

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P.

v.

Eurocontrol

137th Session

Judgment No. 4769

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 16 April 2020, Eurocontrol's reply of 14 August 2020, the complainant's rejoinder of 14 October 2020, Eurocontrol's surrejoinder of 8 January 2021, the complainant's further submissions of 17 December 2021 and Eurocontrol's final comments thereon of 8 March 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 impugns what he refers to as decisions concerning Eurocontrol Agency's reorganisation, and his transfer following that reorganisation.

The complainant joined Eurocontrol in 1993. At the material time, he was Head of the COM & Frequency Coordination Unit in the Network CNS/IM Services Division of the Network Management Directorate (DNM). Among other areas, that division dealt with network infrastructure and was made up of five units.

By an internal memorandum of 4 July 2019, the Director General notified all staff of a change in the Agency's organisational structure intended to improve organisational efficiency and effectiveness. Among the reasons for the Agency's structural changes, he referred to the staff non-replacement policy approved by Eurocontrol's decision-making bodies and to a related study and its recommendations. Those recommendations focused on reducing the number of units in the Agency and on grouping activities and expertise to build synergies and avoid duplication of tasks in different directorates. The memorandum stated that the reorganisation would come into effect on 4 July 2019, but that it should be implemented by the end of September 2019 "through final organisational decisions at Directorate and Units level" regarding the staff moves and the possible publication of competitions among other matters. An organisational chart showing the Agency's new structure was appended. DNM was among the departments affected. Its new Infrastructure Division was now made up of three units instead of five: Planning and Support, Integrated CNS, and Information and Cyber.

By an internal memorandum of 5 July 2019, the Network Management Director informed staff that he was working to implement the Directorate's new structure, to assign staff within that new structure and to identify the possible publication of competitions, all by the end of September 2019. He also designated the managers who would be in charge of the various DNM divisions in the meantime. Someone other than the complainant was chosen to take charge of the new Infrastructure Division.

On 20 September 2019 the Director General signed Decision No. I/25a (2019) 04/07/2019 concerning Eurocontrol Agency's organisation and Decision No. XVI/4 (2019) 04/07/2019 regarding the organisation of the Network Management Directorate. These decisions stipulated that they would take effect on 4 July 2019.

On 20 September 2019 the complainant lodged an internal complaint pursuant to Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency against the internal memoranda of 4 and 5 July 2019. He stated the following in his internal complaint:

“Since their publication, these decisions have led to major structural changes and the creation of new posts, such as that of the Head of the iCNS Unit for example, which was assigned by appointment in violation of internal rules”*. The complainant considered that the memoranda of 4 and 5 July 2019 adversely affected him because “[t]he posts of Head of the Infrastructure Division and Head of the iCNS Unit [were] not advertised”* “[t]he post of head of unit which [he had] occupied [was] disappearing”* and “the unit which [he] head[ed] [...] no longer appear[ed] in the new organisational chart”*.

On 27 September 2019 the Director General took a decision reassigning all DNM staff within the reorganised divisions. The complainant was transferred to the Integrated CNS Unit in the Infrastructure Division.

On 4 November 2019 the Administration acknowledged receipt of the complainant’s internal complaint and forwarded it to the Joint Committee for Disputes. The complainant was informed that this was a “decision upon [the] claim” – within the meaning of the Tribunal’s case law – that had the effect of suspending the 60-day period at the expiry of which an implied rejection decision could arise under Article VII, paragraph 3, of the Statute of the Tribunal.

The complainant filed a complaint with the Tribunal on 16 April 2020 to impugn an implied rejection decision.

In its opinion of 24 November 2020, which followed a meeting held on 8 October 2020, the Joint Committee for Disputes found by a majority that the complainant’s internal complaint was well founded “on the ground that posts within the Agency should have been advertised so that the complainant could have shown his interest”* in them. However, one member considered the internal complaint to be unfounded and referred to an organisation’s discretionary power where restructuring and recruitment for vacant posts were concerned.

On 10 December 2021 the Head of the Agency’s Human Resources and Services Unit, acting by delegation of power from the Director General, notified the complainant of the opinion of the Joint Committee

* Registry’s translation.

for Disputes and informed him that she did not agree with the members who considered his internal complaint well founded and that she had decided to dismiss it as groundless.

The complainant asks the Tribunal to set aside the internal memoranda of 4 and 5 July 2019, Decision No. I/25a (2019) 04/07/2019 and Decision No. XVI/4 (2019) 04/07/2019, as well as the decision of 27 September 2019 ordering his transfer. He also asks the Tribunal to “order [Eurocontrol] to comply” with Articles 7 and 30 of the Staff Regulations. He further seeks a sum of 5,000 euros in compensation for the moral injury he considers he has suffered. Lastly, he claims costs.

Eurocontrol asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. In his complaint of 16 April 2020, the complainant impugns before the Tribunal the implied decision to reject his internal complaint lodged on 20 September 2019 pursuant to Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency. The internal complaint was mainly directed against an internal memorandum issued by the Director General on 4 July 2019 concerning the Agency’s reorganisation and an internal memorandum issued by the Network Management Director concerning the implementation of the new structure of the Network Management Directorate (DNM), both of which, according to the complainant, adversely affected him.

In his internal complaint, the complainant alleged that he had suffered moral and professional injury since, according to him, the memoranda of 4 and 5 July 2019 had resulted in his position of head of unit disappearing, the unit that he headed no longer appearing in the new organisation chart, and staff members other than himself being appointed to head of division positions that had not been advertised, leaving him “in a state of uncertainty as to [his] future in the Organisation”*. While not wishing to cause injury to colleagues

* Registry’s translation.

appointed to these positions, he asked the Director General to “discuss possible alternatives to cancelling [the] decision not to appoint [him] and to appoint [his] colleagues”^{*}.

2. Eurocontrol contends that the complaint is irreceivable because the complainant did not exhaust the internal means of redress available to him as an official of the Organisation, contrary to the requirements of Article VII, paragraph 1, of the Statute of the Tribunal. However, the Tribunal notes that, under the last sentence of Article 92(2) of the Staff Regulations, an implied decision rejecting the complainant’s internal complaint that could be challenged before the Tribunal arose when four months had passed from the date on which that internal complaint had been lodged, that is on 20 January 2020 (see Judgments 4696, consideration 2, 4695, consideration 2, and 4694, consideration 3). Consequently, by the date on which the complainant filed his complaint with the Tribunal, the internal means of redress available to him had indeed been exhausted. The Organisation’s objection to receivability in this respect must therefore be dismissed.

3. In his further submissions, the complainant raised the point that, after he had filed his complaint with the Tribunal, on 24 November 2020 the Joint Committee for Disputes eventually issued its opinion on his internal complaint. This led to a decision explicitly rejecting that internal complaint, taken on 10 December 2021 by the Head of Human Resources and Services Unit, acting by delegation of power from the Director General, in which she concluded that his internal complaint was unfounded. The complainant also pointed out in the further submissions that the Committee’s opinion was an essential document for the settlement of the present dispute.

The Tribunal observes that the complainant’s claims to the Tribunal remained fundamentally unchanged after this explicit rejection decision taken on 10 December 2021.

^{*} Registry’s translation.

Since the parties had the opportunity to comment fully in their submissions on the decision expressly rejecting the complainant's internal complaint, the Tribunal considers it appropriate to treat the complaint as if it were directed against that decision (for similar cases, see, in particular, Judgments 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

4. In his claims for relief, the complainant indicates that he asks the Tribunal to review the lawfulness of five decisions. He also asks the Tribunal to "order [Eurocontrol] to comply with Articles 7 and 30 of the Staff Regulations". Lastly, he requests the Tribunal to order the Organisation to pay him 5,000 euros in moral damages.

5. Three of the decisions which the complainant challenges as unlawful and seeks to have set aside are general decisions. The first, which he describes as the Director General's "final decision" of 4 July 2019, is actually an internal memorandum informing staff of the Agency's reorganisation. The other two are, first, Decision No. I/25a (2019) 04/07/2019 concerning the Agency's structure, dated 20 September 2019, which follows on from the announcements made in the memorandum of 4 July 2019, and, second, Decision No. XVI/4 (2019) 04/07/2019 concerning the DNM's structure, also dated 20 September 2019, which makes official the DNM's new structure following the process referred to in the internal memorandum issued by the Network Management Director on 5 July 2019. In this connection, the Tribunal observes that, according to the submissions, the complainant does not deny that these general decisions resulted from a major organisational restructuring of the Agency. That is, moreover, made clear by the internal memorandum of 4 July 2019 and the two decisions of 20 September 2019.

However, the Tribunal finds that the complainant's claim for these decisions to be set aside is irreceivable. Under the Tribunal's settled case law, a general decision intended to serve as a basis for individual decisions – as is the case of the memorandum at issue and the two decisions of 20 September 2019 – cannot be impugned, save in exceptional cases, and its lawfulness may only be contested in the

context of a challenge to the individual decisions that are taken on its basis (see, for example, Judgments 4734, consideration 4, 4572, consideration 3, 4278, consideration 2, 3736, consideration 3, and 3628, consideration 4).

6. Contrary to the complainant's submissions in the complaint, these general decisions are not among the exceptions recognised in the Tribunal's case law according to which general decisions may be challenged when they do not require implementing decisions and immediately and adversely affect individual rights (see in this connection Judgments 4551, consideration 5, and 4550, consideration 4).

Neither the memorandum of 4 July 2019 nor the two decisions of 20 September 2019 infringed the individual rights of staff members within the meaning of this case law. In addition, the Tribunal notes that the memorandum of 4 July 2019 stated that the reorganisation would be implemented "through final organisational decisions at Directorate and Units level", including decisions on staff moves. Similarly, Decision No. I/25a (2019) 04/07/2019 indicated that separate decisions would cover the precise structure of the entities concerned and the administrative situation of the staff members affected. That was the case for the complainant and all other staff members affected by the collective transfer decision of 27 September 2019, clearly demonstrating that the memorandum and the decision required implementing decisions for each staff member concerned. For its part, Decision No. XVI/4 (2019) 04/07/2019 merely set out the structure of the DNM and the units and departments of which it was made up.

7. As regards the memorandum issued by the Network Management Director on 5 July 2019, which the complainant describes as a general decision, the Tribunal observes that it is in fact a collective decision making various individual appointments against the backdrop of the planned restructuring to ensure that management functioned smoothly during a transition period before recruitment procedures were initiated or final appointment decisions adopted. However, even supposing that the complainant had a cause of action in challenging these appointments, he stated in his internal complaint of 20 September

2019 that he did not seek to cause injury to his colleagues appointed and that he therefore remained at the Organisation's disposal to discuss possible alternatives to cancelling the decision not to appoint him and to appoint his colleagues. The complainant did not request that one or more recruitment procedures be initiated for these various positions, nor did he later challenge his colleagues' final individual appointments by the Organisation on 12 November 2019. It follows that his request for the memorandum of 5 July 2019 to be set aside is lacking in substance in any event and is therefore irreceivable as being moot.

8. Lastly, the complainant seeks the setting aside of the decision of 27 September 2019 ordering his transfer to the Integrated CNS Unit. However, since the evidence shows that the complainant never used internal means of redress to challenge that decision, which was, moreover, taken after he had lodged his internal complaint on 20 September 2019, the Tribunal finds that his request to have that decision set aside must be dismissed as irreceivable under Article VII, paragraph 1, of its Statute for failure to exhaust internal remedies.

9. It follows from the foregoing considerations that the complainant's claims for the setting aside of the internal memoranda of 4 and 5 July 2019, of Decision No. I/25a (2019) 04/07/2019, of Decision No. XVI/4 (2019) 04/07/2019 and of the decision of 27 September 2019 transferring him must all be dismissed as irreceivable.

10. The Tribunal further considers that the complainant's request for Eurocontrol to be "ordered to comply" with Articles 7 and 30 of the Staff Regulations cannot be granted. It is settled case law that it is not for the Tribunal to issue such general declarations or declarations of law, or declaratory orders (see, for example, Judgments 4637, consideration 6, 4492, consideration 8, and 4246, consideration 11).

11. Lastly, as regards the moral injury for which the complainant claims moral damages of 5,000 euros, the Tribunal observes that this claim is limited to the injury which he explains he suffered owing to the

allegedly unlawful decisions examined above. Since, as previously stated, the complainant's claims on this point must all be dismissed as irreceivable, the related claim for moral damages must likewise be dismissed.

12. It follows from all the foregoing considerations that the complaint must be dismissed in its entirety, without there being any need for the Tribunal to rule on Eurocontrol's other objections to receivability.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 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