

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

107th Session

Judgment No. 2847

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. R. H. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 23 April 2008, the Organisation's reply of 23 July, the complainant's rejoinder of 25 August and Eurocontrol's surrejoinder of 19 November 2008;

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. Article 67 of the Staff Regulations governing officials of the Eurocontrol Agency reads in pertinent part as follows:

“1. Family allowances shall comprise:

- a) household allowance;
- b) dependent child allowance;
- c) education allowance.

2. Officials in receipt of family allowances specified in this Article shall declare allowances of like nature paid from other sources; such latter

allowances shall be deducted from those paid under the provisions of these Regulations.”

The complainant, a French national born in 1961, joined the Agency on 1 October 1992 and was assigned to the Central Flow Management Unit. He was transferred to the Eurocontrol Experimental Centre in October 2006. His duty station is at Brétigny-sur-Orge (Essonne, France).

The complainant was granted a dependent child allowance and a household allowance for his first child as from 1 August 2000. In the form entitled “Notification of change in family situation”, which he completed on 31 August 2000, he declared that no allowances of the same nature as those being paid by Eurocontrol were being paid by any other source. He made a similar declaration after the birth of his other two children in March 2002 and October 2004. In February 2007, at the request of the Human Resources Directorate, he confirmed that in 2006 neither he, nor a spouse or former spouse, nor his children had received any family allowances other than those paid by Eurocontrol.

On 25 June 2007 the Administration asked the complainant to obtain from the *Caisse d’allocations familiales de l’Essonne* (hereinafter “the CAF”) – the Family Allowance Office for the area in which his partner lived – a statement showing the nature and amount of the family benefits paid for their children since 1 March 2002. The complainant replied that he had already declared that he received no benefits from the CAF. He added that since his partner was not his wife, she did not “legally exist” as far as Eurocontrol was concerned and that she would not supply any documents. On 22 August 2007 the Head of the Human Resources Management Services wrote to the CAF in order to ascertain whether it had paid benefits for any of the complainant’s children after 4 March 2002. The CAF replied that the complainant’s partner had drawn family allowances and supplied a statement of the sums she had received since April 2002. As from August 2007, the sum of 271.75 euros, equivalent to the monthly family allowances paid by the CAF since January 2007, was deducted from the family allowances which the complainant received from Eurocontrol.

By a minute of 10 October 2007 the Director of Human Resources informed the complainant that, as the allowances paid by the CAF had not been deducted from those paid by Eurocontrol, he had received an overpayment amounting to 12,206.47 euros, which he must reimburse, possibly by means of 12 monthly instalments. On 23 October 2007 the complainant filed an internal complaint against the decision to make a deduction from his family allowances and to require him to reimburse the alleged overpayment. As the four-month deadline for the Agency's reply expired on 23 February 2008, he considered that his internal complaint had been implicitly rejected and filed a complaint with the Tribunal on 23 April. The matter had, however, been referred to the Joint Committee for Disputes, which recommended the dismissal of this internal complaint. By a minute of 21 May 2008 the Director of Human Resources and Administration, acting on behalf of the Director General, informed the complainant that his internal complaint had been dismissed as unfounded.

B. The complainant submits that the Agency has applied the provisions of Article 67 of the Staff Regulations incorrectly. He asserts that the deduction of 271.75 euros is unlawful because the only family allowances that he receives are those paid by Eurocontrol, and he therefore had nothing to declare regarding allowances of like nature paid from other sources. Furthermore, he explains that because his partner does not have the status of a spouse, she is not entitled to the social benefits paid by Eurocontrol. However, having paid contributions to the French social security scheme, she is entitled to certain allowances paid by the CAF. The complainant considers that the Agency should not be able to benefit from the allowances paid to his partner by another scheme, especially since the organisation grants her no rights.

The complainant contends that in his case, in applying Article 67, the Agency implemented new conditions for which no provision is made in either Rule of Application No. 7 of the Staff Regulations – the first section of which deals with family allowances – or Office Notices Nos. 13/99 and 19/03. These new conditions are set out in an explanatory note entitled “Allowances paid from other sources” which

lists, improperly in his view, allowances which must be declared by the official and which include, in his words, those “paid directly by the employer as part of the partner’s salary”. In his opinion, since the Staff Regulations have not been officially amended to this effect, the application of this note is unlawful and the Agency has committed an abuse of authority. Lastly he challenges Eurocontrol’s right to require reimbursement of the whole of the overpaid amount and asserts that the Agency applies different methods of reimbursement according to whether the recipient of the overpayment is an official or rather the Agency itself. In this connection he refers to Judgments 2627 and 2628.

The complainant asks for the “strict application” of Article 67 of the Staff Regulations, restitution of the above-mentioned sum of 12,206.47 euros, reimbursement of the monthly deductions of 271.75 euros effected since August 2007 and an award of damages in the amount of 5,000 euros.

C. In its reply the Agency states that the provisions of Article 67 are clear and that the complainant’s reading of them is incorrect or even fallacious: paragraph 2 of that article requires an official to declare not only family allowances paid directly to him/her by other sources, but also all other allowances of like nature from other sources, in order to avoid concurrent payment. In the instant case it is immaterial whether the allowances in question are paid directly to the complainant or to the mother of his children; what counts is that the CAF pays allowances for the maintenance of the three children of the complainant and his partner. The latter person’s status under the Staff Regulations is irrelevant.

The Agency adds that the explanatory note mentioned by the complainant in no way modifies the rule against concurrent benefits contained in the Staff Regulations, whereby all family allowances paid in respect of an official’s children, irrespective of their source and the person drawing them, must be declared in order that they can be deducted from the allowances paid by Eurocontrol. As the complainant made false declarations and refused to cooperate with the Agency, it believes that it was perfectly justified in recovering the

sum unduly paid to him, in accordance with Article 87 of the Staff Regulations. In its opinion, the arguments based on Judgments 2627 and 2628 are inapposite.

D. In his rejoinder the complainant reiterates his arguments. He stresses that it was to his partner that the CAF paid family allowances. As he did not directly receive these allowances, he holds that all his declarations were true. He adds that, for the purpose of determining whether or not an allowance has been paid to one of its officials, the Agency cannot take into account the rules of domestic law applied by the CAF.

E. In its surrejoinder the Agency maintains its position. It takes the view that the complainant is acting in bad faith. The family allowances paid by Eurocontrol must be reduced by an amount equivalent to the allowances of like nature paid from other sources, since the very purpose of the rule laid down in Article 67 is to prevent the concurrent payment of allowances from various sources to different persons but for the same children. In this respect the Staff Regulations governing officials of the Agency are similar to the Staff Regulations of Officials of the European Communities. Eurocontrol draws attention to the fact that the case law of the Court of Justice of the European Communities establishes that family allowances paid by the employer are in the nature of a supplement to those paid by a national scheme.

CONSIDERATIONS

1. As a father of three children born in 2000, 2002 and 2004 in a common-law marriage, the complainant received family allowances (consisting of a household allowance and a dependent child allowance) paid by Eurocontrol pursuant to Article 67 of the Staff Regulations. As this article lays down that the amount of these benefits must be reduced by that of family allowances from other sources, after the birth of each of his children the complainant was asked to sign a declaration that “allowances of the same nature as those paid by Eurocontrol [we]re not being paid” by any other source. On the strength of these declarations

the complainant was therefore granted Eurocontrol family allowances at the full rate.

2. The complainant again confirmed in a survey conducted among the staff in 2006 that he was not drawing any other family allowances, but on 25 June 2007 the Eurocontrol Administration asked him to supply a statement showing the benefits paid in respect of his children by the French Family Allowance Office (CAF) for the area where his partner lived (Essonne). An exchange of e-mails ensued at the end of which the complainant in effect refused to comply with this request on the grounds that he only had to furnish proof of the allowances that he himself had received, and not those which might have been paid to his partner.

At that point the Eurocontrol Administration made direct contact with the CAF, which supplied them with the statement that they had requested. This statement showed that the CAF had indeed been paying family allowances to the complainant's partner (who has since become his wife) for the same children since April 2002.

3. By a minute dated 10 October 2007 the Director of Human Resources informed the complainant that, in the light of the information thus obtained, it had been decided that the amount of family allowances that Eurocontrol was paying him would have to be reduced by the amount of the family allowances drawn by his partner, and that the overpayment that he had received would therefore be recovered. In view of the sum involved, i.e. 12,206.47 euros, he was offered the possibility of repayment in 12 monthly instalments.

4. The complainant filed an internal complaint against these measures on 23 October 2007 under Article 92 of the Staff Regulations. He now asks the Tribunal to set aside the Director General's decision implicitly rejecting that internal complaint, which was confirmed by an express decision of 21 May 2008 endorsing the opinion of the Joint Committee for Disputes. He requests that his family allowances be restored to the full rate and that the sums which

the Agency has required him to reimburse be restituted. He also claims damages in the amount of 5,000 euros.

5. In support of his claims the complainant essentially contends that the Agency applied the above-mentioned Article 67 of the Staff Regulations incorrectly, since it considered that it was entitled to deduct the amount of the allowances paid by the CAF from that of the family allowances he was receiving, despite the fact that these national benefits were not granted to him personally, but were drawn by his partner.

This line of argument has no merit.

6. Article 67(2) of the Staff Regulations lays down that:

“Officials in receipt of family allowances specified in this Article [namely household allowance, dependent child allowance and education allowance] shall declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid under the provisions of these Regulations.”

7. The purpose of the family allowances which Eurocontrol pays to officials with dependent children is to contribute financially towards these children’s maintenance, and the aim of the rule laid down in paragraph 2 quoted above, according to which the amount of these allowances must be reduced by the amount of allowances of the same kind paid from other sources, such as family allowances paid by a national authority, is to prevent two benefits from being granted concurrently for the same children, since this would plainly result in the unlawful enrichment of the recipient family.

In this regard, the fact that the CAF does not make payments to the official himself, but to his spouse (or, as in this case, his partner), is of course immaterial. If the two benefits in question are being paid for the maintenance of the same children, they cannot be drawn simultaneously by the parents without contravening the very purpose of this rule against concurrent benefits.

8. Contrary to the complainant's submissions, this conclusion, which is also a matter of good sense, is in no way contradicted by the letter of the above-mentioned provisions of Article 67 of the Staff Regulations.

These provisions, requiring Eurocontrol officials to declare allowances of like nature "paid from other sources" in order that they may be deducted from the family allowances granted by the Agency, do not specify that they apply only to other allowances paid to the official himself. The complainant is therefore mistaken in believing that he can construe Article 67 as authorising the concurrent payment of the allowances he draws from Eurocontrol and of the family allowances paid by the CAF to his partner in respect of the children for whom the couple are jointly responsible. Such an interpretation would place on the scope of the above-mentioned paragraph 2 a restriction to which no explicit reference is made in this text.

9. None of the various arguments on which the complainant relies to contest the lawfulness of this rule prohibiting the concurrent payment of family allowances from several sources, or that of its application in his case, can be entertained.

10. The complainant contends that the explanatory note accompanying the form for declaring the receipt of family allowances other than those paid by Eurocontrol unlawfully extended the scope of the rule against concurrent benefits to cases for which no provision is made in Article 67 of the Staff Regulations or in Rule of Application No. 7, which defines, *inter alia*, the conditions for applying the said article. He infers from this that the requirements set out in this note could only have resulted from an amendment of the Staff Regulations themselves, or at least of the above-mentioned rule, decided by the competent authority in compliance with the relevant formal requirements. But since, as has just been stated, the scope of the rule in question does cover the eventuality of concurrent payment of allowances drawn by a spouse or partner, this note does not in any way alter the scope of the provisions of the existing Staff Regulations or Rules.

11. Nor is there any merit in the complainant's argument that by taking into account the family allowances paid for the children of one of its officials by the social security system of a Member State, Eurocontrol is wrongly abiding by national regulations with which it does not have to comply. Indeed, the Agency is merely applying Article 67 of its own Staff Regulations, which provides for the deduction of such allowances from its own allowances.

12. The fact that Article 67(5) specifies that, where Eurocontrol family allowances are being paid to a person other than the official himself, the rule against concurrent benefits laid down in paragraph 2 also applies to that person, does not in any way invalidate the foregoing considerations. Contrary to the complainant's argument, which rests on a misinterpretation of the provisions of paragraph 5, these provisions do not purport to confine the cases in which family allowances paid from other sources may be deducted to those in which the recipient of the Eurocontrol allowances is either the official himself or the other person referred to in that paragraph.

13. Lastly, the fact that the Staff Regulations governing Eurocontrol officials do not give officials' common-law partners the same rights as spouses is at all events immaterial to the current dispute, which concerns the allowances paid to an official for the maintenance of his children, since these allowances are granted irrespective of the parents' matrimonial status. Moreover, the Tribunal observes that the complainant's argument that he did not have to declare allowances drawn by his partner because she was not his spouse is scarcely consistent with his own interpretation of Article 67(2), which would result in the deduction of allowances drawn by a spouse being likewise excluded.

14. It follows from the foregoing considerations that the Agency was right to apply the rule prohibiting the concurrent payment of Eurocontrol family allowances and allowances from other sources.

15. Whilst Eurocontrol was therefore legally entitled to make the disputed deduction from family allowances paid to the complainant in the future, at this stage the Tribunal must examine the complainant's subsidiary argument that the Agency could not require him to reimburse the full amount overpaid.

16. Article 87 of the Staff Regulations reads as follows:

“Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.”

17. From the complainant's written submissions it does not appear that he intends formally to contest the fact that these provisions authorise the Agency to require him to reimburse all or some of the sums received. Be that as it may, the Tribunal finds that the provisions in question did authorise that course. The evidence on file shows that the complainant deliberately refrained from declaring to Eurocontrol the family allowances drawn by his partner, although he had been duly informed that, in the Agency's view, they should be deducted from those he was receiving. While it was open to the complainant to challenge – if necessary before the Tribunal – any deductions made by the Agency in calculating the payments, he could not choose of his own accord to evade his duty of disclosure. He must therefore be deemed to have been aware of the unlawfulness of the disputed payments, which was indeed sufficiently obvious for it to be concluded that he could not have been unaware of it.

18. Nevertheless, the complainant objects to the fact that Eurocontrol has recovered the amount overpaid on the allowances in question from the outset, i.e. over a five-year period, whereas in the opposite case, when the Agency makes a mistake to the detriment of an official, it usually benefits from rules of prescription which enable it greatly to reduce the amounts reimbursed. In this connection he refers to a recent dispute – to which he was not a party – concerning the levying of internal tax on the ancillary remuneration of Eurocontrol officials, which gave rise to Judgments 2627 and 2628.

As thus formulated, this plea is of no relevance. Although the rules applicable to the two scenarios mentioned by the complainant are indeed different by reason of the very nature of the respective situations that they involve, the only relevant issue is whether the rules applicable to the instant case have been observed.

19. In this connection, a question arises as to whether the reimbursement required by the Agency conflicts with the general legal principle to which Judgment 2230 refers, namely that obligations are subject to extinctive prescription. Indeed, according to the Tribunal's case law, a claim for recovery of undue payment is not imprescriptible and must be brought – even in the absence of any provision in writing to this effect – in reasonable time (see Judgments 53, under 4, and 2565, under 7(c)). However, apart from the fact that the complainant does not formally rely on such prescription, the five-year period concerned by the recovery of the overpayment, long though it may be, cannot be regarded in this case as an unreasonable length of time, particularly because the disputed reimbursement arises from concealment on the part of the complainant and because Eurocontrol did not fail to take the necessary steps to recover the sums in question.

20. Lastly, the Tribunal notes that, in view of the large sum to be recovered, the Agency took care to provide for a schedule of repayments compatible with the complainant's income.

21. Like the Joint Committee for Disputes in its unanimous decision, whose independence and impartiality is most regrettably called into question by the complainant without any basis whatsoever, the Tribunal cannot but find that the measures adopted in this case by Eurocontrol were completely justified.

22. It follows that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 30 April 2009, Mr Seydou Ba, 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 8 July 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet