

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

I. (No. 3)

v.

Eurocontrol

137th Session

Judgment No. 4766

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms C. A. I. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 23 October 2021, Eurocontrol's reply of 6 May 2022, the complainant's rejoinder of 5 June 2022 and Eurocontrol's surrejoinder of 31 August 2022;

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 requests a compensatory allowance to offset financial losses resulting from a restructuring.

Until 30 November 2020 the integrated manual flight plan processing system – previously managed by the Central Flow Management Unit (CFMU) – was split between two Initial Flight Plan Processing Units (IFPU): IFPU1, located at the Organisation's Headquarters in Brussels (Belgium), and IFPU2, located in Brétigny-sur-Orge (France). The staff members of these two units were further divided into group E1 (comprising staff responsible for ensuring CFMU's continuous operation) who belonged to the FCO function group (for jobs involving traffic flow and capacity management operations), and group E2

(comprising operational support staff) who also belonged to the FCO function group. The two units were merged as from 1 December 2020 owing to a restructuring and all initial flight plan processing operations were transferred to Brussels.

The complainant joined Eurocontrol, at Brétigny-sur-Orge, on 1 September 2002 as an official at grade C3, step 1, assigned to IFPU2 under a limited-term appointment of five years. With effect from 1 May 2003, her appointment was converted into an appointment for an unlimited period, then as of 1 September 2005 she was awarded the title of Assistant Air Traffic Flow and Capacity Manager (ATFCM) while remaining employed in IFPU2. Until the restructuring came into effect, she received an ATFCM functional allowance and a shift work allowance in addition to her basic salary.

On 2 February 2017 the staff of the two IFPUs were called to a meeting where they were informed that a task force had been set up to formulate various scenarios to optimise costs and address the number of staff surplus to requirements in view of the steady reduction in the manual processing of flight plans.

On 14 November 2019, at another meeting – for which a PowerPoint presentation was made but no minutes were kept – the Network Management Director (director of the Network Management Directorate, DNM, previously known as CFMU) and the Head of Human Resources and Services informed IFPU2 staff that the two IFPUs were to be merged and all flight processing operations transferred to Belgium. Two options were offered to the staff members concerned: they could relocate to Brussels and be assigned to IFPU1 or they could be redeployed in Brétigny-sur-Orge in the Operational Systems Digitalisation Unit, whose staff members were also FCO staff in group E2. The deadline by which staff members could state their choice was 15 January 2020 and it was later extended until 24 January. According to the complainant’s account, contradicted by Eurocontrol, the Network Management Director said at the meeting: “Nobody will lose money”.

Individual meetings between IFPU2 staff members and the Administration were held from 14 to 19 November 2019. The complainant's meeting took place on 19 November. She expressed her preference for remaining employed in Brétigny-sur-Orge owing to her family situation and her son's health. By an individual email of 10 December 2019, she received salary projections reflecting the two options offered to her. Specifically, the option of remaining in France would mean that she kept 75 per cent of the ATFCM functional allowance but lost the shift work allowance (which would stop because she would no longer be undertaking shift work). The option of joining IFPU1 in Brussels would in contrast allow her to retain both allowances at 100 per cent.

On 20 December 2019 IFPU2 staff members received a document (entitled "Questions and Answers") comprising the questions they had asked during the individual meetings and the answers provided by DNM. In the meantime, several emails had been exchanged by the Head of Human Resources and Services and the IFPU2 staff representative to clarify certain points of the restructuring.

The complainant submitted her choice to remain in Brétigny-sur-Orge on 28 January 2020.

On 10 June 2020 the Director General took Decision No. I/31 (2020) concerning the transfer of manual flight plan processing operations from IFPU2 to IFPU1.

By an individual decision of 15 July 2020, the complainant was informed that, with effect from 1 December 2020, she would be appointed Operational Support Specialist in DNM at Brétigny-sur-Orge and would retain her grade, step and seniority. Her ATFCM functional allowance would be set at 75 per cent and the shift work allowance would stop.

On 4 September 2020 the complainant lodged an internal complaint under Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency against aforementioned Decision No. I/31 (2020). Citing the principles of equal treatment and non-discrimination, she requested a compensatory allowance equal to the difference between her new net remuneration and the remuneration she had received before

the restructuring. On 6 October the Head of Human Resources and Services acknowledged receipt of the internal complaint and informed the complainant that it had been forwarded to the Joint Committee for Disputes to be discussed during its next session.

On 23 October 2020 the complainant submitted a request to the Director General under Article 92(1) of the Staff Regulations, seeking “special compensation” to offset all financial effects of the merger of the IFPUs, as two of her colleagues had received. She also sought compensation of 40,000 euros “to cover the Organisation’s breach of its duty of care”. On 30 November 2020 she received the first pay slip affected by the individual decision of 15 July 2020, showing a reduction of around 7.1 per cent in her total pay.

On 30 March 2021 the complainant sent an email to her supervisor requesting him to forward to the Director General her new internal complaint – attached to the email and dated 26 March 2021 – submitted pursuant to Article 92(2) of the Staff Regulations, against the implied rejection of her request of 23 October 2020. On 9 September 2021 the Head of Human Resources and Services acknowledged receipt of the internal complaint of 26 March and informed the complainant that it had also been forwarded to the Joint Committee for Disputes.

The complainant filed a complaint with the Tribunal on 23 October 2021. She states that she impugns the implied decision rejecting her internal complaint of 26 March 2021, as notified to the Administration on 30 March 2021, and requests the Tribunal to set aside that decision, to order Eurocontrol to restore all her rights predating the merger of the IFPUs, including the payment of “identical remuneration taking into account her foreseeable and logical career progression”, to pay her financial compensation of 40,000 euros for the moral injury she alleges she has suffered, to order that interest for late payment at the rate of 5 per cent per annum be paid on these sums, with that interest to be compounded, and, lastly, to order the Organisation to pay costs in the amount of 6,000 euros.

Eurocontrol asks the Tribunal to dismiss the complaint as “not receivable” and, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant seeks the setting aside of the implied decision to reject her internal complaint of 26 March 2021 for the award of a compensatory allowance for which she considered herself eligible in the circumstances described in the summary of the facts above.

2. In her first plea, the complainant submits that reasonable time did not elapse between the Organisation informing her of the restructuring and its implementation, which was unlawful. On the same ground, she considers that Eurocontrol breached its duties of good faith, care and transparency as she was not informed sufficiently early of the consequences of that restructuring to enable her to make an informed and well-considered decision about her professional future. The two-and-a-half-month time limit given to her to choose whether to move abroad with her son was especially unreasonable, in her view, given that he was suffering from a serious illness and that her husband would have had to look for a new job in case of transfer to Brussels.

First of all, the Tribunal recalls its settled case law that decisions concerning the restructuring of an international organisation, including to abolish posts, may be taken at the discretion of the organisation's executive head and are consequently subject to only limited review. Accordingly, the Tribunal shall confine itself to ascertaining whether such decisions are taken in accordance with the relevant rules on competence, form or procedure, whether they rest on a mistake of fact or of law or whether they constitute abuse of authority. The Tribunal shall not rule on the appropriateness of a restructuring or of individual decisions relating to it, and it shall not substitute the organisation's view with its own (see, for example, Judgments 4608, consideration 7, 4503, consideration 11, and 4405, consideration 2).

That having been recalled, the Tribunal observes that, at a meeting on 14 November 2019, the complainant was informed that the two IFPUs at Brétigny-sur-Orge and Brussels were to be merged, that the Brétigny unit was to be abolished and that the staff employed in that unit would then be presented with two options regarding their

redeployment: they could move to Brussels and be assigned to the new IFPU, retaining the status of an FCO staff member in group E1, or they could remain in Brétigny-sur-Orge in other roles as FCO staff in group E2. As announced at the same meeting, individual meetings were subsequently held with the staff members concerned. During hers, the complainant expressed her preference to remain in Brétigny-sur-Orge owing to her family situation. Two salary projections were then sent to her by email on 10 December 2019, depending on whether she chose to remain in Brétigny-sur-Orge or to request relocation to Brussels. It was plain that the first option would have the adverse financial consequences of a 25 per cent reduction in the ATFCM allowance and withdrawal of the shift work allowance.

Although the deadline for notifying the choice between the two options was eventually set at 24 January 2020 and the staff members concerned were informed, in a document entitled “Questions and Answers ” of 20 December 2019, that the choice could be postponed for “social reasons”, on 30 January 2020 the complainant expressly chose to remain employed in Brétigny-sur-Orge as an Operational Support Specialist in group E2 in the Network Management Directorate (DNM)’s Operational Systems Digitalisation Unit. This choice was confirmed by the Director General’s individual decision of 15 July 2020, taking effect on 1 December 2020, without the complainant having in the meantime expressly changed the choice she had made on 30 January 2020.

In the circumstances, the Tribunal considers that the Organisation did comply with the duties which the complainant claims were breached in support of her first plea and that the time limit allowed for her to state her choice and make the corresponding personal arrangements was sufficient, even in the light of her particular personal constraints.

This first plea is therefore unfounded.

3. Referring to the Tribunal’s case law on promises, the complainant further submits that the Organisation did not keep the promise made orally by the Network Management Director at the aforementioned meeting of 14 November 2019, according to which

staff members of IFPU2 would not experience any adverse financial effects, regardless of their choice (“Nobody will lose money”).

However, even if this remark was actually made at that meeting, it is clear from the circumstances surrounding Eurocontrol’s planned restructuring that it would inevitably lead to staff members who did not agree to be relocated to Brussels losing some pay. In this context, this remark could not be considered in isolation or understood as having the significance attributed to it by the complainant.

The second plea is also unfounded.

4. The complainant submits that, in any event, the reduction or withdrawal of the allowances allegedly due to her in her capacity as a member of staff of IFPU2 in Brétigny-sur-Orge constitutes a breach of her acquired rights within the meaning of the Tribunal’s applicable case law.

However, the Tribunal recalls that, according to established case law, an acquired right is breached only when the amendment of a rule to the official’s detriment and without her or his consent disturbs the structure of the contract of appointment or impairs fundamental terms of appointment in consideration of which the official accepted appointment (see, in particular, Judgments 4381, consideration 14, 4195, consideration 7, and 4028, consideration 13).

In the present case, there can be no question of any breach of the complainant’s acquired rights. In view of the relative amount involved, the pay reduction at issue cannot be regarded as disturbing the structure of the contract of appointment or impairing fundamental terms of appointment in consideration of which the complainant joined Eurocontrol.

The third plea is also unfounded.

5. Lastly, the complainant alleges that the principle of equal treatment was breached in that two staff members who, like her, had chosen to remain in Brétigny-sur-Orge and thereby became FCO staff in group E2 received financial compensation to cover the difference in total remuneration paid before and after the abolition of IFPU2.

However, it is clear from the file that the two staff members concerned were officially employed as Senior Network Operations Supervisors at the time IFPU2 in Brétigny-sur-Orge was abolished, and received the additional allowance provided for in Article 1 of Rule of Application No. 29a concerning functional allowances payable to DNM operational staff. But that was not the case of the complainant who was therefore not in an identical or similar situation to that of those two other staff members and so cannot legitimately rely on a breach of the principle of equal treatment (see, for example, Judgments 4712, consideration 5, 4681, consideration 9, and 4498, consideration 27). The plea fails.

6. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need to rule on Eurocontrol's objection to receivability, for which it has not provided any details.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER