

The Administrative Tribunal,

Considering the complaint filed by Mr L. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol Agency) on 2 February 2007 and corrected that same day, his supplementary brief of 4 May, the Agency's reply of 29 May, the complainant's letter of 18 June submitted in lieu of a rejoinder and Eurocontrol's comments thereon dated 20 July 2007;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a French national born in 1961, joined the Eurocontrol Agency on 1 April 1994 as an expert in the Human Resources Directorate. On termination of his service on 31 October 2006 he held a grade A5 post.

In March 2006, when the complainant had been on sick leave for nearly eight months, the Agency asked the Invalidation Committee for an opinion on his health. The Committee met on 8 August 2006 and considered that he was suffering from total permanent invalidity within the meaning of the Staff Regulations governing officials of the Eurocontrol Agency, which "render[ed] him incapable of performing the duties corresponding to a post in his career bracket". In addition, two of the three members of the Committee found that this invalidity had been sustained as a result of an occupational disease. The complainant was informed by a letter of 30 August 2006 from the Human Resources Directorate that, in accordance with the Committee's conclusion that he was suffering from total permanent invalidity, he would receive an invalidity allowance as from October 2006. This allowance is provided for in the first paragraph of Article 78 of the Staff Regulations.

On 25 September 2006 the above-mentioned directorate notified the complainant that his file was still under examination and that, pending a decision, he would be paid his salary for October. On 17 October it informed him that the Director General had decided to accept the Invalidation Committee's findings regarding his total permanent invalidity and that he would receive an invalidity allowance as from November. However, it asked the complainant to submit the statement referred to in Article 16 of Part II of Rule of Application No. 10 of the Staff Regulations in order to establish the existence of the occupational disease leading to his invalidity, and explained that a decision establishing its existence could be given retroactive effect. By a letter of 19 October 2006 the Human Resources Directorate forwarded to the complainant the Director General's decision concerning the invalidity allowance he would receive as from 1 November. The award of this allowance was governed by the provisions of the second, third and fourth paragraphs of Article 78. Pursuant to the fourth paragraph, the allowance in question was subject to contributions to the pension scheme.

On 17 November 2006 the complainant lodged an internal complaint with the Joint Committee for Disputes, in which he challenged the decisions of 17 and 19 October. Since the majority of the members of the Invalidation Committee had concluded that his invalidity resulted from an occupational disease, he considered that he was not required to submit the statement requested on 17 October 2006 and that the invalidity allowance he had been granted ought to have been calculated according to the provisions of the fifth paragraph of Article 78, which stipulates that when the invalidity arises from an occupational disease, contributions to the pension scheme shall be paid in full from the budget of the Organisation.

On 2 February 2007 he filed a complaint with the Tribunal in which he impugned what he regarded as the Agency's implied decision of 16 January 2007 rejecting his internal complaint. He requested the setting aside of this decision and those of 17 and 19 October 2006. In addition, he claimed compensation in the symbolic amount of one euro for the moral and material injury he had suffered and which he estimated at 500,000 euros, as well as costs. However, by a letter of 14 February 2007 the Director of Human Resources forwarded to the complainant a

copy of the opinion delivered on 1 February by the Joint Committee for Disputes. The complainant was thus notified that, on the basis of this opinion, his internal complaint had been deemed to be receivable and well founded in law, that it had been recognised that his invalidity was the result of an occupational disease and that the invalidity allowance would be paid to him, in accordance with the fifth paragraph of Article 78, with retroactive effect from 1 November 2006. Following this letter, on 4 May 2007 the complainant submitted a supplementary brief to the Tribunal, in which he withdraws his claim concerning the setting aside of the implied decision rejecting his internal complaint, but presses his claim for compensation for moral injury.

B. In his supplementary brief the complainant submits that Eurocontrol deliberately kept him in a state of anxiety and uncertainty through its many instances of inconsistent or improper behaviour. As evidence thereof he refers to the contradictory information he was sent on 30 August, 25 September, 17 and 19 October 2006. In addition, he takes the view that the Agency ought not to have asked him to submit a statement on the cause of his invalidity and thereby to substitute his own opinion for the conclusions drawn by the Invalidity Committee. Moreover, the complainant points out that although he indicated in his internal complaint of 17 November 2006 that, in view of his “potential morbidity”, he would file a complaint with the Tribunal if he received no reply to his internal complaint within sixty days, Eurocontrol kept him in a state of uncertainty until 14 February 2007. He considers that the Agency should not have needed three months to arrive at a decision on his claim, because at the meeting of the Joint Committee for Disputes Eurocontrol had already deemed his claim to be receivable and well founded in law.

The complainant claims that the defendant’s improper behaviour was made worse by the unacceptable action of an Agency official who in January 2007 went to see Dr W. – a member of the Invalidity Committee which had given an opinion on his case – in order to obtain information on his state of health.

The complainant requests that the Tribunal award him compensation for the moral injury he has suffered and which he estimates at 500,000 euros, and costs.

C. In its reply Eurocontrol submits that the injury suffered by the complainant has been fully redressed, because it has refunded the amounts which had been wrongly deducted as contributions to the pension scheme, plus the interest on them.

The Agency adds that since no case of invalidity due to an occupational disease had occurred previously, there was uncertainty as to how to apply the various provisions of the Staff Regulations. It points out that the complainant filed a complaint with the Tribunal without waiting for the end of the four-month period for notifying a reply allowed under Article 92(2) of the Staff Regulations. It acknowledges that it is possible under Article VII, paragraph 3, of the Statute of the Tribunal to file a complaint if there is no response to an internal appeal within sixty days. However, it submits that this Article is essentially intended to apply when an organisation’s rules do not set a deadline for completing the internal procedure. Filing a complaint with the Tribunal was not therefore a matter of urgency.

The Agency contends that the complainant’s allegations concerning an official’s appointment with Dr W. rest on no more than gratuitous supposition, since the consultation was of a personal nature. Moreover, that consultation could not have influenced either the Invalidity Committee, as it had already issued its decision, or the Joint Committee for Disputes, since it had already met.

Subsidiarily, Eurocontrol states that the amount of compensation requested by the complainant is exorbitant and requests that he be ordered to pay costs.

D. In his letter of 18 June 2007, submitted in lieu of a rejoinder, the complainant comments that, in the words of the Invalidity Committee, it is “inadvisable that he should have any further contacts with the institution, which could only be unsettling”. Furthermore, he produces copies of e-mails exchanged between him and Dr W. in January 2007, in other words before the Joint Committee for Disputes had issued its opinion: in reply to Dr W.’s e-mail thanking him for having sent her “one of [his] former colleagues” who had introduced herself by saying that she had been sent by him, the complainant stated that he had not had any contact with that colleague since 20 July 2005 and that since she was “dealing with [his] case”, her action was “especially disconcerting and worrying”.

E. In its comments of 20 July 2007 the Agency reaffirms that an official’s personal consultation of the complainant’s physician could not have influenced the conclusions of the Invalidity Committee or those of the

Joint Committee for Disputes. It also emphasises that from November 2006 onwards the complainant was in possession of information regarding the favourable position which the Administration was going to adopt on his case within the Joint Committee for Disputes. For these reasons, Eurocontrol considers that the complainant cannot reasonably claim any compensation for moral injury.

## CONSIDERATIONS

1. The complainant was on sick leave as from the end of July 2005. On 8 August 2006 the Invalidity Committee recognised that he was suffering from total permanent invalidity. By a letter of 30 August notifying him of the Committee's findings, he was informed that his service with the Agency must terminate and that he would receive an invalidity allowance as from October 2006.

By a letter of 25 September 2006 the Human Resources Directorate notified the complainant that his file was still under examination and that, pending a decision, he would receive his salary for October. On 17 October he was invited to submit the statement referred to in Article 16 of Part II of Rule of Application No. 10, in order to establish that his invalidity had been caused by an occupational disease. At the same time he was informed that his entitlement to an invalidity allowance would take effect on 1 November 2006 and that, depending on the outcome of the procedure provided for in the above-mentioned Rule, the decision recognising his invalidity could be reviewed to take account retroactively of the existence of an occupational disease causing his invalidity.

On 19 October 2006 the Human Resources Directorate, acting on behalf of the Director General, took the decision to award the invalidity allowance to the complainant as from 1 November on the conditions set out in the fourth paragraph of Article 78 of the Staff Regulations.

2. On 17 November the complainant lodged an internal complaint with the Joint Committee for Disputes against the decisions of 17 and 19 October, in which he requested their rescission and the award, as from 1 November, of an invalidity allowance calculated in accordance with the fifth paragraph of Article 78 of the Staff Regulations. This Committee met on 18 December 2006 and unanimously recommended that the complaint should be allowed as receivable and well founded in law.

Considering that by 16 January 2007 Eurocontrol had "implicitly decided to reject" his internal complaint, the complainant filed a complaint with the Tribunal on 2 February 2007 in which he requested that the decisions of 17 and 19 October 2006 be set aside and that the Agency be ordered to pay damages and costs.

3. By a letter of 14 February 2007 the complainant was notified of the Director General's decision to allow his internal complaint as receivable and well founded in law and to grant him an invalidity allowance on the conditions laid down in the fifth paragraph of Article 78 of the Staff Regulations, because it had been acknowledged that his invalidity resulted from an occupational disease. Contributions to the pension scheme which had been deducted since 1 November 2006 were to be reimbursed.

In his supplementary brief the complainant stated that, further to the decision of 14 February 2007, he withdrew suit as far as it concerned the setting aside of the implied decision rejecting his internal complaint, but he pursued it concerning his claim that Eurocontrol should be ordered to pay compensation for moral injury, which he estimated at 500,000 euros, plus all the costs of the proceedings.

The complainant takes the Agency to task for its "inconsistent or improper behaviour" which led to his being kept in a state of anxiety and uncertainty about his future.

4. The Agency asserts that the injury suffered by the complainant has been fully redressed. The amount wrongly deducted from the complainant's invalidity allowance worked out at approximately 550 euros a month. It states that he was reimbursed for the sums in question "retroactively with effect from 1 November 2006" and that "[i]n order to compensate for the delay which occurred, 8% interest per annum has been paid on these sums as from their respective due dates".

It submits that the complainant has not suffered any injury which might entitle him to compensation. It holds that it cannot be said that the complainant's case has been treated with "undue delay", since he filed an appeal hastily without even waiting for the end of the four-month period for notifying a reply allowed under Article 92(2) of the Staff Regulations.

5. It should first be made clear that the Tribunal, when examining this case, will disregard all the submissions relating to the consultation of Dr W. by an official, because in any case this consultation took place in January 2007, that is to say after the meeting of the Invalidity Committee on 8 August 2006 and after the meeting of the Joint Committee for Disputes on 18 December 2006.

6. On the remaining points, the complainant has withdrawn suit as far as it concerns the setting aside of the implied decision rejecting his internal complaint, but has pursued it concerning his claim for compensation for the moral injury which he allegedly suffered. In support of this claim he asserts that the “many instances of inconsistent or improper behaviour” on the part of the Agency kept him for no valid reason in a state of anxiety and uncertainty about his personal and medical situation until 14 February 2007.

7. In his internal complaint of 17 November 2006 directed against the decisions of 17 and 19 October 2006, the complainant sought the quashing of these decisions and the award, as from 1 November 2006, of an invalidity allowance calculated in accordance with the fifth paragraph of Article 78 of the Staff Regulations; he made no other request regarding compensation for moral injury. By its decision of 14 February 2007 the Agency gave full satisfaction to the complainant. The complainant’s claim for compensation, which was not submitted to the Joint Committee for Disputes, must be dismissed on the grounds that internal means of redress have not been exhausted.

Moreover, the complainant lodged his internal complaint on 17 November 2006 and the Joint Committee for Disputes met on 18 December 2006 and delivered its opinion on 1 February 2007; the complainant was notified of the final decision on 14 February 2007, but he had just filed his complaint with the Tribunal.

As the internal procedure was conducted within the time frame established by the Staff Regulations, Eurocontrol cannot be taxed with improper behaviour related to any undue delay in dealing with the complainant’s case.

Although the decision of 14 February 2007, by which he obtained satisfaction, was delivered after he had filed his complaint, the complainant is not entitled to costs. Indeed, the complaint was premature because, as stated above, that decision was delivered within the applicable time limit. The complaint must therefore be dismissed.

8. The Agency requests that the complainant be ordered to bear the full costs of the proceedings. The Tribunal sees no need to accede to that request.

## DECISION

For the above reasons,

The complaint is dismissed, as is Eurocontrol’s counterclaim.

In witness of this judgment, adopted on 9 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet