

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

137th Session

Judgment No. 4765

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr R. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 3 March 2021, Eurocontrol's reply of 24 June 2021, the complainant's rejoinder of 21 October 2021 and Eurocontrol's surrejoinder of 10 January 2022;

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 to open an administrative investigation into his conduct, and the dismissal of his harassment complaint.

On 11 October 2018 the complainant, a Eurocontrol official, submitted an application to Eurocontrol's Sickness Insurance Scheme seeking reimbursement for a pair of spectacles, accompanied by a medical prescription and an optician's invoice. On 25 October 2018 Ms F., a staff member of the Scheme, informed the complainant that he had not been granted reimbursement for the spectacles because the date on the medical prescription had been falsified to read 4 October 2018

instead of 4 October 2017, and that she had to inform her own supervisor, Ms B.

By an internal memorandum dated 18 April 2019, the Head of Human Resources and Services brought it to the Director General's attention that the complainant had been accused of attempting to defraud the Sickness Insurance Scheme and recommended that an administrative investigation be opened. She added that she had visited the optician in question while on holiday in Italy and that his invoices did not match the one submitted by the complainant in support of his application for reimbursement.

On 7 May 2019 the Director General asked the Head of the Corporate Security Service to launch an administrative investigation pursuant to Article 88(2) of the Staff Regulations governing officials of the Eurocontrol Agency.

By an internal memorandum of 6 October 2020, the Head of the Corporate Security Service informed the complainant of the opening of such an investigation.

On 19 October 2020 the complainant lodged an internal complaint against the memorandum of 6 October 2020. He stated that the complaint also constituted a formal harassment complaint against Ms F., Ms B. and the Head of Human Resources and Services and that, unless the administrative investigation was cancelled, the harassment complaint should also be extended to the Head of the Corporate Security Service and the Director General. He also disclosed information pursuant to Article 22a of the Staff Regulations.

The Head of the Corporate Security Service submitted his investigation report to the Director General on 22 October 2020. Further to that report, on 23 October 2020 the Director General asked the Head of Human Resources and Services to initiate disciplinary proceedings against the complainant.

On 3 March 2021 the complainant filed a complaint with the Tribunal against the implied rejection of his internal complaint of 19 October 2020.

On 1 June 2021 the complainant was notified of the decision to reject his harassment complaint.

The complainant asks the Tribunal to set aside the decision (memorandum) of 6 October 2020 and to order Eurocontrol to conduct an administrative investigation into the “machinations” of Ms F., Ms B., the Head of Human Resources and Services, the Head of the Corporate Security Service, and the Director General. He also asks the Tribunal to declare them guilty of morally harassing him and that the “investigation conducted outside any framework”^{*} by the Head of Human Resources and Services is unlawful and breached his fundamental rights. He seeks compensation for the moral injury he considers he has suffered of at least 60,000 euros, including 10,000 euros for the failure to deal with his internal complaint, as well as exemplary or punitive damages in the amount of 25,000 euros. Lastly, he claims costs in the amount of 9,500 euros, of which 2,500 euros relate to the internal procedure.

Eurocontrol asks the Tribunal to dismiss the complainant’s first claim, seeking the setting aside of the decision of 6 October 2020, as irreceivable and to dismiss his other claims as unfounded.

CONSIDERATIONS

1. Beyond compensation for the moral injury he alleges to have suffered owing to Eurocontrol’s behaviour towards him and an award of exemplary or punitive damages and costs, the complainant requests, in particular, that the Tribunal set aside the memorandum of 6 October 2020 from the Head of the Corporate Security Service notifying him that an administrative investigation had been launched into his conduct, declare that various staff members of the Organisation are guilty of morally harassing him, and order Eurocontrol to “conduct an administrative investigation” into their actions. He further challenges the dismissal of his internal complaint of moral harassment.

^{*} Registry’s translation.

2. According to the Tribunal's settled case law, a decision to open an investigation is not a decision that adversely affects a complainant since it does not affect her or his legal situation and, in particular, does not cause any change in her or his status. It is therefore not open to appeal (see Judgments 4607, consideration 6, 4039, consideration 3, 3236, consideration 12, and 2364, considerations 3 and 4). It should be recalled that any objections that a complainant may raise against such a decision, which is merely a step in the investigative procedure, may be brought up in a challenge to the final decision taken at the end of that procedure (see, for example, Judgments 4475, consideration 6, and 3958, consideration 15, and the case law cited therein).

Insofar as the complainant seeks to have the decision (memorandum) of 6 October 2020 set aside, his complaint must therefore be declared irreceivable.

3. As regards the dismissal of the harassment complaint lodged by the complainant on 19 October 2020, the Tribunal notes that he did not challenge that decision using the appeal procedures provided for in Article 92 of the Staff Regulations governing officials of the Eurocontrol Agency. Under Article 92(2), the complainant ought to have submitted an internal complaint against the decision on his harassment complaint. Instead, he impugned it directly before the Tribunal. The complaint is therefore irreceivable in this respect as the complainant contravened the requirement laid down in Article VII, paragraph 1, of the Statute of the Tribunal that internal means of redress be exhausted.

4. Lastly, although the complainant also requests the Tribunal to order Eurocontrol to conduct an administrative investigation into information which he had considered should be disclosed to the Organisation pursuant to Article 22a of the Staff Regulations, it is not for the Tribunal in any event to make an order of this kind.

5. 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 8 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER