

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

D.-E. (No. 5)

v.

Eurocontrol

122nd Session

Judgment No. 3659

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms N. D.-E. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 13 June 2014, Eurocontrol's reply of 26 September 2014, the complainant's rejoinder of 6 January 2015 and Eurocontrol's surrejoinder of 17 April 2015;

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 challenges the fact that she was not promoted in the 2013 promotion exercise.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, the details of which are to be found in Judgment 3189. At that juncture, non-operational staff categories B and C were replaced, for a two-year transitional period, by categories B* and C*. On 1 July 2010, at the end of this transitional period, these two categories were merged in the Assistant group (AST), which comprises 11 grades (AST1 to AST11) arranged in various grade brackets. At the material time, the complainant, an official who had previously been

in C category, was seconded to a trade union organisation and classed at grade AST5 in the AST2-AST5 bracket.

Office Notice No. 1/13 was published on 7 February 2013. In essence it announced that a procedure for grade promotion would be organised for 2013 and, for that purpose, the list of staff eligible for promotion would comprise those officials and servants who in 2013 had at least two years' seniority in their grade and were not yet in the last grade of their respective career brackets as defined in their job descriptions. The list of Eurocontrol staff eligible for promotion was published on 8 February 2013. As the complainant's name was not on it, she lodged an internal complaint on 12 April. She requested the cancellation of this list and the holding of a promotion exercise in which her merits would undergo comparative examination.

The Joint Committee for Disputes, to which several internal complaints – including that of the complainant – had been referred, delivered its opinion on 13 December 2013. It unanimously held that, insofar as the internal complaint relied on the unlawfulness of Rule of Application No. 35 concerning job management, it was time-barred and therefore irreceivable, because the complainant had not challenged the reclassification decisions of July 2008 and 2010. As for the merits, two of its members recommended that the internal complaint should be allowed in accordance with the “principle of legitimate expectations” and the “right to a career”, whereas the other two recommended that it should be dismissed on the grounds that the complainant had reached the last grade in her grade bracket and was thus not eligible for promotion under Rule of Application No. 4 concerning the procedure for grade promotion provided for in Article 45 of the Staff Regulations governing officials of the Eurocontrol Agency. The complainant was informed by a memorandum of 17 March 2014, which constitutes the impugned decision, that in accordance with the opinion of the latter two members of the Joint Committee for Disputes, the Director General had dismissed her internal complaint.

The complainant filed her complaint with the Tribunal on 13 June 2014. She asks it to set aside the impugned decision, the list of staff eligible for promotion in the 2013 exercise and all the subsequent

decisions adopted during that exercise, including the list of staff members who were promoted. She also requests the payment of compensation in the amount of 1,500 euros for moral injury and 5,000 euros in costs.

Eurocontrol submits that the complaint is irreceivable in that the complainant has not exhausted internal means of redress in respect of the claim that the list of officials promoted in 2013 should be cancelled, and because that claim is tantamount to asking the Tribunal to order her promotion. It considers that all the other claims are unfounded. Lastly, Eurocontrol asks the Tribunal to join this complaint with six other cases concerning the 2012 or 2013 promotion exercises.

CONSIDERATIONS

1. The complainant challenges the failure to include her name on the list of staff eligible for promotion in the 2013 exercise, which was published on 8 February 2013.

2. Eurocontrol requests the joinder of this complaint with those of three other complainants. However, as these three cases raise legal issues that are partly different, the Tribunal will not grant this request (see, in particular, Judgment 3620, under 2).

3. Eurocontrol also requests the joinder of this complaint with an earlier complaint filed by the complainant. This request has become moot, since the Tribunal has already ruled on that other complaint in Judgment 3495.

4. The complainant seeks the setting aside of the decision by which the Director General dismissed her internal complaint requesting the cancellation of the list of staff members eligible for promotion in the 2013 exercise and the opening of a promotion exercise in which her particular merits would undergo comparative examination. She submits that the decision taken in her case breaches Article 45 of the Staff Regulations and disregards the principle of equality, the duty of care, her right to career advancement and her legitimate expectations.

She also challenges the lawfulness of the norm underlying that decision, namely Rule of Application No. 35 concerning job management as from 1 July 2010, which was published in an Office Notice of 5 July 2010.

5. It is unnecessary to determine whether these pleas and the claims to which they lead are all receivable, which the defendant organisation disputes.

Indeed, in Judgments 3404 and 3495, delivered on 11 February 2015 and 30 June 2015 respectively and concerning the refusal to include the complainants' names on the list of staff members eligible for promotion in the 2012 exercise, the Tribunal dismissed the same pleas as those now entered before it, though the complainant could not have been aware of this when she filed her new complaint.

6. In the aforementioned two judgments, the Tribunal found that, quite apart from the fact that officials may always participate in a competition or request the reclassification of their post, the Director General had not breached Article 45 of the Staff Regulations or the complainants' right to career advancement by excluding them from the list of staff members eligible for annual promotion on the grounds that they had reached the top of their career bracket.

There is no reason to depart from that precedent in the present case, since this provision and the other texts cited by the complainant are consistent with the aims of the administrative reform carried out in 2008, namely to end the practice of automatic promotion while not ruling out the possibility of making exceptions in order to enable particularly well-qualified officials to move up to the next grade in another bracket within their function group, in this case to AST6.

7. In the structure introduced by the administrative reform which entered into force at Eurocontrol on 1 July 2008, officials are classed in hierarchical grade brackets, each of which corresponds to a clearly defined category of functions. In the same way that an official who has reached the pinnacle of her or his career can no longer hope for promotion, a Eurocontrol official who has reached the top of her or

his grade bracket does not, in principle, have any possibility of moving into a higher grade.

8. The exception to this rule allowed by Article 45 of the Staff Regulations is a matter for the discretion of the Director General, which he must exercise within the limits established by the Rules of Application of the Staff Regulations (see Judgment 3666, also delivered this day). In the instant case, although the complainant denounces a breach of the principle of equality, she produces no evidence to show that officials in a situation similar to hers have benefited from the exceptional treatment provided for in Article 45 of the Staff Regulations.

9. In her rejoinder, the complainant submits that hers is a special case calling for an exception in her favour to the principle established in Article 45 of the Staff Regulations. However, her argument that her situation as a person “seconded to a professional and trade-union organisation within the institution” warrants granting her an exceptional promotion under Article 45 of the Staff Regulations does not convince the Tribunal.

10. The complaint is therefore entirely unfounded.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 6 May 2016, 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 6 July 2016.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ