Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F. (No. 3)

v.

Eurocontrol

125th Session **Judgment No. 3925**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr M. F. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 13 May 2014, Eurocontrol's reply of 5 September, the complainant's rejoinder of 14 November 2014 and Eurocontrol's surrejoinder of 23 February 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 rejection of his application for payment of language training fees.

On 5 September 2013 the complainant, who had enrolled in a university distance training programme to study French and German, submitted an official application for Eurocontrol to cover the fees. That application was refused by his line manager, who, on 8 October 2013, advised him of the reasons for his decision, namely that the official working language in his unit was English and that his training would necessitate leave that he could not commit to granting throughout the four-year course in view of operational requirements.

On 17 December 2013 the complainant lodged an internal complaint against the decision of 8 October. He requested the revocation of that decision, funding of 1,250 euros per year for the training – the maximum amount that he could claim and approximately half of the annual cost of the training – and, lastly, special leave of up to four days per year to allow him to sit the examinations required by the training programme.

As the complainant did not receive a reply within the 60-day period mentioned in Article VII, paragraph 3, of the Statute of the Tribunal, on 13 May 2014 he filed a complaint with the Tribunal to contest what he considered to be an implied decision to reject his internal complaint. He asks the Tribunal to set aside that decision and to order Eurocontrol to pay him the sum of 1,250 euros for each of the four years of training, to grant him special leave of up to 10 days per year and the reimbursement of examination fees and, lastly, to award him 5,000 euros in compensation for the moral injury he considers he has suffered, as well as 5,000 euros in costs.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded.

On 5 August 2014, while these proceedings were under way, the Joint Committee for Disputes met to consider the complainant's internal complaint and delivered a divided opinion, with one member recommending that it be dismissed. On 1 October 2014 the Director General took an express decision rejecting the internal complaint.

In his rejoinder, the complainant reiterates his claims and additionally asks the Tribunal to declare the decision of 1 October 2014 unlawful.

In its surrejoinder, Eurocontrol requests that this new claim be dismissed.

CONSIDERATIONS

1. The complainant challenges what he considers to be an implied decision of the Director General rejecting his internal complaint in which he principally requested defrayal of his language training fees. He also contends that the express decision to reject his internal complaint, taken on 1 October 2014 by the Director General, is unlawful.

2. The present complaint, though initially directed against an implied rejection of his internal complaint, must now be viewed as challenging the express decision taken during the proceedings, on 1 October 2014, by which the Director General confirmed the refusal to pay for the complainant's training (see, in particular, Judgment 3667, under 1).

3. The two reasons stated for refusing to pay for the complainant's language training were, firstly, that the training in question would not usefully contribute to the proper functioning of the unit in which he was employed and, secondly, that the days of leave which he needed to complete the training would create operational difficulties for that unit.

4. The Tribunal recalls that training at various levels in various subjects is a natural part of the professional experience (continuous training) and aims to improve performance in a variety of areas (see, in particular, Judgment 3052, under 6). Therefore, as a matter of principle, every official is entitled to professional training, subject to the restrictions imposed by the staff rules or regulations of the organisation employing her or him.

5. In the Tribunal's view, Eurocontrol made an error of law by taking account solely of the complainant's duties at the time when he submitted his application for defrayal of training fees when it assessed the benefit of the language training to the functioning of the unit.

6. The Tribunal further considers that the second reason given by Eurocontrol would not on its own have justified the refusal of the complainant's application, since that would imply that, because of the workload of the unit concerned, no professional training whatsoever could be funded for officials working in that unit.

7. It ensues from the foregoing that the decision of 8 October 2013 explaining the reasons for the refusal to pay for the language training, and the decision of 1 October 2014 by which the Director General confirmed that refusal, must be set aside.

8. The unlawful nature of those decisions caused the complainant material and moral injury entitling him to redress.

9. The complainant also complains of the slow handling of his internal complaint. The Tribunal observes that whereas Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency specifies a time limit of four months for the Director General to notify the person concerned of his reasoned decision, in this case such a decision was taken only after nine months. Although that length of time is not unreasonable in absolute terms, it nevertheless constitutes a breach by Eurocontrol of its own rules, which caused the complainant moral injury that likewise warrants redress.

10. In these circumstances, the Tribunal considers that the various injuries suffered by the complainant will be fairly redressed by awarding him compensation in the amount of 10,000 euros under all heads.

11. As he succeeds for the most part, the complainant is entitled to costs, which the Tribunal sets at 5,000 euros.

DECISION

For the above reasons,

1. The decision of 1 October 2014 and the earlier decision of 8 October 2013 are set aside.
2. Eurocontrol shall pay the complainant compensation under all heads in the amount of 10,000 euros.
3. It shall also pay him 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 17 November 2017, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ