

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.

v.

Eurocontrol

134th Session

Judgment No. 4513

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr É. B. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 27 November 2018, Eurocontrol's reply of 18 March 2019, the complainant's rejoinder of 7 June and Eurocontrol's surrejoinder of 18 September 2019;

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 challenges the decision not to convert his appointment as a graduate when it expired and to terminate it.

On 1 December 2013 the complainant was appointed by Eurocontrol as a graduate official at grade AD5. Pursuant to Annex Xa to the Staff Regulations governing officials of the Eurocontrol Agency – which contains the special provisions of the Staff Regulations applicable to graduates – his appointment was for an initial period of 25 months, including a probation period of 13 months. The complainant was to be successively assigned to different services during the various phases of his appointment (induction period, probation period and periods of extension of appointment as a graduate) and, should he successfully

complete his full period of appointment, he might be offered the conversion of his contract into an appointment for an undetermined period or at least an appointment for a limited period, depending on the Organisation's need for staff resources. For the probation period, and then for each subsequent assignment, a host manager was to be designated to ensure that the assignment progressed properly. A mentor was also to be designated for the entire period of service.

Having successfully completed his probation period, on 1 January 2015 the complainant began an assignment in another service as an official with a limited-term appointment. Although an appraisal report was not drawn up for 2015, the complainant's appointment, still as a graduate, was renewed for 2016. On 26 September 2016 the Performance Board met and, noting the complainant's poor performance in 2015 and 2016, recommended that his appointment be terminated when it expired. However, on 27 October 2016 the Directorate of Resources proposed that the complainant's appointment be extended by one year and that a specific development plan and close monitoring be put in place. Thus, on 2 December 2016 the complainant's appointment, still as a graduate, was extended on an exceptional basis for a final period expiring on 31 December 2017. The complainant's appraisal report for 2016, which was eventually drawn up in May 2017, reflected unsatisfactory performance.

However, the intermediate appraisal report that was drawn up concerning the complainant in July 2017 reported satisfactory performance. On 31 August an external consultancy delivered a report on the complainant's business attitudes and motivations.

After hearing the complainant on 9 October 2017 and taking into account his overall performance and the external consultancy's report of 31 August, the Performance Board unanimously recommended on 30 October 2017 that his appointment be terminated. That same day, the Director General decided not to convert the complainant's appointment and to terminate it as of 31 December 2017.

On 20 December 2017 the complainant lodged an internal complaint against that decision in which he requested the setting aside of the decision, his reinstatement, the initiation of an investigation into the

conduct and actions of particular host managers whom he accused of moral harassment, compensation for injury and an award of legal costs. The Joint Committee for Disputes, which met on 5 February 2018, unanimously considered that the complainant should be reinstated in the last service to which he had been assigned because, since the service had expressed a need for staff with the complainant's profile, he had an expectation that his appointment would be converted. All the members of the Committee recommended that the complainant's legal fees be reimbursed and considered that the administration was required to initiate a harassment procedure under Rule of Application No. 40.

By a letter of 4 October 2018, which constitutes the impugned decision, the Head of Human Resources and Services at Eurocontrol informed the complainant that she had decided, for the Director General and by delegation, to reject his internal complaint as unfounded. She reviewed the complainant's entire assessment process in detail and considered that the decision not to convert his appointment was lawful and duly justified. With regard to the complainant's allegations of harassment, he was told that the head of the service in charge of psychosocial risks would contact him.

The complainant asks the Tribunal to set aside the impugned decision and to order his reinstatement and the payment of the salary difference for the period between 31 December 2017 and the date of his reinstatement, or, alternatively, to award him 236,309.40 euros in material damages. In any event, he claims the same amount in moral damages under all heads, compensation in the amount of 8,000 euros for the delay in dealing with his internal complaint and costs in the amount of 7,000 euros.

Eurocontrol requests the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The dispute mainly turns on compliance, in the present case, with the provisions applicable within Eurocontrol concerning the appraisal of a graduate's probation period and performance.

2. The relevant provisions are the following.

Articles 2, 3, 5 and 6 of Annex Xa to the Staff Regulations, entitled “Special provisions of the Staff Regulations applicable to graduates appointed as officials for a limited period”, in its 2013 version applicable to the present dispute, provide, in relevant part, as follows:

“Article 2
Recruitment

Graduates shall be recruited as officials by means of an external competition. Recruitment shall be organised by domain in order to meet the needs of the Agency. [...]

[...]

Article 3

Duration of appointment - placement within the Agency

1. Graduates shall be appointed as officials for an initial period of 25 months, including a probation period of 13 months as provided for in Article 5 below.
2. This initial appointment may be renewed once for 12 months if their acquisition of professional qualifications, practical performance and conduct in the service are considered satisfactory at the end of the 25-month period.
3. The appointment may be extended in exceptional cases by decision of the Director General for a final period of 12 months.

[...]

6. On expiry of any period of appointment, the appointment may be terminated. The official shall be informed of this termination two months in advance.

Article 5

Probation period - confirmation in the service

1. Graduates appointed as officials shall serve a probation period of 13 months, including a one-month induction period. During this induction period they shall be familiarised with the general functioning of the services of the Agency and shall be given an in-depth introduction to their future area of activity. The remaining 12 months of the probation period shall be devoted to gradually acquiring the qualifications necessary for their functions, under the supervision and direction of senior staff specially designated by the Director of the service in cooperation with the services in charge of human resources.
2. A specific Rule of Application shall set out the practical organisation of their probation period and in particular:

- the designation of the authorities in their service in charge of supervising and monitoring the progress of their probation period;
 - the periodicity of the reports drawn up on their performance;
 - the composition of the Board that will decide whether or not to recommend the confirmation of their initial appointment.
3. At the end of the probation period, if there is a positive recommendation by the competent board, the final decision concerning their confirmation in the service shall be taken by the Director General.

[...]

Article 6

Further career progression

1. Officials who have successfully completed the full period of appointment as determined under Article 3 above may be offered by the Director General, depending on the needs of the Agency in terms of staff resources at the time and without a selection procedure:
- the conversion of their appointment in career bracket AD5-8, to an appointment for an undetermined period. This appointment shall be governed by the provisions of Annex X to the Staff Regulations.
 - the conversion of their appointment for a limited period in career bracket AD5-8, subject to the conditions set out in Annex X to the Staff Regulations. The total length of the appointment, including the period spent as a graduate appointed as an official, shall not exceed seven years.

[...]

3. If the appointment is not converted or extended, it shall be terminated at the end of the period indicated in the letter of appointment.”

Rule of Application No. 43 concerning assessment of the probation period and confirmation of the official in the service pursuant to Article 5 of the aforementioned Annex Xa to the Staff Regulations, in the version published in the Office Notice of 5 June 2013 and applicable *ratione temporis* to the present dispute until 13 September 2017, provides as follows:

“Article 1

The present Rule sets out the procedure for assessment during the probation period and confirmation in the service following the probation period pursuant to Article 5 of Annex Xa to the Staff Regulations.

Article 2

Reference period

The initial period of one month devoted to familiarisation with the general functioning of the services shall not be assessed in the framework of the probation period. However, in the event of failure on the part of the official to fulfil his or her obligations as specified in the Staff Regulations during this period of familiarisation, a separate report shall be drawn up by the competent authorities designated below with a view to immediate termination of the probation period, after the official concerned has been heard. Five working days' notice shall be given. Any remuneration not due shall be recovered.

The reference period for assessing conduct in the service, the acquisition of professional qualifications and practical performance shall be the probation period defined in Article 5 of Annex Xa, less the familiarisation period of one month defined above, i.e. a 12-month probation period. This period may be increased or extended subject to the conditions specified in the aforementioned Article 5.

Article 3

Designation and role of the authorities responsible for monitoring the progress of the probation period

A host manager shall be designated for each official for the duration of the probation period. The official's professional profile (including his or her strengths and areas requiring improvement), as identified during the selection interview, shall be sent to the host manager so that it can be taken into account when the training plan is drawn up.

By means of periodical contact with the official, he/she shall be responsible for ensuring that the probation period progresses properly, i.e. through:

- the acquisition of knowledge and qualifications;
- integration in the service;
- observation of professional attitudes;
- the drawing-up of at least one intermediate report and a final probation report. The host manager shall send the reports in good time to the Probation Supervision Board ('Review Board'), the composition of which is set out in Article 6 below.

A mentor shall be designated for the entire period of service, including the probation period. He/she shall be responsible for providing personalised supervision and a basis for the official's development by sharing advice and experience. He/she shall not be involved in the drawing-up of the reports on the official.

Article 4

Frequency/timetable

The unit responsible for probations within the directorate in charge of human resources shall draw up the timetable for the intermediate probation report(s) and the final report.

No later than one month prior to the end of the probation period, a Probation Supervision Board shall meet to examine the intermediate and final probation reports and shall issue its opinion on the official's confirmation.

Article 5

Content of the report/assessment criteria

The probation report shall be drawn up on official forms provided by the Agency.

The intermediate probation report(s) and the final report shall reflect the outcome of a meeting between the host manager and the official. They shall include assessments and shall refer to the official's competencies, strengths and areas requiring improvement in his or her professional profile and conduct in the service during the probation period.

With a view to assessing the official's conduct in the service, the intermediate probation report(s) shall include assessments reflecting his or her compliance with the 'corporate behaviours'.

Article 6

Probation Supervision Board

In order to assess the probation period, a Probation Supervision Board shall be appointed by the Director General. It shall be composed of the following:
[...]

The Probation Supervision Board shall meet at least once a month prior to expiry of the probation period.

It shall examine the intermediate probation report(s) and the final report. It may hear the host manager, the mentor and the official prior to issuing its final opinion on the latter's confirmation.

If the opinion is negative, it must be substantiated. The opinion shall be sent to the official, host manager, director concerned and the Director General. The Director General shall take the final decision, which shall be substantiated.

Officials whose work has not proved adequate for confirmation shall be dismissed as provided for in Annex Xa."

Moreover, Rule of Application No. 44 concerning the performance appraisal of officials governed by Annex Xa during their period of employment provided for in Article 3 of that annex, in the version

published in the Office Notice of 5 June 2013 and applicable *ratione temporis* to the present dispute until 13 September 2017, provides as follows:

“Article 1

The present Rule sets out the procedure for the performance appraisal of those officials governed by Annex Xa, subsequent to their confirmation in the service, pursuant to Article 5 of Annex Xa to the Staff Regulations.

For the officials in question, these provisions shall replace the provisions of Article 43 of the Staff Regulations, which are not applicable to them.

Article 2

Designation and role of the authorities responsible for appraisal

A host manager shall be designated for each official for the duration of his or her assignment to a service or an Agency site. By means of periodical contact with the official, he/she shall be responsible for ensuring that the assignment progresses properly, i.e. through:

- the acquisition of knowledge and qualifications;
- integration in the service;
- observation of professional attitudes;
- the drawing-up of at least one intermediate performance appraisal report and a final appraisal report per reference period. The host manager shall send the reports to the Performance Board, the composition of which is set out in Article 6 below.

A mentor shall be designated for the entire period of service, including the probation period. He/she shall be responsible for providing personalised supervision and a basis for the official’s development by sharing advice and experience.

The host manager shall be the official’s line manager during the reference period. The countersigning manager shall be the host manager’s line manager.

By way of derogation from the above, the Director General may appoint a host manager or countersigning manager who is not one of the official’s line managers.

Article 3

Reference period

The reference period for assessing the official’s acquisition of professional qualifications, practical performance and conduct in the service shall be the 12 months following confirmation in the service, or any 12-month renewal period as defined in Article 3 of Annex Xa.

Article 4

Frequency/timetable

For each reference period, the host manager shall draw up the timetable for the intermediate report(s) and final report during that period.

No later than two months prior to the end of each reference period, a Performance Board shall meet to examine the intermediate appraisal report(s) and final performance appraisal report and shall issue an opinion on the renewal and possibly the extension of the official's employment.

If there is a change in host manager during the reference period, an intermediate appraisal report shall immediately be drawn up in order to carry out the appraisal for the elapsed period. The intermediate appraisal report shall specify the host manager and countersigning manager responsible for appraising the official's performance and the host manager and countersigning manager responsible for appraising the remainder of the reference period.

Article 5

Content of the report/appraisal criteria

The intermediate appraisal report(s) and the final report shall reflect the outcome of a meeting between the host manager and the official. They shall include assessments and shall refer to the ability, efficiency and conduct in the service of the official during the reference period.

With a view to evaluating the official's ability and efficiency, the intermediate appraisal report(s) and final report shall include assessments of the degree of completion of the professional objectives determined, as far as possible, by joint agreement between the official and the host manager, which should be accompanied by a plan of action to attain those objectives.

With a view to assessing the official's conduct in the service, the intermediate appraisal report(s) and final report shall include assessments reflecting his or her compliance with the 'corporate behaviours'.

The intermediate appraisal report(s) and final report may contain comments relating to specific services or tasks.

Article 6

Performance Board

In order to assess the official's performance during the reference period, a Performance Board shall be appointed by the Director General.

[...]

During its work, the Board may ask to hear the official, host manager, mentor or any other staff member who has participated in the performance appraisal.

Article 7

The Performance Board shall issue a recommendation on whether or not the official's employment should be renewed or extended, and shall state the reasons for its recommendation. To this end, it shall refer to the content of the intermediate appraisal report(s) and the final report. The recommendation shall be sent to the official, host manager, director concerned and the Director General. The Director General shall take the final decision, which shall be substantiated.

Officials whose work has not proved adequate for their period of employment to be renewed or extended shall be dismissed as provided for in Annex Xa on the scheduled end date of their employment."

From 14 September 2017 Rule of Application No. 44 was repealed and only Rule of Application No. 43, as amended, was applicable in this dispute. Rule of Application No. 43, adopted with the particular aim of merging the two previous Rules of Application so as to standardise the procedure for appraising the performance of graduates and henceforth entitled "Rule of Application No 43 concerning the assessment of officials subject to Annex Xa to the Staff Regulations", contains the following relevant provisions concerning the performance assessment procedure:

"Article 1

The present Rule shall apply to graduates appointed as officials who are required to undergo an appraisal pursuant to the final paragraph of Article 43 of the Staff Regulations.

This assessment shall cover the probation period designed to confirm the official's appointment and also the appointment period(s). Its purpose shall be, inter alia, to assess the official's conduct, competencies and professional attitude in the service.

Section 1

Assessment of the probation period and confirmation in the service

The present section sets out the procedure for assessment during the probation period and for confirmation in the service pursuant to Article 5 of Annex Xa to the Staff Regulations.

Article 2

Initial period

[...]

Article 3

Probation period

[...]

Article 4

Designation and role of the authorities responsible for monitoring the progress of the probation period

[...]

Article 5

Frequency/timetable

[...]

Article 6

Content of the report/assessment criteria

[...]

Section 2

Performance appraisal during the appointment period(s)

Article 7

[...]

Article 8

Appointment period(s)

[...]

Article 9

Designation and role of the authorities responsible for monitoring the progress of the appointment period

[...]

Article 10

Frequency/timetable

For each appointment period, the host manager shall draw up the timetable for the establishment of the objectives, the intermediate report(s) and final report during the period(s) of appointment.

A first intermediate report shall be drawn up jointly by the host manager and the official, in the presence of a representative of the directorate in charge of human resources.

If there is any change in host manager during the appointment period, an intermediate appraisal report shall immediately be drawn up in order to allow the appraisal to be carried out for the elapsed period. The intermediate appraisal report shall specify the host manager and countersigning manager responsible for appraising the official's performance and the host manager and countersigning manager responsible for appraising the remainder of the appointment period.

No later than two calendar months prior to the end of each appointment period or 60 calendar days as the case may be, the Performance Board shall meet to examine the intermediate appraisal report(s) and final appraisal report and shall issue an opinion on the renewal and possibly the extension of the official's employment.

Article 11

Content of the report/appraisal criteria

The intermediate appraisal report(s) and the final appraisal report shall reflect the outcome of a meeting between the host manager and the official. They shall include assessments and shall refer to the ability, efficiency and conduct in the service of the official during the appointment period(s).

With a view to evaluating the official's ability and efficiency, the intermediate appraisal report(s) and final appraisal report shall include assessments of the degree of compliance with the professional objectives determined, as far as possible by joint agreement between the official and the host manager, which should be accompanied by a plan of action to allow the official to meet those objectives if necessary.

With a view to assessing the official's conduct in the service, the intermediate appraisal report(s) and final appraisal report shall include assessments reflecting his compliance with the 'corporate behaviours'.

The intermediate appraisal report(s) and final appraisal report may contain comments relating to specific services or tasks. Each report shall be communicated to all parties within one month of the establishment thereof.

If any of the reports indicates an area for improvement, an improvement/development plan shall be put in place by the Directorate in charge of staff performance management:

- In the case of an intermediate report, an improvement/development plan shall be put in place covering the period from the establishment of the intermediate report to that of the final report.
- In the case of the final report, the Performance Board may decide to extend the appointment and to draw up an improvement/development plan for that purpose.

Section 3

Composition of the Performance Board and assessment procedures

Article 12

Composition

In order to assess the probation period as defined in Article 3 of the present Rule and the appointment period(s) following the confirmation in service, as defined in Article 8 of the present Rule, a Performance Board shall be appointed by the Director General.

It shall be composed of the following:

[...]

During its proceedings, the Board may ask to hear the official, host manager, mentor or any other staff member who has participated in the performance appraisal. The official may also, at his request, be heard.

Article 13

Assessment procedure for the probation period

The Performance Board shall meet at least 60 working days before the expiry of the probation period.

It shall examine the intermediate report(s) and/or the final report. It may hear the host manager, the mentor and the official before giving a final opinion on whether the official subsequent appointment should be confirmed, as provided for in Article 3 of Annex Xa to the Staff Regulations. The official may also be heard at his request.

The opinion shall be sent to the official, the host manager, the Director concerned and the Director General.

If the opinion is negative, it shall state the grounds for refusal. In such cases, the host manager, the mentor, the HR Business Partner and the official shall be heard.

On the basis of the Performance Board's opinion, the Director General shall take a reasoned final decision within 30 working days from the date at which the Performance Board has delivered its opinion.

If the Director General's decision is negative, the official's contract shall be terminated at the end of the probation period pursuant to the provisions laid down in Annex Xa to the Staff Regulations. The notice period in case of termination shall be the date defined in Article 5, paragraph 5 of Annex Xa to the Staff Regulations.

If the Director General's decision is positive, the official's subsequent appointment shall be confirmed.

Article 14

Assessment procedure for the appointment period(s)

The Performance Board shall meet at least 2 calendar months before the expiry of each appointment.

It shall examine the intermediate report(s) and/or the final report for each appointment period. The host manager, the mentor and the official may be heard before a final opinion is given on whether the official's subsequent appointment is to be confirmed. The official may also be heard at his request.

The opinion shall be sent to the official, the host manager, the Director concerned and the Director General.

If the opinion is negative, it shall state the grounds for refusal. In such cases, the host manager, the mentor, the HR Business Partner and the official must be heard.

On the basis of the Performance Board's opinion, the Director General shall take a final reasoned decision within 1 calendar month from the date at which the Performance Board has delivered its opinion, either to:

- exceptionally extend the appointment, pursuant to Article 3, paragraph 3 of Annex Xa; or
- convert the appointment, pursuant to Article 6, paragraph 1 of Annex Xa; or
- terminate the appointment, pursuant to Article 6, paragraph 3 of Annex Xa.

The notice period in case of termination of the appointment shall be the date defined in Article 3, paragraph 6 of Annex Xa to the Staff Regulations.

If the Director General's decision is negative, the official's contract shall be terminated at the end of the appointment period pursuant to the provisions laid down in Annex Xa to the Staff Regulations."

3. Firstly, the complainant alleges various breaches of the rules applicable within Eurocontrol concerning the assessment of the performance of a staff member recruited as a graduate.

While his performance was assessed from 2014 to mid-2017, the complainant submits that the appraisal was very positive for 2014 and the first half of 2017, but that the Performance Board's opinion of 30 October 2017, which formed the basis of the Director General's decision taken that same day, mainly drew on the negative appraisals of his performance for 2015 and 2016. In his view, the assessment of his performance during those two years was affected by serious shortcomings on Eurocontrol's part.

Regarding 2015, the complainant submits that no appraisal was carried out, in breach of the relevant rules. According to him, during that period, no intermediate or final appraisal report was drawn up; no objectives were set for him; no monitoring was carried out by the host managers and the mentor concerned; and no opinion was issued by the Performance Board, which did not meet and did not hear him.

The complainant alleges the same procedural breaches for the appraisal of his performance in 2016. Although it is true that, this time, a final report was drawn up, the complainant submits that it has no evidential value because it was drawn up retrospectively for purely formal reasons and is not based on any tangible objectives that had been previously set.

He infers from this that when he was assigned specific tasks and properly monitored in accordance with the relevant rules, his objectives were fully achieved.

4. Eurocontrol acknowledges that no written appraisal report was drawn up for 2015. However, it points out that, as regards that year, the Performance Board met on 23 October 2015 and concluded, on the basis of a positive appraisal by one of the four host managers responsible for that reference period, not to convert the complainant's appointment into an appointment for an undetermined period or at least into a limited-term appointment but to renew it for a 12-month period. A decision was, moreover, taken on 1 December 2015 and the complainant's appointment as a graduate was extended for a further 12 months, from 1 January 2016 to 31 December 2016.

Regarding 2016, Eurocontrol acknowledges that the appraisal report was finalised late, but states that the Performance Board met in September 2016 to assess the complainant's overall performance during the first three years of his service, after reviewing the information provided by his host managers for 2014, 2015 and 2016. It was in those circumstances that a majority of the members of the Performance Board decided not to recommend that the complainant's appointment be converted.

5. Under the Tribunal's case law, the decision not to renew a fixed-term contract is a discretionary decision, but if the decision rests on poor performance, the assessment of that performance has to be made in accordance with the rules established for that purpose; this is allied with an obligation to afford an opportunity to improve (see, in particular, Judgment 4289, under 7, and the case law cited therein).

These principles are also applicable when, as in the present case, a decision is to be taken on whether to convert a graduate appointment into an appointment for an undetermined period or a limited period.

In the present case, the Tribunal, in the light of the unanimous opinion delivered by the Joint Committee for Disputes on 5 April 2018 and the other documents in the file, finds that the manner in which the appraisal of the complainant's performance during his appointment as a graduate was carried out was tainted by a number of flaws in relation to the appraisal procedure laid down in Rules of Application No. 43 and No. 44, in the versions applicable at the time when a given stage of the appraisal procedure was or should have been carried out.

The Tribunal considers that the following shortcomings, correctly identified by the Joint Committee for Disputes in its aforementioned opinion, have been established:

- no intermediate or final assessment report for the complainant was drawn up for 2015, and there was a delay in drawing up the final report for 2016;
- the Performance Board issued only one recommendation, in September 2016, covering a period of three reference years and based only on the finalised assessment report for 2014 - which was positive - whereas, under the aforementioned Rules of Application Nos. 43 and 44, the Board should have given an opinion for each reference year based on the intermediate and final appraisal reports for each of these years;
- in his decision of 2 December 2016, the Director General acknowledged that the complainant's performance during the reference year 2016 was satisfactory and the only reason why the decision was taken to extend the complainant's appointment instead of converting it pursuant to Annex Xa to the Staff Regulations, was that the Director General considered that there was, at that time, no job available corresponding to the complainant's profile. However, when the Performance Board met in October 2017, it continued to assess the complainant's performance unfavourably without referring to this decision of the Director General or to the fact that the

intermediate appraisal of the complainant's performance for the first half of 2017 had been considered positive.

The complainant's plea is therefore well founded.

6. The Tribunal notes, however, that, pursuant to Article 6 of Annex Xa to the Staff Regulations, conversion of an appointment as a graduate may be considered only if, at the time when that decision is to be taken, such a conversion is warranted by the Organisation's staffing needs.

7. In that regard, Eurocontrol submits that it was not, and still is not, in a position to offer the complainant a job matching the Organisation's requirements.

8. However, the Tribunal observes that the reasoning behind both the decision initially taken by the Director General on 30 October 2017 and the one he took, after the internal appeal procedure, on 4 October 2018 is not based on whether the Organisation needed at that point to secure the services of a person with the complainant's profile, but only on the complainant's allegedly unsatisfactory performance.

Eurocontrol's argument is therefore unfounded.

9. It follows from the foregoing that the impugned decision of 4 October 2018 and the initial decision of 30 October 2017 are unlawful and must therefore be set aside, without there being any need to examine the complainant's other pleas directed against them.

10. The complainant seeks an order for his reinstatement in the Organisation at grade AD5 and at the step corresponding to normal service on the date of his reinstatement, with payment of the salary difference from the time he was dismissed and engaged by another employer until he is actually reinstated. Failing that, he requests an award of 236,309.40 euros in material damages. He also requests that, in any event, he be awarded the same amount in moral damages.

11. The Tribunal cannot grant the complainant's principal claim for reinstatement. Having regard to the wording and scheme of the abovementioned provisions of Article 6 of Annex Xa to the Staff Regulations, the setting aside of the impugned decision does not necessarily entail the conversion of the complainant's appointment as a graduate into an appointment for an undetermined period or at least a limited period.

12. In the circumstances of the present case, and in view of the specific features of the appointment process provided for in Annex Xa to the Staff Regulations, the Tribunal does not consider it appropriate to remit the case to Eurocontrol for an examination by the Organisation of whether, following the setting aside of the impugned decision by the Tribunal, Eurocontrol should convert the complainant's appointment.

13. However, the Tribunal concludes from its examination of the complainant's pleas that he was deprived of a valuable opportunity to have his appointment as a graduate converted, as from 1 January 2018, into an appointment for an undetermined period or at least a limited period pursuant to Article 6 of the abovementioned Annex Xa to the Staff Regulations. Several documents in the file, including the emails exchanged at the time by various authorities of the Organisation, lead the Tribunal to consider that, on 31 December 2017, the Organisation did in fact have a need for a staff member with the complainant's profile.

14. Moreover, the numerous flaws in the procedure leading to the impugned decision had the effect of depriving the complainant of his right to have the question of the conversion of his appointment as a graduate examined under lawful conditions and thus caused him substantial moral injury.

15. In the circumstances of the case, the Tribunal considers that the material injury linked to the loss of opportunity identified in consideration 13, above, and the moral injury identified in consideration 14, above, will be fairly redressed by awarding to the

complainant compensation in the amount of 65,000 euros under all heads.

In that regard, the Tribunal notes that the amount of compensation claimed by the complainant as redress for material injury evidently does not take into account the earnings he received from another employer, according to the file, after he left the Organisation. Furthermore, there is no rational basis for granting compensation for the moral injury alleged by the complainant in the same amount as compensation for material injury. Lastly, it is not appropriate in the present proceedings to consider the claims for compensation for moral injury relating to the complainant's internal complaint of harassment.

16. The complainant also claims 8,000 euros in compensation for the injury caused by the delay in handling his internal complaint.

In the present case, the internal complaint was lodged on 20 December 2017, the Joint Committee for Disputes gave its opinion on 5 April 2018 and the Director General took his final decision on 4 October 2018, almost ten months after the internal complaint was lodged. That delay, which the Tribunal notes is largely due to the fact that the Director General delayed in taking his decision after receiving the Committee's opinion, is excessive and caused the complainant moral injury which warrants the award of compensation in the amount of 2,000 euros.

17. As the complainant succeeds for the most part, he is entitled to costs, which the Tribunal sets at 4,000 euros.

DECISION

For the above reasons,

1. The decision of the Director General of Eurocontrol of 4 October 2018 and the decision of 30 October 2017 are set aside.
2. Eurocontrol shall pay the complainant compensation in the amount of 65,000 euros, as stated in consideration 15, above.

3. The Organisation shall also pay him compensation in the amount of 2,000 euros for the delay in the internal appeal procedure.
4. Lastly, it shall pay him costs in the amount of 4,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 13 May 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ