

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session

Judgment No. 3265

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr A. L. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 22 March 2011, Eurocontrol's reply of 24 June, the complainant's rejoinder of 22 August and Eurocontrol's surrejoinder of 16 September 2011;

Considering the applications to intervene filed on 9 June 2011 by:

K. A.	S. M.
M. D.	K. M.
B. E.	R. N.
G. G.	F. O. E.
K. H.	S. O.
T. H.	S. R.
D. H.-D.	W. S.
D. K.	A. V.
Q. L.	B.V.d.V.

and the letter of 1 July 2011 in which Eurocontrol stated that it had no objection to the applications filed by Ms H.-D., Messrs K., M. and O. E., Ms O., Ms S., Ms V. and Ms V.d.V., since their situation was

similar in law and in fact to that of the complainant, but that the applications filed by the other interveners could be accepted only in respect of the time covered by their contracts for a limited period;

Considering Article II, paragraph 5, 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 and the pleadings may be summed up as follows:

A. The complainant joined Eurocontrol on 1 November 2002 as a simulator pilot. He was assigned to the Maastricht Upper Area Control Centre on a contract for a limited period as of 1 October 2008.

Until 1 July 2008, the date of the entry into force of an extensive administrative reform at Eurocontrol, simulator pilots' contributions to the Agency's Pension Scheme were calculated by reference to the full-time basic salary, despite the fact that they put in only 60 per cent of full working hours. Since then, the contributions of servants working part time have been calculated pro rata by reference to their own basic salary, but they may request to have them calculated by reference to the basic salary of a servant working full time. As the complainant chose to avail himself of this option, which had been proposed to him by Eurocontrol, his contributions continued to be calculated by reference to the full-time salary.

The complainant was informed by an e-mail of 15 July 2010 that, since he worked part time, as of 1 July 2008 he was no longer entitled to acquire a full retirement pension, and that 40 per cent of the contributions which he had paid since that date would therefore be reimbursed with his salary for August 2010. On 29 September he wrote to the Director General to ask him to cancel his payslip for the previous month. On 18 November the Principal Director of Resources, acting on behalf of the Director General, notified him that the Administration had made a mistake, and that it had been decided to apply the new method of calculating contributions to him as from

1 September 2010. On 14 December 2010 the complainant challenged this decision by lodging an internal complaint. On 22 March 2011, having received no reply from the Administration, he filed a complaint with the Tribunal.

B. The complainant, represented by his lawyer, chiefly submits that Eurocontrol did not honour its commitments, that it breached the “fundamental terms and conditions of his employment contract” and that it violated his acquired rights. He therefore asks the Tribunal to set aside the implied decision rejecting his internal complaint, to “authorise” him to continue to contribute to the Pension Scheme on the basis of full-time pay and to award him 4,000 euros in costs.

C. In its reply Eurocontrol states that the complainant was informed by a memorandum of 9 June 2011 that, in accordance with the unanimous opinion of the Joint Committee for Disputes, his internal complaint had been upheld. It therefore invites the Tribunal to find that there is no longer any need to rule on the complaint and to take note of the fact that it will endeavour to arrive at “a financial agreement with the complainant on the terms of the withdrawal of his suit”.

D. In the rejoinder submitted to the Tribunal, the lawyer representing the complainant and the interveners states that the only issue still to be decided is that of costs. He increases to 5,000 euros the sum claimed under that head owing to the additional expenses which, he contends, were occasioned by the 18 applications to intervene.

E. In its surrejoinder Eurocontrol points out that the Tribunal does not award costs to interveners. It adds that, since the complainant and all the interveners have obtained satisfaction, their internal complaints having been upheld, it has tried to negotiate a withdrawal of suit by proposing to pay their lawyer costs in the amount of 3,000 euros. As this offer has been declined, it hopes that, in the instant case, the Tribunal will award a lower amount in costs, or none at all.

CONSIDERATIONS

1. The complainant was recruited by Eurocontrol on 1 November 2002 as a simulator pilot on a contract for a limited period, which was later converted into a contract for an unlimited period. Although he worked part time, at 60 per cent of full working hours, the terms of his appointment stipulated that he would contribute to the Agency's Pension Scheme on the basis of the salary of a servant working full time (100 per cent), which would entitle him to a full retirement pension.

2. On 15 July 2010 he was informed by an e-mail from the Directorate of Resources that, in consequence of an amendment to the applicable provisions of the Staff Regulations, he could no longer contribute to the Pension Scheme at the rate of 100 per cent and that the rate had been retroactively reduced to 60 per cent as of 1 July 2008.

3. On 18 November 2010 the Director General, to whom the complainant had submitted a request for a decision under Article 91, paragraph 1, of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre, maintained the reduced rate of contributions imposed on the complainant and agreed only to postpone the date on which it took effect to 1 September 2010.

4. The complainant first lodged an internal complaint against this decision under paragraph 2 of the above-mentioned Article 91 and then filed a complaint with the Tribunal impugning the implied decision to reject the internal complaint.

5. Applications to intervene were submitted by 18 other officials also employed as simulator pilots, who considered that they were in the same position as the complainant.

6. However, by an express decision taken on 9 June 2011, in other words while the proceedings before the Tribunal were pending, the Director General finally allowed the aforementioned internal

complaint. As he concurred with the unanimous opinion of the Joint Committee for Disputes that the impugned measure infringed the complainant's acquired rights by substantially modifying his conditions of employment, he authorised the complainant once again to pay contributions to the Pension Scheme on the basis of the salary of a servant working full time – including retroactively for the period when he had been denied this right.

7. It follows from the foregoing that there is no need to rule on the claims that the impugned decision should be set aside and that the possibility of paying contributions calculated in this manner should be restored, since they have become moot.

8. Nor is there any need to rule on the applications to intervene, since the ruling on the complaint necessarily applies to them as well (see Judgment 764, under 6), though it is noted that Eurocontrol has also allowed the internal complaints submitted by each of the interveners.

9. It appears from the most recent submissions of the parties that the only outstanding issue is therefore the possible award of costs.

10. The complainant who, in his complaint, claimed a sum of 4,000 euros under this head, has increased the amount thereof in his rejoinder to 5,000 euros and has justified this higher figure by the fact that “services and expenditure were necessitated by the spontaneous intervention of 18 other pilots”. Eurocontrol, which had offered a sum of 3,000 euros to the complainant but met with what it considers to be an unwarranted refusal, asks the Tribunal to award him costs lower than the latter sum, or to refuse quite simply to award any costs at all.

11. The Tribunal notes that the complainant, who was obliged to initiate judicial proceedings in order to obtain the cancellation of a decision which the Agency thereafter admitted was unlawful, may at all events legitimately claim an award of costs. As far as determining their amount is concerned, it must, however, be observed, on the one hand, that the proceedings in question were considerably simplified

through the rapid withdrawal of the impugned decision and, on the other, that the submission of applications to intervene does not, in itself, give rise to entitlement to an award of costs. In these circumstances, the Tribunal considers it fair to award the complainant 3,000 euros in costs, the amount which, as stated earlier, the Agency spontaneously offered during the proceedings.

DECISION

For the above reasons,

1. There is no need to rule on the claims that the impugned decision should be set aside and that the complainant should be authorised to contribute to the Pension Scheme on the basis of the salary of a servant working full time, or on the applications to intervene.
2. Eurocontrol shall pay the complainant costs in the amount of 3,000 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 7 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet