

109th Session

Judgment No. 2952

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr J.O. S. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 4 September 2008 and corrected on 20 November 2008, Eurocontrol's reply of 27 February 2009, the complainant's rejoinder of 6 June and the Agency's surrejoinder of 14 September 2009;

Considering Articles II, paragraph 5, and VII 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. Article 9 of the Staff Regulations governing officials of the Eurocontrol Agency provides for the creation of a Staff Committee. Rule of Application No. 1, which gives effect to Article 9, lays down the composition and procedure of this body. It provides *inter alia* that the Staff Committee is comprised of a Central Committee and local sections based in the Agency's duty stations. The members of the Central Committee are elected by the local sections.

The complainant, a Danish national born in 1966, joined Eurocontrol in July 1995 in the Flight Data Operations Division at Brétigny-sur-Orge, near Paris. He was elected as a full member of the local section of the Staff Committee of Brétigny in October 2004 and as an alternate member of the Central Committee in July 2005.

In 2006 and 2007 consultation meetings were held between officials of the Agency and its social partners with a view to amending Rule of Application No. 1. The resulting amendment, which entered into force in February 2007, extended the term of office of members of the Staff Committee from two to three years, created two new local sections, increased the number of members of the Central Committee from ten to 14, and modified the election procedure so that full members and alternate members of the Staff Committee would be elected in pairs.

On 12 June 2007 the complainant wrote to the Director General and drew attention to what he considered to be irregularities in the functioning of the Central Committee. He explained that he was prevented from “carrying out [his] functions as an independent Staff Committee representative” and he requested that transparent measures be taken to ensure its proper functioning. Specifically, he requested that the new Central Committee be made officially aware of the Agency’s policies and that it be instructed to make the minutes of its meetings available to all staff, that members of the Staff Committee not affiliated to any trade union be given access to the consultation meetings, and that Rule of Application No. 1 be amended so as to allow the local section of Brétigny to appoint an additional member to the Central Committee. That same month he was elected as a full member of both the local section of the Staff Committee of Brétigny and the Central Committee.

Having received no reply from the Director General, on 11 January 2008 he filed an internal complaint against the implied rejection of his request of 12 June 2007. By a memorandum of 7 February 2008, copied to the President of the Central Committee, the Director of Human Resources and Administration advised the complainant that, since a new Central Committee had been constituted

in June 2007, his allegations were considered to be without object. However, in reply to his internal complaint, he stated that it was not for the Director General to interfere in the composition of the Central Committee, nor was the Agency competent to designate representatives at meetings. He also pointed out that the minutes of the meetings and documents on the agenda were available. The matter was referred to the Joint Committee for Disputes. In its opinion dated 28 April 2008, which the complainant indicates as the impugned decision, the Committee endorsed the arguments advanced by the Director of Human Resources and Administration, and recommended that the internal complaint be rejected as partially inadmissible and legally unfounded. By a memorandum of 21 May 2008 the latter informed the complainant that, following the unanimous recommendation of the Committee, his internal complaint had been rejected.

B. The complainant contends that the procedure to amend Rule of Application No. 1 lacked transparency and that it did not sufficiently involve officials who were not affiliated with trade unions. He explains that in 2005 the local section of the Staff Committee of Brétigny objected to a number of proposed amendments, but that further discussion regarding the amendments took place during consultation meetings which were held in 2006 between the Agency's management and trade unions. He complains that the final minutes of all of the meetings were not made available to the staff. He further explains that, after he received the final version of the amendments in March 2007, he objected to them in his capacity as a member of the Central Committee, but his objections were ignored by the Board of the Committee. The complainant considers that the amendments to Rule of Application No. 1 give an "unfair advantage to trade union members" and that they are detrimental to the overall interest of the staff.

He submits that the Joint Committee for Disputes, a body he criticises for its lack of independence and unclear term of office, misinterpreted his arguments and failed to consider some of the claims

he made in his internal complaint. In addition, he alleges breach of confidentiality insofar as his internal complaint was disclosed to the President of the Central Committee. He asks the Tribunal to order Eurocontrol to take “appropriate and necessary actions in order to restore [the] staff’s confidence” in the Joint Committee for Disputes.

The complainant also submits that the Staff Committee does not function properly. In particular, the Board of the Central Committee fails to consult and inform its other members, the local section of the Staff Committee of Brétigny does not meet with the directors concerned at least once every two months as provided for in Rule of Application No. 1, and the President of the Central Committee has refused to comply with a decision taken by that Committee in relation to a breach of the recruitment procedures.

By way of relief, he requests that the Agency be ordered to renegotiate Rule of Application No. 1 with its social partners in full transparency, to adhere to the principles set forth in Office Notice No. 6/95 establishing the Joint Committee for Disputes, and to ensure the proper functioning of the Central Committee and the local sections of the Staff Committee as well as the possibility for all of their members to carry out their functions. He claims moral damages and costs in an amount to be determined by the Tribunal.

C. In its reply Eurocontrol objects to the receivability of the complaint on two grounds. It submits that the complainant has no cause of action because he has failed to identify any decision which affects him directly. In addition, his claims concerning the functioning of the Staff Committee are new and as such should be considered as irreceivable since internal remedies have not been exhausted.

The Agency replies subsidiarily on the merits. It contends that there were objective reasons for amending Rule of Application No. 1, namely the need to take into consideration new duty stations and to improve the functioning of the Staff Committee in general, and that “trade unions (incidentally also the Staff Committee[...])” were consulted prior to amending the provisions.

It rejects the complainant's assertions that the Staff Committee lacks independence and that it fails to function in a transparent manner. In its opinion, it would be contrary to the right of association, as recognised in the Tribunal's case law, to reserve membership in certain committees to officials not affiliated to trade unions. Further, the complainant has produced no evidence to support the view that he was subjected to improper influence by third parties, and even if such had been the case, it would not have prevented him from carrying out his functions in the Staff Committee. The Agency emphasises that the Staff Committee enjoys discretion to organise itself and that the Director General has no right to interfere in the application or interpretation of its internal rules. It adds that it is for the Central Committee to decide which information it wishes to make available.

It denies that there was any irregularity in the composition or proceedings of the Joint Committee for Disputes. It stresses that the latter is an advisory body which merely advises the Director General, and that the memorandum of 7 February 2008 was copied to the President of the Central Committee because he is "the person entitled to clarify the matters raised by [the complainant]".

D. In his rejoinder the complainant contends that his complaint is receivable. He points out that the Agency has failed to take the necessary measures to allow him to perform his duties, in breach of Article 8 of Rule of Application No. 1, and he submits that his claims concerning the functioning of the Staff Committee are receivable since they were "obviously [...] an essential part of his initial complaint[...] to the [Director General]".

The complainant develops his pleas on the merits. He asserts that one of the reasons for amending Rule of Application No. 1, namely the need to take into consideration new duty stations, has become obsolete in view of the recent reorganisation of Eurocontrol, and that members of the Staff Committee are still excluded from negotiations directly concerning staff working conditions. He also asserts that no final minutes of the 2006 consultation meetings have been made

available and that he has provided sufficient evidence of the improper influence exercised by one trade union on the Central Committee. He points to new facts that have arisen since the filing of his complaint which, in his opinion, add “further potential disruption to the functioning of the Agency’s Staff Committee[...]”.

E. In its surrejoinder Eurocontrol maintains its position. It indicates that its objection to receivability for failure to exhaust internal remedies relates to the “new claim of [...] breach of the recruitment procedures”. It submits that the duty to ensure observance of Article 8 of Rule of Application No. 1 is vested in the President of the Central Committee and that, even if the President had laid the matter before the Director General, the latter has wide discretion to decide whether or not to take action.

CONSIDERATIONS

1. The complainant, an official of the Agency, was at the material time a full member of the local section of the Staff Committee of Brétigny, an alternate member of the Central Committee, and later a full member of that Committee. He wrote to the Director General on 12 June 2007, lodging “a formal complaint concerning the administrative functioning of the [Central Committee]”. He detailed various matters and made four requests which are set out in part A, above.

The requests were not granted and, following proceedings before the Joint Committee for Disputes, the internal complaint was rejected.

2. The complainant now seeks orders from the Tribunal directing the Agency to renegotiate Rule of Application No. 1, to adhere to the principles relating to the independence of the Joint Committee for Disputes, to assure the proper functioning of the Central Committee and all local sections, and to ensure that Staff Committee representatives can carry out their functions as such. He also seeks moral damages and costs. The Agency argues that the complaint is wholly irreceivable.

3. Pursuant to Article II of its Statute, the Tribunal's competence is limited to complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the provisions of the Staff Regulations applicable to them. The complainant does not allege the non-observance of any of the terms of his appointment or of any of the Staff Regulations applicable to him. Nor does he claim that the Agency has infringed his rights as a member of the Staff Committee. Rather, his dispute, if any, is with the other members of that Committee. Further, he does not claim to have suffered any loss, damage or other injury, and does not point to any decision affecting him directly or which would have legal consequences for him individually. Thus, he has not established any cause of action (see Judgment 1852, under 2 and 3), or raised any matter that may be the subject of a complaint to the Tribunal.

4. It should also be noted that the Tribunal's powers are confined to granting relief with respect to obligations. The Tribunal has no power to order renegotiation of existing obligations or the creation of new obligations, that being implicit in the orders which the complainant seeks with respect to the Staff Committee and its representatives. Further, there is nothing to suggest that the Joint Committee for Disputes does not act independently. Moreover, as the claim with respect to that Committee was made for the first time in the complaint, it is irreceivable on the grounds that internal remedies have not been exhausted.

5. The complaint is wholly irreceivable.

DECISION

For the above reasons,

The complaint is dismissed as irreceivable.

In witness of this judgment, adopted on 7 May 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2010.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet