

**116th Session**

**Judgment No. 3278**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr J. W. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 3 March 2011 and corrected on 17 May, and Eurocontrol's reply of 22 August 2011;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, 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 case are to be found in Judgment 3189, delivered on 6 February 2013, and in Judgment 2869, delivered on 3 February 2010.

On 1 July 2008, in the context of an administrative reform aimed in particular at placing greater emphasis on staff members' performance, Eurocontrol introduced a new structure in which the existing staff categories A, B, and C were replaced by categories A\*, B\* and C\*. The grades were grouped together in new career brackets,

which were broader than those they replaced and which partially overlapped one another. Thus, some grades appeared in two different career brackets. At the same time, Article 45 of the Staff Regulations governing Officials of the Agency, which deals with promotion, was amended in such a way that officials who had reached the highest step in their career bracket could no longer advance to the next career bracket by means of a promotion in the context of the annual promotion rounds, but only by obtaining a reclassification of their current post to reflect a change in their duties, or by applying for a vacant post in the next career bracket.

One other aspect of the reform should be mentioned. Since 1999, in pursuance of its job management policy, Eurocontrol had been evaluating all jobs within Eurocontrol with a view to defining standard job descriptions and grading each post according to the level of its responsibilities. Although the implementation of the policy had begun several years earlier, it was only when the administrative reform entered into force that the principles of job management were incorporated in the Staff Regulations by the addition of a new paragraph 7 to Article 5, and by the adoption of Rule of Application No. 35, which provided *inter alia* that, as of 1 July 2008, staff would be assigned to a new generic post with its associated career bracket corresponding to their former career bracket. Rule of Application No. 35 was published in Office Notice No. 26/08.

In practice, these changes were introduced in several stages. As a transitional measure, each staff member's grade was converted to its equivalent in the new grade structure on 1 July 2008. The decisions as to which career bracket staff would be placed in were not taken until April 2009. Finally, the nomenclature of grades was modified again with effect from 1 July 2010, but the career brackets remained unchanged.

The complainant was recruited before the administrative reform entered into force on 1 July 2008. He joined Eurocontrol in Brétigny-sur-Orge at grade B3 in 1989, and was promoted to grade B2 in July 1998. He was granted full-time release from his official duties to

enable him to pursue his activities as a staff union representative and member of the Staff Committee from 2002 until mid-2007, when he resumed duties as a Security Officer on a part-time basis. As from 1 July 2008 his grade B2 was converted to grade B\*8. He was informed by a decision of 28 April 2009 that the Director General had decided to assign him to the career bracket B\*5-B\*8 with effect from 1 July 2008. He thus found himself at the top of his career bracket.

During the summer of 2009 he lodged an internal complaint with the Joint Committee for Disputes, challenging the decision of 28 April on the grounds that it was procedurally flawed. In January 2010 he was notified that his appeal was accepted and that, consequently, his case had been submitted to the Committee in charge of job management monitoring to examine his assignment to a generic post and provide an opinion thereon; the decision of 28 April 2009 was therefore set aside and a new decision would be taken once the Committee in charge of job management monitoring had given its opinion.

By memorandum of 5 July 2010 the Principal Director of Resources acting by delegation of the Director General, informed the complainant that the Committee in charge of job management monitoring had concluded that the decision assigning him to a new career bracket following the entry into force of the administrative reform on 1 July 2008 was in line with Article 9 of Rule of Application No. 35, and that it was therefore confirmed.

On 5 October 2010 the complainant lodged an internal complaint against the decision of 5 July 2010 contending that his “real functions”, as described in his performance appraisal, had not been taken into account. He also alleged inter alia violation of Article 9 of Rule of Application No. 35, arguing that the Director General’s decision was based on an erroneous opinion of the Committee in charge of job management monitoring, because the Committee had not consulted his line manager as to the nature of their functions. He also contended that the decision to assign him to career bracket B\*5-B\*8 deprived him of any possibility of being promoted,

as he already held the highest grade in his career bracket. In addition, he criticised Eurocontrol for having taken no account of the Memorandum of Understanding Governing Relations Between Eurocontrol and three Representative Trade Unions (hereinafter “the Memorandum of Understanding”), which provides that an official’s career should not be harmed by his or her participation in trade union activities. Consequently, he asked that the contested decision be cancelled, that the procedure of assigning him a job title, a generic post and a career bracket be “carried out correctly” in consultation with the Committee in charge of job management monitoring taking into account his “real” functions and in line with the Memorandum of Understanding. He requested that any decision taken with respect to him should have retroactive effect from 1 July 2008, to allow him to participate in future promotion exercises.

As he received no reply from the Administration within the sixty-day period mentioned in Article VII, paragraph 3, of the Statute of the Tribunal, in March 2011 the complainant filed a complaint directly with the Tribunal impugning the implied decision to reject his internal complaint.

On 14 June 2011 the Principal Director of Resources, acting on behalf of the Director General, wrote to the complainant informing him that he had received the opinion of the Joint Committee for Disputes on his internal complaint and that he shared the views of the two members of the Joint Committee for Disputes who concluded that the Committee in charge of job management monitoring had correctly verified the transposition of his grade into the new career bracket as required by Article 9 of Rule of Application No. 35, and he had therefore decided to reject his internal complaint as unfounded.

B. The complainant objects to the decision to assign him to career bracket B\*5-B\*8 following the implementation of the administrative reform on the ground that his “real functions” do not correspond to those described for officials assigned to that career bracket. He explains that he was granted part-time release from his official duties of Security Officer to enable him to pursue his activities as a

staff union representative and Staff Committee member, and that his functions as a union representative do not correspond to any statutory job description.

The complainant alleges that the implementation of the administrative reform adversely affected his career prospects, and that Eurocontrol did not keep its promise of “improvement in careers”, which it made when developing the job management policy.

He indicates that Eurocontrol insisted on assigning him to a career bracket knowing that the job description it relied on to that end did not reflect his activities. Consequently, his “post” could never be reviewed “positively” by the Committee in charge of job management monitoring; hence, he is *de facto* deprived of the possibility of reclassification/promotion and will never be eligible again because of his activities as a union representative. He stresses that he is due to retire in 2014 at the latest, which means that the *de facto* decision to deny him any possibility of being promoted will have a negative impact on his and his wife’s pension rights.

He emphasises that the Tribunal held in Judgment 2869 that Eurocontrol had a duty to implement the Memorandum of Understanding through specific rules; however, to date no rules have been adopted. He contends that his situation has deteriorated further and that the Memorandum of Understanding is still not applied in his case. He claims compensation in that respect.

The complainant asks the Tribunal to set aside the contested decision, and to award him moral damages and costs. He also seeks material damages for “exclusion from promotion opportunities since 2000” and asks to be assigned a job title, generic post and career bracket taking into account the Memorandum of Understanding. He further asks to be included in promotion exercises as from 2009 or, alternatively, that Eurocontrol take a decision on his promotion request for 2007. He notes that in Judgment 2869 the Tribunal decided to set aside the decision not to promote him in 2007, which, in his view, means that the decision on his request for promotion is still outstanding.

C. In its reply Eurocontrol requests that the complaint be joined with other complaints pending before the Tribunal on the grounds that they serve the same purpose, i.e. contesting the classification carried out following the entry into force of the administrative reform on 1 July 2008.

It contends that the complaint is irreceivable insofar as the complainant's claims are based on the alleged violation of the Memorandum of Understanding, the Agency's alleged failure to execute Judgment 2869 and his "lack of promotion" since 2000. These issues were not raised during the internal appeal proceedings.

On the merits Eurocontrol asserts that the complainant's position was classified in accordance with Rule of Application No. 35 and that it was correctly placed in career bracket B\*5-B\*8. Eurocontrol explains that, in accordance with Article 9 of Rule of Application No. 35, the Committee in charge of job management monitoring checked that each generic post's description corresponded to the career bracket assigned to it. For each individual case, it consulted the line managers concerned to obtain their comments on whether or not the generic post and the career bracket to be assigned to an official in the new structure were appropriate. It stresses that Article 9 does not provide that each official's situation should be reviewed to determine whether his or her functions in category A\*, B\* or C\* are fully in line with those he or she performed in category A, B or C. A table indicating corresponding grades was annexed to Rule of Application No. 35 and was prepared taking into account the posts existing prior to 1 July 2008.

Eurocontrol considers that the "right to make a career" still exists following the implementation of the administrative reform. It indicates that, in accordance with Article 6 of Rule of Application No. 35, a description of functions and job evaluation may be re-examined at the initiative of the line management.

Lastly, Eurocontrol states that, in Judgment 2869, the Tribunal required it to set out specific measures concerning the promotion of officials who were full-time staff union representatives. However, there is no longer any official in that position within Eurocontrol.

## CONSIDERATIONS

1. The complainant impugns the implied decision of the Director General to dismiss his internal complaint which he filed following the Director General's decision of 5 July 2010, confirming the classification of his post in a new career bracket with effect from 1 July 2008 (following a reclassification exercise which transposed the career brackets for posts at Eurocontrol). The complainant's internal complaint was filed in early October 2010. Having received no response from Eurocontrol, the complainant filed his complaint before the Tribunal on 3 March 2011. The Joint Committee for Disputes met on 29 March 2011 and presented its report on 28 April 2011. In a memorandum dated 14 June 2011, the complainant was notified of the Director General's explicit decision to uphold the opinion of the two members of the Joint Committee for Disputes "who [felt] that the Committee in charge of job management monitoring correctly verified the transposition of the grades into the new career bracket as provided for in the second indent of Article 9 of Rules of Application Nos. 35 and 35a, and who recommended that [the] complaint be rejected as unfounded". There being no objection, it is convenient to treat the complaint as directed against the decision communicated by the memorandum of 14 June 2011.

Eurocontrol requests the Tribunal to join the present complaint with a series of complaints having the same purpose, "i.e. to contest the classification carried out following the transposition of jobs into the new nomenclature which entered into force in July 2008". The Tribunal finds that as the present complaint differs sufficiently in fact and in law from the others (see Judgments 3275 and 3277, also delivered this day) it should be considered separately.

2. According to the Opinion of the Joint Committee for Disputes, dated 28 April 2011:

"[s]ince the entry into force of the Administrative Reform at EUROCONTROL on 1.7.08, the posts of officials and servants have been subject to the provisions of the service regulations and Rules of Application concerning job management as set out in Article 5.7 of the

Staff Regulations and Article 4.5 of the General Conditions of Employment (hereinafter referred to as the service regulations) and also in the corresponding Rules of Application (Nos. 35 and 35a).

In accordance with these provisions, each official or servant was, by individual decision, assigned a grade in the new grade structure. Furthermore, the table annexed to Rule of Application No. 35 (or 35a) indicated the correspondence between the job title provided for in Annex XIII.1 and the generic post, and the corresponding grade bracket.

At its meeting on 1.12.09, the Committee considered the complaints of 81 officials and 2 servants against the decision assigning them to a generic post and the career bracket corresponding to that post on the basis of the applicable provisions. The Committee concluded that there had been a '*procedural irregularity*' in the process of determining the generic posts and the corresponding grade brackets, and recommended that the Committee in charge of job management monitoring should, in the case of the complainants only, carry out the examination which had not been carried out.

In line with this recommendation, the Committee in charge of job management monitoring met to examine the complainants' cases. The conclusions of this examination, and a new decision, dated 5.7.10, confirming the classification in the career bracket made on 1.7.08, were sent to the complainants.

Now, 36 officials and 1 servant are contesting the new decision, dated 5.7.10, and are arguing that the Committee in charge of job management monitoring did not examine in detail the applicable classification criteria, as a result of which the generic post and career bracket do not correspond to the nature of the work actually done. They conclude from this that they are suffering financial loss, as a result *inter alia* of the absence of any possibility of promotion to a higher grade."

The Joint Committee for Disputes concluded as follows:

"The members of the Committee are unable to reach a unanimous decision.

On the basis of the above deliberations, two members feel that the Committee in charge of job management monitoring should have carried out an analysis allowing a possible reassessment of the posts, and that the complaints are therefore well founded.

The other two members, however, consider that the Committee in charge of job management monitoring correctly verified the transposition of grades into the new career brackets as provided for in the second paragraph of Article 9 of Rules of Application Nos 35 and 35b. Consequently, in the opinion of the two members concerned, the complaints must be rejected."



3. The complainant requests cancellation of the impugned decision and the correct application of the procedure for assigning grade brackets based on his functions and his rights under the Memorandum of Understanding. He asks to be included in promotion exercises as from 2009 onwards, or that a decision be taken by Eurocontrol on his request for promotion for 2007. He claims moral damages, material damages due to past and future exclusion from the possibility of promotion, also taking into account his retirement in 2014. He further seeks costs.

4. The grounds for complaint are:

- (a) the impugned decision puts the complainant in a career bracket below that which corresponds to his functions and previous grade, without basing the decision on any reference to the complainant's functions and experience, or indicating the precise justification for the allocation;
- (b) the complainant has lost the possibility of a career progression;
- (c) Eurocontrol has broken all promises made to staff regarding careers.

The complainant also raises the grounds that, being a staff union activist, the transposition of his grade should have taken into account the Memorandum of Understanding, as well as the fact that his grade was not attached to any job description and therefore should not have been transposed without an in-depth examination of his particular functions.

5. Eurocontrol considers the complaint irreceivable insofar as it challenges the complainant's lack of a promotion since 2000, the alleged failure to respect the Memorandum of Understanding, and the non-enforcement of Judgment 2869, as these issues were not raised in his internal complaint. Eurocontrol sees his complaint as receivable only insofar as it concerns the classification in the career bracket as confirmed by the 5 July 2010 decision, challenged in his internal complaint.

6. As the complaint fails on the merits the Tribunal will not treat the question of receivability.

7. The provisions which regulate the present case are: Article 9 of Rule of Application No. 35 concerning job management, the penultimate paragraph of Section 2 of Office Notice No. 26/08, and Article 5 of the Staff Regulations. Article 9 of the Rule of Application provides as follows:

“[w]ith 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 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, Military Service),
- the official shall be assigned by the Director General, after the latter has consulted the Committee constituted pursuant to Article 7 above, to a generic post as provided for in Article 3 of the present Rule of Application,
- [...]”

Office Notice No. 26/08 states, in relevant part:

“[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.”

Article 5 of the Staff Regulations provides:

“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’).

[...]

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.

[...]"

8. The Tribunal is of the opinion that the complaint is unfounded. Annex XIII, Part 2, Article 2, paragraph 1, to the Staff Regulations indicates that posts graded B2 were to be renamed B\*8 during the transition period. Grade B\*8 was then renamed AST8 following the administrative reform. The problem arises with the fact that, in the new career brackets, some of the grades (including B\*8/AST8) overlap between brackets. The initial decision of 1 July 2008 was annulled when the Director General endorsed the Joint Committee for Disputes' finding of "procedural irregularity" in the assessment proceedings, as it was shown that the Committee in charge of job management monitoring had not met prior to giving its opinion to the Director General regarding the content of the job description and the grading of the post in accordance with Article 7 of Rule of Application No. 35. The second decision, dated 5 July 2010 (made after having followed the procedure required of the Committee in charge of job management monitoring), confirmed the initial grading transpositions of 1 July 2008. In his second internal complaint, the complainant again requested clarification and justification for the new grading assignments, particularly as it affected those in grades with overlapping brackets. The Tribunal finds that the decision of 5 July 2010, and the subsequent decision of considers June 2011, are lawful given that Eurocontrol, in implementing the administrative reform, as the Tribunal pointed out in Judgment 3189, and in Judgment 3275, delivered this day, limited itself to a transposition proceeding in accordance with Annex XIII, Part 2, Article 2, paragraph 1, to the Staff Regulations. Regarding the overlapping grades Eurocontrol followed the general criterion to classify an official who had already reached the highest grade in her/his career in the previous

nomenclature at the corresponding grade but in a career bracket in which that grade was the highest.

As such, the Tribunal concludes that the classification of the complainant's post in the higher grade of the career bracket B\*5-B\*8 and then AST5-AST8, was made in accordance with the above-mentioned provisions.

The other arguments raised by the complainant are not relevant as they could not be considered by Eurocontrol in the transposition proceeding which was conducted in accordance with the above-mentioned rules.

In light of the foregoing considerations the complaint must be dismissed.

#### DECISION

For the above reasons,  
The complaint is 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