

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C. (No. 3), F. (No. 3) and U. (No. 3)

v.

Eurocontrol

121st Session

Judgment No. 3568

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr J.-N. C. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 9 March 2013 and Eurocontrol's reply of 5 July 2013, Mr C. having chosen not to file a rejoinder;

Considering the third complaints filed by Mr J. F. and Mr S. S. U. against Eurocontrol on 9 March 2013, Eurocontrol's replies of 5 July, the rejoinders of Mr F. and Mr U. of 17 September and Eurocontrol's surrejoinders of 20 December 2013;

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 none of the parties has applied;

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

Facts relevant to this dispute may be found in Judgment 3275, delivered on 5 February 2014, concerning the second complaints of Mr C. and Mr U., amongst others. Suffice it to recall that on 1 July 2008, a wide-ranging administrative reform entered into force at Eurocontrol entailing, inter alia, the introduction of a new grade structure. The complainants were informed by decisions of 28 April 2009 of the generic post and career bracket assigned to them with effect

from 1 July 2008. Each of them submitted an internal complaint to contest this classification, but the classification was upheld by decisions of 5 July 2010.

In October 2010 each complainant submitted a second internal complaint, challenging the decision sent to him on 5 July 2010. On 2 March 2011 Mr C. and Mr U. each filed a second complaint with the Tribunal impugning the implied decision to reject their second internal complaints. These complaints were dismissed by the Tribunal as groundless in Judgment 3275. As Eurocontrol had explained, in the surrejoinders which it had filed on those complaints, why the requests for reclassification in a higher career bracket submitted on 11 June 2009 by the line manager of both complainants (who was also Mr F.'s line manager) had not been processed, Mr C. and Mr U. had been authorised to file further written submissions on this matter.

After the filing of the aforementioned surrejoinders, on 2 May, 8 May and 26 April 2012 respectively, each of the complainants submitted a third internal complaint challenging an alleged “decision of 2009” dismissing their reclassification requests. They asked for a proper review of these requests in accordance with the procedure laid down in Article 6 of Rule of Application No. 35 of the Staff Regulations governing officials of the Eurocontrol Agency – concerning job management – and that consideration be given to the possibility of an ad hoc promotion under Article 8 of that Rule.

In the single opinion which it issued on 31 October 2012, the Joint Committee for Disputes held that the internal complaints were not directed against decisions causing injury and therefore unanimously dismissed them as irreceivable. It stated that Mr F. – who, unlike the other two complainants, had not filed a complaint with the Tribunal in the wake of the implied dismissal of his second internal complaint – was also time-barred from challenging the classification decision of which he had been notified in 2009. Mr C. and Mr U. were informed by memorandums of 10 December 2012, which constitute the impugned decisions, that their third internal complaints had been dismissed on the grounds that they had the same purpose as their previous internal complaints, which formed the subject of their second

complaints then pending before the Tribunal. Mr F. was advised that his internal complaint had been dismissed as irreceivable because it was “directed against an administrative decision taken in 2009” and, subsidiarily, because it was unfounded.

On 9 March 2013 the complainants filed the present complaints in which they reiterate the claims set out in their third internal complaints and seek the setting aside of the impugned decision and compensation for moral and financial injury.

Eurocontrol asks the Tribunal to join the three complaints, to dismiss them as manifestly irreceivable owing to the lack of a decision causing injury and, subsidiarily, as groundless. It submits that Mr F.’s complaint is also time-barred, since his internal complaint of 8 May 2012 was submitted out of time. It adds that the complaints of Mr C. and Mr U. are also irreceivable because they are “obviously connected” with their second complaints before the Tribunal, and it asks the Tribunal to order them to bear “the full costs of the proceedings” if they do not withdraw their third complaints, which it terms “frivolous and redundant”.

CONSIDERATIONS

1. Eurocontrol requests the joinder of the three complaints. The complainants have not expressed an opinion on this subject.

The three complaints concern essentially similar decisions and contain identical claims. The complainants’ submissions differ only in that two of them briefly set out a subsidiary argument which is of limited significance. The complaints will therefore be joined to form the subject of a single judgment.

2. In its recommendation of 31 October 2012, on which the Director General based his refusal to entertain the internal complaints, the main conclusion of the Joint Committee for Disputes was that they were not directed against decisions causing injury.

3. This finding bears no criticism.

According to the wording of their internal complaints, the complainants were challenging a “decision in 2009 adopted [...] by an unknown person at an unknown date”. They maintain that they had learnt of the existence of this decision from the surrejoinder submitted by Eurocontrol in February 2012 in response to the complaints filed by two of them which were dismissed by Judgment 3275. They contend that this surrejoinder thus constituted “late notification” of the said decision.

The surrejoinder to which the complainants refer does not evidence any decision dismissing their internal complaints which they would have been unable to impugn at an earlier date because they were unaware of it. In that surrejoinder, Eurocontrol merely stated the reasons why it had discontinued the process of reviewing the complainants’ classification and why it had not endorsed the favourable opinion which their line manager had expressed on this matter in an e-mail. The Joint Committee for Disputes, on whose recommendation the Director General based his decision, was therefore right in holding that there was nothing in the surrejoinder cited by the complainants which permitted them to rely either on the existence of a decision of which they had previously been unaware or on any assurance of reclassification or promotion.

For the remainder, the complaints merely repeat in various ways, as main or subsidiary arguments, pleas which were definitively rejected in Judgment 3275.

4. The complaints must therefore be dismissed as devoid of merit, without there being any need to rule on Eurocontrol’s objections to receivability.

5. In its replies Eurocontrol asked that two of the complainants, namely those who were party to the dispute leading to the delivery of Judgment 3275, be ordered to bear “the full costs of the proceedings” if they did not withdraw their respective complaints.

The Tribunal may indeed award costs against the authors of frivolous, vexatious and repeated complaints which absorb its resources and those of the defendant organisations and hamper the Tribunal’s ability to deal expeditiously with other complaints. Any such award

must, however, remain exceptional, since it is essential that international civil servants' access to an independent and impartial judicial body is not impeded by the prospect of an adverse award of costs if their complaint were to prove unfounded (see Judgments 1962, under 4, and 3196, under 7).

It is true that, in the instant case, the complaints have been maintained despite the fact that there has been no change in the situation which led the Tribunal to dismiss the complainants' claims in a judgment carrying *res judicata* authority. Although this case is on the borderline of what is acceptable in this respect, the Tribunal considers that, in the circumstances, it is not justified to allow Eurocontrol's counterclaims that the two complainants in question should be ordered to pay costs.

DECISION

For the above reasons,

The complaints are dismissed, as are Eurocontrol's counterclaims.

In witness of this judgment, adopted on 5 November 2015, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ