

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**114th Session**

**Judgment No. 3180**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms M. D. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 16 December 2010, the Organisation's reply of 8 April 2011, the complainant's rejoinder dated 12 May and Eurocontrol's surrejoinder of 19 August 2011;

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, a Belgian national born in 1969, entered the Agency's service on 1 May 2001 as an Auxiliary Administrative Assistant 1st class, at grade C4, at the Maastricht Upper Area Control Centre. At the material time she was working as an Advanced Secretary.

Following the approval on 7 May 2009 by the Permanent Commission for the Safety of Air Navigation of a salary adjustment

that took effect on 1 July 2008, the Principal Director of Resources announced in an office notice dated 27 May 2009 that the basic salaries of permanent members of staff of the Agency and members of staff of the Eurocontrol Maastricht Centre had been raised by 3 per cent with effect from 1 July 2008. On 10 June 2009 the Agency paid the back pay due for the period 1 July 2008 to 30 June 2009. On 4 September 2009 the complainant wrote to the Director General to request the payment of interest for late payment on the amount of back pay which she had received, arguing that such interest was due to her *ipso jure*. As this request was rejected, she lodged an internal complaint on 26 February 2010 in which she specified that the above-mentioned interest was due to her as from 7 May 2009.

In its opinion of 30 July 2010 the majority of the members of the Joint Committee for Disputes recommended that the Director General should grant her request on the grounds that, since the salary adjustment had been agreed upon on 7 May 2009, the back pay was due as from that date, and the fact that it had been paid at a later date warranted the payment of interest. However, one member of the Committee held that the internal complaint should be rejected because in practice the back pay could not have been paid before the end of May 2009 and because the Agency had acted with reasonable care in making that payment the following month. By a memorandum of 2 November 2010 the Principal Director of Resources, acting on behalf of the Director General, informed the complainant that he shared the opinion expressed by that one member of the Joint Committee for Disputes and therefore rejected her internal complaint. That is the impugned decision.

B. The complainant contends that, as the Permanent Commission approved the salary adjustment on 7 May 2009, the corresponding back pay was due as from that date. She asserts that in Judgment 2782 the Tribunal stated the principle that interest is due *ipso jure* whenever a salary which falls due at a fixed date is paid belatedly, and she argues that this principle also applies to a salary adjustment because it

“constitutes salary”. The complainant asks the Tribunal to set aside the impugned decision and to order the Agency to pay her interest for late payment at a rate of 8 per cent per annum as from 7 May 2009 on the amount of back pay which she received. Lastly, she requests costs in the amount of 2,000 euros.

C. In its reply the Agency points out that the amount of interest claimed by the complainant is “derisory”. Since it considers that, in these circumstances, she has no “material cause of action”, it asks the Tribunal to “examine the receivability of the complaint”, which it terms “improper and vexatious”.

On the merits, it states that since back pay is retroactive it cannot “by its very nature” be paid on a set date. In addition, it contends that, in the instant case, the back pay was paid on 10 June 2009 and was not therefore late. Consequently, the complainant did not suffer any injury which would warrant the payment of interest to her. It adds that, given that it had to make individual calculations once the Permanent Commission had approved the salary adjustment, it is “plain” that it acted promptly and with due care.

D. In her rejoinder the complainant submits that a cause of action arises whenever a decision violates an official’s rights, and that the amount claimed is immaterial. In her view, she has cause of action insofar as she has an interest in obtaining a ruling from the Tribunal “once and for all” on the issue of whether interest is due as from the date on which salary adjustments are approved. On the merits, she reiterates her pleas.

E. In its surrejoinder the Agency maintains its position. It explains that Eurocontrol’s internal rules do not lay down a time limit for the payment of salary arrears after the approval of a salary adjustment. When, as in this case, they are paid within a reasonable period of time, it cannot be considered that there has been any delay warranting the payment of interest.

## CONSIDERATIONS

1. In Office Notice No. 18/09, published on 27 May 2009, the Principal Director of Resources informed the staff that on 7 May 2009 the Permanent Commission for the Safety of Air Navigation had approved a salary adjustment with effect from 1 July 2008.

2. On 10 June 2009 the Agency paid the back pay resulting from that adjustment for the period 1 July 2008 to 30 June 2009.

3. On 4 September 2010 the complainant submitted a request to the Director General for the payment of interest on that back pay, on the basis that it had been paid late. As this request was rejected, she lodged an internal complaint with him in which she claimed that this interest was due to her as from 7 May 2009.

4. The Director General referred the case to the Joint Committee for Disputes. In its opinion of 30 July 2010 the majority of its members recommended that her request should be granted. However, one member of the Committee expressed the opinion that the Agency had acted with reasonable care and recommended the rejection of the internal complaint.

5. The complainant was informed by a memorandum of 2 November 2010 that, on the basis of the latter opinion, her internal complaint had been rejected as unfounded. That is the decision that she impugns before the Tribunal.

6. The complainant asks the Tribunal to set aside this decision and to order the Organisation to pay her interest for late payment at the rate of 8 per cent per annum, as from 7 May 2009, on the amount of back pay which she received. She also claims costs in the amount of 2,000 euros.

7. The Agency invites the Tribunal to rule on the receivability of the complaint. It observes that in the complainant's case, the back

pay which she received on 10 June 2009 amounted to 429.68 euros and that if interest at a rate of 8 per cent per annum were paid on this sum, it would amount to approximately 3.20 euros. It wonders whether, in view of the “derisory nature of this amount” and consequently the “dispute’s lack of sufficient effectiveness”, the complainant has the “requisite material cause of action” to file a complaint with the Tribunal. It considers the complaint to be “improper and vexatious”.

8. In response to these comments, the complainant draws attention to the fact that “precedent has it that for a complaint to be receivable the staff member must have a cause of action”. Citing Judgment 1641, under 3, she submits that she has a cause of action insofar as she has an interest in obtaining a ruling “once and for all” on the issue of whether interest is due as from the date on which salary adjustments are approved.

9. As the Tribunal endorses the complainant’s opinion, it will rule on the merits of the dispute. Indeed, the fact that the amount of money claimed may be derisory does not prevent the claim from being receivable. Moreover, if the Agency was of the opinion that the amount at stake in this dispute was derisory, it ought to have tried to put an end to it by reaching an amicable settlement.

10. The complainant submits in substance that as the salary adjustment was approved by the Permanent Commission on 7 May 2009, the back pay was due as from that date. In her opinion it is clear from Judgment 2782 that interest is due *ipso jure* whenever a salary which must be paid at a fixed date is paid belatedly. In this respect she contends that a salary adjustment is an integral part of a salary and must therefore be governed by the same principle. She also relies on Article 65 of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre, which expressly states that salary adjustments shall be made by modifying the basic salaries or other elements of the salaries and allowances as defined in Article 62. In her opinion, this means that not only staff members’

salaries but also adjustments thereof bear interest *ipso jure*, in accordance with the Tribunal's case law.

11. Eurocontrol holds that back pay cannot be paid at a fixed date on account of its retroactive nature. In the instant case it stresses that the back pay for the period 1 July 2008 to 30 June 2009 was paid by the Agency on 10 June 2009, "in other words at a date within the period covered by the back pay", and that interest for late payment is therefore not due. It argues that the interest for late payment, "which, by definition is intended to redress an injury which has been suffered", could be contemplated only if the Agency had acted wrongfully, for example if it had been slow in implementing the decision of the Permanent Commission and late in paying the complainant the sum due to her as back pay, which, according to Eurocontrol, was not the case here. It explains that the back pay was paid on 10 June 2009, in other words at a date which not only lay within the period covered by the said back pay but which also corresponded to the 34th day after the Permanent Commission had approved the adjustment and the 14th day after the publication of Office Notice No. 18/09. Given that it had to make individual calculations, the Agency believes that it acted promptly and with due care. It concludes from this that there is no question of any late payment giving rise to interest.

12. The Tribunal notes that its case law establishes that in the absence of a particular rule requiring the Organisation to pay interest to a staff member where a benefit due to that person is paid belatedly, such interest is not in principle due until the creditor – i.e. the staff member to whom the benefit is owed – has served notice on the Organisation to pay. This apparently harsh solution is justified because no particular formalities are required for the service of such notice, it being sufficient for the creditor to request payment of the amount due. However, this rule does not apply where the debt is one which falls due on a fixed date. In such a case the due date is equivalent to the service of notice (*dies interpellat pro homine*). The debtor owes interest for late payment as from that date, without any

need for the creditor to establish that he or she has requested payment of the sum due. The same applies where the debt falls due periodically at a fixed date, as in the case of a salary. (See Judgment 2782, under 6.)

In the same judgment the Tribunal explained that a salary adjustment forms an integral part of a salary and that a salary, plus increments, is due on precise dates at the end of every month.

13. In the instant case, the Tribunal finds that the complainant is at all events entitled to claim interest for the late payment of the back pay resulting from such an adjustment. Even if this interest works out at a derisory amount, as the Agency contends, the complaint must nevertheless be allowed, because the decision rejecting the complainant's internal complaint was legally unfounded.

The impugned decision must therefore be set aside.

14. The complainant is entitled to the interest for late payment which she claims, at the rate of 8 per cent per annum, from 7 May 2009 until the effective date of payment of the back pay.

15. As she succeeds, the complainant is entitled to costs, which the Tribunal sets at 2,000 euros.

#### DECISION

For the above reasons

1. The impugned decision is set aside.
2. The Agency shall pay the complainant interest for late payment at the rate of 8 per cent per annum on the amount of back pay which she received, for the period from 7 May 2009 to the date of the effective payment of that back pay.
3. It shall also pay her costs in the amount of 2,000 euros.

In witness of this judgment, adopted on 13 November 2012, Mr Seydou Ba, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2013.

Seydou Ba  
Giuseppe Barbagallo  
Patrick Frydman  
Catherine Comtet