

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

## **110th Session**

## **Judgment No. 2970**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr S. V. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 16 January 2009, the Agency's reply of 19 June, the complainant's rejoinder of 27 August and Eurocontrol's surrejoinder of 2 December 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 Belgian national born in 1970, entered the service of Eurocontrol on 1 June 2005 as a Technical Assistant 1st class, at grade B4, in career bracket B4/B5, in the Engineering Division of the Central Flow Management Unit (CFMU). He was established in his post on 1 March 2006 at the end of his probationary period.

In 2006 the Permanent Commission of Eurocontrol approved a revision of the regulations and rules governing the conditions of

employment of CFMU operational staff with effect from 1 June 2006, which entailed a reorganisation of posts in that unit. The new conditions of employment introducing amendments to the Staff Regulations governing officials of the Eurocontrol Agency and to the Rules of Application thereof were published in Office Notice No. 17/06 of 18 October 2006. This notice announced the creation of a single CFMU operational staff service comprising two groups of posts, E1 and E2. The list of basic posts in each group – which, with one exception, corresponded to a career bracket – was shown in Annex I to the Staff Regulations. Appointments to the posts listed in this annex were to be made with retroactive effect from 1 September 2005. On 6 November 2006 the Director of the CFMU issued Note No. 7/06 to CFMU staff, entitled “Practical modalities concerning the implementation of the new conditions of employment of CFMU operational staff”, which explained inter alia that the appointments in question would be made either directly – where the new operational posts corresponded to functions identical to those already performed by the job holder and were of the same category and career bracket – or by internal competition, where the posts corresponded to new functions and/or to a higher career bracket or category than that of the job holder.

On 27 March 2007, pursuant to these measures, the complainant was appointed to a basic post of “Infrastructure Specialist” in group E1, corresponding to the career bracket B3/B4/B5, with effect from 1 September 2005. He retained his B4 grade.

On 30 June 2007 he submitted an internal complaint to the Director General in which he challenged this decision and asked to be appointed to a basic post at grade B3. In support of his request he contended that his immediate superior, Mr D., and one of his colleagues, Mr K., had been appointed to a basic post of “Technical System Manager” corresponding to career bracket B1/B2/B3 following the introduction of the above-mentioned new conditions of employment although, in his opinion, they were performing the same duties as him.

In its opinion of 22 November 2007 the Joint Committee for Disputes recommended to the Director General that the complainant's actual duties and their level be analysed, if necessary, by relying on the expertise of an independent auditor.

The complainant was informed by a memorandum of 12 February 2008 that, in light of this opinion, the Director of Human Resources and Administration, acting on behalf of the Director General, had decided to ask the Recruitment and Job Management Section of the Human Resources Directorate to analyse his post. In conducting this analysis, the Recruitment and Job Management Section compared the complainant's responsibilities with those corresponding to the generic job descriptions of "Infrastructure Specialist" and "Technical System Manager" and also with the responsibilities of Messrs D. and K. It found that the complainant's duties were indeed those of an "Infrastructure Specialist" in career bracket B3/B4/B5. The complainant was notified of the dismissal of his internal complaint by a memorandum of 24 September 2008. That is the impugned decision.

B. The complainant states that his duties largely match those performed by "Technical System Managers" and not those assigned to "Infrastructure Specialists" and that, for this reason, the Director General "has not respected the job titles" established by Annex I to the Staff Regulations and Office Notice No. 17/06. He takes the Administration to task for not showing in what respect his duties are identical to those of an "Infrastructure Specialist" in career bracket B3/B4/B5 and for breaching the principle of equal treatment insofar as the other members of his team, namely Messrs D. and K., were appointed to "Technical System Manager" posts in career bracket B1/B2/B3.

He further states that the aim of ensuring social cohesion of CFMU operational staff mentioned in Office Notice No. 17/06 has been disregarded, because he was the only member of his team to be appointed to an "Infrastructure Specialist" post in career bracket B3/B4/B5.

The complainant asks the Tribunal to set aside the decision of 27 March 2007 insofar as it appointed him directly to an “Infrastructure Specialist” post in career bracket B3/B4/B5 and not to a post in career bracket B1/B2/B3, as well as the decision of 24 September 2008 dismissing his internal complaint of 30 June 2007. He claims costs in the amount of 5,000 euros.

C. In its reply the Organisation holds that the complainant was appointed to the disputed post after identification of the duties and career bracket corresponding to his post, in accordance with Article 7 of the Staff Regulations and in compliance with the principles of equal treatment and equal pay for work of equal value. The Agency explains that the complainant’s duties are principally operational and that he does not have any managerial responsibilities which might justify his request for reclassification. Moreover, it considers that the complainant fails to understand the terms of Note No. 7/06 when he submits that his duties as Technical Assistant 1st class did not correspond to those of an “Infrastructure Specialist”. In its opinion, the disputed appointment was consistent with the “job titles” established by Annex I to the Staff Regulations and Office Notice No. 17/06.

Eurocontrol denies that it breached the principle of equal treatment. It points out that, as the analysis of the Recruitment and Job Management Section shows, the complainant’s situation is different, both in fact and in law, to that of his two colleagues, whose posts and level of responsibilities are different to his.

Lastly, the defendant submits that the aims set out in Office Notice No. 17/06 were fully respected.

D. In his rejoinder the complainant maintains that the Agency wrongly appointed him to the disputed post. He adds that, contrary to the Agency’s statement, the existence or extent of managerial responsibilities is not a criterion that would justify an appointment to career bracket B1/B2/B3, rather than B3/B4/B5, and that the analysis conducted by the Recruitment and Job Management Section shows that he performs not only operational duties, but also various other

responsibilities. Nevertheless, he questions that section's impartiality, on the one hand, because it reports to the authority which made the disputed appointment and, on the other, because of the way in which the comparative analysis was carried out.

E. In its surrejoinder the Organisation maintains its position and comments that the complainant had not produced a shred of evidence to support the view that his duties and responsibilities were comparable to those of his two colleagues. It rejects the allegations of personal prejudice which the complainant levels at the Recruitment and Job Management Section and it corroborates the latter's conclusions.

## CONSIDERATIONS

1. The complainant entered the service of Eurocontrol on 1 June 2005 to work in the CFMU as a Technical Assistant 1st class, at grade B4, in career bracket B4/B5.

2. On 18 October 2006 new regulations and rules governing the conditions of employment of CFMU operational staff were published in Office Notice No. 17/06. These new revised conditions of employment were reflected in particular in the creation of two groups of operational posts, E1 and E2. Appointments to posts in these two groups were to be made with retroactive effect from 1 September 2005 either directly, where the new operational posts corresponded to functions identical to those already performed by the job holder and were of the same category and career bracket, or by internal competition, where the posts in question corresponded to new functions and/or a higher career bracket or category.

3. On 27 March 2007 the complainant was appointed directly to a post of "Infrastructure Specialist" in group E1 at grade B4, with retroactive effect from 1 September 2005. This appointment was made pursuant to the provisions of Note No. 7/06 of 6 November 2006 issued by the CFMU Director.

4. As the complainant considered that he ought to have been appointed to a grade B3 post of “Technical System Manager” like two of his colleagues who, in his opinion, performed the same duties as he did, on 30 June 2007 he lodged an internal complaint directed against the decision of 27 March 2007.

On 22 November 2007 the Joint Committee for Disputes, to which this internal complaint was referred, delivered a unanimous opinion containing the following recommendation to the Director General:

“[C]larify what duties are actually assigned to the complainant and their level, if necessary by relying on the expertise of an independent auditor. If such analysis leads to the conclusion that the duties performed by the complainant are those of a Technical System Manager post (B3-B1), the Committee is of the view that the complainant should then either be appointed to such a post or, in accordance with Article 7 of the [Staff] Regulations, be given duties consistent with those of the post of Infrastructure Specialist (B5-B3) to which he is currently assigned.”

On the basis of this opinion, the Director of Human Resources and Administration, acting on behalf of the Director General, informed the complainant by a memorandum of 12 February 2008 that he had asked the Recruitment and Job Management Section to “analyse [his] post”.

By a memorandum of 24 September 2008, of which the complainant was apprised on 16 October 2008, the Director General informed the complainant that his internal complaint had been dismissed on the grounds that the above-mentioned section had compared his duties with the generic job descriptions of “Infrastructure Specialist” and “Technical System Manager”, and also with the responsibilities of the two colleagues whom he had mentioned as examples, that this analysis had taken account of the information which he and his superiors had supplied and of the data in his staff reports and those of his two colleagues, and that, at the end of this analysis, the section had confirmed that his duties did correspond

to those of an “Infrastructure Specialist” at the B3/B4/B5 level (B\*3/4/5/6/7 according to the new grade structure). In this memorandum of 24 September 2008, which constitutes the impugned decision, the Director General also informed the complainant of the considerations underpinning the conclusions of the Recruitment and Job Management Section.

5. The complainant asks the Tribunal to set aside the decisions of 27 March 2007 and 24 September 2008 and to award him costs in the amount of 5,000 euros.

In support of his complaint he submits that the Agency did not respect the “job titles” established by Annex I to the Staff Regulations and Office Notice No. 17/06 and that it disregarded the aims set out in that office notice.

6. The Tribunal considers that the nub of the case is the classification of the complainant’s post.

It is well established in the Tribunal’s case law that decisions concerning the classification or reclassification of posts in an organisation’s structure lie within the discretion of the organisation and may be set aside only on limited grounds. Such is the case, for example, if the competent bodies breached procedural rules, or if they acted on some wrong principle, overlooked some material fact or reached a clearly wrong conclusion (see, for example, Judgment 2807, under 5).

7. As the Joint Committee for Disputes appositely noted, the question raised in this case, which is that of the nature and level of the complainant’s duties, is a factual and technical matter which only specialists can decide. Indeed, that is why the Committee suggested that, if necessary, an independent audit of the complainant’s post should be carried out.

The Agency did not order an independent audit but, without giving the reasons for its choice, merely asked the Recruitment

and Job Management Section to conduct the above-mentioned comparative analysis.

That section's analysis is challenged by the complainant, who expresses doubts as to whether the section is completely impartial, arguing that it reports to the authority which adopted the disputed decision and that it systematically disregarded the similarities between his duties and the functions and skills required for the post of "Technical System Manager". In view of this criticism the Tribunal considers that, in these circumstances, the case should be referred back to the Organisation, which should commission an independent audit in order to ascertain the complainant's actual duties and their level as at 27 March 2007.

8. The complainant is entitled to costs which the Tribunal sets at 1,000 euros.

## DECISION

For the above reasons,

1. The case is referred back to the Organisation in order that an independent audit may be held in accordance with consideration 7, above.
2. Eurocontrol shall pay the complainant 1,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 5 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