Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C.

v.

Eurocontrol

136th Session **Judgment No. 4700**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. C. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 21 August 2019, Eurocontrol's reply of 18 December 2019, the complainant's rejoinder of 16 March 2020 and Eurocontrol's surrejoinder of 26 June 2020;

Considering the applications to intervene filed by Mr G. A., Mr E. C., Mr R. D., Mr C. L. R. and Mr A. V. d. S. R. on 7 September 2021 and Eurocontrol's comments thereon dated 15 October 2021;

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 measures reorganising his working time.

On 15 October 2010, the complainant joined the Eurocontrol Agency, the secretariat of the Organisation, as a technician in the Systems Operations (CSO) team within the Network Management Directorate (DNM). In the CSO team, officials work on rolling shifts in teams in order to ensure continuity of service. Following the reorganisation of the DNM in 2012, a project to revise the particular schedules

applicable to the CSO team was set up. A new shift pattern was subsequently trialled in 2017.

By decision of 1 November 2017, the Director General delegated to the Director of DNM "powers and/or authority" to sign on matters concerning the support services from other Agency units, DNM budget process, DNM operational staff social dialogue technical meetings, and operational and technical agreements which are necessary for the performance by Eurocontrol of the network functions.

By internal memorandum of 13 March 2018, the Director of DNM submitted a proposed new roster pattern for staff in the CSO team to the Director General. By an internal memorandum of the same date, the Head of the Human Resources and Services Unit sent the new pattern to the President of the Central Staff Committee for consultation purposes. She asked him to submit his observations within 14 days. Between 13 March and 28 March, several exchanges took place between the Administration and staff representatives, who expressed their dissatisfaction with the handling of the social dialogue process in connection with the proposed new roster pattern and requested that the consultation process be continued in order to address in greater detail what were, in their view, problems arising from the proposal. By internal memorandum of 28 March 2018, the Director General approved the new roster pattern.

In a letter of 5 April 2018, the President of the Eurocontrol section of the European Civil Service Federation (FFPE), one of the Agency's trade union organisations, asserted that the rules on consultation had been breached and that the change in working conditions of the officials affected by the new pattern was unlawful.

On 16 April 2018, the complainant lodged an internal complaint in which he asked, in particular, for the rosters published since 16 April 2018 to be annulled and the delegating decision of 1 November 2017 to be set aside.

On 15 April 2019, the Joint Committee for Disputes issued a divided opinion. On 6 June 2019, the Head of the Human Resources and Services Unit, acting by delegation of power from the Director General, dismissed the complainant's internal complaint as partly

irreceivable to the extent that it challenged the delegating decision. Furthermore, she considered that, overall, the claims made by the complainant were no longer relevant, since, in her view, the new roster for October 2018 complied with the Staff Regulations and the relevant rule of application. She noted in addition that she shared the opinion of one member of the Committee which found that the reduction from three to two officials per team did not breach the Memorandum of Understanding between the trade union organisations and Eurocontrol, and the opinion of those members of the Committee who took the view that there had been no breach of the applicable rules concerning minimum rest time. That is the impugned decision.

The complainant asks the Tribunal to set aside the final decision of 6 June 2019 together with the Director General's decision of 1 November 2017 delegating power to the Director of DNM. He asks the Tribunal to declare that his working conditions were changed unlawfully and that the roster patterns in force since 16 April 2018 are unlawful because they do not comply with the legal requirements for working time and rest time. In addition, he asks for those rosters to be annulled. The complainant also asks the Tribunal to declare that EU Directive 2003/88 of 4 November 2003 concerning certain aspects of the organisation of working time applies to officials of the Agency and that stand-by duty counts as working time. He also seeks 50,000 euros in moral damages for the moral injury he considers he has suffered and compensation of 8,000 euros for the delay in dealing with his internal complaint. Lastly, the complainant seeks 7,000 euros in costs.

Eurocontrol asks the Tribunal to reject the complainant's claims as partly irreceivable and to dismiss the complaint in its entirety as unfounded.

CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of 6 June 2019 of the Head of the Human Resources and Services Unit of the Eurocontrol Agency, acting by delegation of power from the Director General, which dismissed his internal complaint of 16 April

2018. That internal complaint concerned the changes to the complainant's working conditions which were embodied in the new roster patterns published following an internal memorandum of 13 March 2018 from the Head of the Human Resources and Services Unit which notified the President of the Central Staff Committee of the content of those roster patterns.

The complainant also seeks the setting aside of Decision No. XI/91 of 1 November 2017 delegating power to the Director of Network Management Directorate (DNM) in order to put in place the changes to working conditions reflected in those roster patterns.

The complainant also asks the Tribunal to issue three declarations, which he words as follows:

> "• Declare that the complainant's working conditions were changed unlawfully;
>
> • Declare that since 16 April 2018 the Rosters have been unlawful in that they do not comply with the legal limit on working time or the provision for rest time and annul them;
>
> • Declare that Directive 2003/88 applies to officials of the Agency and that stand-by duty counts as working time;"*.

Lastly, he seeks the payment of 50,000 euros in moral damages, compensation of 8,000 euros for the delay in dealing with his internal complaint and 7,000 euros in costs.

2. The Tribunal notes first of all that, as part of his claims, the complainant asks for three declarations to be made. However, it is settled case law that it is not for the Tribunal to issue declarations of law of this kind (see, for example, Judgments 4637, consideration 6, 4492, consideration 8, 4246, consideration 11, and 3876, consideration 2). Such claims are irreceivable and must be dismissed.

Next, the Tribunal notes that the Organisation raises two objections to receivability, which it qualifies in its submissions as partial. The first objection relates to one of the complainant's claims for a declaratory order and is addressed in the previous paragraph. The second objection

* Registry's translation.

relates to the lack of any link between the present case and the delegating decision No. XI/91 of 1 November 2017, which the complainant wishes to have set aside, but in fact this argument is more concerned with the merits of the case rather than constituting an actual objection to receivability.

3. In support of his complaint, the complainant puts forward various pleas alleging a breach of the procedures involved in taking the decisions which he is seeking to have set aside and the unlawfulness of the changes to the working conditions of the Systems Operations (CSO) team brought about by the new roster patterns which were the subject of his internal complaint.

Among the many pleas entered by the complainant in his submissions, the Tribunal considers one to be decisive for the outcome of this dispute. This is the plea that insufficient reasons were given for the impugned decision.

4. This plea relates to the reasoning involved in both aspects of the decision of 6 June 2019. Firstly, with regard to the reduction from three to two officials working together in the CSO service, the Tribunal notes that the Head of the Human Resources and Services Unit merely asserted that this did not amount to a change in working conditions but was a reduction legitimately implemented by a managerial decision, adding that she shared the opinion of the only member of the Joint Committee for Disputes to take that view.

However, in the impugned decision, the Head of the Human Resources and Services Unit did not explain why the majority view of the three members of the Committee who had concluded that this was not a question of a simple managerial decision should be departed from in this way. Neither did she explain why a reduction from three to two officials did not constitute a change in working conditions, notwithstanding the fact that the measure was adopted pursuant to a rule of application (Rule of Application No. 29) specifically dealing with the working conditions of DNM operational staff.

Under settled case law, the executive head of an international organisation, when taking a decision on an internal appeal that departs from the recommendations made by the appeals body, to the detriment of the employee concerned, must adequately state the reasons for not following those recommendations (see Judgment 4437, consideration 19, and the case law cited therein). As the Tribunal also recalled in Judgment 3695, consideration 9, when the executive head of an organisation "fail[s] to explain, in any satisfactory and persuasive way, why the recommendations of the [appeals body], whether the majority or the minority, should be rejected, [f]or this reason alone the impugned decision rejecting [a] complainant's appeal [...] should be set aside" (see also, in this respect, Judgment 3161, consideration 7, and the case law cited therein).

Secondly, turning to the other aspect of the impugned decision, concerning compliance with the requirement for at least ten hours' rest time between shifts, the Head of the Human Resources and Services Unit – astonishingly – stated that she shared the view of those members who considered that there had been no breach of the applicable rules in this regard. In fact, as the complainant rightly points out in his submissions, the Committee's opinion shows that all four members were unanimous in their opinion that there had been a breach of the rules in force at the material time in terms of ensuring a minimum rest time of ten hours.

In stating that she shared an opinion that none of the members in fact held, the Head of the Human Resources and Services Unit ultimately failed to provide any reasons for her decision in this regard. It is well established by the case law that the reasons for a decision must be sufficiently explicit to enable the person concerned to understand why it was taken (see, for example, Judgment 4164, consideration 11) and an absence of reasons clearly does not satisfy this minimum standard.

This plea is therefore well founded, thus rendering the impugned decision unlawful.

5. It follows from the foregoing that the impugned decision must be set aside, without there being any need to rule on the other pleas entered against it in the complaint.

At this stage in its findings, the Tribunal would ordinarily remit the case to the Organisation. However, given that it is apparent from the submissions that discussions with staff representatives led to new rosters being published with effect from 1 October 2018, in other words subsequent to the complainant's internal complaint which related to the rosters referred to in the internal memorandum of 13 March 2018 and the impugned decision of 6 June 2019, the Tribunal considers that it is not appropriate, in the circumstances, for the case to be remitted.

The Tribunal notes that the complainant's claims for relief do not include any claim for compensation for material injury arising from the setting aside of the challenged decisions. It follows that, in the present case, the setting aside of the impugned final decision is in itself sufficient to bring the dispute to a close.

In addition, with regard to delegating decision No. XI/91 of 1 November 2017, which delegated "powers and/or authority" to the Director of DNM and which the complainant wishes to have set aside, it must be concluded that such a claim far exceeds the scope of the present dispute. It does not, therefore, need to be dealt with.

6. With regard to the complainant's claim for 50,000 euros for the moral injury he alleges he has suffered, the Tribunal notes that any moral injury caused to the complainant by the disputed decisions, for which he adduces no evidence, appears to be negligible in the circumstances of the case, and warrants no compensation.

By contrast, the fact that the insufficient and deficient reasoning in the impugned decision breached the complainant's right to a due internal appeals procedure undoubtedly caused him moral injury, which warrants an award of damages. The Tribunal considers that this injury will be fairly redressed, in this case, by awarding compensation to the complainant under this head in the amount of 1,000 euros.

7. As regards the complainant's claim for an award of 8,000 euros for the delay in dealing with his internal complaint, the Tribunal notes that this internal complaint was lodged on 16 April 2018 and that the impugned decision is dated 6 June 2019. This period of almost 14 months far exceeds the period laid down by Article 92(2) of the Staff Regulations, which stipulates that the Director General is to provide his reasoned decision within four months. This therefore constitutes a breach by the Organisation of its own rules and the Tribunal considers the delay to be unreasonable in the circumstances.

Under the Tribunal's settled case law, the amount of compensation liable to be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgment 4635, consideration 8). Although the length of the delay in the present case is significant, the adverse effects of that delay on the complainant are minimal in the circumstances. The Tribunal considers that the injury suffered will be fairly redressed by awarding him 1,000 euros in compensation under this head.

8. The five officials who filed applications to intervene consider themselves to be in a similar situation to that of the complainant in fact and in law, which was acknowledged by the Organisation in its comments on their applications. It is therefore appropriate for the Tribunal to allow these applications to intervene. As a consequence, compensation of 1,000 euros for the breach of their right of appeal and 1,000 euros for the delay in dealing with their internal complaints will also be awarded to each of the interveners.

9. Since the complainant succeeds in part, he is entitled to costs, which the Tribunal sets at 4,000 euros.

DECISION

For the above reasons,

1. The decision of 6 June 2019 of the Head of the Human Resources and Services Unit of the Eurocontrol Agency is set aside.
2. Eurocontrol shall pay the complainant damages in the total amount of 2,000 euros.
3. It shall also pay the complainant 4,000 euros in costs.
4. All other claims are dismissed.
5. Eurocontrol shall pay damages in the total amount of 2,000 euros to each of the interveners.

In witness of this judgment, adopted on 11 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ