

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G. (No. 2)

v.

Eurocontrol

133rd Session

Judgment No. 4472

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr P. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 24 February 2017 and corrected on 8 March, Eurocontrol's reply of 23 June, the complainant's rejoinder of 19 September 2017, Eurocontrol's surrejoinder of 18 January 2018, the complainant's further submissions of 8 June and Eurocontrol's final observations thereon of 3 October 2018;

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 impugns the decision to appoint an official to his former post.

At the material time, the complainant was assigned to a generic post of advanced supervisor and held, at grade AST7, the post of Sickness Insurance Supervisor in the "People and Finance Operations" unit of the Directorate of Resources. On 10 November 2014 he lodged a complaint of psychological harassment against his supervisor, Ms A.

By decision of 17 December 2014, the Head of People and Finance Operations, stating that he was acting by delegation of authority from the Director General, told the complainant that, "[s]olely in view of the

interest of the service and after hearing the member of staff concerned”*, he was transferred within the Directorate of Resources with immediate effect. It was made clear that the complainant would retain his grade, step and generic post.

On 14 January 2016 the complainant was notified that, in accordance with the investigators’ conclusion in respect of his harassment complaint, the case was considered closed. In his internal complaint against this decision, he stated that he had been “ousted”* from his post of Sickness Insurance Supervisor as a result of the lodging of his harassment complaint. That internal complaint was finally dismissed by a decision of 15 December 2016, which is the subject of the complainant’s first complaint.

By email of 2 March 2016, Ms A. announced that Ms F. had taken over as Sickness Insurance Supervisor on the previous day. On 17 March the complainant lodged another internal complaint, this time against the “decision” of 2 March which, according to him, appointed that official to “[his] post of Sickness Fund Supervisor”*. He alleged that this appointment was intended to make his removal permanent.

In the opinion of 18 November 2016 of the Joint Committee for Disputes, to which the case had been referred, two of its members considered that the internal complaint was irreceivable, as the email of 2 March 2016 was not, in their view, a decision adversely affecting the complainant. On the merits, the majority found that the decision not to reassign the complainant to the post of Sickness Insurance Supervisor was lawful. However, the Committee found unanimously that a competition should have been organised to fill that post. On 1 December 2016 the Director General informed the complainant that he had decided to dismiss his internal complaint as irreceivable and, subsidiarily, unfounded. That is the impugned decision.

The complainant asks the Tribunal to set aside that decision, to find that Eurocontrol did not respect his rights or the applicable rules by appointing Ms F. to his post, and to order that he be reinstated in his post. He also claims 20,000 euros in compensation for the moral injury

* Registry’s translation.

he considers he has suffered and 7,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

Eurocontrol submits that the complaint should be dismissed as irreceivable and unfounded. It leaves it to the Tribunal's discretion to decide whether this complaint should be joined with the complainant's first complaint.

CONSIDERATIONS

1. The complainant's second complaint is dated 24 February 2017. He filed his first complaint on 20 February 2017. The factual background of the two cases partly overlaps. However, the Tribunal considers it appropriate to render separate judgments in view of the complainant's different claims in each complaint.

2. In this case, the impugned decision of the Director General of 1 December 2016 refers to the opinion of the members of the Joint Committee for Disputes dated 18 November 2016. The internal complaint of 17 March 2016 dismissed by that decision of the Director General is directed against what the complainant calls the "decision" of 2 March 2016 appointing Ms F. to the post of Sickness Insurance Supervisor with effect from 1 March 2016.

3. Eurocontrol challenges the receivability of the complaint on two grounds.

First, it submits that the complainant is not challenging the actual decision to appoint Ms F., but only an "informative" email of 2 March 2016 announcing that appointment, which makes his internal complaint irreceivable.

However, the Tribunal observes that, according to the submissions, Ms F. was in fact appointed by a decision of the Director General of 1 February 2016, and not the email of 2 March 2016 to which the complainant draws attention. It follows that the complainant's internal complaint, submitted under Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency, must be regarded as

directed against the Director General's decision of 1 February 2016 and that, consequently, Eurocontrol's objection to receivability is irrelevant.

4. Second, Eurocontrol submits that the complainant's request to be reinstated in his post is irreceivable since he never challenged, in accordance with the procedure laid down in Article 92 of the Staff Regulations, the decision to transfer him on 17 December 2014. As the Tribunal stated in Judgment 4471 also delivered in public this day, ruling on the complainant's first complaint, the complainant did not in fact lodge an internal complaint under the procedure laid down in the aforementioned Article 92 with a view to contesting that transfer decision. His request for reinstatement in his former post, which would necessarily involve setting aside this transfer decision, is therefore bound to be dismissed.

5. On the merits, the complainant submits that the post was unlawfully assigned to Ms F. by Ms A., whereas under Article 7 of the Staff Regulations the power to make such an appointment lay with the Director General. However, as stated in consideration 3, above, this appointment decision was taken by the Director General, and not Ms A. This plea is therefore unfounded.

6. Furthermore, Article 7 of the Staff Regulations allows the Director General, acting solely in the interest of the service and without regard to nationality, to assign each official by transfer to a post in his function group, which corresponds to his grade and his service.

In the event of a transfer under Article 7, in which the Director General has broad discretion, the Organisation is not required to announce the vacancy or organise a competition to fill the post under Articles 4 or 30 of the Staff Regulations (see Judgment 1757, consideration 11). The complainant does not contest that, as Eurocontrol submits, there was an interest of the service that warranted the use of that procedure to fill the post. This plea will therefore be dismissed.

7. Lastly, the complainant alleges that the Joint Committee for Disputes showed bias in the opinion of 18 November 2016 on which the impugned decision of the Director General of 1 December 2016 is based. The complainant submits that the Committee was biased because its secretary was Ms D., who had personally intervened in the complainant's case on Eurocontrol's behalf.

8. First, Article 2 of the Annex to Office Notice No. 06/11 of 7 March 2011 on the functioning of the Joint Committee for Disputes provides that the Committee is to consist of a chairman and four appointed members. The Committee's secretary, who has a purely administrative role, is not a member of it. Opinions are delivered by members of the Committee alone. Second, there is nothing in the file to substantiate the complainant's allegations that, at the meeting of the Committee where his internal complaint was examined, Ms D. overstepped her role and defended the Organisation's point of view.

9. Although the complainant criticises the Joint Committee for Disputes for having referred to Eurocontrol's arguments in its opinion, it does not appear from an examination of that opinion that the Committee, which must take into consideration both parties' submissions, breached its duty of impartiality.

10. It follows 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 9 November 2021, 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 27 January 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ