

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session

Judgment No. 3275

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed against the European Organisation for the Safety of Air Navigation (Eurocontrol) by Mr B. B. on 25 February 2011, Ms M. M. J. on 28 February, Messrs J.-N. C. and S.S. U. (their second) on 2 March, Mrs M.J. A. M. (her third) and Ms P. T. on 3 March and Ms M. F. on 4 March, which were corrected between 19 April and 20 June, Eurocontrol's replies of 5 August, 5 September and 23 September, the rejoinders submitted by Mr B. on 13 September, Ms J. on 7 October, Ms T. on 19 October, Ms F. on 20 October, Mr U. on 9 November, Mr C. on 14 November and Mrs A. M. on 2 December, Eurocontrol's surrejoinders of 15 December 2011, 5 January 2012, 12 January, 26 January, 5 February and 9 February, the further submissions of Mr C. of 21 April, Ms J. of 25 April and Mr U. of 27 April, Eurocontrol's comments of 2 August, the additional comments of Ms J. of 4 October and Eurocontrol's final observations thereon of 21 November 2012;

Considering the applications to intervene in the third complaint of Mrs A. M. filed by Ms C.M.d.B. D. and Ms M.J. S.-P. M.;

Considering the application to intervene in the complaint of Ms F. filed by Ms C. L.;

Considering the applications to intervene in the complaint of Ms J. filed by Ms A. B., Messrs F. C., F. C. and R. D.-G., Ms H. E., Ms B. L., Ms E. S. and Ms N. T. M.;

Considering the application to intervene in the second complaint of Mr U. filed by Mr S. B.;

Considering the letters of 25 April 2013 in which Eurocontrol stated that it had no objection to these applications to intervene;

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

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties 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 to be found in Judgment 3274, also delivered this day. It should be recalled that on 1 July 2008 an administrative reform entered into force at Eurocontrol entailing, *inter alia*, the introduction of a new grade structure. As part of that reform, Rule of Application No. 35 of the Staff Regulations governing officials of the Eurocontrol Agency was adopted on job management during 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 grade 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 [...],
- [...]”

During the transitional period the A, B and C staff categories were replaced with categories A*, B* and C* respectively.

The complainants work at Eurocontrol's Experimental Centre at Brétigny-sur-Orge. On 1 July 2008 Mr B. was placed in grade B*10. The other complainants were given grades C*4, C*5 or C*6.

On 28 April 2009 Eurocontrol sent its staff members a decision informing them of the generic post and corresponding career bracket assigned to them in the new grade structure, with effect from 1 July 2008. Between 12 May and 7 August 2009 numerous officials, including the complainants – who were in categories B* and C* – submitted an internal complaint. The Joint Committee for Disputes delivered its opinion on 16 December 2009. It unanimously held that the process of determining the generic posts and career brackets had been flawed and it 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 its meeting on 5 May, the Committee in charge of job management monitoring reached the conclusion that the principles that had been applied when assigning the new career brackets were in line with Article 9 of Rule of Application No. 35. On 5 July 2010 the persons concerned were sent a memorandum enclosing the new decision taken that same day, confirming their career bracket classification that had come into effect on 1 July 2008. Between 23 September and 6 October 2010 some of those persons, including the complainants, lodged a second internal complaint. They impugn the implied decision rejecting that complaint.

B. Mr B. confines himself to contending that the decision of 28 April 2009 ignored his 16 years of professional experience which, in his opinion, justified his classification in career bracket B*11. The other complainants submit that the opinion of the Committee in charge

of job management monitoring and the decisions of 5 July 2010 ignored not only their experience but also the real nature of their functions. They contend that they have suffered a setback in their career progression. In this connection they also take issue with the fact that, since the entry into force of the administrative reform and the new version of Article 45 of the Staff Regulations, officials who, like some of them, have reached the top grade in their career bracket, are no longer eligible for promotion.

Mr B. asks for the setting aside of the implied decision rejecting his second internal complaint, his classification in career bracket B*11, his retroactive promotion to that grade as of 1 July 2008, moral damages and costs. In addition to the setting aside of the impugned decisions, the other complainants seek the correct implementation of the procedure set out in Rule of Application No. 35 and request that the consequences thereof be drawn in terms of allocating a career bracket and/or assignment to a generic post. Most of them also ask for recognition of their eligibility for inclusion in promotion rounds since 1 July 2008, 2009 or 2010. Mr C. asks that the consequences thereof should be drawn in respect of the amount of the “allowance for [his] early termination of service” on 31 December 2012 and of his pension rights. Lastly, they claim damages to redress the moral and material injury suffered, and costs.

C. In its replies Eurocontrol states that, pursuant to the case law, the claims that the Tribunal should order it to promote the complainants, or to allocate a specific career bracket to them, are irreceivable. In most cases it produces the opinion delivered by the Joint Committee for Disputes on the internal complaints submitted to it in September and October 2010 and the memorandums of 14 June 2011 by which the Principal Director of Resources, acting on behalf of the Director General, informed the complainants that their second complaint had been rejected.

On the merits and subsidiarily, Eurocontrol contends that the complainants’ classification in the new grade structure complied with the applicable texts, in particular Rule of Application No. 35. In its

opinion, the reference in Article 9 of that Rule to the allocation of a job title to each official did not mean that each official's individual situation had to be reviewed in order to determine whether their functions in categories A*, B* or C* were completely in line with those which they had been performing in categories A, B or C. It was the task of the Committee in charge of job management monitoring to verify that the description of generic posts corresponded with their career brackets. Eurocontrol maintains that in fact all the complainants, apart from Mr B., are 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 officials in categories B and C to advance through promotion from the lowest to the highest grade in their categories without any change in functions, now once an official has reached the highest grade in his or her bracket, he or she will be unable to progress unless he or she applies for a job in a higher bracket, or his or her current job has changed to such an extent that it must be re-evaluated. Eurocontrol emphasises that this is a matter of human resources management policy for which it alone is responsible. Insofar as Article 16a of Rule of Application No. 2 permits officials to change career brackets, it considers that the administrative reform has not called into question the principle of the right to career advancement. Lastly, it explains that the fact that Mr B. had acquired more than 15 years of experience did not mean that he should automatically have been promoted to grade B*11.

Eurocontrol asks for the joinder of the complaints now before the Tribunal with several other complaints pursuing the same claim.

D. In their rejoinders the complainants enlarge on their pleas. Most of them object to Eurocontrol's request for joinder and say that, since the entry into force of the administrative reform, the possibility of obtaining promotion through a competitive recruitment process exists in theory but not in practice.

E. In its surrejoinders Eurocontrol explains that it has held few competitions since 2008 owing to the budgetary constraints which it is facing. The line manager of Messrs C. and U. submitted requests to

have each of them reclassified in a higher career bracket but, like all the requests for a reassessment of posts, they have not been processed on account of the restructuring.

F. In their further submissions, Mr C., Ms J. and Mr U. maintain that the restructuring in question had already occurred by the time these requests were submitted.

G. In its comments Eurocontrol maintains its version of the facts. It explains that, as from 2013, the prospects of advancement through promotion or a competitive recruitment process will no longer be stymied, because the current voluntary separation programme, which is proving rather expensive, as the officials covered by it receive an allowance, will have ended.

Eurocontrol also states that on 26 April and 2 May 2012 Messrs U. and C. respectively submitted internal complaints in which they “repeat the same arguments accompanied by virtually identical claims to those of [their] current complaint”. It states that, in doing so, they seek to be able to file further complaints in which they could “argue endlessly about this case in the hope [...] that, for the sake of peace and quiet, Eurocontrol will finally accede to [their] requests”. It asks the Tribunal “to rule that the judgment in the instant case will close it”.

H. In her additional comments Ms J. points out that the voluntary separation programme was presented as a means of saving 40 per cent of the salaries of the officials taking early retirement.

I. In its final observations Eurocontrol relies on the provisions of Annex XVI to the Staff Regulations to contend that it was not wrong to say that the programme had a financial cost, since the staff members covered by it receive a sizeable allowance.

CONSIDERATIONS

1. These complaints concern the classification of posts at Eurocontrol, which was introduced in pursuance of new rules ensuing from the administrative reform which entered into force on 1 July 2008 (see Judgment 3189). On 1 July 2010 the duties performed by non-operational staff, who during the transitional period from 1 July 2008 to 30 June 2010 had been classed in the categories B* and C*, which had replaced the former categories B and C, were classified definitively in the new function group for assistants (AST).

2. Article 5(1), (2) and (7) of the Staff Regulations governing officials of the Eurocontrol Agency, as amended for the purposes of this reform, read as follows:

“1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in a function group for managers or administrators (hereinafter ‘AD’) and a function group for assistants or other specific functions referred to in Annex I to these Staff Regulations (hereinafter ‘AST’).

2. Function group AD shall comprise twelve grades, corresponding to administrative, advisory, executive and management duties, as well as to linguistic duties. Function group AST shall comprise eleven grades, corresponding to duties involving the application, supervision and execution of technical, operational or clerical tasks.

7. A summary table showing the types of posts is given in Annex I.

By reference to this table, the Director General shall define the duties and powers attaching to each type of post and its level expressed in grade(s) after consulting the Staff Committee. He shall do this taking account inter alia of the need to harmonise and ensure consistency between the services.

For that purpose, the Director General shall take into account the principles of job management (payment in line with responsibility) i.e.

- a) every post shall have a job description;
- b) every post, defined on a specific or generic basis, shall be graded in line with the level of responsibilities by making reference to grades as set out in Annex I;
- c) responsibilities/grade of a post may be reviewed as necessary;

- d) if a change reduces one or more of the grades attaching to a post, this shall apply only to new vacancy notices;
- e) if a change entails an increase of one or more grades, the post-holder can be promoted within the scope of the provisions of the Staff Regulations;
- f) The implementation provisions shall be laid down in a Rule of Application.

The Rule of Application mentioned above shall lay down in particular:

- the types of generic posts including the specificities of posts,
- the criteria for evaluation of a job,
- the maintenance of such evaluation,
- the process for revision of a job description/job evaluation and possible promotion, further to such revision,
- a mechanism to examine individual cases, involving management and Staff Committee representation.

[...].”

However, Article 1(1) of Section 1 of Part 2 of Annex XIII to the Staff Regulations stipulated that:

“For the period from 1 July 2008 to 30 June 2010, paragraphs 1 and 2 of Article 5 of the Staff Regulations shall be replaced by the following:

- ‘1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in 3 categories A*, B* and C*, in descending order of rank.
2. Category A* shall comprise twelve grades, category B* shall comprise nine grades and category C* shall comprise seven grades.’”

3. In accordance with these provisions, on 27 June 2008 the Director General published a rule of application concerning job management during the transitional period from 1 July 2008 to 30 June 2010 (hereinafter “Rule of Application No. 35”). Article 3 of this Rule established the principle that posts at Eurocontrol should be grouped according to three separate professional specialities – including a “General Service” – in order to reflect specific recruitment and career conditions and that the “General Service” job titles shown in Annex XIII.1 to the Staff Regulations were to be organised into generic posts according to the nature and level of the functions. A

table appended to Rule of Application No. 35 determined for the “General Service” the correspondence between the job titles set out in the aforementioned annex and the generic posts, and the correspondence between job titles (or generic posts) and the grades shown in that annex.

Article 9 of Rule of Application No. 35 stated:

“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, as provided for by of Annex XIII, Part 2, Article 2, paragraph 1,
- the official shall be allocated a job title, according to the nature of his/her functions, from the job titles set out in Annex XIII.1, corresponding to his grade and professional speciality (General, CFMU [Central Flow Management Unit], Military Service),
- 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 as provided for in Article 3 of the present Rule of Application,
- as a transitional measure, officials assigned on 30 June 2008 to a post corresponding to the career-bracket A7/A6/A5 shall be assigned to the career-bracket A*11/10/9/8, while keeping their current grade.”

An office notice accompanying Rule of Application No. 35 explained that specific measures had been taken to ensure that grade progression possibilities within the statutory career brackets which existed prior to the administrative reform were maintained.

4. The complaints must be joined in view of their similarity. The longest-serving complainant entered the service of Eurocontrol in 1982, the most recently recruited among them in 2004. All have worked throughout their career at the Experimental Centre at Brétigny-sur-Orge in the Paris region.

Before 1 July 2008 two of them had reached grades B1 and C1, the highest in their respective categories of B and C. They now hold grades AST10 and AST6 (B*10 and C*6 during the transitional

period). The others had reached grades C2 and C3, which have become AST5 and AST4 (C*5 and C*4 during the transitional period).

The generic posts assigned to them by the decisions of 28 April 2009 are defined and classified as follows, in accordance with the table appended to Rule of Application No. 35:

- Senior Technical Assistant, in career bracket B*8-B*10 during the transitional period (AST8-AST10 in the new nomenclature);
- Senior Technician in career bracket C*4-C*6 during the transitional period (AST4-AST6 in the new nomenclature);
- Advanced Administrative Support in career bracket C*2-C*5 during the transitional period (AST2-AST5 in the new nomenclature);
- Advanced Data Support in career bracket C*2-C*5 during the transitional period (AST2-AST5 in the new nomenclature);
- Advanced Technician in career bracket C*2-C*5 during the transitional period (AST2-AST5 in the new nomenclature).

The decisions of 28 April 2009 made it clear that the complainants retained their previous grades.

5. Each of the complainants submitted an internal complaint against the decision of 28 April 2009 concerning him or her. The decisions were rescinded on the grounds that a procedural irregularity had occurred in that the Committee in charge of job management monitoring established by Rule of Application No. 35 had not been consulted (see Judgment 3274, also delivered this day).

After obtaining this Committee's opinion the Director General simply confirmed the complainants' classification in their career bracket by decisions of 5 July 2010. Between 23 September and 6 October 2010 each complainant submitted another internal complaint disputing the evaluation procedure followed when establishing their new job descriptions and determining the equivalence of their old and new grades. All asked to be classed in a higher grade or career bracket.

The complaints are directed against the implied decisions rejecting these internal complaints.

6. The Joint Committee for Disputes delivered a divided opinion on 28 April 2011, after the complaints had been filed. Two members considered that the Committee in charge of job management monitoring had not carried out an analysis allowing a reassessment of the posts, while the other two held that the Committee had verified the transposition of the complainants' grades into the new career brackets in accordance with Article 9 of Rule of Application No. 35.

By decisions of 14 June 2011 the Director General rejected the internal complaints as unfounded and endorsed the opinion of the latter two members of the Joint Committee for Disputes.

7. It is not disputed by the complainants that the implementation of Rule of Application No. 35 cannot lead to changes in the conditions for promotion or eligibility for competitive recruitment. However, they submit, first, that they have not obtained a position equivalent to that which they held prior to 1 July 2008, because the Committee in charge of job management monitoring failed to carry out a detailed examination.

The classification of posts necessarily involves the exercise of a value judgement as to the nature and extent of the duties and responsibilities pertaining to the posts. Accordingly, the Tribunal will not substitute its own assessment or direct a new assessment unless certain grounds are established. Save when the impugned decision was taken without authority or shows some procedural or formal flaw, the Tribunal will interfere with the decision only if it is based on a mistake of fact or of law, overlooks some material fact, is an abuse of authority, or draws a clearly mistaken conclusion from the facts (see Judgments 1281, under 2, and 3016, under 7). It is therefore understandable that the complainants rely only on errors of judgement and the overlooking of material facts when a comparison was made of their respective powers and tasks in their old and new posts.

The complainants' arguments are not sufficient to convince the Tribunal that, as they contend, the disputed classification decisions breach the principle of equivalence underpinning the administrative reform. This principle is set forth in the penultimate paragraph of

section 2 of the office notice accompanying Rule of Application No. 35, which states that “[i]n practice, staff will be assigned with effect from 1 July 2008 to a new generic post with its associated grade-bracket corresponding to their former career bracket”. Nor have they established that when Eurocontrol transposed their grades it should have promoted them to a higher grade or classified their posts in a higher career bracket on account of their work and experience. On the contrary, it appears from the documentation produced before the Tribunal that Eurocontrol’s decision-making and advisory bodies which were responsible for introducing the new classification proceeded in accordance with the applicable rules.

8. The complainants further submit that the new classification of their duties has deprived them of all objective possibility of promotion.

This assessment of the consequences of the administrative reform at issue is mistaken. The reform has not had the effect of unreasonably restricting the promotion possibilities of the officials concerned, nor was it intended to do so. Section 1 of the office notice accompanying Rule of Application No. 35 makes this quite clear by stating that “[s]pecific measures have been taken to ensure that grade progression possibilities within the statutory career brackets which existed prior to the Administrative Reform are maintained”. The Tribunal finds no evidence in the complainants’ files that the transposition of their grades into the new career brackets had an adverse effect on their career or that, as they contend, their jobs no longer make them eligible for promotion. Inasmuch as under the old system there was an objective prospect of promotion to a higher grade, their assignment to a generic post in another classification system has not deprived them of that prospect.

The procedure for implementing the administrative reform which entered into force on 1 July 2008 and the new classification it entailed is summarised in the office notice accompanying Rule of Application No. 35. It may be inferred from this notice, from Rule of Application No. 35 and from Article 5(7) of the Staff Regulations that, by

including most job titles and generic posts in a career bracket and by defining jobs on the basis of main tasks and well-defined criteria, such as training, experience and skills, the administrative reform altered the former rules on promotion which established the principle of career advancement without changing job, functions or tasks. The reform changed this method of promotion by placing greater emphasis on performance, skills and the nature of the tasks pertaining to the various grades within a bracket. In particular, officials who have reached the highest grade in their career bracket can progress further in their career only by being appointed following a competition, in accordance with the terms and conditions set forth in Article 16a of Rule of Application No. 2 of the Staff Regulations, to another post in a new bracket, or through a job review justifying the reclassification of their post in a higher bracket.

The new rules on job classification have not therefore deprived the complainants of the prospect of career advancement within Eurocontrol. They can still be promoted in either of the circumstances outlined above.

It must be recalled that the Tribunal is not competent to review the advisability or merits of the changes which Eurocontrol has introduced in its staff management, for they form part of general employment policy which an organisation is free to pursue in accordance with its general interests (see Judgment 3225, under 6).

9. Furthermore, the submissions contain no evidence that any of the complainants would have been entitled to promotion when the change in his or her job title and grade was adopted. It was, however, only on this condition that the Director General would have had a duty to review the grade assigned to the person in question subject to the particular conditions laid down by Article 6 of Rule of Application No. 35, after obtaining the opinion of the Committee in charge of job management monitoring.

10. The complaints are therefore groundless and must be dismissed, as must the applications to intervene.

DECISION

For the above reasons,

The complaints and the applications to intervene are dismissed.

In witness of this judgment, adopted on 7 November 2013, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, Mr Seydou Ba, Judge, Ms Dolores M. Hansen, Judge, Mr Patrick Frydman, Judge, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Giuseppe Barbagallo
Claude Rouiller
Seydou Ba
Dolores M. Hansen
Patrick Frydman
Michael F. Moore
Hugh A. Rawlins
Catherine Comtet