

The Administrative Tribunal,

Considering the second complaint filed by Mr D.N. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 27 April 2005, Eurocontrol's reply of 29 July, the complainant's rejoinder of 29 October 2005 and the Agency's surrejoinder of 10 February 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a British citizen, was born in 1962. He joined Eurocontrol in 1993 as a clerical assistant 1st class, at grade C4, and was assigned to the Flight Data Operations Division – in IFPU2 – at Brétigny-sur-Orge, near Paris. He was promoted to grade C3, and then to C2 with effect from 1 July 2002. From 1 May 2002 his appointment was converted into an appointment for an unlimited period.

The complainant and one of his colleagues each received a memorandum from the Director of the Central Flow Management Unit (CFMU) asking them to come to his office, in Brussels, on 19 March 2004 for a discussion. The memorandum indicated that it was regarding aspects of their "behaviour in the service in the recent past". That meeting could not take place, and they each received another invitation, dated 11 May, asking them to attend on 28 May. The complainant and his colleague replied by e-mail on 27 May declining to attend on the grounds that, despite requests they had made, they had not been told the "true motivation" for the meeting.

They then each received a memorandum dated 28 May 2004 from the Director of Human Resources, who said that their refusal to come to Brussels represented an "act of insubordination" and, in conjunction with "various serious incidents", constituted "serious misconduct" within the meaning of Article 90 of the Staff Regulations governing officials of the Eurocontrol Agency. He informed each of them that it was the Director General's intention to suspend them from duty with effect from 1 June to prevent them from "continuing to cause disruption in the service". He said that, acting on behalf of the Director General, he would meet with them, in Brussels, on 1 June to hear what they had to say, prior to the decision regarding their suspension being taken. The meeting took place as scheduled. The complainant then received a decision dated 1 June 2004 indicating that "following an allegation of serious misconduct", he was suspended from duty until further notice. A similar decision was sent to his colleague.

The complainant wrote to the Director General, asking to be provided with the details of the "various serious incidents" held against him. The Director of Human Resources informed the complainant by letter of 9 June that he would soon receive the information requested and that a hearing was due to take place the following week. By a letter of 15 June 2004 he asked the complainant to attend a hearing in his office on 17 June. Attached to the letter was a report listing the incidents and informing the complainant of the charges against him. It was indicated that the charges were "based on a report made by Director CFMU to the Director General". The hearing had to be postponed because the letter and list of charges only reached the complainant at 5.30 p.m. on 17 June. It took place instead on 22 June 2004 and the complainant submitted a statement.

Several other decisions were subsequently issued concerning the complainant. By one issued on 9 July the suspension decision was revoked and he was asked to resume work on 16 July; it was stipulated that until further notice he would work "normal office hours", but would continue to be paid the transitional allowance, related to shift work. By one of 16 July he was given a reprimand, and informed that if his behaviour did not change "more severe disciplinary measures" would follow. Then by a further one dated 14 September, the decision to assign the complainant to office hours was revoked and he was placed in a different team.

Meanwhile, on 25 August 2004 the complainant had filed an internal complaint seeking the annulment of the decisions to suspend him from duty, to assign him to office hours and to impose the reprimand. It was referred to

the Joint Committee for Disputes. In its Opinion of 3 January 2005 the Committee concluded that the complaint should be rejected as unfounded. However, it found that the complainant had not been paid the transitional allowance while he was suspended from duty, and recommended paying him the sum due, as well as interest for late payment. By a memorandum of 31 January 2005, the Director of Human Resources, acting on behalf of the Director General, rejected the complainant's internal appeal as legally unfounded, but agreed to the payment of the transitional allowance for the period from 1 June to 15 July 2004. That is the impugned decision.

B. The complainant puts forward several pleas. First, he alleges "administrative and moral harassment". He submits that for a "considerable period" he suffered various forms of harassment by his superiors at his workplace. He says that following an incident in November 2002, he and other staff members filed a complaint with the Director General about their supervisor's behaviour, but did not receive any reply. When a new supervisor took over, the complainant and his colleague began to experience "direct personal harassment" from that official. He contends that the "discrimination and ridiculing" which he experienced had the effect of undermining his dignity. The Organisation allowed the situation to continue without making any effort to remedy it and neglected its duty to maintain a healthy work environment. In his opinion, he and his colleague were victimised for having brought "discrepancies within the Agency" to the attention of management.

The complainant also submits that Eurocontrol failed to act in accordance with its own procedures as it took no steps to assist him when he sought action under the Agency's "Policy on Protecting the Dignity of Staff". Ultimately it set in motion the disciplinary sanctions, without him being able to seek redress through the said policy.

In addition, the complainant takes issue with the disciplinary measures imposed on him, arguing that the Organisation misused its authority, acted in breach of good faith and failed to respect his dignity. It appears to him that the Agency had been compiling its list of accusations against him over a long period of time. Citing Article 88(3) of the Staff Regulations, which specifies that a "single offence shall not give rise to more than one disciplinary measure", he argues that in breach of that provision "multiple measures" were taken against him, and his colleague, given that they faced suspension, the imposition of office hours, a reprimand, a warning and also a "team transfer".

Lastly, he alleges further breach of due process, particularly because even though the hearing was postponed until 22 June 2004, he still had too little time to prepare for it. Similarly, with regard to the meeting of 1 June, the notice had been too short for him to be able to obtain legal advice. He also disputes the validity of the Opinion of the Joint Committee for Disputes, arguing in particular that the Committee did not include any members officially nominated by the Staff Committee.

The complainant asks that the decision of 16 July 2004, imposing the reprimand, be quashed, and that all related entries be deleted from his personal file. He claims 50,000 euros in moral damages and compensation for loss in terms of "financial investment and future earnings". He also claims 4,000 euros in costs.

C. In its reply Eurocontrol points out that the complainant's internal complaint was directed against three decisions, whereas his complaint before the Tribunal is directed only against the decision of 16 July imposing the reprimand. It thus assumes that the complainant is no longer challenging the decisions by which he was suspended from duty and then assigned to office hours, as communicated to him on 1 June and 9 July 2004, respectively.

It submits that the complainant's arguments cannot stand in law. First, with regard to the decision to impose the reprimand, Eurocontrol holds that it was legally correct in form and substance. It is clear from Article 88(1) of the Staff Regulations that if a staff member fails to comply with his obligations under the Staff Regulations, he shall be liable to disciplinary action. One such disciplinary measure was the reprimand. In the complainant's case he was repeatedly "insubordinate" and disrespectful to his superiors, and this caused disruption to the service. Events culminated in his refusal to attend the meeting in Brussels.

The Agency argues that it complied with its obligation to hear the complainant. Moreover, the complainant knew from the letter of 9 June 2004 that a hearing would take place the following week; he was well aware of the charges made against him, and could have arranged for legal assistance. A four-page document detailing the charges against him was attached to the letter of 15 June, and it included a page of written testimonies by officials in CFMU management. He was heard before the decision to reprimand him was taken.

It rejects the complainant's argument that multiple disciplinary measures were taken against him. Of those he mentions, only the reprimand is a disciplinary measure within the meaning of Article 88(3).

Referring to the successive decisions to suspend the complainant from duty and then assign him to office hours, the Organisation explains that they were necessary in order to maintain the proper functioning of the service and to avoid any disruption. With regard to the decision to suspend him from duty, it submits that the Staff Regulations do not specify that an official has to be heard before such action is taken.

It denies that there was any irregularity in the composition of the Joint Committee for Disputes. It points out that, as provided for in Office Notice No. 6/95, two full members had been "appointed by the Central Staff Committee". They had been nominated in March 2004 and were appointed for the whole year; they were thus members of the Joint Committee for Disputes when it met on 7 December 2004 to hear the complainant's case.

D. In his rejoinder the complainant develops his pleas. He asserts that a newly elected Staff Committee sat on 7 December 2004 and could not have appointed members to the Joint Committee for Disputes that heard his case that day. In addition, he questions the validity of the Opinion of the Joint Committee, since it was not issued within the two-month time limit specified in Article 4 of Office Notice No. 6/95.

The complainant contends that one page was missing in the documentation attached to the letter of 15 June 2004. He points out that he did not receive the page containing statements from the CFMU officials.

He confirms that he is seeking redress against "all decisions subsequent to and including the [decision of] 1 June 2004". He amends his claim to moral damages – now seeking 150,000 euros to compensate for the injury he suffered.

E. In its surrejoinder the Agency maintains its position and considers that there are no grounds for the complainant's claim for damages.

Regarding the composition of the Joint Committee for Disputes, it states that the term of office of members proposed by the Staff Committee is not interrupted if Staff Committee elections are held in the course of a year. It also points out that the Opinion of the Joint Committee for Disputes does not indicate on which date the complainant's case was referred to the Committee, and, in any event, nothing in the relevant rules indicates that an Opinion delivered after the two-month period would lose all value.

The Agency concedes that, through an error on its part, one page was missing from the report annexed to the letter of 15 June 2004 sent to the complainant.

CONSIDERATIONS

1. The complainant has been employed by Eurocontrol since 1993 in its Flight Data Operations Division – IFPU2 – at Brétigny-sur-Orge. He is the person referred to as the colleague of the complainant in Judgment 2545.

2. The facts that gave rise to the complaint before the Tribunal were not materially different from those detailed in Judgment 2545, the only difference being that the hearing scheduled for 17 June 2004 was, in the case of the present complainant, postponed until 22 June. The present complainant was subject to decisions with respect to his conduct in the same terms as the complainant in that case. He lodged an internal complaint with respect to those decisions on substantially the same grounds and, after referral to the Joint Committee for Disputes, that Committee made the same findings and recommendations. Those recommendations were accepted by the Director General and the present complainant now makes the same arguments with respect to the Director General's decision as were made by the complainant in Judgment 2545. Subject to one qualification, he seeks the same relief. That qualification is that the present complainant also seeks compensation for an investment opportunity which he says he lost because of his suspension from duty.

3. For the same reasons as are set out in Judgment 2545, the complainant's arguments must be rejected and the complaint dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 12 May 2006, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet