

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D.-E. (No. 6) and G. (No. 5)

v.

Eurocontrol

126th Session

Judgment No. 4017

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms N. D.-E. (her sixth) and Ms F. G. (her fifth) against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 30 April 2015, Eurocontrol's replies of 28 August, the complainants' rejoinders of 16 December 2015 and Eurocontrol's surrejoinders of 6 April 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 none of the parties has applied;

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

The complainants challenge the decisions not to promote them during the 2014 promotion exercise.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, details of which are to be found in Judgment 3189. At that juncture, non-operational staff categories B and C were replaced, for a two-year transitional period, by categories B* and C*. On 1 July 2010, at the end of this transitional period, these two categories were merged in the Assistant group (AST), which comprises 11 grades (AST1 to AST11) arranged in various grade brackets. At the material time, the complainants, officials who had previously been in C category, were classed in grade AST5 in the AST2-AST5 bracket.

Office Notice No. 5/14 was published on 10 April 2014. In essence it announced that a procedure for grade promotion would be organised for 2014 and, for that purpose, the list of staff eligible for promotion would comprise those officials and servants who in 2014 had at least two years' seniority in their grade and were not yet in the last grade of their respective career brackets as defined in their job descriptions. The list of Eurocontrol staff eligible for promotion was published on 17 April 2014. As the complainants' names were not on it, they each lodged an internal complaint in June. They requested the cancellation of this list and the holding of a promotion exercise in which their merits would undergo comparative examination.

The Joint Committee for Disputes, to which several internal complaints had been referred, including those of the complainants, issued its opinion on 18 December 2014. Two of its members recommended that the internal complaints should be allowed in accordance with the "principle of legitimate expectations" and the "right to a career", whereas the other two recommended that they should be dismissed on the grounds that the complainants had reached the last grade in their grade bracket and were thus not eligible for promotion under Rule of Application No. 4 concerning the procedure for grade promotion provided for in Article 45 of the Staff Regulations governing officials of the Eurocontrol Agency. The Committee also unanimously recommended that the Director General should clarify the complainants' situation in light of Article 9 in Part 2 of Annex XIII to the Staff Regulations, which provides that officials in service in category C before 1 July 2008 "may be promoted or appointed up to grade AST7", since the complainants alleged that this provision had been breached. The complainants were informed by two memorandums of 2 February 2015, which constitute the impugned decisions, that the Director General had decided to endorse the position of the two members of the Joint Committee for Disputes who recommended the dismissal of their internal complaints.

The complainants each filed a complaint with the Tribunal on 30 April 2015. They ask it to set aside the impugned decisions, the list of staff eligible for promotion in the 2014 exercise and all the subsequent

decisions adopted in the course of that exercise, including the list of staff who were promoted. They also each request the payment of moral damages and costs.

Eurocontrol asks the Tribunal to join the two complaints. With regard to their receivability, it contends that the complainants have not exhausted internal means of redress in respect of their claim seeking the cancellation of all subsequent decisions adopted in the 2014 promotion exercise, including the list of officials who were promoted, and that this claim is tantamount to asking the Tribunal to order it to promote them. It also holds that the complaints are “manifestly irreceivable, frivolous and redundant”, given that the Tribunal has already ruled on the issue of promotion beyond a given grade bracket in the AST category in Judgments 3404 and 3495. Lastly, it submits that all the other claims are unfounded.

CONSIDERATIONS

1. The complainants challenge their non-inclusion on the list of staff eligible for promotion in 2014, which was published in April 2014 in the wake of Office Notice No. 5/14.

2. Eurocontrol requests the joinder of the two complaints. The complainants have no objections. The two case files show that the complaints basically seek the same redress and rest on the same submissions. They may therefore be joined to form the subject of a single judgment.

3. In support of their complaints the complainants allege a failure to respect their right to career advancement, breach of Article 45 of the Staff Regulations, breach of Article 9 in Part 2 of Annex XIII to the Staff Regulations, and breach of the principle of equal treatment and the duty of care.

4. With regard to the breach of Article 45 and failure to respect the right to career advancement, the following was stated by the Tribunal in Judgment 3404:

“10. The defendant organisation replies that the complainant does not fulfil the three conditions of eligibility for promotion in the year in question. Although he has not reached grade AST11, the last grade in his category, he does not meet one of the conditions laid down in Article 45 of the Staff Regulations, namely that the higher grade to which he aspires must, “as a rule”, be in the grade bracket as defined in the job description, since he holds grade AST10, which is at the top of the career bracket AST8-AST10 to which his post belongs.

11. The above-mentioned Article 45 states that “[t]he next higher grade should, as a rule, be within the grade bracket as defined in the job description”.

12. The complainant submits that the phrase “as a rule” does not mean that promotion to a grade in a higher bracket is prohibited.

13. The Tribunal considers that the aforementioned text must be construed as meaning that the stated principle is the rule, but that it is permissible, in some special cases, to depart from that rule. That text did not, however, prevent the Director General from deciding, as he did in Office Notice No. 10/12, not to depart from the rule in 2012, as this decision applied only to one specific year.

The complainant’s argument in this respect is therefore [...] unfounded.”

Having reiterated this reasoning in consideration 13 of Judgment 3495 concerning one of the complainants in the instant case, the Tribunal held in Judgment 3659 concerning the 2013 promotion exercise that:

“6. In the [...] two judgments [3404 and 3495], the Tribunal found that, quite apart from the fact that officials may always participate in a competition or request the reclassification of their post, the Director General had not breached Article 45 of the Staff Regulations or the complainants’ right to career advancement by excluding them from the list of staff members eligible for annual promotion on the grounds that they had reached the top of their career bracket.

There is no reason to depart from that precedent in the present case, since this provision [...] [is] consistent with the aims of the administrative reform carried out in 2008, namely to end the practice of automatic promotion while not ruling out the possibility of making exceptions in order to enable particularly well-qualified officials to move up to the next grade in another bracket within their function group [...].

7. In the structure introduced by the administrative reform which entered into force at Eurocontrol on 1 July 2008, officials are classed in hierarchical grade brackets, each of which corresponds to a clearly defined category of functions. In the same way that an official who has reached the pinnacle of her or his career can no longer hope for promotion, a Eurocontrol official who has reached the top of her or his grade bracket does not, in principle, have any possibility of moving into a higher grade.

8. The exception to this rule allowed by Article 45 of the Staff Regulations is a matter for the discretion of the Director General, which he must exercise within the limits established by the Rules of Application of the Staff Regulations (see Judgment 3666, [under 6]). [...]"

The Tribunal considers that, although the Organisation may not lawfully preclude any possibility of promotion year after year for officials who have reached the top of their grade bracket, since as stated in the above-mentioned judgments the Staff Regulations make provision for such promotions in exceptional cases, it was open to it to decide once more that they could not be granted by the Director General in the 2014 promotion exercise.

5. The Tribunal also considers that there has been no breach of Article 9 in Part 2 of Annex XIII to the Staff Regulations. In this connection, it recalls Judgment 3655, under 8, where it stated with reference to this provision that “the complainant [was] wrong to rely on a provision allowing the possibility for officials whose post, like hers, was classed in the former staff category C, to be promoted or appointed up to grade AST7. This was a transitional provision which ceased to apply on 1 July 2010.”

6. The plea that the principle of equal treatment has been breached cannot be allowed either, for the complainants offer no evidence that officials in a position similar to theirs were eligible for promotion in 2014 (see Judgments 3659, under 8, and 3404, under 17).

7. The Tribunal considers that the allegation that the duty of care has been breached is unfounded, as by reason of Office Notice No. 05/14 the complainants could not lawfully be included on the list of

officials eligible for promotion in 2014 (see Judgments 3495, under 18, and 3404, under 18).

8. It follows from the foregoing that the complaints must be dismissed, without there being any need to rule on the various objections raised by Eurocontrol.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 24 April 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ