

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

110th Session

Judgment No. 2978

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. J. M. M. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 8 January 2009 and corrected on 30 January, the Organisation's reply of 14 May, the complainant's rejoinder of 16 June and Eurocontrol's surrejoinder of 13 August 2009;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a French national born in 1957, joined the Eurocontrol Agency on 16 September 1992 as an Administrative Assistant 1st class, at grade B4, at the Experimental Centre at Brétigny-sur-Orge (France). On 1 September 2003 he was promoted to Principal Administrative Assistant at grade B1.

On 28 December 2007 the Agency published a notice of competition for the post of Head of General Services at grade A4 in the Human Resources and Administration Directorate in Brussels. The complainant applied for the job on 6 February 2008. The Selection

Board shortlisted four of the 26 candidates to take part in tests. The complainant was informed on 11 March 2008 that his candidature had been unsuccessful. After holding interviews, the Selection Board unanimously decided to ask the candidate who for several months had been performing the duties of ad interim Head of General Services to take some further tests. He was selected to fill the vacant post on the Selection Board's unanimous recommendation.

Meanwhile, on 13 March 2008, the complainant had submitted a request for an explanation in writing of the reasons for the rejection of his application. In a memorandum of 1 April the Director of Human Resources and Administration explained that the Selection Board had carefully examined his candidature and that, although it had noted that he had some relevant experience, it had considered that this experience was confined to too narrow a field when compared with the requirements of the vacant post, "given the [latter's] huge scope and complexity". As the complainant considered that this explanation was rather vague and ill-founded, on 8 April he asked the Director to clarify his reasons.

Having received no reply to this request, on 10 June 2008 the complainant submitted an internal complaint to the Director General in which he requested the cancellation of the decision of 11 March 2008 and the reopening of the competition on the grounds that the Selection Board had plainly made a mistake when assessing his qualifications and had breached its "statutory duty to state the reasons at once" for a decision adversely affecting an official.

By a memorandum of 27 June 2008 the Director of Human Resources and Administration provided the complainant with a detailed explanation of the reasons for the rejection of his candidature and told him that a thorough analysis of his professional experience had shown that it fell short of the requirements of the post in the following respects:

- The Selection Board recognised your experience in various fields connected with general services, but it is not at the level of the advertised post, that is to say at the level of a head of a unit who will be responsible for participating in the overall management of human

resources and contributing to the [Human Resources and Administration Directorate] Business Plan.

- Your experience in ‘prevention and protection at work’ is described as being confined to activities carried out in a temporary capacity.
- The size and level of the teams you are currently leading are not proof that you have the vision to lead activities and a team at senior management level.”

The complainant was further reminded that the Board, having examined his application with great care, had found that he possessed experience that was relevant to the technical aspects of the post, but that his experience had seemed “insufficient bearing in mind requirements in respect of management and participation in the strategic management” of the Human Resources and Administration Directorate.

The complainant was informed on 25 November 2008 by the secretariat of the Joint Committee for Disputes that the latter had issued an opinion on his internal complaint, which would be forwarded to the Director General for a final decision. On 8 January 2009 the complainant filed a complaint with the Tribunal, since he considered that the absence of any reply from the Director General to his internal complaint of 10 June 2008 was tantamount to an implied decision rejecting it. He was informed by a memorandum of 27 January 2009 that the Director General had decided to reject his internal complaint as being legally unfounded, in accordance with the Committee’s unanimous recommendation.

B. The complainant submits that the Selection Board plainly made a mistake when assessing his qualifications. He points out that the notice of competition states that the responsibilities of the Head of General Services include the responsibility of participating in the overall management of human resources and contributing to the business plan of the Human Resources and Administration Directorate and that, in connection with that responsibility, under the heading “Required profile” the notice referred to the “[v]ision and drive to lead activities and a team at senior management level”. In the complainant’s opinion, “[his] candidature clearly had some drive

behind it” but, since he was not shortlisted to take the tests, it had been impossible to evaluate his candidature in the light of this criterion. He alleges that the notice of competition made no mention of the need to possess several years of experience in a permanent appointment in the field of prevention and protection at work and states that, contrary to the Board’s findings, his experience in this field undeniably matches the required profile. With reference to the Board’s considerations regarding his ability to “lead activities and a team at senior management level”, he contends that he certainly possesses managerial skills, the level of which should not be measured in terms of the number of people under his responsibility.

The complainant also submits that, having occupied the vacant post on an ad interim basis for several months, the candidate appointed at the end of the competition had, unlike the other candidates, acquired some experience in the duties attached to this post. In his opinion, although the Agency has to ensure its proper functioning, it must also take the necessary steps to respect the principle of equality amongst candidates and, in particular, to demonstrate scrupulousness and transparency in their treatment. The complainant considers that these steps were not taken in this case, because the reasons for the rejection of his candidature which were forwarded to him on 1 April 2008 were unclear and imprecise and those contained in the memorandum of 27 June 2008 were incorrect and questionable. Moreover, the decision to reject his candidature before holding tests “was lacking in the most elementary prudence”. He objects to the casual manner in which his application appears to have been treated.

The complainant requests the cancellation of the decision of 11 March 2008 rejecting his candidature, the reopening of the disputed competition, compensation for the moral injury which he considers he has suffered and an award of costs.

C. In its reply Eurocontrol states that, although the Selection Board recognised the complainant’s merits, it exercised its broad discretion and made no obvious error of judgement in considering that he did not possess the necessary qualifications, in particular with regard to experience, to perform the duties of Head of General Services. It

explains that it was up to the Board to compare the experience which the complainant had acquired, particularly in performing his grade B1 duties, with the skills required for the post of Head of General Services at grade A4.

The defendant submits that the complainant is mistaken in contending that his application appears to have been processed in a casual fashion and without the necessary scrupulousness and transparency. It observes that the extent to which the explanation must be detailed depends on the circumstances, and that when an organisation informs internal candidates that they have been unsuccessful, it must take care not to harm their prospects. It considers that, in the instant case, the explanations provided by the Agency for the rejection of the complainant's candidature satisfied these requirements and enabled the complainant to know the reasons for this rejection. In addition, the fact that the successful candidate had been holding the vacant post on an ad interim basis does not in itself constitute conclusive evidence of unlawfulness and there is nothing to indicate that the candidate was appointed for any reasons other than his ability to perform the duties associated with the post in question.

D. In his rejoinder the complainant expresses the view that the real reason for the rejection of his candidature was his B1 grade. Since, according to him, his post is at A6 level, assessing this post as being at level B1 is an obvious error. The argument which the Agency appears to put forward, namely that experience at A4 level was necessary for the vacant post, is not acceptable, particularly since no such experience was specified in the notice of competition. The complainant further alleges that only officials in the A category were allowed to sit the tests, to the detriment of those in the B category.

E. In its surrejoinder the Agency holds that the most important selection criterion was the candidates' qualifications and not their grade, as the complainant asserts. It points out that the notice of competition and the explanations given to the complainant do not mention experience at a precise grade, but the ability to perform duties at senior management level, in other words, in this case, in an A4 level

post. The defendant submits that the Selection Board did not base its assessment of the complainant's candidature on his grade. It also states that the candidate who was ultimately successful did not gain any substantial advantages from having held the post on an ad interim basis for a brief period.

CONSIDERATIONS

1. On 6 February 2008 the complainant, who was at that time a Principal Administrative Assistant at grade B1, applied for the grade A4 post of Head of General Services in the Human Resources and Administration Directorate. On 11 March he was informed that his candidature had been rejected and that he could obtain fuller information from the Recruitment and Job Management Section.

Only four of the 26 candidates had been shortlisted by the Selection Board to take part in tests. They included the official who for a few months had been occupying the advertised post on an ad interim basis. The Director of Human Resources and Administration explained in response to a query from the complainant that his candidature had been rejected because he had insufficient experience, "given the huge scope and complexity" of the post in question. At the end of the selection procedure, the ad interim Head of General Services was chosen for the appointment under consideration.

2. On 8 April 2008 the complainant, who had difficulty in understanding the reasons provided by the Director of Human Resources and Administration, asked him to clarify them. As he received no reply, on 10 June 2008 he submitted an internal complaint to the Director General, which was directed against the decision to reject his candidature. He complained of non-compliance with the duty to state the reasons for a decision adversely affecting an official and of an obvious error by the Board when assessing his qualifications. On 27 June 2008, that is to say after the lodging of his internal complaint, the Director of Human Resources and Administration apprised the complainant of the Selection Board's

reasons. It had found that the complainant's experience, especially in the technical field, fitted the vacant post but was "insufficient bearing in mind the requirements in respect of management and participation in the strategic management" of the Human Resources and Administration Directorate.

On 8 January 2009 the complainant filed a complaint with the Tribunal, challenging the implied decision to reject his internal complaint. On 27 January 2009 the Director General explicitly rejected this internal complaint on the basis of a unanimous recommendation from the Joint Committee for Disputes, which took the view that there was nothing in the file to suggest "that the successful candidate ha[d] been chosen for reasons other than those given by the Selection Board, namely his suitability for the post".

3. Although the complaint was filed against an implied decision to reject the internal complaint, it may now be considered as seeking the cancellation of the decision of 27 January 2009 by which the Director General confirmed the initial rejection of the complainant's candidature for the post of Head of General Services in the Human Resources and Administration Directorate.

4. The complainant submits that insufficient reasons were given for the decision to reject his candidature. However, according to the Tribunal's case law, when the result of a competition is announced and, more broadly when, as here, the Administration chooses between candidates, the duty to state the reasons for the choice does not mean that they must be notified at the same time as the decision (see Judgments 1787, under 5, and 2035, under 4). These reasons may be disclosed at a later date, for example in the context of appeal proceedings (see Judgments 1590, under 7, and 2194, under 7).

In the instant case, the complainant was informed of the reasons for the rejection of his candidature on 1 April 2008 and in greater detail on 27 June 2008. In addition, the Director General's final decision of 27 January 2009 contained sufficient reasons. The complainant was therefore given a proper opportunity to challenge the reasons for not selecting him.

5. The post of Head of General Services which was advertised on 28 December 2007 is in the Human Resources and Administration Directorate, which is responsible for recruitment, “talent and career management” and staff administration.

The notice of competition described the responsibilities of this post in the following terms:

“The successful candidate will be responsible for:

- developing, maintaining and implementing the procedures and processes required in the field of general services and site management, including prevention and protection at work;
- ensuring the delivery of the required services in an effective and efficient manner;
- establishing and maintaining an effective network of working relations with internal and external partners in order to ensure adequate collaboration to reach business objectives;
- managing the resources with the Services to achieve the above, including providing the necessary support and coaching to staff members and to create the necessary synergies between them;
- participating, as part of the senior management team, in the overall Agency [Human Resources] and administration management and delivering the service’s contribution to the [Human Resources and Administration Directorate] Business Plan.”

The notice of competition defined the required profile as follows:

- “• University degree in a relevant subject or equivalent professional experience.
- 10 years professional experience, including prevention and protection activities management.
 - Experience in a support function and/or general services would constitute an advantage.
 - Strong communication, negotiation and interpersonal skills with the ability to build and maintain internal and external relations.
 - Vision and drive to lead activities and a team at senior management level.
 - Ability to propose practical-organisational improvements and advice to ensure added value to all parties concerned.
 - [...] [C]andidates must have an excellent command of either English or French and a working knowledge of the other [language].”

The Selection Board therefore rightly considered that the vacant post was a senior position and that the duties assigned to its incumbent were huge in scope and complex.

6. The question here is whether, as the complainant submits, the Board made an obvious error of judgement when it found that his recognised experience was insufficient for the above-mentioned responsibilities of the vacant post.

The Selection Board did not ignore either the professional qualifications which the complainant had acquired or developed in the course of his relatively long experience in the Agency's service, or his leadership abilities in specific areas. It concluded, however, that these qualifications did not entirely satisfy the requirements of the vacant post and that four other candidates, including the person who had been holding the post on an ad interim basis for several months, offered better guarantees of accomplishing the requisite duties in accordance with the Organisation's needs.

It is understandable that, given his qualifications, the complainant found it hard to accept this choice, notwithstanding the reasons he was given. Nevertheless, according to its case law, the Tribunal exercises only a limited power of review over the selection of candidates in a competition.

In the instant case, the Tribunal considers that the explanations furnished by the Agency with regard to the specific features of the post and the reasons why the complainant's profile did not match the post are convincing.

The complainant contends that, although the notice of competition did not establish any such restriction, the applications submitted by officials in category B were deliberately set aside in favour of candidates in category A alone. Nothing in the submissions justifies this contention. Nor is there any indication that the person who had been the ad interim Head of General Services had been chosen before the opening of the competition, thus turning it into no more than a paper exercise, since the mere fact that one of the candidates in a competition is temporarily holding the post to be

filled does not render the procedure unlawful. It is clear from the submissions that the final choice was made after several interviews with the four candidates on the shortlist, that the successful candidate was thoroughly tested and, furthermore, that his permanent appointment was made subject to the successful completion of a nine-month probationary period.

7. Since the complainant has not shown that the impugned decision was based on an error of law or of fact, that a material fact was overlooked, that a plainly wrong conclusion was drawn from the facts, or that there was abuse of authority (see Judgment 2834, under 7, and the case law cited therein), the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 November 2010, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2011.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet