Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session **Judgment No. 3274**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr É. H. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 21 February 2011 and corrected on 2 March, Eurocontrol's reply of 17 June, the complainant's rejoinder of 27 July, Eurocontrol's surrejoinder of 28 October, the complainant's further submissions of 6 December 2011 and Eurocontrol's final observations thereon of 19 January 2012;

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. As explained in Judgment 3189, delivered on 6 February 2013, on 23 May 2006 the Permanent Commission for the Safety of Air Navigation approved the main provisions of a wide-ranging administrative reform which was due to enter into force on 1 July 2008. It entailed the introduction within Eurocontrol of a new structure comprising more grades and fewer steps and of a new salary scale. In

the context of that reform, Office Notice No. 26/08 of 27 June 2008 informed the staff of the adoption of Rule of Application No. 35 of the Staff Regulations governing officials of the Eurocontrol Agency, concerning job management during the period from 1 July 2008 to 30 June 2010 (hereinafter "the transitional period"). Article 9 of this Rule read in pertinent part as follows:

> "With effect from 1 July 2008, the administrative situation of each official in the 'General Service' shall be reviewed on the basis of the following principles:
>
> – the grade held on 30.6.08 by each official shall be renamed and converted [in the new grade structure],
>
> – the official shall be allocated a job title, according to the nature of his/her functions, […] corresponding to his grade and professional speciality […],
>
> – the official shall be assigned by the Director General, after the latter has consulted the Committee [in charge of job management monitoring], to a generic post […],
>
> – […]."

The Rule also contained a table showing the generic post, career bracket, main tasks and criteria pertaining to each job title.

During the transitional period the A, B and C staff categories were replaced with categories A*****, B***** and C***** respectively.

The complainant entered the service of Eurocontrol on 1 December 1992 at grade A7. He was promoted twice in the course of his career at Eurocontrol's Experimental Centre at Brétigny-sur-Orge. In November 2005 he was put in charge of the research unit to which he was assigned. On 16 April 2008 the Committee in charge of job management monitoring, which had been asked to review the grade attributed to certain managerial posts, recommended that the complainant, who at that juncture held grade A5, should be classed as a Principal Manager at grade A4. As from 1 July 2008 he was classed in grade A*****11, which corresponded to grade A5.

On 28 April 2009 Eurocontrol sent its staff members a decision informing them of the generic post and career bracket assigned to them in the new structure, with effect from 1 July 2008. The complainant had been assigned to the generic post of Head of Section

in career bracket A*****8-A*****11, while retaining his grade. Between 12 May and 7 August 2009 numerous officials, including the complainant, submitted an internal complaint. In his opinion, the procedure followed had been flawed in several respects and he asked to be assigned to the generic post of Service Manager in career bracket A*****11-A*****12. The Joint Committee for Disputes, to which the internal complaints in question had been referred, delivered its opinion on 16 December 2009. It unanimously held that the process of determining the generic posts and career brackets had been flawed and recommended that the decisions of 28 April 2009 should be cancelled and that the Committee in charge of job management monitoring should, "in the case of the complainants only, carry out the examination which was not carried out at the appropriate time".

On 20 January 2010 the Principal Director of Resources, acting on behalf of the Director General, wrote to the staff members who had filed internal complaints to inform them that he had decided to follow the recommendations of the Joint Committee for Disputes. At its meeting held on 5 May, the Committee in charge of job management monitoring reached the conclusion that the principles that had been applied when assigning the new career brackets were in line with Article 9 of Rule of Application No. 35. On 5 July 2010 the persons concerned were sent a memorandum enclosing the new decision taken that same day, confirming their career bracket classification that had come into effect on 1 July 2008. Between 23 September and 6 October 2010 some of them lodged a second internal complaint. That of the complainant is dated 27 September 2010. On 21 February 2011, considering that his internal complaint had been implicitly dismissed, he filed a complaint with the Tribunal.

B. The complainant first alleges several formal and procedural flaws. He submits that, since the Director General did not take a decision "defining the duties and powers attaching to each type of post and its level expressed in terms of grade(s)", Article 1 of Rule of Application No. 35 was breached. He contends that Article 9 of the Rule was also breached, because no job title was allocated to him. Although the opinion delivered in May 2010 by the Committee in charge of job

management monitoring was not forwarded to him – notwithstanding his request that this be done – he states that this opinion does not comply with the aforementioned Article 9, because the Committee did not examine the administrative situation of each official. The complainant also finds it regrettable that no reasons were given for the decision of 5 July 2010 and that it did not specify his job title, his generic post or his grade.

The complainant then endeavours to show that the procedure is tainted with various factual mistakes and, in particular, with obvious errors of judgement. He considers that, in breach of Article 2 of the above-mentioned Rule, the decision to assign him to the generic post of Head of Section was adopted without taking into account his real tasks and responsibilities. Lastly, he submits that some material facts were overlooked, such as the recommendation made by the Committee in charge of job management monitoring in April 2008.

The complainant requests the setting aside of the impugned decision and that of 5 July 2010, his retroactive assignment to the generic post of Service Manager in career bracket A*11-A*12 as from 1 July 2008, his classification in grade A*12 as from November 2005 and the payment with interest of the resultant difference in salary. He also claims 32,000 euros to compensate for the moral injury suffered in terms of lost career opportunities and for the delay in processing his internal complaints, as well as costs in the amount of 8,000 euros.

C. In its reply Eurocontrol produces the opinion delivered by the Joint Committee for Disputes on the internal complaints submitted to it in September and October 2010 and the memorandum of 14 June 2011 by which the Principal Director of Resources, acting on behalf of the Director General, informed the complainant that his internal complaint of 27 September 2010 had been rejected.

On the merits Eurocontrol submits that the decision of 5 July 2010 did not breach any procedural rule. In its opinion, the reference in Article 9 of Rule of Application No. 35 to the allocation of a job title to each official did not necessitate the adoption of individual measures. It adds that, while the consultation of the Committee in

charge of job management monitoring referred to in Article 9 is required when existing posts are reviewed, or when a new post is created, this does not signify that it had to be consulted when each official was integrated into the new grade structure; that was done simply by transposing grades and the Committee, "for practical reasons and for the sake of administrative simplicity", ascertained that the description of generic posts matched the career bracket. Eurocontrol explains that there was never any question of that integration resulting in a promotion. It points out that on 30 June 2008 the complainant held grade A5, which corresponded to the job title of "expert", and it states that it was under no obligation to reclassify him in grade A4. It considers that the decision of 28 April 2009, which was based on the complainant's appraisal reports and which respected the provisions of the above-mentioned Rule of Application, was correct and that the decision of 5 July 2010 confirmed it. It comments that the latter decision referred not only to Rule of Application No. 35 but also to the individual classification decision of 1 July 2008, and that further reasons for it were set out in the accompanying memorandum.

D. In his rejoinder the complainant reiterates his arguments. He says that prior to the entry into force of the administrative reform he was eligible for promotion to grade A3 in the long term, whereas his classification in the highest grade of the career bracket assigned to him now deprives him of all possibility of promotion. In this connection he comments that, according to Rule of Application No. 4 concerning "the procedure for grade promotion provided for in Article 45 of the Staff Regulations", officials may be promoted to a higher grade only within the function group to which they belong, although the article in question allows some exceptions.

The complainant also takes issue with the fact that the final decision rejecting the internal complaint which he submitted on 27 September 2010 was delivered out of time and without stating any reasons. He asks that it be set aside and increases his claim for costs to 10,000 euros.

E. In its surrejoinder Eurocontrol maintains its position. It contends that in fact the complainant is challenging the version of Article 45 of the Staff Regulations that entered into force on 1 July 2008. It explains that although previously it was theoretically possible for an official to advance through promotion from the lowest to the highest grade in his or her category without any change in functions, now once an official has reached the highest grade in his or her bracket, he or she will be unable to progress unless he or she applies for a job in a higher bracket or his or her current job has changed to such an extent that it must be re-evaluated. It emphasises that this is a matter of human resources management policy for which it alone is responsible.

Eurocontrol asks for the joinder of the complaint now before the Tribunal with several other complaints pursuing the same claim.

F. In his further submissions the complainant objects to Eurocontrol's request for joinder. He now claims costs in the amount of 12,000 euros.

G. In its final observations Eurocontrol explains that, in all the cases which it is asking the Tribunal to join, the complainants are in the same situation in fact and in law, but it leaves it to the discretion of the Tribunal to decide whether joinder is appropriate.

CONSIDERATIONS

1. The complaint concerns the classification of posts at Eurocontrol, which was introduced in pursuance of new rules ensuing from the administrative reform which entered into force on 1 July 2008 (see Judgment 3189). On 1 July 2010 the duties performed by non-operational staff, who during the transitional period from 1 July 2008 to 30 June 2010 had been classed in either category A***** or categories B***** and C*****, which had replaced the former categories A, B and C, were classified definitively in the new Administrator function group (AD) and Assistant function group (AST) respectively.

2. Article 5(1), (2) and (7) of the Staff Regulations governing officials of the Eurocontrol Agency, as amended for the purposes of this reform, read as follows:

> "1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in a function group for managers or administrators (hereinafter 'AD') and a function group for assistants or other specific functions referred to in Annex I to these Staff Regulations (hereinafter 'AST').
>
> 2. Function group AD shall comprise twelve grades, corresponding to administrative, advisory, executive and management duties, as well as to linguistic duties. Function group AST shall comprise eleven grades, corresponding to duties involving the application, supervision and execution of technical, operational or clerical tasks.
>
> 7. A summary table showing the types of posts is given in Annex I.
>
> By reference to this table, the Director General shall define the duties and powers attaching to each type of post and its level expressed in grade(s) after consulting the Staff Committee. He shall do this taking account inter alia of the need to harmonise and ensure consistency between the services.
>
> For that purpose, the Director General shall take into account the principles of job management (payment in line with responsibility) i.e.
>
> a) every post shall have a job description;
>
> b) every post, defined on a specific or generic basis, shall be graded in line with the level of responsibilities by making reference to grades as set out in Annex I;
>
> c) responsibilities/grade of a post may be reviewed as necessary;
>
> d) if a change reduces one or more of the grades attaching to a post, this shall apply only to new vacancy notices;
>
> e) if a change entails an increase of one or more grades, the post-holder can be promoted within the scope of the provisions of the Staff Regulations;
>
> f) The implementation provisions shall be laid down in a Rule of Application.
>
> The Rule of Application mentioned above shall lay down in particular:
>
> – the types of generic posts including the specificities of posts,
>
> – the criteria for evaluation of a job,
>
> – the maintenance of such evaluation,

– the process for revision of a job description/job evaluation and possible promotion, further to such revision,
– a mechanism to examine individual cases, involving management and Staff Committee representation.

[…]."

However, Article 1(1) of Section 1 of Part 2 of Annex XIII to the Staff Regulations stipulated that:

"For the period from 1 July 2008 to 30 June 2010, paragraphs 1 and 2 of Article 5 of the Staff Regulations shall be replaced by the following:

'1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in 3 categories A*****, B***** and C*****, in descending order of rank.

2. Category A***** shall comprise twelve grades, category B***** shall comprise nine grades and category C***** shall comprise seven grades.'"

3. In accordance with these provisions, on 27 June 2008 the Director General published a rule of application concerning job management during the transitional period from 1 July 2008 to 30 June 2010 (hereinafter "Rule of Application No. 35"). Article 3 of this Rule established the principle that posts at Eurocontrol should be grouped according to three separate professional specialities – including a "General Service" – in order to reflect specific recruitment and career conditions and that the "General Service" job titles shown in Annex XIII.1 to the Staff Regulations were to be organised into generic posts according to the nature and level of the functions. A table appended to Rule of Application No. 35 determined for the "General Service" the correspondence between the job titles set out in the aforementioned annex and the generic posts, and the correspondence between job titles (or generic posts) and the grades shown in that annex.

Article 9 of Rule of Application No. 35 stated:

"With effect from 1 July 2008, the administrative situation of each official in the 'General Service' shall be reviewed on the basis of the following principles:

– the grade held on 30.6.08 by each official shall be renamed and converted, as provided for by of Annex XIII, Part 2, Article 2, paragraph 1,

– the official shall be allocated a job title, according to the nature of his/her functions, from the job titles set out in Annex XIII.1, corresponding to his grade and professional speciality (General, CFMU [Central Flow Management Unit], Military Service),

– the official shall be assigned by the Director General, after the latter has consulted the Committee [in charge of job management monitoring], to a generic post as provided for in Article 3 of the present Rule of Application,

– as a transitional measure, officials assigned on 30 June 2008 to a post corresponding to the career-bracket A7/A6/A5 shall be assigned to the career-bracket A*****11/10/9/8, while keeping their current grade."

An office notice accompanying Rule of Application No. 35 explained that specific measures had been taken to ensure that grade progression possibilities within the statutory career brackets which existed prior to the administrative reform were maintained.

4. In the version applicable as from 1 July 2010, the table appended to Rule of Application No. 35 classes the generic post of "Head of Section" in career bracket AD8-AD11 (A*****8-A*****11 during the transitional period). The higher career bracket AD11-AD12 (A*****11-A*****12) includes the generic post of "Programme/Service Manager", while the generic post of "Principal Manager/Head of Division" falls into career bracket AD12-AD14 (A*****12-A*****14).

5. The complainant entered the service of Eurocontrol in 1992. Throughout his career he has worked at the Experimental Centre at Brétigny-sur-Orge in the Paris region.

On 30 June 2008 he was informed that grade A5, step 4, which he had reached in the generic post of expert and the job of Research Area Manager, had become grade A*****11. It was made clear that this change in the name of his grade did not alter his step or his seniority in his grade and step. On 28 April 2009 the Director General decided that, as from 1 July 2008, the complainant would be assigned to the generic post of "Head of Section" in career bracket A*****8-A*****11 whilst retaining his grade (i.e. A*****11). On 1 July 2010 his post, which had become that of Deputy Manager in the Air Traffic Service unit, was classed in grade AD11 (the new name for A*****11) in career bracket AD8-AD11.

6. On 15 July 2009 the complainant submitted an internal complaint against the decision of 28 April 2009, in which he contended that it had not been taken in accordance with the procedure introduced by Rule of Application No. 35 insofar as his assignment to a generic post had not been based on the nature of his functions, as required by Article 9 of the Rule, but had been carried out by automatically transposing his old career bracket, which was of no relevance to job management. In his opinion, this process jeopardized his chances of future promotion. Numerous other officials likewise submitted an internal complaint against the decisions of 28 April 2009 concerning them.

On 20 January 2010 the Director General allowed the internal complaint and rescinded the decision at issue on the grounds that it was tainted with a formal flaw, as recommended by the Joint Committee for Disputes, since the Committee in charge of job management monitoring had not conducted the review prescribed by Rule of Application No. 35.

This decision stated that a new decision would be taken once the Committee in charge of job management monitoring had given an opinion, which it did on 5 May 2010. The Committee concluded that the transposition of the disputed grade had been in line with the conditions laid down in Article 9 of the Rule of Application. It simply added: "Furthermore, the Committee recommends that both staff and management concerned […] should be informed that this recommendation does not preclude the possibility of reviewing a given job and as such, be advised of the process for the submission of such a request."

The Director General decided on 5 July 2010 to follow this recommendation; thus, he simply confirmed the complainant's classification in career bracket A*****8-A*****11, assigned on 28 April 2009. On 27 September 2010 the complainant submitted another internal complaint seeking the cancellation of this decision.

The present complaint is directed against the implied rejection of that internal complaint.

7. The Joint Committee for Disputes delivered a divided opinion on 28 April 2011, after the complaint had been filed. Two members considered that the Committee in charge of job management monitoring had not carried out an analysis allowing a reassessment of the complainant's post, while the other two held that the Committee had verified the transposition of the complainant's grade into the new career brackets in accordance with Article 9 of Rule of Application No. 35.

By a decision of 14 June 2011 the Director General rejected the internal complaint as unfounded and endorsed the opinion of the latter two members of the Joint Committee for Disputes.

This decision and the opinion delivered by the Joint Committee for Disputes were appended to Eurocontrol's reply in order that the complainant might comment on them in his rejoinder.

8. Eurocontrol asks the Tribunal to join this complaint with several others pursuing the same claim. The Tribunal considers that this complaint is sufficiently different from the others in fact and in law to warrant a separate examination.

9. The complainant first makes various allegations regarding formal flaws in both the procedure which led to the final disputed classification and the decision at issue.

(a) He contends that the procedure followed was fundamentally flawed because, generally speaking, the description of the duties and powers attaching to each type of post and the level of these posts expressed in terms of grades did not form the subject of a decision by the Director General, which prevented the officials concerned from ascertaining whether the new classification of their duties respected the rights which they enjoyed under the previous post classification system. Regarding his own case in particular, he says that, as he was not expressly allocated any job title, he could not be assigned a generic post.

This plea is unfounded. The complainant produces no evidence to support the view that the procedure followed for introducing and

putting in place the administrative reform – as outlined in the submissions and explained by Eurocontrol in its reply and surrejoinder – failed to respect the principles established in Rule of Application No. 35. The complainant was clearly informed that his previous rights would be safeguarded, and of the job title and generic post assigned to him.

(b) He contends that the decision of 5 July 2010 is tainted with serious procedural flaws because it does not mention his job title, generic post or even his precise grade, and because no reasons are stated for it, since he did not receive the opinion of the Committee in charge of job management monitoring on which it was based.

This criticism is groundless. The decision of 5 July 2010 was taken after the correction of the procedural flaw resulting from the fact that the disputed classification was not submitted for review by the Committee in charge of job management monitoring. It merely confirms the decision of 28 April 2009 assigning the complainant to a precise generic post in an equally clearly defined career bracket, this being the main subject of the dispute. The decision of 28 April 2009 followed that of 30 June 2008 classifying the complainant in a precise grade. He was notified of both decisions. The decision of 5 July 2010 thus left him in no doubt as to his job title, generic post and the classification thereof within the career bracket which it mentions.

Nor can it be said that no reasons were given, since the decision of 5 July 2010 was accompanied by a memorandum from the Principal Director of Resources which reflected the substance of the opinion of the Committee in charge of job management monitoring.

10. In the complainant's opinion, the latter Committee delivered only a general opinion whereas it should have made an individual examination of each case submitted to it. Although he concurs with Eurocontrol that the implementation of Rule of Application No. 35 cannot lead to changes in the conditions for promotion or eligibility for competitive recruitment, he submits that, in the instant case, its implementation did alter his career and his eligibility for promotion. He believes that, while in the old system he could objectively hope for

promotion to grade A3, his new generic post no longer enables him to advance to a higher grade, because he has reached the highest in his career bracket, i.e. grade AD11 (A*****11), without any improvement in his situation.

This statement is partly true. The office notice accompanying Rule of Application No. 35 summarises the steps for moving from the old job classification to the new classification ensuing from the administrative reform which entered into force on 1 July 2008. It may be inferred from this notice, from Rule of Application No. 35 and from Article 5(7) of the Staff Regulations that, by including most job titles and generic posts in a career bracket and by defining these jobs on the basis of main tasks and well-defined criteria, such as training, experience and skills, the administrative reform altered the former rules on promotion which established the principle of career advancement without changing job, functions or tasks. The reform changed this method of promotion with the result that it is now no longer possible for an official who has reached the highest grade in his or her career bracket to be promoted automatically. Moving to a higher career bracket involves either being appointed following a competition, in accordance with the terms and conditions set forth in Article 16a of Rule of Application No. 2 of the Staff Regulations, to another post in that new bracket, or a job review justifying the reclassification of the post held in a higher bracket.

It must be recalled that the Tribunal is not competent to review the advisability or merits of the changes which Eurocontrol has introduced in its staff management, for they form part of general employment policy which an organisation is free to pursue in accordance with its general interests (see Judgment 3225, under 6).

Contrary to the complainant's submissions, the new job classification system does not, however, deprive him of his prospects of career advancement within Eurocontrol. He can still be promoted in either of the circumstances outlined above. Moreover, the complainant has produced no evidence that he would have been entitled to promotion when the change in his job title and grade was adopted. It was, however, only on this condition that the Director General would

have had a duty to review the grade assigned to him subject to the particular conditions laid down by Article 6 of Rule of Application No. 35, after obtaining the opinion of the Committee in charge of job management monitoring.

11. The complainant considers that he should have been assigned the generic post of Service Manager or Senior Manager in a higher career bracket which, in his opinion, ought at all events to have led to his promotion to grade A*****12. This is what he requested, without success, in his internal complaint of 27 September 2010.

The classification of posts necessarily involves the exercise of a value judgement as to the nature and extent of the duties and responsibilities pertaining to the posts. Accordingly, the Tribunal will not substitute its own assessment or direct a new assessment unless certain grounds are established. Save when the impugned decision was taken without authority or shows some procedural or formal flaw, the Tribunal will interfere with the decision only if it is based on a mistake of fact or of law, overlooks some material fact, is an abuse of authority, or draws a clearly mistaken conclusion from the facts (see Judgments 1281, under 2, and 3016, under 7). It is therefore understandable that the complainant relies only on errors of judgement and the overlooking of material facts when a comparison was made of his respective powers and tasks in his old and new posts.

The complainant's arguments are not sufficient to convince the Tribunal that the disputed classification decision is tainted with the flaws which he alleges. He has not established that when Eurocontrol transposed grades it should have promoted him to a higher grade on account of his work and experience.

12. The substantive pleas entered in the complaint are therefore also groundless.

13. It follows from the foregoing that the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 14 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