

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**M.**

**v.**

**Eurocontrol**

**127th Session**

**Judgment No. 4082**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. M. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 26 June 2015, Eurocontrol's reply of 8 October 2015, the complainant's rejoinder of 15 February 2016 and Eurocontrol's surrejoinder of 20 May 2016;

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 neither party has applied;

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

The complainant contests the salary he receives at his new grade.

The complainant, who joined Eurocontrol in 2000, was appointed to a grade B5 post on 1 August 2004.

On 1 July 2008 a wide-ranging administrative reform entered into force at Eurocontrol, the details of which are explained in Judgment 3189. At that juncture, the non-operational staff categories B and C were replaced for a two-year transitional period by the categories B\* and C\* respectively. The complainant was then placed in grade B\*5. On 1 July 2010, at the end of the transitional period, categories B\* and C\* were merged and placed in the Assistant group (AST). From that date, the complainant held grade AST5, step 3. He was awarded a first step advancement on 1 August 2010, and a second one on 1 August 2012.

On 3 November 2014 the complainant – who then held grade AST5, step 6 – was informed that he had been promoted to grade AST6, step 1, with retroactive effect as of 1 July 2014. On 28 January 2015 he filed an internal complaint challenging his payslip for the month of November 2014. He complained that the salary at his new grade had not been calculated in accordance with Article 7(4) of Part 2 of Annex XIII to the Staff Regulations governing officials of the Eurocontrol Agency. He requested, amongst other relief, the cancellation of his payslip for November 2014 and all subsequent payslips.

On 26 June 2015 the complainant filed his complaint with the Tribunal. He indicates that he is impugning the implied decision to dismiss his internal complaint, and he asks the Tribunal to quash that decision and to cancel his payslip for November 2014, as well as all his subsequent payslips. He also claims 5,000 euros in costs.

In its reply, Eurocontrol submits that the complaint should be dismissed as groundless.

In his rejoinder, the complainant maintains his claims.

In its surrejoinder, Eurocontrol informs the Tribunal that, on 21 March 2016, the Joint Committee for Disputes, to which the complainant's internal complaint was referred, issued its opinion, in which it held unanimously that the complaint was unfounded and should be dismissed on the grounds that the complainant's salary at his new grade had been calculated in accordance with the applicable provisions of the Staff Regulations. Eurocontrol adds that, by a memorandum dated 27 April 2016, the complainant was informed that the Director General shared the Committee's view and that his internal complaint was therefore dismissed.

## CONSIDERATIONS

1. The complainant asks the Tribunal to cancel his payslip for November 2014, as well as all his subsequent payslips. He also asks the Tribunal to quash the implied decision dismissing his internal complaint lodged on 28 January 2015 and to order the defendant Organisation to pay 5,000 euros in costs.

2. This complaint, which was originally directed against an implied decision to dismiss the complainant’s internal complaint, must now be regarded as impugning the express decision of 27 April 2016, taken in the course of the proceedings, by which the Director General informed the complainant of his decision to dismiss his internal complaint of 28 January 2015 (for a similar case, see, for example, Judgment 3667, consideration 1).

3. The complainant contends that when calculating his salary at his new grade, the Organisation failed to take into account the value of the notional step corresponding to his 23 months of service at grade AST5, step 5, thereby violating Article 7(4) of Part 2 of Annex XIII to the Staff Regulations. He considers that, in accordance with the third subparagraph of Article 7(4), the value of the notional step should have been taken into account given that he had not yet reached the last step of his grade.

4. In the edition of the Staff Regulations applicable on 1 August 2013, Article 7(4) of Part 2 of Annex XIII, on transitional measures applicable to officials, read as follows:

“[F]or each official, the first promotion or appointment to a higher grade after 1 July 2008 shall, depending on the category occupied before 1 July 2010 and the step occupied at the time the promotion or appointment to a higher grade takes effect, lead to an increase in basic monthly salary to be determined on the basis of the following table:

Average value of the increase in the various categories

Grade	Steps							
	1	2	3	4	5	6	7	8
A	13,1 %	11,0 %	6,8 %	5,7 %	5,5 %	5,2 %	5,2 %	4,9 %
B	11,9 %	10,5 %	6,4 %	4,9 %	4,8 %	4,7 %	4,5 %	4,3 %
C	8,5 %	6,3 %	4,6 %	4,0 %	3,9 %	3,7 %	3,6 %	3,5 %

For the purpose of determining the applicable percentage, each grade shall be divided into notional steps corresponding to two months of service and into notional percentages reduced by one twelfth of the difference between the percentage for the step in question and that for the next higher step with each notional step.

For the purposes of calculating the salary before promotion or appointment to a higher grade of an official who is not in the last step of his grade, the value of the notional step shall be taken into account. For the purposes of this provision, each grade shall also be divided into notional salaries rising

by one twelfth of the two-yearly increment for that grade throughout the span of the actual steps.”

5. It is clear from the provisions of Article 7(4), contained, as mentioned above, in Annex XIII, on transitional measures applicable to officials, that the “last step of [the] grade” referred to in the third subparagraph of Article 7(4) must be understood as being the last step of the grade held by the official concerned before the implementation of Eurocontrol’s administrative reform in 2008.

6. In the present case, prior to the entry into force of the reform, the complainant held a post at grade B5, step 4, and there were only four steps in that grade. Since the complainant was therefore at the last step of his grade, he is not entitled to benefit from the provisions of the third subparagraph of Article 7(4), which are not applicable to him.

7. It follows from the foregoing that the complaint must be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 16 November 2018, 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 6 February 2019.

*(Signed)*

PATRICK FRYDMAN

FATOUmata DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ