there subsequently been any attempt on the part of the complainant to justify or excuse those actions. That being so, it must be concluded that, so far as concerns the complainant’s actions of 27 and 28 May, he had no basis to challenge the facts and no answer to make to the charges insofar as they were based on those facts. Accordingly, although the time limits were brief and the particulars scanty, that did not result in the denial of a real opportunity to challenge the facts relating to those events or to answer the charges to the extent that they were based on those events.

14. The undisputed facts relating to the events of 27 and 28 May provided an ample basis for a charge of insubordination and a subsequent finding to that effect. Further, given the surrounding circumstance, those undisputed events justified the complainant’s suspension. So, too, the subsequent reprimand was appropriate and proportional to those events and the charges based on them.

15. The argument that the complainant was subject to multiple disciplinary measures must be rejected. In the context of the largely undisputed events preceding those of 27 and 28 May, the complainant’s suspension is properly to be regarded as an interim measure designed to avoid disruption to the service while the question of disciplinary action was considered. Further, it is not possible to treat the information contained in the reprimand decision – i.e. that more serious measures would be necessary if the complainant’s behaviour did not change – as a “written warning” within Article 88(2)(a) of the Staff Regulations. It was simply an indication of the probable consequences of any further failure to conform to the proper standards of conduct.

16. The complainant’s assignment to office hours and, later, his transfer to another team could be regarded as disguised disciplinary measures if the complainant established that they were not taken in the interest of the proper functioning of IFPU2. However, there can be no doubt that the situation in that Unit was fraught and some action was clearly necessary if it was to function efficiently. The complainant’s claim of “administrative harassment” cannot support a finding that his assignment to office hours and his transfer to another team were taken as part of a discriminatory campaign against him. Particularly is that so when, as the Joint Committee for Disputes noted, he declined to lodge an individual complaint in that regard when invited to do so in February 2004. That being so, it must be concluded that the actions in question were taken in the interests of the proper functioning of IFPU2 and the argument that they were disguised disciplinary measures must be rejected.

17. In the absence of evidence that members of the Joint Committee for Disputes appointed by the Staff Committee were to remain members only until a new Staff Committee was established or that new members were appointed to hold office as from 7 December 2004, there is no basis for the argument that the Joint Committee for Disputes was improperly constituted. So, too, in the absence of any evidence as to when the Opinion of the Joint

Committee was sought, it cannot be held that it did not provide its Opinion within the period specified in Article 4 of Office Notice No. 6/95.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2006, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet