

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**P.**

**v.**

**Eurocontrol**

**123rd Session**

**Judgment No. 3730**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr L. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 6 May 2014, Eurocontrol's reply of 5 September, the complainant's rejoinder of 14 November 2014, Eurocontrol's surrejoinder of 23 February 2015, the complainant's further submissions of 13 May 2016 and Eurocontrol's final observations thereon of 2 September 2016;

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 may be summed up as follows:

The complainant contends that Eurocontrol withdrew his title and duties as Head of Section.

At the material time, the complainant was assigned to the generic post of Advanced Technical Assistant, at grade AST6 in the AST5-AST8 bracket, in the Information and Communication Services (ICS), Directorate of Resources. By an e-mail dated 27 March 2012, the Head of ICS announced that the complainant would assume new responsibilities and "take the lead" of a section of ICS as from 1 May 2012.

On 6 May 2013 the complainant, who had been promoted in the 2012 promotion exercise to grade AST7 with effect from 1 July 2012 while retaining his generic post, signed his appraisal report for 2012. The report stated that he had assumed the duties of Head of Section at the end of the first quarter and that the development of his role within ICS should lead in due course to his grade bracket being aligned with his responsibilities as Head of Section.

On 3 October 2013 the complainant had a meeting with two officials from the Directorate of Resources. In an e-mail of the same day, one of the officials confirmed that, since he held grade AST7, under the applicable rules he could not properly be granted the title and responsibilities of Head of Section, which corresponded to grade bracket AD8-AD11. She added that in order to correct the “error” thus identified, the title of “Head of Section”, which appeared under the complainant’s name in the ICS organisational chart, would have to be removed. However, “[i]n recognition of the evolution of [his] tasks [...] and his involvement in task and team management”, she told him that the Directorate of Resources proposed that “an official decision” be taken assigning him the generic post of Advanced Supervisor in the AST5-AST8 grade bracket, which would entail a redefinition of his professional objectives for 2013.

By a decision of 9 October 2013, the Head of the People Management Division, stating that he was acting with delegation of authority from the Director General, informed the complainant that, in view of “the request of the Principal Director of Resources” dated 3 October 2013, he would be reassigned to the generic post of Advanced Supervisor as from 1 October 2013. He specified that the complainant would retain his grade, step and assignment. This decision was also signed by the Principal Director of Resources.

On 10 December 2013 the complainant lodged an internal complaint. He submitted that, given that he had been performing the duties of Head of Section since 1 April 2012, he was entitled to be classified within the AD8-AD11 grade bracket. Yet as a result of the decision of 9 October, he had been “downgraded to Advanced Supervisor”, despite the fact that his duties had not changed. In his view, this “downgrading” resulted from a “cosmetic repackaging of [his] duties and title”, and on this point

he referred to the e-mail of 3 October containing the “instructions to deprive [him] of the re-evaluation of [his] grade”. He added that the said decision was a hidden disciplinary measure and had been taken in circumstances that “offended [his] dignity”, and he claimed to be suffering from “significant stress, which [was] affecting [his] health”. He therefore sought reinstatement in his “title and duties” as Head of Section within ICS or an equivalent service; the re-evaluation of his salary, with effect from 1 April 2012, to bring it into line with that of a Head of Section within the AD8-AD11 grade bracket; correction of his pay slips; compensation for moral injury; and reimbursement of all future medical expenses.

Having received no reply from Eurocontrol, the complainant filed his complaint on 6 May 2014.

The complainant requests that the implied decision to dismiss his internal complaint be quashed and he reiterates his claims for reinstatement as Head of Section, re-evaluation of his salary and correction of his pay slips accordingly. Failing this and “quite subsidiarily”, he seeks the payment of a differential allowance for the period from 1 April 2012 to 9 October 2013 and the correction of his pay slips. In any event, he requests that Eurocontrol be ordered to pay him 25,000 euros in compensation for the moral injury that he considers that he has suffered and to defray all “medical and assistance costs” incurred to date or in future as a result of the decision of 9 October 2013. Lastly, he claims 7,500 euros in costs.

Eurocontrol submits that the complaint should be dismissed as groundless.

### CONSIDERATIONS

1. The complainant’s main plea is that the decision of 9 October 2013 constitutes an abuse of authority and is unlawful because the officials who signed it did not have a valid delegation of authority or power of signature.

The decision in question, the title of which indicates that in principle it is within the competence of the Director General, bears the signature of the Head of the People Management Division, who states that he is

acting with delegation of authority from the Director General, and the signature of the Principal Director of Resources.

As an annex to its reply, Eurocontrol has produced a decision of 1 March 2011 by which the Principal Director of Resources, who himself has a delegated power of signature from the Director General by virtue of a decision of 1 February 2009, lawfully subdelegated to all the “Heads of Area, Heads of Unit and Heads of Section” reporting to him the authority to sign documents within their areas of responsibility. The Head of the People Management Division thus had the authority to take the decision of 9 October 2013 concerning the complainant’s reassignment on the Director General’s behalf.

The complainant does not dispute the validity of the decision of 1 February 2009 delegating the power of signature, which the Tribunal has already examined in Judgment 3201, but contends that the power had lapsed when the decision of 9 October 2013 was taken since it had not been renewed by the new Director General who took office on 1 January 2013.

The Tribunal notes that the delegation of power of signature of 1 February 2009 was not withdrawn by the new Director General. In an international organisation, such a delegation is institutional rather than personal. It hence continues to operate after the delegator has left office and until one of his or her successors decides to withdraw it.

The complainant’s main plea is hence groundless.

2. Subsidiarily, the complainant points out that the title of the generic post to which he was reassigned, “Advanced Supervisor” (in French, *superviseur avancé*), does not appear in the French version of Annex I to the Staff Regulations governing officials of the Eurocontrol Agency, which lists types of posts. He further submits that the Agency breached Article 5(7) of the Staff Regulations by failing to consult the Staff Committee on the duties and powers attaching to the generic post to which he was reassigned.

A summary table showing the types of posts in the General Service is given in Annex I to the Staff Regulations. It is true that in the French version of the Staff Regulations, this table does not include “*superviseur avancé*” as a type of post that can be held at grade AST7 but lists only

“*superviseur qualifié*”. In contrast, the designation “*superviseur avancé*” appears in the detailed table provided in Rule of Application No. 35 concerning job management as from 1 July 2010, which lists the types of generic posts and includes a description of each of these. The designation applies to a generic post in the AST5-AST8 grade bracket, which covers the complainant’s grade of AST7.

It thus matters little that this designation does not appear in Annex I to the Staff Regulations, which merely lists types of posts for which, pursuant to Article 5(7) of the Staff Regulations, a job description is to be drawn up, as was done in Rule of Application No. 35. Indeed, Article 5(7) of the Staff Regulations gives the Director General the authority to determine the duties and powers attaching to each type of post and its level expressed in a grade or grades, and, to that end, the Director General must consult the Staff Committee. However, the complainant’s objection to the fact that the Committee was not consulted before he was reassigned to the generic post of “*superviseur avancé*” is groundless. Indeed, the wording of Article 5(7) of the Staff Regulations leaves no doubt that once the Director General has drawn up a description of the duties and powers attaching to each type of post in Rule of Application No. 35, he or she is under no obligation to seek the opinion of the Staff Committee on the implementation of that Rule in individual cases.

This plea is therefore likewise groundless.

3. Also subsidiarily, the complainant asserts that, as he had plainly performed the duties of Head of Section since April 2012, the Agency denied his right to be promoted to at least grade AD8. He claims that in being kept at grade AST7, he was deprived of “fair remuneration”, and that this has placed him in a discriminatory situation by comparison with officials holding the generic post of Head of Section. He also considers that the decision of 9 October 2013 is a hidden sanction, constitutes moral harassment and was taken without authority.

4. The complainant entered Eurocontrol’s employment on 1 August 2008 and until 1 October 2013 held the generic post of Advanced Technical Assistant in the AST5-AST8 grade bracket in ICS, Directorate

of Resources. However, his appraisal report for 2012, drawn up in May 2013, indicates that his post is that of Head of Section. In the summary of the report, the complainant's appraiser notes that in 2012 his level of responsibility rose to that of Head of Section. The complainant says in his comments that he is delighted with his new post of Head of Section and the results achieved in a few months. More generally, the complainant's promotion to Head of Section seems to have been recognised within ICS. Indeed, on 27 March 2012 an e-mail announced to ICS staff that the complainant would "take the lead" of a section with effect from 1 May 2012. He was also described as Head of Section in ICS organisational charts.

5. However, this does not mean that the complainant was given assurances that he would be promoted to grade AD8 in the AD8-AD11 grade bracket within which the generic post of Head of Section is situated.

Furthermore, the complainant does not claim to fulfil the eligibility criteria set out in Article 5(3)(c) of the Staff Regulations for promotion to a post within the AD8-AD11 grade bracket. Nor has it been shown that such a promotion could have been made by way of a derogation to the aforementioned Article 5(3)(c) pursuant to Article 45a(1) of the Staff Regulations.

6. Nevertheless, the behaviour of the complainant's superiors, whom he was entitled to presume had authority, maintained his belief that they would take the necessary steps to have him promoted to the generic post corresponding to the duties entrusted to him, or that he would be granted a differential allowance, which he claims for the first time in these proceedings.

As such a promotion procedure was not feasible under Article 5(3)(c) or Article 45a(1) of the Staff Regulations, the complainant was unduly kept in an illusory position for an excessively long time, which undeniably constituted a substantial affront to his dignity.

Although the complainant's pleas of discrimination, punishment, harassment and abuse of authority must be dismissed as clearly unfounded, it may be accepted that the situation caused him moral injury that must be redressed.

7. The complaint must therefore be partly allowed for the reason stated in the preceding consideration, and Eurocontrol will be ordered to pay the complainant moral damages in the amount of 15,000 euros.

As the complainant succeeds in part, he is also entitled to an award of costs, set at 4,000 euros.

8. All other claims must be dismissed.

#### DECISION

For the above reasons,

1. Eurocontrol shall pay the complainant 15,000 euros in moral damages.
2. It shall also pay him 4,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 7 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

*(Signed)*

CLAUDE ROUILLER      PATRICK FRYDMAN      FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ