Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

119th Session **Judgment No. 3405**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms A. D. and Ms G. I. (her second) against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 10 August 2012 and corrected on 11 September, Eurocontrol's reply of 21 December 2012, the complainants' rejoinder of 8 February 2013 and Eurocontrol's surrejoinder of 17 May 2013;

Considering the complaints filed by Ms A. D. (her second) and Ms G. I. (her third) against Eurocontrol on 30 October 2012, Eurocontrol's reply of 8 February 2013 and the letter of 19 March 2013 in which the complainants informed the Registrar of the Tribunal that they would not file a rejoinder;

Considering the applications to intervene filed by Mr V. B., Ms V. G.-S., Ms E. K., Ms A. M., Mr B. R. and Ms C. R., Eurocontrol's comments thereon of 22 February and 26 April 2013, the comments of Ms V. G.-S. of 26 March 2013 and Eurocontrol's final comments of 19 April 2013;

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

Having examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainants entered the service of Eurocontrol in 2005 and 2003 respectively. They are both married. One has one dependent child;

the other has two dependent children. In both cases their husband, who works for the European Commission, receives the dependent child allowance for which provision is made in the Staff Regulations of Officials of the European Communities.

The complainants were reminded by an internal memorandum of 15 December 2011 that when a spouse of a Eurocontrol official works for another international organisation, "the organisation employing the official who holds the higher grade pays the allowances" for dependent children, but that the corresponding "tax deduction" applies to both officials. They were advised that, following an analysis of their file, their situation had to be amended with regard to that "tax deduction" and that their new situation would be reflected in their salary slip as from 1 January 2012.

In January 2012 the complainants asked to receive the above-mentioned tax deduction as from the date on which they had joined the Organisation. On 27 February 2012 the Head of the Regulations and Rules Unit replied that their request could not be granted. She explained that the decision to grant "tax relief in respect of their dependent child(ren)" to all officials who had one or more dependent children and who did not receive family allowances from Eurocontrol because their spouse who was working for another international organisation was receiving such allowances, was a "social security measure" and did not "reflect any legal obligation stemming from provisions of the Staff Regulations/GCE or Rules of Application in force at Eurocontrol".

On 14 March each of the complainants lodged an internal complaint in which they accused Eurocontrol of failing to respect its obligations with regard to remuneration and of having flouted the principle of equal treatment. On 10 August 2012 they each filed a complaint with the Tribunal, impugning the implied decision to reject their internal complaints.

In the meantime the Joint Committee for Disputes had delivered its opinion on 5 July 2012. Two of its members recommended that the above-mentioned internal complaints should be allowed, while the other two recommended that they should be dismissed as unfounded.

The Committee also stated that it supported the proposal of the Directorate of Resources to rectify the situation of officials now benefiting from the tax relief "as from the first day of the three-month period preceding the lodging" of the internal complaints, in other words as from 1 December 2011.

The Director General informed the complainants by internal memoranda dated 7 August 2012 that he had decided to dismiss their internal complaints. However, he advised them that, as a gesture of good will, he had decided to accept the "recommendation" that they should be granted the tax relief as from 1 December 2011. This is the decision which the complainants impugn in the complaints which they filed on 30 October 2012.

B. The complainants submit that the decision not to grant them tax relief for dependent children as from the time they joined the Organisation breaches Article 3(2) b) ii) of Annex V to the Staff Regulations governing officials of the Eurocontrol Agency, which specifies that the dependent child allowance is deducted from the basic taxable amount. Moreover they accuse Eurocontrol of not having respected the principle of equal treatment, as, according to them, several of their colleagues whose spouse is an official of another international organisation holding a higher grade received tax relief for dependent children before the publication of the internal memorandum of 15 December 2011.

The complainants request the setting aside of the decisions – implied or express – rejecting their internal complaints of 14 March 2012 and of the decision of 27 February 2012. They ask the Tribunal to order Eurocontrol to pay them a sum equivalent to the difference between the salary which they received as from the date on which they were granted tax relief for dependent children and that which they had received until that date, as from the date on which they declared that they had dependent children. They ask for interest for late payment of that sum and claim costs.

C. In its replies Eurocontrol emphasises that the fact that the complainants did not receive tax relief for dependent children before 1 December 2011 had "an effect which was reflected" in each of the payslips which they received up until that date. As the complainants did not challenge those payslips – which, according to Judgment 1408 are decisions subject to appeal – within the three-month time limit established by Article 92(2) of the Staff Regulations, the Organisation submits that the complaints are time-barred and hence irreceivable in respect of the period prior to 1 December 2011.

On the merits, Eurocontrol contends that, since the Staff Regulations make no provision for tax relief for dependent children, the complainants were not entitled to it until it was granted to them on social grounds. It adds that, insofar as it paid them no dependent child allowance, the complainants could not receive any deduction in respect of that allowance from the basic taxable amount pursuant to Article 3(2) b) ii) of Annex V to the Staff Regulations. In addition, while it acknowledges that some officials might have derived an "indirect financial advantage" which could easily be regarded as tax relief for dependent children, this was in fact a mistake on which the complainants cannot rely in order to derive any benefit. Eurocontrol requests the joinder of the four complaints.

D. In their rejoinder the complainants maintain that their situation is different to that described in Judgment 1408 and they endeavour to demonstrate that their complaints are receivable. On the merits they enlarge on their pleas.

E. In its surrejoinder Eurocontrol maintains its position.

CONSIDERATIONS

1. In two complaints filed with the Tribunal on 10 August 2012 the complainants impugn the implied decision to reject their internal complaints regarding the tax relief for dependent children which they

had claimed retroactively as from the date on which they had joined Eurocontrol.

2. After having been notified of the decision of 7 August 2012 explicitly rejecting their internal complaints, on 30 October 2012 the complainants filed new complaints with the Tribunal which have the same purpose as their first complaints.

3. As the various complaints contain identical submissions, it is convenient that they be joined in order that they may form the subject of a single judgment.

4. Article 62 of the Staff Regulations governing officials of the Eurocontrol Agency specifies that family allowances, which may include the dependent child allowance, form part of officials' remuneration. However, if the spouse of a Eurocontrol official works for another international organisation, it is the organisation employing the official with the higher grade which pays the dependent child allowance. In order to avoid any double payment or overpayment, the organisation employing the official with the lower grade deducts the allowance paid by the other organisation.

5. Annex V to the Staff Regulations, entitled "Determination of the amount and method of levy of the tax on Eurocontrol staff remuneration", specifies in Article 3 that:

"[…]

2. The following shall be deducted from the basic taxable amount:

[…]

b) The following allowances and benefits:

[…]

ii) dependent child allowance

[…]"

6. The complainants, who entered the service of Eurocontrol on 1 January 2005 and 1 January 2003 respectively, both have dependent children and a spouse working for another international organisation

where he holds a higher grade. They had received no dependent child allowance or tax relief for dependent children since they were recruited.

7. One of the complainants, who alleges that she learnt that one of her colleagues at Eurocontrol who has children and whose husband has a higher grade and works for another international organisation, was receiving tax relief for dependent children as was her husband, asked in an e-mail of 27 September 2011 to be granted such relief retroactively as from the date of her recruitment.

8. In an internal memorandum of 15 December 2011, addressed to all officials in the same situation as the above-mentioned complainant, the Head of the People Management Division informed those officials, in substance, that a thorough analysis of their file had revealed that their situation had to be amended with regard to the "tax deduction" for their dependent children, that their file had been updated accordingly and that this would be reflected in their payslip as from 1 January 2012.

9. On receipt of the aforementioned memorandum, the two complainants asked the Head of the Regulations and Rules Unit to review their situation and to grant them the tax relief as from the date of their recruitment. Their requests were denied.

10. The Joint Committee for Disputes, to which their internal complaints were referred, issued a divided opinion on 5 July 2012, with two of its members recommending dismissal of the complaints as unfounded, while the other two considered that they should be allowed. However, the Committee stated that it supported "the proposal of the Directorate of Resources to rectify the situation of the 10 persons whose file had been updated as from 1 December 2011, that is to say as from the first day of the three-month period preceding the lodging of the internal complaint".

11. The complainants ask the Tribunal not only to set aside the decisions rejecting their internal complaints, but also to order Eurocontrol to pay the difference between the salary which they received

as from 1 December 2011, which includes tax relief for dependent children, and the salary which they had received up until that date, as from the date on which they declared that they had dependent children, plus interest for the late payment of that sum. They also claim costs.

12. The complainants request the holding of an oral hearing.

In view of the sufficiently clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

13. Six applications to intervene have been filed.

Eurocontrol comments that, while two of the interveners are in a situation similar to that of the complainants, this is not true of the others.

14. Relying on Judgment 1408, Eurocontrol contends that the complaints are irreceivable with regard to the period prior to 1 December 2011. In its opinion, as the tax relief was reflected in their salary slips, the complainants should have complied with the time limits for challenging them. As they failed to do so in respect of the period prior to 1 December 2011, their complaints must be declared irreceivable.

15. This objection to receivability is well founded, as under Article 92(2) of the Staff Regulations an internal complaint must be lodged within a three-month period which starts to run as from the receipt of each payslip (see Judgment 1408, under 8). In this case the complainants did not lodge their internal complaints until 14 March 2012. As the Director General rightly found in the impugned decision, the complainants could therefore claim the disputed tax relief only as from 1 December 2011.

16. As the Tribunal has repeatedly stated, for example in Judgments 602, 1106, 1466, 2722 and 2821, time limits are an objective matter of fact and it should not rule on the lawfulness of a decision which has become final, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. In

particular, the fact that a complainant may not have discovered the irregularity on which he or she purports to rely until after the expiry of the time limit is not in principle a reason to deem his or her complaint receivable (see, for example, Judgments 602, under 3, and 1466, under 5 and 6).

17. It is true that the Tribunal's case law as set forth in Judgments 1466, 2722 and 2821 allows exceptions to this rule where the complainant has been prevented by *vis major* from learning of the impugned decision in good time (see Judgment 21), or where the organisation, by misleading the complainant or concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith (see Judgment 752). However, none of these conditions were met in this case.

18. As the salary slips preceding that of December 2011 were not challenged within the time limit laid down in Article 92 of the Staff Regulations, both complaints must be dismissed as irreceivable because internal means of redress have not been exhausted, as required by Article VII, paragraph 1, of the Statute of the Tribunal, without there being any need to rule on any other issue.

19. The applications to intervene must therefore also be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 14 November 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

(Signed)

CLAUDE ROUILLER SEYDOU BA PATRICK FRYDMAN

DRAŽEN PETROVIĆ