Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A.

v.

Eurocontrol

138th Session **Judgment No. 4819**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-P. A. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 13 August 2021, Eurocontrol's reply of 12 November 2021, the complainant's rejoinder of 31 January 2022, Eurocontrol's surrejoinder of 29 April 2022, the complainant's further submissions of 29 September 2023 and Eurocontrol's comments thereon of 21 December 2023;

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 challenges the decision to place him on "administrative leave" as a consequence of the structural reorganization of the Eurocontrol Agency, the Organisation's secretariat, which led to the abolition of his functions and the launch of a reassignment procedure, as well as the decision to reject his allegations of moral harassment.

The complainant, who was born on 12 November 1960, joined the staff of Eurocontrol at the Organisation's Headquarters in Brussels (Belgium) in October 2005. At the material time, he was serving as Head of the Network Technical Systems (NTS) Division at grade AD14,

step 8, in the Network Management Directorate (DNM), one of the Agency's highest posts. This division, which was staffed by between 80 and 150 people depending upon the period under consideration, was mainly concerned with the Agency's information technology.

On 4 July 2019 the Director General took Decision No. I/25 (2019) concerning the organization of the Agency, which introduced, with immediate effect, changes to the organization of its management to improve its efficiency. The objective was to reduce the number of units and/or services, regroup activities and skills together to develop synergies and avoid duplication of tasks in different directorates. These changes included a significant restructuring of the DNM, which assumed most of the activities relating to the information technology tasks of the entire Agency. That entailed bringing together, in a new Technology Division, all services involved in such activities, as well as all staff members working mainly in this area of expertise. It was also stated that "the detailed organization of [the Agency's different directorates and the Human Resources and Service Unit] [would] be subject to separate decisions"[*], but that the general organizational structure described in the decision was already in place. By a minute of the same date, the Director General informed staff of these changes. He indicated that the reorganization was effective immediately and that "all Agency [information and communication technology] activities [would] be grouped under the [new] [...] Technology Division", established within the DNM in lieu of the NTS Division headed by the complainant, which was itself being abolished. An organigram was attached as an annex to this minute, from which it emerged that this new division, structured on the basis of a new functional framework, was thenceforth made up of seven units and/or services, in lieu of the three units that formerly constituted the NTS Division.

By an internal memorandum of 5 July 2019, the Director of the DNM informed staff members that he was working to implement the Directorate's new structure, to assign staff within it and to identify the possible publication of competitions, all by end of September 2019 and,

[*] Registry's translation.

further, named those who, in the interim, would be in charge of the various DNM divisions and units. The complainant's name was not included. In addition, he told them that vacancy notices for the posts of Head of the new Technology Division – which he would temporarily occupy, assisted by a technology adviser from the Agency and an external consultant – and Head of the Operations Division would be published shortly.

The complainant was called to a meeting on 5 July 2019 by the Head of the Agency's Human Resources and Services Unit, also attended by the Head of the Legal Service, who announced her decision, contained in a memorandum of the same date, to place him on "administrative leave" with immediate effect as a result of the abolition of the NTS Division and, consequently, of the discontinuation of the duties assigned to him, and the creation of the new Technology Division. The complainant was also informed that this was not a disciplinary sanction but a temporary measure to facilitate the establishment of the new structure that would allow him to explore the possibilities of reassignment with the administrative services under Article 5 of Annex X to the Staff Regulations governing officials of the Eurocontrol Agency, which governs the procedure and notice period applicable when the duties of a staff member "cease or are substantially changed". He was also told that the Agency would assess potential matches between his skills and existing or new job vacancies in Brussels or other locations. According to the complainant, at the end of this meeting he was invited to leave the Agency's premises or would be forced to do so by security staff. These various decisions, of which the complainant was notified by the memorandum of 5 July 2019, constitute, according to him, the decisions impugned in the present complaint.

Between 8 and 18 July 2019, the complainant had exchanges with the Human Resources and Services Unit, then with the Legal Service, seeking explanations about the cancellation of his annual leave, his placement on "administrative leave" and his possible reassignment. These efforts were, for the most part, in vain. Meanwhile, on 12 July 2019, he was placed on sick leave by his treating doctor.

On 31 July 2019, as the reassignment procedure had just begun and the complainant had received, in this connection, three vacancy descriptions matching his profile (namely, for Chief Technology Officer at the DNM, Head of Innovation at the Directorate European Civil-Military Aviation (DECMA) and Head of Operations at the DNM), his counsel lodged an internal complaint under Article 92(2) of the Staff Regulations challenging the decisions of the Head of the Human Resources and Services Unit, contained in her memorandum of 5 July 2019, to terminate his client's functions and place him on "administrative leave" with effect from the same date. Among the numerous pleas put forward, he also made allegations of harassment and requested that an investigation be opened "to determine whether such moral harassment [was] by individuals or [was] organisational"[*]. The counsel specified that the internal complaint constituted a formal harassment complaint. In addition to the opening of an investigation, he requested that the decisions of 5 July 2019 be set aside, that the study that led to the reorganization of the DNM and the discontinuation of the complainant's functions be disclosed, that the complainant be reinstated and, also, that he be awarded damages for the material and moral injuries allegedly suffered, including future injuries, and costs.

On 5 August 2019 the complainant expressed his interest in the posts of Chief Technology Officer at the DNM and Head of Innovation at DECMA, while at the same time expressing doubts as to the Agency's willingness to reassign him to a new post in view of his "abrupt" and "humiliating"[*] ousting. On 8 August the Human Resources Business Partner Coordinator explained to him that he had "priority for a post in his grade group for which he had the required skills"[*] and that "discussions could be organized (prior to any publication of a competition procedure) in order to determine whether [his] reassignment to the vacant posts was feasible in view of the requirements"[*]. These discussions took place on 20 and 28 August. Referring to his fragile health, the complainant refused to take part in the subsequent "feedback" discussion that had to take place on 30 August. On 5 September the Human Resources Business Partner Coordinator told

[*] Registry's translation.

him that she would send him a written report of the discussions but could already inform him that he would not be considered for reassignment to the two posts to which he had applied, "an analysis of the post profiles and [his] profile having not led to a favourable opinion"*, which was confirmed by a letter from the Head of the Human Resources and Services Unit of 13 September. The Coordinator indicated that she remained available to discuss the matter in person, but also and above all to consider his future assignment once his sick leave ended.

The separate decisions detailing the organization of the different directorates announced in the Director General's Decision No. I/25 (2019) were published on 20 September 2019, with retroactive effect as from 4 July 2019. The Technology Division consisted of four units (IT Organisation, Coordination and Business Relations Management; IT Strategy and Architecture; IT Development and Delivery; IT Infrastructure and Operations) and three services (Corporate Programmes; IT Security; IT Sourcing).

On 24 September 2019 the Head of the Human Resources and Service Unit acknowledged receipt of the internal complaint of 31 July and informed the complainant that it would be reviewed by the competent service and forwarded to the Chairperson of the Joint Committee for Disputes to be dealt with at the next available session, which was done on the same day. The following day, she told the complainant's counsel that the harassment complaint contained in the internal complaint was not sufficiently substantiated and did not meet the conditions set forth in Rule of Application No. 40 concerning harassment as defined under Article 12a of the Staff Regulations. She requested him to provide further details so that she could examine the complaint thoroughly within the prescribed time limits.

On 26 September 2019 the complainant was informed that he was "temporarily officially assigned"* to the Human Resources and Services Unit, since his future assignment had not yet been determined, and an office was allocated to him in this unit.

* Registry's translation.

Between 15 October 2019 and 12 April 2020, various posts to which the complainant might be reassigned were considered, but without success, either because he found the level of the posts proposed "vexatious and humiliating"* or because, for some of them, he was not considered to have the requisite profile, or because one of the posts in question would have involved moving from Belgium to France, on the outskirts of Paris.

On 14 January 2020 the complainant enquired with the President of the Joint Committee for Disputes about the progress of his internal complaint and asked to be heard when it was examined. On 20 January the Secretary of the Committee replied that the internal appeal had indeed been registered on the relevant digital platform, that Committee members had access to it, but that no date had yet been set to deal with it. However, one Committee member replied to the Secretary – with a copy to the complainant – indicating that, upon verification, no internal complaint appeared on the platform in question, which he found surprising in view of the date on which the internal complaint had been lodged.

On 1 February 2020 the complainant's counsel sent the Director General an addendum to the complainant's internal complaint, and specifically to the harassment complaint contained therein, reviewing the events since 31 July 2019, which, in his view, constituted harassment, indicating the circumstances in which these acts occurred, identifying the alleged harassers and designating potential witnesses to be heard. He rebuked the Director General for failure to comply with the provisions of Article 92(2) of the Staff Regulations by failing to forward the internal complaint to the Joint Committee for Disputes and to take a final decision within the prescribed time limits. With regard to the moral harassment complaint – which he considered to have been dismissed, or "simply ignored and denied"*, by the Head of the Human Resources and Services Unit, "as a dilatory tactic"* – he once again requested that an investigation be opened. Furthermore, he expressed doubts as to the Administration's real willingness to reassign his client

* Registry's translation.

in view of the posts proposed to him and the rejection of his applications to posts for which he had the requisite profile.

On 24 April 2020 the complainant's counsel wrote to the Head of the Human Resources and Services Unit, accusing her of having, with the complicity of one of her colleagues, instigated "sham reclassifications"*, of having acted in ways that were particularly harmful to his client's health and of being responsible for the situation of harassment that his client had endured. He asked, inter alia, that the internal complaint of 31 July 2019 and the harassment complaint contained therein, as supplemented on 1 February 2020, finally be dealt with "seriously and with diligence"*. On 15 May he wrote to the Director General to find out the steps taken in response to the internal complaint. That request went unanswered.

In the meantime, the Director General had informed the staff of the appointment, on 20 April 2020, of the new Chief Technology Officer of the DNM. On 8 May 2020 he sent a letter to all Directors General of Civil Aviation of Eurocontrol Member States to inform them of the Agency's activities during the COVID-19 pandemic and announce, in particular, the recruitment of several "senior managers", including the new Chief Technology Officer, emphasizing that these recruitments were "essential for a change in culture [that would] improve productivity"*.

The complainant, on sick leave since 12 July 2019, was contacted on 8 May 2020 by the Organisation's medical adviser, who informed him that an invalidity committee would be set up in connection with his case. That committee was established by a decision of 6 July 2020 of the Head of the Human Resources and Services Unit, acting by delegation of authority from the Director General, of which the complainant was notified on 9 July. On 6 October the Director General informed him that, in accordance with the conclusions of that committee, he was to be retired on grounds of total permanent invalidity as from 1 November 2020, on which date his services with Eurocontrol were terminated and from which date he would be granted an invalidity allowance.

* Registry's translation.

On 14 October 2020 the complainant received from the Chairperson of the Joint Committee for Disputes the Committee's final report, dated 8 July, in which it concluded that his internal complaint lodged on 31 July 2019 was well-founded. The four Committee members considered, unanimously, that his right to be heard and his right to receive adequate reasons for the decisions taken on 5 July 2019 had been violated and that the "administrative leave" on which he had been placed was unlawful, being "non-existent in statutory terms"[*]. In conclusion, they stated that the changes resulting from the reorganization of 4 July 2019 did not justify ousting the complainant from his post and that he should, at the very least, have received an offer of a transfer to a post equivalent to the one that he held prior to the reorganization.

On 1 December 2020 the complainant's counsel requested the Director General to inform him without delay of his intentions, namely whether to take a final decision or to continue to ignore the internal complaint and the moral harassment complaint of 31 July 2019. He reiterated his request on 6 March 2021. These requests remained, again, unanswered.

Alleging, therefore, that the Organisation was deliberately paralysing the internal appeals procedure, thereby infringing his right of appeal, the complainant filed the present complaint on 13 August 2021. He asks the Tribunal to set aside the decisions contained in the memorandum of the Head of the Human Resources and Services Unit of 5 July 2019, to declare that Eurocontrol deliberately subjected him to degrading treatment and moral harassment, to order redress for the moral and material injury which he considers he has suffered, as well as the payment of punitive damages of 150,000 euros, and to award him 18,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

[*] Registry's translation.

Eurocontrol considers that the claim for payment of punitive damages is irreceivable having not been submitted at the internal appeal stage. It asks the Tribunal to dismiss the complaint as irreceivable in part on this ground and, in any event, as unfounded.

By two letters of 17 February 2022 – received after the rejoinder was filed but before Eurocontrol submitted its surrejoinder – the complainant was informed that the Director General had decided to dismiss both his internal complaint against the decisions of 5 July 2019 and his moral harassment complaint, on the grounds that the first was unfounded and the second did not meet the "minimum criteria for receivability"[*] set out in Rule of Application No. 40.

CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the decisions of which he was notified by the memorandum of the Head of the Agency's Human Resources and Services Unit of 5 July 2019, whereby, on the one hand, he was placed on "administrative leave" with immediate effect as a result of the reorganization of the Network Management Directorate (DNM) in which he worked, which entailed the abolition of the Network Technical Systems (NTS) Division which he headed, and, on the other hand, his functions were abolished. For the material injury he allegedly suffered, he seeks the payment of the difference between his salary, plus his expatriation allowance, before 30 October 2020 corresponding to his grade and step, and his invalidity allowance, with retroactive effect to that date and until the starting date of his retirement, as a single payment up to the date of the present judgment, with interest on arrears at the rate of 5 per cent per annum, and monthly after the public delivery of the judgment. He further asks the Tribunal to declare that Eurocontrol deliberately subjected him to degrading treatment and moral harassment and, under this head, claims compensation for the moral injury which he considers he has suffered, in the amount of 373,355.64 euros, as well as the payment of punitive

[*] Registry's translation.

damages up to 150,000 euros, and an award of 18,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

In the further submissions which he filed on 29 September 2023, the complainant also contests the two express decisions taken by the Director General on 17 February 2022 relating, on the one hand, to the dismissal of his internal complaint of 31 July 2019 against the decisions to abolish his functions and to place him on "administrative leave", and, on the other hand, to the finding of "inadmissibility" in respect of his moral harassment complaint.

2. In its final comments filed on 21 December 2023, Eurocontrol argues that the complaint should be declared irreceivable insofar as it is directed against the Director General's decision of 17 February 2022 to dismiss the moral harassment complaint. In this regard, it relies on the fact that this decision was not challenged by the complainant within the statutory time limits.

The Tribunal notes that, in accordance with the provisions of Article 92 of the Staff Regulations, it was for the complainant to lodge an internal complaint under paragraph 2 thereof, either against what he regarded as an implicit decision to dismiss his moral harassment complaint upon the expiry of four months from the date on which the complaint was lodged, or against the decision taken by the Director General on 17 February 2022 to dismiss that complaint.

Since the complainant has taken neither of these steps, it must be considered that he has failed, before filing his complaint, to exhaust the internal means of redress within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal.

Accordingly, the complaint is irreceivable insofar as it is directed against the dismissal of the moral harassment complaint.

3. Insofar as the complaint is directed against the decisions of 5 July 2019 and against the dismissal of the complainant's internal complaint of 31 July 2019, the Tribunal makes the following observations:

(a) Where the Administration takes any action to deal with a claim, by forwarding it to the competent internal appeal body for example, this step in itself constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, of the Statute of the Tribunal, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3715, consideration 4, 3428, consideration 18, and 3146, consideration 12).

(b) Pursuant to Article 92(2) of the Staff Regulations, the complainant should have filed a complaint before the Tribunal within 90 days as from the expiry of the four-month time limit available to the Administration to reply to his internal complaint, even though the matter had been referred to the Joint Committee for Disputes. The present complaint should therefore, in principle, be declared irreceivable as time-barred under Article VII, paragraph 2, of the Statute of the Tribunal, in conjunction with Article 92(2) of the Staff Regulations.

(c) However, in the present case, the Tribunal considers that the complainant was misled by the Organisation when it indicated to him that, since his internal complaint had been referred to the Joint Committee for Disputes, he had, in accordance with the Tribunal's case law on the application of Article VII, paragraph 3, of its Statute, to await the final decision of the Director General before being able to file a complaint with the Tribunal. By so doing, the Organisation failed to take into account that, pursuant to Article 92(2) of the Staff Regulations, failure by the Director General to respond to an internal complaint within four months from the date on which it was lodged is deemed to constitute an implied decision rejecting it, which may be impugned before the Tribunal. Accordingly, there is no need to declare the complaint irreceivable as time-barred, insofar as it is directed against an implicit decision to dismiss by the Director General. To rule otherwise would amount to unduly depriving the complainant of his right to refer the matter to the Tribunal solely due to the conduct of the Organisation.

(d) The Tribunal observes that while the complainant's failure to comply with the 90-day time limit to file a complaint with the Tribunal is recognized above as admissible due to the fact that he was wrongly informed by the Organisation that he had to await an express decision, the complainant did not wait for this decision to be issued before filing his complaint. The complaint should therefore, in principle, be declared irreceivable for failure to exhaust internal means of redress as required by Article VII, paragraph 1, of the Statute of the Tribunal. However, in this case, taking into account the period of more than two years that had elapsed between 31 July 2019, when the complainant lodged his internal complaint, and 13 August 2021, when he filed his complaint, and the fact that his counsel had followed up on several occasions, to no avail, with the Director General and the Chairperson of the Joint Committee for Disputes, the Tribunal considers that the complainant was faced with a paralysis of the internal appeals procedure that would allow him to come directly to it. Under the Tribunal's case law, a complainant is entitled to file a complaint directly with the Tribunal against the initial decision which she or he intends to challenge where the competent bodies are not able to determine the internal appeal within a reasonable time having regard to the circumstances, provided that she or he has done her or his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a final decision within a reasonable time (see, in particular, Judgments 4660, consideration 2, 4271, consideration 5, 4268, considerations 10 and 11, 4200, consideration 3, 3558, consideration 9, 2039, consideration 4, or 1486, consideration 11).

(e) In addition, the Tribunal notes that a final decision was ultimately taken by the Director General on 17 February 2022 and that that decision was issued in the course of proceedings. Since the Tribunal has the complete file in its possession and the parties have had the opportunity to comment fully in their written submissions on that decision to expressly dismiss the complainant's internal complaint of 31 July 2019, it considers that, in accordance with its case law, it is appropriate to treat the internal complaint as being

directed against the decision of 17 February 2022 (see in particular, for similar cases, Judgments 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

4. The present complaint is, accordingly, receivable insofar as it challenges both the lawfulness of the Director General's decision of 17 February 2022 to dismiss the complainant's internal complaint of 31 July 2019 and that of the initial decisions of the Head of the Human Resources and Services Unit of 5 July 2019 to abolish his functions and place him on "administrative leave".

5. Eurocontrol requests the Tribunal to disregard the transcriptions and recordings of telephone conversations between the complainant, on the one hand, and the Human Resources Business Partner Coordinator and the Organisation's medical adviser, on the other hand, since their authorization to record these conversations was not sought beforehand.

However, the Tribunal does not find it necessary to decide on the manner, improper or not, in which these recordings were obtained. It has a sufficiently complete file to enable it to reach an informed decision on the present case, without it being necessary to take into account the content of these recordings. It will not therefore take this evidence into consideration.

6. At the outset, it should be recalled that consistent precedent has it that decisions concerning restructuring within an international organization, including the abolition of posts, may be taken at the discretion of the executive head of the organization and are consequently subject to only limited review. Accordingly, the Tribunal shall ascertain whether such decisions are taken in accordance with the relevant rules on competence, form or procedure, whether they rest upon 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 decisions relating to it, and it shall not substitute the organization's view with its own (see, for example, Judgments 4608, consideration 7, 4405, consideration 2, 4180, consideration 3, or 4004,

consideration 2, and the case law cited therein). However, the Tribunal has found that the abolition of any post must be based on objective grounds and must not serve as a pretext for removing staff regarded as unwanted, since this would constitute an abuse of authority (see Judgments 4599, consideration 11, 4353, consideration 6, 2830, consideration 6(b), and 1231, consideration 26).

7. With regard to the various decisions of 5 July 2019 to abolish the complainant's functions at the time it was decided to reorganize the Agency, to launch a reassignment procedure in his regard and to place him on "administrative leave" with immediate effect, the complainant alleges, firstly, a violation of his right to be heard, which Eurocontrol disputes.

However, the Tribunal finds that the written submissions of the parties show that the purpose of the discussion that took place on 5 July 2019 – the day on which the Director of the DNM announced the reorganization of the Agency's structure to staff – was clearly not to hear the complainant about the proposed course of action to be taken in his regard, but simply to notify him of the decisions already taken concerning him. Similarly, it appears that the requests for explanations made by the complainant in the following days also went unanswered.

In this respect, Eurocontrol submits that the purpose of the exercise in this case was to reorganize its services and that the right to be heard individually could not, in any event, be considered in the context of such a general decision.

However, the Tribunal notes that, beyond the reorganization of services exercise decided upon for managerial reasons, the decisions taken on 5 July 2019 had a fundamental impact on the complainant's situation, since they had, in particular, led to the abolition of his functions, which he strongly contests. These decisions had thus an adverse impact on the complainant, for which reason he should have had the opportunity to state his views before they were taken (see, for example, Judgments 4622, consideration 10, 3124, consideration 3, 1817, consideration 7, and 1484, consideration 8).

The plea that the right to be heard was violated is therefore well-founded as far as the decision to abolish the complainant's functions is concerned.

8. Still with respect to the decisions of which he was notified on 5 July 2019, the complainant considers, secondly, that they are based on spurious grounds. The purportedly substantial reorganization of the NTS Division which the complainant headed was purely fictitious, his functions were not in fact abolished as had been indicated to him at the meeting of 5 July 2019, and no other staff member in his Division was really disadvantaged by the introduction of the new Technology Division. He also considers that a reorganization due to be finalized in September 2019 could not, under any circumstances, give rise to a decision to abolish his functions on 5 July 2019, that is more than three months in advance. Accordingly, the complainant takes the view that he was never afforded the opportunity to ascertain the real reasons for which his functions were abolished, as the Joint Committee for Disputes also unanimously observed. In this regard, the complainant refutes each of the various grounds relied on in turn by Eurocontrol, whether in the decisions of 5 July 2019 or in its written submissions to the Tribunal, and notes a contradiction between the grounds set forth successively by the Organisation.

The Tribunal notes that in the memorandum of the Head of the Human Resources and Services Unit of which the complainant was notified on 5 July 2019, it was firstly stated that following the reorganization of the Agency, the NTS Division would be abolished, as would the complainant's functions. It was indicated secondly, in an email of 8 August 2019, that following the regrouping of all of the Agency's information technology activities, the role of Head of the new Technology Division had become a substantially different role from that of Head of the NTS Division, in particular because that new division was approximately three times the size of the former NTS Division. Thirdly, the Agency argued that the organizational changes introduced meant that new skills were required for managerial positions, and that the "leadership" style desired and required by the

Director General no longer matched the profile of the complainant, who was more a technical expert than a "leader".

Thus, the specific justifications given concerning the various decisions of which the complainant was notified on 5 July 2019 changed as time went by, in line with his criticisms. The initial outright abolition of his functions became a substantial modification of the duties to be performed and, finally, turned into a modification of the "leadership" style required of the incumbents of managerial posts. This is all the more regrettable given that the complainant clearly stated, and this is not disputed by Eurocontrol, on the one hand, that from 2014 to 2017 he had headed the NTS Division, which already consisted of some 150 staff members and in which all of the Agency's information technology services were grouped together before it was decided to split them, and, in July 2019, to regroup them again, and, on the other hand, that his various performance evaluation reports, in particular those relating to this period, had always been very positive, in particular with regard to his "leadership" capacity.

It follows that the various grounds on which the above-mentioned decisions are purported to be based cannot be considered valid and adequate within the meaning of the Tribunal's case law (see, for example, Judgments 4467, consideration 7, 4108, consideration 3, and 1817, consideration 7).

This plea is, therefore, well-founded.

9. The complainant further argues, thirdly, that the decision to place him on "administrative leave" is, in itself, unlawful, given that there is no provision for this administrative status in the Staff Regulations and the Rules of Application thereof. He notes in this regard that he is the only Agency staff member to have been removed from his functions and placed on "administrative leave" in the context of the reorganization carried out in 2019.

In its reply, Eurocontrol contends that the mere fact that "administrative leave" is not expressly provided for by the Staff Regulations does not, however, render its application unlawful. It argues that this measure formed a natural part of the process of

exploring potential reassignments detailed in Article 5 of Annex X to the Staff Regulations and was a legitimate means of managing complex situations caused by restructuring measures resulting in the abolition of the functions of the official concerned and in which immediate reassignment was not possible, in particular because of the complainant's high grade at the time of the reorganization.

In this regard, Article 5 of Annex X to the Staff Regulations, concerning the special provisions applicable to officials appointed for an undetermined or limited period as from 1 May 2022, provides, in part, as follows:

> "1. The Director General may terminate the service of an official appointed for an undetermined period where the duties the official performs cease or are substantially changed, with or without deletion of the budgetary post.
>
> 2. Prior to taking such a decision, the Director General shall explore all the options for reassigning the official to a different post in his function group, at the same or a lower grade, including if necessary retraining measures. Any termination of service proposal shall adduce the reasons therefore and be communicated to the official concerned. The official shall be entitled to make any comments thereon which he considers relevant. The reasoned decision shall be taken by the Director General after consulting the Joint Reports Committee."

There is no provision in Article 5 that the official concerned may, while his potential reassignment is being reviewed, be placed on temporary "administrative leave", as such a status is not provided for by the Staff Regulations or the Rules of Application. As the members of the Joint Committee for Disputes rightly pointed out in their report of 8 July 2020, this status does not appear in the exhaustive list of possible statuses to which staff members may be assigned, as laid down by Article 37 of the Staff Regulations, and while the term "administrative leave" is used in Article 10 of Rule of Application No. 6 concerning the terms and conditions governing leave, it is used in an entirely different context, namely where an official is placed on "administrative leave granted on an exceptional basis by the Agency's Medical Officer", pursuant to Article 59(6) of the Staff Regulations. Lastly, since the determination of the administrative status assigned to a staff member must be considered an essential part of her or his status,

the Organisation is also mistaken in its mere assertion that the measure of placement on temporary "administrative leave" formed a natural part of the process of exploring potential reassignments provided for in Article 5 of Annex X to the Staff Regulations quoted above.

It follows that the plea whereby the decision to place the complainant on temporary "administrative leave" is tainted with an error of law is also founded.

10. All of the claims of unlawfulness levelled against the decisions of which the complainant was notified by the memorandum of 5 July 2019 apply equally to the Director General's decision of 17 February 2022, by which the Director General dismissed the internal complaint lodged by the complainant on 31 July 2019, all the more so since it is clear, in the Tribunal's view, that the Director General, by simply ignoring these claims, did not adequately motivate his decision to disregard the unanimous opinion to the contrary reached by the members of the Joint Committee for Disputes in the report of 8 July 2020. The Tribunal will not reproduce in the present judgment both the reasoning set out in the Committee's report and that of the Director General for not acting in accordance with the Committee's opinion. The Tribunal will only note that the Director General failed to adequately indicate, in his decision, the reasons why he did not act in accordance with that unanimous opinion, since he did not consider in that decision the reasons put forward by the Committee.

Accordingly, the Director General's decision of 17 February 2022 to dismiss the complainant's internal complaint lodged on 31 July 2019 must be set aside.

11. In the light of the above, the Tribunal does not find it necessary to consider the complainant's other pleas of unlawfulness in support of his complaint.

12. Concerning the material and moral injury which he considers he has suffered, the complainant submits that his health deteriorated immediately when he was forcibly ousted from the Agency, that he had

to be placed on sick leave continuously from 12 July 2019, that he has not since been fit to resume work despite his efforts and his determination to do everything possible to return or find another post in the Organisation and that he was, inevitably, eventually retired on grounds of total and permanent invalidity as from 1 November 2020, which had the effect of terminating his services only about three years before his possible retirement and of reducing his salary by 30 per cent.

13. In response to these arguments, Eurocontrol states that it "declines [...] any responsibility for the complainant's health as it has not committed any wrongdoing that could have caused his ill-health"[*]. It further states that it "did not behave improperly towards the complainant"[*] and that "the impugned decision [was] in no way unlawful"[*]. From this, Eurocontrol infers that "the complainant suffered no injury that would call for compensation insofar as the impugned decision [is] amply justified in view of the circumstances"[*].

14. However, the Tribunal notes, first of all, that contrary to Eurocontrol's assertion, the Director General's decision of 17 February 2022 is tainted with unlawfulness on various counts, as stated in considerations 7 to 10 above. Furthermore, the Tribunal finds that these unlawful acts reflect serious misconduct on the part of the Organisation towards the complainant.

The Tribunal further observes that the complainant, having been informed on 5 July 2019 of the decision to abolish his functions, was placed on sick leave from 12 July 2019 and that this leave was extended, without interruption, until 30 November 2020, the date on which he left the Organisation permanently. In this regard, it is clear from one of the medical certificates provided by the complainant's treating doctor, dated 27 April 2020, that this doctor justified his absence from work as being due to "work-related anxious depression"[*]. In a second certificate issued on 15 March 2021, this doctor similarly confirmed that the complainant's incapacity for work from July 2019

[*] Registry's translation.

to the end of October 2020 was the result of a "depression linked to an abrupt layoff from work"*.

The Tribunal observes that the complainant's retirement on grounds of invalidity as from 1 November 2020 followed on from his sick leave since 12 July 2019. The Tribunal further notes that it does not appear from the evidence that the Organisation contested, in any way, the validity or wording of the medical certificate of 27 April 2020 or that of the other certificates of the same kind submitted by the complainant during his sick leave.

In the light of the foregoing, the Tribunal considers that, in the particular circumstances of the case and on the basis of the evidence before it, it must be recognized that the material injury suffered by the complainant is closely correlated with the unlawful acts identified above.

15. It follows that the complainant is justified in claiming payment by Eurocontrol, in compensation for the material injury thus suffered between his retirement on grounds of invalidity on 1 November 2020 and the date on which he reached his normal retirement age, of a sum equivalent to the difference between, on the one hand, the salaries and expatriation allowance that he would have received had he remained in the Organisation's service and, on the other hand, the invalidity allowance that he received during that period, less any professional earnings from other sources during that same period. All these sums shall bear interest at the rate of 5 per cent per annum as from their respective due dates until the date of their payment.

16. The complainant also argues that due to the senior position that he held in the Agency, his exemplary career path, the abrupt nature of his ousting and the "misleading"* nature of the entire reassignment procedure launched in his regard, he is justified in claiming compensation from the Organisation for the significant moral injury that he has suffered.

* Registry's translation.

17. The Tribunal, first of all, considers indisputable that the complainant's annual appraisals were always highly favourable, including since his appointment as Head of the NTS Division, until his removal from the new Technology Division when the Agency was reorganized pursuant to the Director General's decision of 4 July 2019.

Moreover, the abrupt manner in which the complainant was ousted is in no doubt either in the circumstances of the case.

Furthermore, the various decisions of which he was notified on 5 July 2019 are based on manifestly unlawful acts, as is apparent from considerations 7 to 10 above.

Lastly, the Tribunal observes that the manner in which the complainant's reassignment procedure was conducted following his ousting also caused him obvious moral injury. In this regard, the complainant first asserts, without being seriously contradicted by Eurocontrol, that the two discussions that he had on 20 and 28 August 2019 in view of his possible reassignment to the posts of Head of the new Technology Division of the DNM and Head of Innovation at the Directorate European Civil-Military Aviation (DECMA), without having to go through a competition procedure, were in fact merely "sham reclassifications"[*] and that it had been decided from the outset that he would not be found suitable to perform these new functions, which he vehemently disputes. The Tribunal further observes that the explanations provided by Eurocontrol concerning the failure to reply in a timely manner to the various applications submitted by the complainant with a view to participating in calls for competition for various posts within the new Technology Division are also not convincing. As to the other posts proposed to him, in particular within the new Technology Division, the complainant might have reasonably considered these proposals, which were for posts below his level, in respect of which he had served as head in the former NTS Division and in which he would, for some of them, find himself under the supervision of former subordinates, to be "humiliating"[*] and "vexatious"[*] and as being in fact designed only to prompt him to turn them all down.

[*] Registry's translation.

Similarly, the complainant might also have reasonably considered the post of Drones Project Manager within DECMA at Brétigny-sur-Orge (Paris region) to be unacceptable, in particular because it did not correspond to his level of responsibility and because it was ultimately made clear, contrary to what he was initially told, that, if appointed, he would retain neither his remuneration nor his grade.

In summary, it is clear that, during the reassignment procedure launched in his regard, the complainant had no prospect of being reclassified in a post in the Technology Division or in another division of the DNM. The Tribunal notes in this respect that Eurocontrol itself acknowledges, without providing any further explanation on this point, that "it was not feasible for the complainant to return to work in a structure in which his functions ha[d] been abolished"[*], even though the complainant asserts, once again without being seriously contradicted on this point, that all members of the former NTS Division which he headed were ultimately reassigned in the new Technology Division or in another division of the DNM.

18. In the light of the above, the Tribunal must conclude that the overall context in which the complainant's reassignment procedure was conducted can only have been very painful for him, which warrants compensation for moral injury.

19. Furthermore, the time taken by the Organisation to rule on the complainant's internal complaint lodged on 31 July 2019 is unreasonable as the final decision was not taken by the Director General until 17 February 2022. This delay is all the more unacceptable since the report of the Joint Committee for Disputes, which found unanimously in the complainant's favour, was drawn up on 8 July 2020, that is 19 months before that final decision was taken.

20. The Tribunal notes that the amount of the compensation claimed by the complainant, namely 373,355.64 euros, which corresponds to 18 months' salary and expatriation allowance, clearly arises from a

[*] Registry's translation.

confusion between the moral injury and the material injury on which he intends to rely.

Having regard to the various elements and irregularities identified above, the Tribunal considers that the moral injury suffered by the complainant will be fairly redressed by awarding him compensation in the amount of 60,000 euros.

21. The complainant asks that Eurocontrol be ordered to pay punitive damages in view "of the exceptionally unfair, unacceptable and appalling [...] handling of his internal and other complaints, the [Organisation]'s deliberate breaking of its own rules, [the decision to] place him on a spurious 'administrative leave' in order to get rid of him unlawfully and intimidate him [...], the unrelenting determination to drive him out of the Agency by all means including the most demeaning, [the] determination to harm his being and his health [...], the behaviour of all involved [...] and [the] refusal to take a final decision [with] the sole objective of preventing [him] from exercising his rights and remedies [...]"[*]. He assesses those damages at 150,000 euros.

22. Eurocontrol first of all argues that this claim is irreceivable for failure to exhaust internal remedies since it was not raised in the internal appeal procedure.

However, the Tribunal observes that this claim is based on numerous instances of conduct alleged against the Organisation, some of which occurred after the internal complaint of 31 July 2019 was lodged and, in particular, during the proceedings before the Tribunal. In the circumstances, the complainant cannot, in any event, be criticized for not having raised the claim during the internal appeal procedure. This claim is therefore receivable.

Eurocontrol then submits that the exceptional circumstances required by the Tribunal's case law for the award of punitive damages do not exist in this case.

[*] Registry's translation.

However, the Tribunal considers, in view of the evidence on file, that the number and gravity of the various unlawful acts committed by Eurocontrol in the present case constitute a flagrant breach of its obligation to act in good faith and a seriously disrespectful treatment of the complainant, which warrant ordering the Organisation to pay punitive damages (see, for example, Judgments 4391, consideration 14, 4385, consideration 7, 2720, consideration 16, and 2418, consideration 15).

In the present case, the Tribunal considers it appropriate to set the amount of such damages at 20,000 euros.

23. The complainant asks that Eurocontrol be ordered to pay costs of 18,000 euros, including 8,000 euros to cover the sums spent on lodging and pursuing internal appeal procedures. He argues in this regard that in the circumstances of the present case, namely the Organisation's deliberate and determined willingness to ignore his internal appeals, which made it impossible to obtain a remedial decision without turning to the Tribunal, warrant the award of such costs to him.

According to the Tribunal's case law, costs for the internal appeal proceedings may only be awarded under exceptional circumstances (see, for example, Judgment 4217, consideration 12). In the present case, the Tribunal considers, particularly in view of the complexity of the situation in which the complainant found himself due to the Organisation's misconduct, that there is an exceptional situation which also warrants the award of the claimed costs. His request in that respect will therefore be granted and Eurocontrol will be ordered to pay him the sum of 8,000 euros that he is claiming.

As the complainant succeeds, he is also entitled to the sum of 10,000 euros that he is claiming for the costs incurred before the Tribunal.

DECISION

For the above reasons,

1. The Director General's decision of 17 February 2022 dismissing the complainant's internal complaint of 31 July 2019 is set aside, as well as the earlier decisions of the Head of the Human Resources and Services Unit of 5 July 2019.

2. Eurocontrol shall pay the complainant material damages as indicated in consideration 15, above.

3. Eurocontrol shall pay the complainant moral damages in the amount of 60,000 euros.

4. The Organisation shall also pay him punitive damages in the amount of 20,000 euros.

5. It shall pay him 18,000 euros in costs for the internal appeal proceedings and the present proceedings before the Tribunal.

6. All other claims are dismissed.

In witness of this judgment, adopted on 21 May 2024, 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 8 July 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER