

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**D.**

**v.**

**Eurocontrol**

**120th Session**

**Judgment No. 3496**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. D. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 14 December 2012 and corrected on 21 January 2013, Eurocontrol's reply of 17 May, the complainant's rejoinder of 13 August and Eurocontrol's surrejoinder of 15 November 2013;

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 challenges the lawfulness of his suspension and the reprimand that he subsequently received.

On 5 December 2011, after he was accused of having viewed indecent photographs and made advances towards a colleague in his workplace, the complainant, at that time assigned to the Operations Division of the Maastricht Upper Area Control Centre, was issued a reprimand.

He was at the centre of other incidents during a work-related seminar held in a hotel in February 2012.

On 20 February, pursuant to Annex XIVa to the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre setting out disciplinary rules, and specifically Article 18 thereof dealing with suspension, the complainant was heard, in the presence of several officials, by the Acting Director of the Centre. A number of written witness statements were shown to those attending the meeting, but not to the complainant himself. As the Acting Director considered that these witness statements established that the complainant's colleagues no longer wished to work with him owing to his behaviour, it was decided to suspend the complainant from his duties for two weeks starting from 20 February. By a letter of 21 February, the Acting Director confirmed this decision and asked the complainant to undergo a medical examination with a view to assessing his fitness to work in the safety critical environment of air traffic control. The complainant, who was declared unfit for work until 25 March by Eurocontrol's medical officer, was asked to consult a psychiatrist. The psychiatrist submitted his report on 24 April, finding that the complainant was fit to perform his duties. On 23 March the complainant had been placed on sick leave by his doctor.

In the meantime, on 7 March 2012, the complainant had written to the Director General making a request under Article 91, paragraph 1, of the General Conditions of Employment for clarification of the facts leading to his suspension, which was, in his view, unjustified. By a letter of 5 June, the Principal Director of Resources referred him to the grounds set out in the letter dated 21 February, which was thus confirmed. Furthermore, on behalf of the Director General he issued the complainant another reprimand in view of his conduct. On 29 August the complainant filed an internal complaint seeking the quashing of this reprimand and of his suspension.

At the time of filing his complaint with the Tribunal on 14 December 2012, the complainant had not received a response to this internal complaint and hence he challenged what was, in his view, an implicit decision to reject it. He asked for the quashing of the impugned decision, his suspension and the reprimand of 5 June 2012 and he claimed moral damages and costs.

In the meantime, the complainant's internal complaint had been transmitted to the Joint Committee for Disputes. The Committee met on 16 November, but did not hear the complainant. In its opinion dated 7 December 2012, it unanimously found that the internal complaint was time-barred and hence inadmissible insofar as it was directed against the suspension imposed in February, as it took the view that the decision of 5 June 2012 merely confirmed the earlier decision. The Committee also recommended that the internal complaint be allowed insofar as it challenged the second reprimand. It considered that Article 6 of Annex XIVa had indeed been breached as the complainant had not been heard before that measure was imposed. By a memorandum of 6 February 2013, the Principal Director of Resources, acting by delegation of the Director General, informed the complainant that he endorsed the Committee's opinion and reminded him of his obligations in terms of conduct. The reprimand was formally withdrawn on 21 March 2013.

In its reply, Eurocontrol contends that the claim that the suspension be quashed is irreceivable since the complainant did not challenge it within the applicable time limit, and that following the withdrawal of the reprimand of 5 June 2012, the complainant no longer has a cause of action. The Organisation asks on a subsidiary basis that the complaint be dismissed as unfounded.

In his rejoinder, in view of the adoption of the final decision of 6 February 2013 and the decision of 21 March 2013, the complainant withdraws his claims for the quashing of the implicit rejection of his internal complaint and the reprimand dated 5 June 2012 respectively. He makes a new claim for material damages, namely the payment with interest of his entire salary for the period from 21 February 2012 to 31 August 2013 – the date on which he ceased work on the grounds of permanent total disability – less the amounts that he has already received as remuneration.

In its surrejoinder, Eurocontrol submits that the claims for moral and material damages are irreceivable for failure to exhaust internal remedies.

## CONSIDERATIONS

1. The internal complaint dated 29 August 2012 was primarily directed against the suspension imposed on the complainant by the Acting Director of the Maastricht Centre on 20 February 2012.

2. The suspension, which was limited to two weeks, was motivated by concern for safety and the smooth functioning of the Operations Division to which the complainant was assigned.

This was not one of the disciplinary measures exhaustively listed in Article 4 of Annex XIVa to the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre; rather, this was an interim measure taken on the basis of Article 18 of that Annex.

Since this precautionary measure imposes a constraint on the staff member, it must be legally founded, justified by the requirements of the organisation and in accordance with the principle of proportionality. A measure of suspension will not be ordered except in cases of serious misconduct. This decision is a matter of discretion and is subject therefore to only limited review by the Tribunal, that is to say, if it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the evidence (see, for example, Judgment 2365, under 4(a)).

3. Article 18 of Annex XIVa reads as follows:

- “1. If the Director General accuses a servant of serious misconduct, whether through a failure to honour his professional obligations or through an infringement of the law, [he or she] may immediately suspend the person accused of that misconduct for a specified or indefinite period.
2. The Director General shall take this decision after hearing the servant concerned, save in exceptional circumstances.”

4. It should first be noted that the complainant is manifestly wrong to accuse the defendant of having suspended him in breach of

his right to be heard and the competence rules applicable in the Organisation.

The complainant was suspended from his duties on 20 February 2012 after a hearing lasting three quarters of an hour. The draft minutes, which have not been disputed, show that he expressed himself freely.

The file also shows that during that hearing the complainant was duly informed of the reasons behind the contested decision. As the Organisation correctly points out, the complainant admitted to the essential facts of which he was accused. In these circumstances, and given that disciplinary proceedings had not yet been initiated, it was not necessary to disclose the written witness statements to him.

5. The hearing held on 20 February did indeed take place under the authority of the Acting Director of the Maastricht Centre and not that of the Director General. However, Article 95, paragraph 2, of the General Conditions of Employment provides that individual provisions for giving effect to these General Conditions of Employment are to be decided either by the Director General or, by delegation of powers, by the official(s) responsible for staff management. The defendant has appended to its reply sufficient documentation to establish the existence of such a delegation to both the Acting Director of the Maastricht Centre and the Principal Director of Resources, who signed the letter dated 5 June 2012 confirming, at the complainant's request, the grounds that had led the defendant to order his suspension.

6. The suspension was ordered after facts were reported to the defendant that were similar to those which had led the Organisation to issue a complainant the first reprimand in the previous year, a disciplinary measure that he did not challenge. The suspension in no way prejudged the veracity of those facts. This measure could and had to be taken given that accusations that could not be dismissed *prima facie* were brought against the complainant and these accusations related to facts that were liable to disrupt the functioning of a department directly involved in air traffic safety.

As the suspension was limited to two weeks, contrary to what the complainant contends in disregard of the true situation that emerges from the evidence, its duration was clearly not disproportionate.

7. The complainant's pleas concerning a breach of Articles 18 and 19 of Annex XIVa and of the duty of care prove to be irrelevant in light of the circumstances revealed by the evidence.

8. The complaint must therefore be dismissed insofar as it challenges the suspension decision adopted on 20 February 2012, without it being necessary to rule on the objections to receivability raised by the defendant particularly in respect of the legal characterisation of the letter dated 7 March 2012.

9. The internal complaint dated 29 August 2012 had a second aim of challenging the decision of the Principal Director of Resources, taken on behalf and by delegation of the Director General, to issue the complainant a reprimand under Article 4(1)(b) of Annex XIVa. The complainant considered that this disciplinary measure infringed the principle of proportionality in view of the facts that he admitted and his promise to change his behaviour. He further submitted that this measure had been taken in disregard of the rights granted under Article 6 of the Annex to an official before a written warning or reprimand is issued.

10. After the complaint presently under consideration had been filed, the Director General withdrew this disciplinary measure as recommended by the Joint Committee for Disputes, which, when examining the internal complaint dated 29 August 2012, had found that the complainant had not been heard before the disciplinary measure was issued on 5 June 2012.

As the disputed reprimand has thus been withdrawn, the complaint is moot and hence irreceivable insofar as it seeks the quashing of that disciplinary measure.

11. It ensues 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 30 April 2015, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

*(Signed)*

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ