

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F.

v.

Eurocontrol

121st Session

Judgment No. 3569

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. F. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 30 March 2013, Eurocontrol's reply of 5 July, the complainant's rejoinder of 28 August and Eurocontrol's surrejoinder of 29 November 2013;

Considering Article II, paragraph 5, 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 requests the payment of a differential allowance, since he contends that he temporarily occupied his superior's post.

At the material time, the complainant was employed at grade AST5. On 14 August 2012 he wrote to the Director General explaining that he had had to "take over all the duties" of his superior since the latter – who held grade AST8 – had been placed on sick leave on 10 April 2012. He therefore asked to be granted a differential allowance equal to the difference between his superior's remuneration and his own, in accordance with the first paragraph of Article 8 of the Staff Regulations governing officials of the Eurocontrol Agency.

The complainant was informed by a internal memorandum dated 27 August 2012 of various organisational measures concerning the service to which he was assigned.

On 10 September he was advised that the provisions of the aforementioned first paragraph of Article 8 did not apply in his case because, in accordance with “existing policy”, only vacant posts at grade AD12 and above could be occupied temporarily. His request of 14 August was therefore rejected.

On 20 September the complainant submitted an internal complaint to the Director General in which he reiterated his request for a differential allowance and contended that the decision of 10 September breached the principle of equal treatment. The Joint Committee for Disputes, to which the matter was referred, delivered its opinion on 7 December 2012. It took the view that the first paragraph of Article 8 of the Staff Regulations did not apply solely to posts at grade AD12 and above and that the memorandum of 27 August was “inadequate” as it did not define the complainant’s responsibilities “conclusively”. It found that his superior’s duties had been distributed among several persons and considered that the complainant might possibly have been called upon to perform some of them. It therefore unanimously recommended that the Director General should allow the internal complaint and asked that a “new individual decision concerning the extent of [the complainant’s] duties” be sent to him.

On 14 March 2013 the complainant, who had not received a copy of this opinion, enquired as to how the proceedings were progressing. On 19 March he was told that the new Director General, who had taken office on 1 January 2013, had requested some additional information in order to be able to reach a decision and that he would be advised of that decision in due course.

On 30 March 2013 the complainant filed his complaint impugning the implied decision to dismiss his internal complaint. He seeks the quashing of that decision, payment of the sum to which he considers he is entitled as a differential allowance for the period August 2012 to

January 2013 and the correction of his payslips accordingly. He also claims moral damages and costs.

Eurocontrol submits that the complaint should be dismissed as unfounded. It states that the complainant was informed by an internal memorandum of 27 June 2013 that his internal complaint had been dismissed, since the Principal Director of Resources, acting on behalf of the Director General, considered that the conditions for granting a differential allowance were not met, because the duties with which the complainant had been entrusted as from April 2012 were not “duties attaching” to his superior’s post.

CONSIDERATIONS

1. The complainant asks the Tribunal to quash the implied decision dismissing his internal complaint of 20 September 2012 concerning the payment of a differential allowance. He also asks that Eurocontrol be ordered to pay 2,630 euros in respect of the aforementioned allowance for the period August 2012 to January 2013 and to correct his payslips accordingly. Lastly, he asks that Eurocontrol be ordered to pay 5,000 euros in compensation for the moral injury suffered, as well as the costs of the current proceedings, which he estimates to be 5,000 euros. It should be noted that the complaint now before the Tribunal, which was originally directed against what the complainant took to be an implied decision to dismiss his internal complaint of 20 September 2012, must be regarded as being directed against the explicit decision of 27 June 2013, taken in the course of the proceedings, by which the Director General dismissed the internal complaint (see Judgment 3373, under 3).

2. The outcome of the dispute depends exclusively on whether the complainant may rely on the provisions of the first paragraph of Article 8 of the Staff Regulations governing officials of the Eurocontrol Agency, which reads as follows:

“An official may be called upon to occupy temporarily a post in a grade in his function group which is higher than his substantive grade. From the beginning of the fourth month of such temporary posting, he shall receive a differential allowance equal to the difference between the remuneration carried by his substantive grade and step, and the remuneration he would receive in respect of the grade and of the step at which he would be classified if he were appointed to the grade of his temporary posting.”

3. In Judgment 3370, which dealt with the application of a similar regulatory provision of another organisation, the Tribunal held in consideration 11 that the expression “may be called upon” refers to “a request made of an employee by the administration to perform duties of a post not being her or his ordinary post but a post at a higher grade”.

In the instant case, while the complainant asserts that he performed all his superior’s duties, he acknowledges in his written submissions that he assumed them de facto and not by virtue of a formal decision of the administration. In addition, it is plain from the file that, contrary to his submissions, he did not carry out all of his superior’s duties.

The requisite conditions for an official to be recognised as performing duties on a temporary basis, in other words that she or he has received a “request by the administration” and that she or he “perform[s] duties of a post not being her or his ordinary post but a post at a higher grade”, are therefore not met. For this reason, the complainant has no grounds to contend that he should have received the differential allowance which he is claiming.

4. It may be concluded from the foregoing 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 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