

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

115th Session

Judgment No. 3230

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr B. B. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 21 March 2011, the Agency's reply of 1 July, the complainant's rejoinder of 6 October 2011 and Eurocontrol's surrejoinder of 5 January 2012;

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. The complainant, a Belgian national born in 1959, entered the service of Eurocontrol in 1987 at grade B3. In the course of his career at the Institute of Air Navigation Services, he was promoted to grade B2 on 1 January 1992, and subsequently, on 1 April 1998, to grade B1.

As explained in Judgment 3189, delivered on 6 February 2013, on 23 May 2006 the Permanent Commission for the Safety of Air Navigation approved the main provisions of a wide-ranging

administrative reform which was due to enter into force on 1 July 2008. It entailed the introduction within Eurocontrol of a new structure comprising more grades and fewer steps and of a new salary scale. As part of that reform, Office Notice No. 26/08 of 27 June 2008 informed staff of the adoption of Rule of Application of the Staff Regulations No. 35, concerning job management for the period from 1 July 2008 to 30 June 2010 (hereinafter “the transitional period”). Article 9 of this Rule read in pertinent part as follows:

“With effect from 1 July 2008, the administrative situation of each official in the ‘General Service’ shall be reviewed on the basis of the following principles:

- the grade held on 30.6.08 by each official shall be renamed and converted [in the new grading structure],
- the official shall be allocated a job title, according to the nature of his/her functions, [...] corresponding to his grade and professional speciality [...],
- the official shall be assigned by the Director General, after the latter has consulted the Committee [in charge of job management monitoring], to a generic post [...],
- [...].”

This Rule also contained a table showing the generic post, job bracket, main tasks and criteria pertaining to each job title.

As of 1 July 2008, for the whole transitional period, the A, B and C staff categories were replaced with categories A*, B* and C* respectively. The complainant was placed in grade B*10.

On 28 April 2009 the Agency sent staff members a decision informing them of the generic post and job bracket assigned to them in the new structure, with effect from 1 July 2008. The complainant was assigned to the generic post of Senior Technical Assistant, in the job bracket B*8-B*10, while retaining his existing grade. On 29 June 2009 he submitted a request to the Director General under Article 92(1) of the Staff Regulations, seeking reclassification of his post and promotion to grade B*11 on the grounds that, according to the provisions of Rule of Application No. 35, his profile matched that of the generic post of Principal Technical Assistant

in job bracket B*11. By a memorandum of 15 January 2010 he was advised that his request would be referred to the Committee in charge of job management monitoring. On 12 July he received another decision showing that, as from 1 July, his post had been classed within the assistant (AST) function group, and that he would retain “his grade, job title and generic post [...] as well as the corresponding job bracket within [that] function group”.

On 28 July the complainant lodged an internal complaint seeking, inter alia, the setting aside of the decision of 12 July, the reclassification of his post and his promotion to grade AST11, which corresponded to the former B*11 grade. In its opinion of 19 October 2010 the Joint Committee for Disputes recommended that this internal complaint be dismissed as irreceivable, because the decision in question was an “administrative formality” whereby his grade had been renamed “in order to reflect the end of the transitional period of the administrative reform” and, as such, did not adversely affect the complainant. It added that the complainant should not attempt to link his internal complaint with the separate procedure that he had initiated by submitting his request of 29 June 2009. Subsidiarily, it recommended that the internal complaint should be dismissed as unfounded, given that the new grade had been assigned in conformity with the provisions in force. The Joint Committee noted, however, that there had apparently been no response to the aforementioned request after the complainant had been notified of its imminent transmission to the Committee in charge of job management monitoring, and it invited the Administration to “take the steps announced as soon as possible”. By a memorandum of 21 December 2010, which constitutes the impugned decision, the Principal Director of Resources, acting on behalf of the Director General, informed the complainant that he endorsed the Joint Committee’s recommendations. He explained that the Committee in charge of job management monitoring had not considered the request of 29 June 2009 because it was not an internal complaint, that this request should now be regarded as “implicitly rejected after an interval of four months” and that the complainant should have lodged an internal complaint against the decision of 28 April 2009.

B. The complainant submits that his complaint is receivable. Emphasising that the decision of 12 July 2010 was related to the grade, job title, generic post and job bracket assigned to him in his new function group, he rejects the contention that it was a mere formality which did not adversely affect him. He adds that, by informing him that his request of 29 June 2009 would be referred to the Committee in charge of job management monitoring, the Agency recognised, at least implicitly, that it was receivable. In his view, Eurocontrol ought to have treated the request as an internal complaint. Thus, the decision of 15 January 2010 ought to be regarded as a provisional measure which suspended the proceedings and the decision of 21 December 2010 as the final decision dismissing the “internal complaint” of 29 June 2009.

On the merits, the complainant explains that it is plain from Rule of Application No. 35 that the main tasks assigned to a Senior Technical Assistant and a Principal Technical Assistant are identical, but in the former case the period of work experience required is a minimum of ten years, whereas in the latter case it must be at least 15 years. By classifying his post at grade B*10, although he already had 15 years’ experience, the Agency committed an obvious error of judgement.

The complainant also takes issue with the fact that the consultation of the Committee in charge of job management monitoring, provided for in Article 9 of the above-mentioned Rule, did not take place. He contends that Article 7 was also breached, since the Committee refused to consider his request of 29 June 2010, whereas, according to that Article, it is not competent to decide whether such a request is receivable.

The complainant asks the Tribunal to set aside the impugned decision of 21 December 2010 and the decisions of 28 April 2009 and 12 July 2010. He also claims moral damages in the amount of 1,500 euros and 5,000 euros in costs.

C. In its reply Eurocontrol submits that the complaint is time-barred. It argues that, since the decision of 12 July 2010 merely confirmed

that of 28 April 2009, the complainant should have appealed either against the latter decision, or against the implied rejection of his request of 29 June 2009 which, in its opinion, it was not obliged to treat as an internal complaint. It adds that the claim that the decision of 28 April 2009 should be set aside is not receivable in the light of the Tribunal's case law, since it is tantamount to asking the Tribunal to order that the complainant be assigned to grade B*11 as from 1 July 2008.

On the merits and subsidiarily, the Agency contends that the reference in Article 9 of Rule of Application No. 35 to each official being allocated a job title did not require an individual review in order to determine whether the functions performed in categories A*, B* or C* fully matched those performed in the previous categories A, B or C. The Committee in charge of job management monitoring had to ascertain whether the generic post descriptions matched the job brackets. The Agency also points out that in order to be automatically promoted to grade B*11/AST11, it is not enough to have 15 years of work experience.

D. In his rejoinder the complainant denies that his request of 29 June 2009 was implicitly rejected, since the Administration, in its memorandum of 15 January 2010, "responded favourably" by deciding to submit it to the Committee in charge of job management monitoring. He enlarges on his pleas on the merits.

E. In its surrejoinder Eurocontrol reiterates its position.

CONSIDERATIONS

1. When the administrative reform designed to modernise human resources management at Eurocontrol entered into force on 1 July 2008, staff categories A, B and C were replaced by categories A*, B* and C*, respectively, for a two-year transitional period. At that juncture the complainant, who held grade B1, was assigned

grade B*10. During this transitional period, job management was governed by the provisions of Rule of Application of the Staff Regulations No. 35.

On 28 April 2009 the complainant was informed that, as of 1 July 2008, he had been assigned to the generic post of Senior Technical Assistant in job bracket B*8-B*10 while retaining his existing grade. On 29 June 2009 he wrote to the Director General to request reclassification of his post as that of a Principal Technical Assistant and his promotion to grade B*11. He was advised by a memorandum of 15 January 2010 that his request would be submitted to the Committee in charge of job management monitoring and that he would be informed of the outcome as soon as the Committee had given its opinion.

At the end of the transitional period the complainant was integrated into the new grading structure. Thus, by a decision of 12 July 2010 the Director General informed him that he was now in the new assistant (AST) function group and that he would retain “his grade, job title and generic post [...] as well as the corresponding job bracket within [that] function group”. On 28 July the complainant filed an internal complaint against that decision, in which he requested his promotion to grade AST11 (formerly grade B*11) and claimed moral damages in the amount of 1,000 euros, amongst other relief. By a memorandum of 21 December 2010 he was informed that, on the basis of the opinion issued by the Joint Committee for Disputes, the Principal Director of Resources, acting on behalf of the Director General, had dismissed his internal complaint. The complainant asks the Tribunal to set aside that decision, which he challenges before the Tribunal, as well as the decisions of 28 April 2009 and 12 July 2010. He also claims moral damages in the amount of 1,500 euros and 5,000 euros in costs.

2. The Agency submits that the complaint is irreceivable because it is time-barred, as in its opinion the complainant ought to

have challenged either the decision of 28 April 2009, or the implied decision to reject his request of 29 June 2009.

3. The Tribunal considers that Article 6 of Rule of Application No. 35 – which deals in particular with the reviewing of job descriptions at the request of line management – in no way precluded the Agency from examining an official's request for promotion during the transitional period. In the instant case, the complainant submitted his request on 29 June 2009 and the Tribunal considers that it was rejected on 12 July 2010. On receipt of the memorandum of 15 January 2010, the complainant had good reason to expect the Committee in charge of job management monitoring to issue an opinion. As he had still not received that opinion when he was notified of the decision of 12 July 2010, he could legitimately take it to be a decision refusing his request for promotion, because it confirmed his grade. It was against this rejection of his request for promotion that, acting as he was entitled to do, he filed the internal complaint that was dismissed by the impugned decision of 21 December 2010.

4. In the light of the foregoing, the complaint must be allowed and the decision of 21 December 2010 must be set aside. It will be incumbent upon the Agency to submit to the competent bodies the complainant's request for promotion to grade AST11. However, there is no reason to order the setting aside of the decisions of 28 April 2009 and 12 July 2010, as the complainant requests, or to consider his pleas on the merits.

5. The procedure leading up to the impugned decision and the decision itself have caused the complainant moral injury which must be redressed by ordering the Agency to pay him compensation in the amount of 1,500 euros.

6. As the complainant succeeds in part, he is entitled to costs, which the Tribunal sets at 3,000 euros.

DECISION

For the above reasons,

1. The decision of 21 December 2010 is set aside.
2. The case is remitted to the Agency in order that it may proceed as indicated under 4, above.
3. The Agency shall pay the complainant compensation in the amount of 1,500 euros for moral injury.
4. It shall also pay him 3,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 2 May 2013, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Seydou Ba
Claude Rouiller
Giuseppe Barbagallo
Catherine Comtet