Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

115th Session **Judgment No. 3232**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. E. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 11 October 2011, the Agency's reply of 2 February 2012, the complainant's rejoinder of 30 March and Eurocontrol's surrejoinder of 5 July 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. Facts relevant to this dispute are set out in Judgment 3230, also delivered this day.

The complainant, a French national born in 1977, entered the service of the Eurocontrol Experimental Centre at Brétigny-sur-Orge on 1 March 2006 at grade B3. On 1 July 2008, with the entry into force of the administrative reform entailing the establishment of a new

grade structure at Eurocontrol, the A, B and C staff categories were replaced, for a transitional period of two years, with the categories A*, B* and C* respectively, in accordance with Annex XIII, Part 2, Article 2, of the Staff Regulations governing officials of the Eurocontrol Agency. At that juncture the complainant was classified at grade B*7.

On 28 April 2009 the Agency sent its staff members a decision informing them of the generic post and the job bracket assigned to them in the new grade structure, with effect from 1 July 2008. The complainant was assigned the generic post of Advanced Technical Assistant, in the job bracket B*5-B*8, while retaining his existing grade. Between 12 May and 7 August 2009, numerous officials, including the complainant, lodged an internal complaint. According to the complainant, the procedure followed had been flawed in several respects, especially on account of the fact that the Committee in charge of job management monitoring had not been consulted, in breach of Article 9 of Rule of Application of the Staff Regulations No. 35, concerning job management for the period 1 July 2008-30 June 2010. In his view, the generic post to which he had been assigned did not match the functions he was performing, a situation which "deprive[d] [him] of the opportunities for career advancement (through promotion) that [he] would have in a more senior generic post". He requested the "correction and proper execution" of the procedure for assigning job titles and generic posts. The Joint Committee for Disputes, to which these internal complaints were referred, issued its opinion on 16 December 2009. It unanimously held that the process for determining generic posts and the associated job brackets was flawed and recommended that the decisions of 28 April 2009 should be cancelled and that the Committee in charge of job management monitoring should, "in the case of the complainants only, carry out the examination which was not carried out at the appropriate time".

On 20 January 2010 the Principal Director of Resources, acting on behalf of the Director General, wrote to the staff members who had filed internal complaints to inform them that he had decided to follow

the recommendations of the Joint Committee for Disputes. At a meeting held on 5 May, the Committee in charge of job management monitoring concluded that the principles that had been applied when assigning the new job brackets were in line with Article 9 of the aforementioned Rule of Application. On 5 July 2010 the "complainants" were sent a memorandum enclosing the new decision taken that same day, confirming their job bracket classification that had come into effect on 1 July 2008. Between 23 September and 6 October 2010, some of them lodged another internal complaint. In his second internal complaint, dated 30 September 2010, the complainant asked to be classified in the job bracket A*8-A*11, which in his view "matche[d] [his] generic post of project manager". The Joint Committee for Disputes stated in its opinion, delivered on 28 April 2011, that two of its members considered that the complaints should be allowed, given that the Committee in charge of job management monitoring had not carried out an analysis allowing a possible reassessment of the posts. The other two members, however, considered that the complaints should be rejected because, in their view, the aforementioned Committee had correctly verified the transposition of grades into the new job brackets. By a memorandum of 14 June 2011, which constitutes the impugned decision, the complainant was informed that his internal complaint had been dismissed as unfounded.

In the meantime, on 1 July 2010, the non-operational staff in category A* had been placed in the Administrator function group (AD), and those in categories B* and C* in the Assistant function group (AST). On 12 July the complainant was sent a decision showing that, as of 1 July 2010, his post belonged to the Assistant function group, and that he retained "his grade, job title and generic post […], as well as the job bracket associated with [that] function group". On 1 July 2011 he was promoted to grade AST8.

B. The complainant submits that the opinion delivered by the Committee in charge of job management monitoring and the decision of 5 July 2010 did not take account of the work he actually did, or of

his experience. He points out that he is a trained engineer and that he does the job of project manager. He also contends that, since the entry into force of the administrative reform and the new Article 45 of the Staff Regulations, officials who, like him, have reached the highest grade in their job bracket are no longer eligible for promotion, whereas those who were previously in grade A7 have been assigned to the job bracket above his one, and thus still have the possibility of promotion.

The complainant asks the Tribunal to set aside the decisions of 5 and 12 July 2010, and that of 14 June 2011. He asks to be assigned to a post of project manager in the Administrator category and would like to see "compliance with the Staff Regulations and, above all, […] proper job management and evaluation". Lastly, he seeks compensation for moral and material injury.

C. In its reply Eurocontrol argues that the complaint is time-barred because the complainant, having received the decision of 14 June 2011, did not file his complaint within the ninety-day time limit specified in Article VII, paragraph 2, of the Statute of the Tribunal. Subsidiarily, it submits that the claim that the Tribunal should order the complainant's classification in the Administrator category is irreceivable in the light of the case law.

On the merits and subsidiarily, the Agency contends that the complainant's classification in the new grade structure was made in accordance with the applicable rules, including Rule of Application No. 35. The reference in Article 9 of that Rule to the allocation of a job title to each official 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 A, B or C categories. The Committee in charge of job management monitoring had to ascertain that the generic post descriptions matched the job brackets. The Agency points out that the complainant was recruited in 2006 after having applied for a post in category B, which corresponds to the new function group AST. Although he is indeed a trained

engineer, he must accept the consequences of the career choice he made at the time. In its view, the complainant is in fact challenging the version of Article 45 of the Staff Regulations that entered into force on 1 July 2008. Although previously it was theoretically possible for an official in categories B and C to advance through promotion from the lowest to the highest grade in his category without any change of functions, this is no longer the case. The complainant can enter the Administrator category solely by means of a competitive recruitment process. Eurocontrol considers that the measures adopted in respect of officials who were previously assigned to grade A7 are logical and it states that the complainant cannot benefit from them because he was not in the A category.

D. In his rejoinder the complainant explains that he had initially filed a complaint against the implied decision to dismiss his internal complaint of 30 September 2010, but on 13 July 2011 the Registrar of the Tribunal sent him a registered letter pointing out that, since Eurocontrol had issued a final decision on his internal complaint, he could impugn its final decision of 14 June 2011. As that letter did not reach him until 8 October 2011, because of "the vagaries of the post", he asserts that he was not able to file his complaint until 11 October 2011.

E. In its surrejoinder the Agency reiterates its position.

CONSIDERATIONS

1. The entry into force on 1 July 2008 of the administrative reform designed to modernise human resources management at Eurocontrol and, in particular, to focus on the performance of its staff resulted in the complainant, who was then in grade B3, being assigned to grade B*7 for the two-year transitional period.

On 28 April 2009 he was informed that, as of 1 July 2008, he had been assigned to the generic post of Advanced Technical Assistant in

the B*5-B*8 job bracket, while retaining his grade, pursuant to Rule of Application No. 35 concerning Job Management. On 3 July 2009, like many other officials, he lodged an internal complaint in which he contended inter alia that the Committee in charge of job management monitoring had not been consulted. On 20 January 2010 the Principal Director of Resources, acting on behalf of the Director General, informed him that, on the basis of the opinion delivered by the Joint Committee for Disputes on all of the internal complaints, he had decided to rescind the decision of 28 April 2009 and that a new decision would be taken after the Committee in charge of job management monitoring had been consulted. The latter committee met on 5 May 2010 and the complainant was advised, by a decision of 5 July 2010, that the classification in the job bracket which had taken effect on 1 July 2008 had been confirmed. On 30 September 2010 he lodged another internal complaint in which, in essence, he asked to be classified in job bracket A*8-A*11 which, in his view, corresponded to his position as project manager. The Administration acknowledged receipt of this internal complaint on 22 November.

In the meantime, at the end of the transitional period, the complainant had been integrated into the new grade structure. By a decision of 12 July 2010 the Director General had informed him that he was now in the new Assistant function group and that he retained his “grade, job title and generic post […] as well as the job bracket associated with [that] function group”.

2. On 9 May 2011 the complainant filed a single copy of a complaint directed against what he regarded as an implied decision to dismiss his internal complaint of 30 September 2010. However, he entered 11 January 2011 in section 3(b) of the complaint form, which indicates the date at which the complainant notified to the organisation the claim on which no express decision has been taken within the time limit specified in Article VII, paragraph 3, of the Statute of the Tribunal. By a letter of 13 June the Registrar of the Tribunal asked him to correct his complaint within one month by rectifying that date and sending six copies of all his submissions.

3. By a memorandum of 14 June 2011 the Principal Director of Resources, acting on behalf of the Director General, informed the complainant that he had decided to endorse the opinion expressed by two members of the Joint Committee for Disputes and to dismiss his internal complaint of 30 September 2010 as unfounded.

4. On 5 July 2011 the complainant sent the Registry of the Tribunal six copies of his "updated" complaint. Although in his covering letter he mentioned two new facts, including the adoption of the express decision dismissing his internal complaint, he entered the date 30 September 2010 in section 3(b) of the complaint form. By a registered letter of 13 July 2011, the Registrar informed him that he could impugn the final decision of which he had been notified by filling in section 3(a) of the complaint form, instead of relying on Article VII, paragraph 3, of the Statute. She returned the six copies of the complaint form in case he wished to amend section 3.

5. By an e-mail of 23 August the complainant informed the Registrar that, as he had been away from home for more than a month, he had been unable to collect the letter of 13 July, which the post office had returned to the Registry. He therefore asked that this letter be sent to him again. This was done. He received it on 8 October and three days later sent six copies of the complaint form, where he gave the date in section 3(a) as 14 June 2011. In that complaint he seeks the setting aside of the decisions of 5 and 12 July 2010 and the decision of 14 June 2011, amongst other relief.

By a letter of 17 November the Registrar advised the complainant that, although from a procedural standpoint the identification of a new impugned decision was tantamount to the withdrawal of his initial complaint and the filing of a new complaint, the time limits specified in the Statute of the Tribunal were not the same and that, in the instant case, the filing date could only be 11 October 2011, the date stamped on the envelope of the registered covering letter enclosing the six forms which had been amended in section 3.

6. The complainant explains that he did not file his complaint until 11 October 2011 because, owing to “the vagaries of the post”, the aforementioned letter of 13 July did not reach him until 8 October 2011.

7. The Tribunal draws attention to the fact that, under Article VII of its Statute, in order for a complaint to be receivable, not only must it be directed against a final decision (paragraph 1), but it must also be filed within ninety days after the complainant was notified of the decision impugned (paragraph 2).

8. It therefore finds that the initial complaint filed on 9 May 2011 to impugn what the complainant regarded as an implied decision to dismiss his internal complaint of 30 September 2010 could not, in any case, have been entertained.

Under Article VII, paragraph 3, of the Statute of the Tribunal, where the Administration fails to take a decision upon any claim within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint is receivable in the same manner as a complaint against a final decision. The period of ninety days provided for in paragraph 2 of that Article runs from the expiration of the sixty days allowed for the taking of the decision by the Administration.

In the instant case, the complainant filed his initial complaint on 9 May 2011 to impugn the implied dismissal of his internal complaint of 30 September 2010. The ninety-day time limit which began to run as from the expiration of the sixty-day time limit which the Administration was allowed for the taking of a decision had therefore plainly been exceeded. Moreover, when the Administration acknowledged receipt of that internal complaint on 22 November 2010, i.e. before the expiry of the sixty days, it informed the complainant that his internal complaint would be examined by the competent service. He could not therefore rely on Article VII, paragraph 3.

9. The Agency objects to the receivability of the complaint on the grounds that the complainant is challenging "the decision of 14 June 2011 of which, he says, he was notified on the same day", and that, since he did not file his complaint until 11 October 2011, he considerably overstepped the strict ninety-day time limit prescribed by Article VII, paragraph 2, of the Statute of the Tribunal.

10. The Tribunal draws attention to the fact that, according to the terms of that provision, to be receivable, a complaint must have been filed within ninety days after the complainant was notified of the decision impugned.

11. In this case the complainant did not file his complaint against the final decision of 14 June 2011 until 11 October 2011, in other words after the ninety-day time limit laid down in the aforementioned Article VII, paragraph 2, of the Statute of the Tribunal.

12. The circumstances surrounding the delivery of the letter of 13 July 2011 cannot be taken into account in order to exempt the complainant from compliance with the prescribed time limits, since he does not dispute the fact that he was notified of the decision he is impugning on the date on which it was adopted. Indeed, in view of the need for stability in legal relations, time limits must be treated as binding (see, in particular, Judgment 3147, under 5).

13. It follows from the foregoing that the complaint, which is out of time, must be declared irreceivable.

DECISION

For the above reasons,

The complaint is dismissed as irreceivable.

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