Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G. (No. 2)

v.

Eurocontrol

133rd Session **Judgment No. 4470**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-M. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 5 February 2018 and corrected on 15 February, Eurocontrol's reply of 23 May, the complainant's rejoinder of 31 July and Eurocontrol's surrejoinder of 7 November 2018;

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 impugns Eurocontrol's decision to stop payment, as from 1 August 2016, of the education allowance and the dependent child allowance which he was receiving in respect of his daughter.

On 10 September 2015 the *Université libre de Bruxelles* drew up for the complainant's daughter a certificate of enrolment and a declaration for the attention of family allowance funds which stated that the 2015-2016 academic year would begin on 14 September 2015 and would end on 13 September 2016.

On 16 August 2016 that university issued a certificate of achievement for the course of study that the complainant's daughter had undertaken. On 20 September the complainant completed a change of family status

form, to which he appended that certificate, and stated therein that his daughter had completed her studies on 14 September. However, he stated verbally that she had completed her studies in June, after sitting her exams in the first session. By email of 23 September, he was reminded that it was the date on which the child stopped attending the educational establishment in question (that is, the date of the last examination) and not the date on which the qualification was awarded that was taken into account in determining the official's entitlements. He was asked to provide a certificate showing either the date on which his daughter had stopped attending the university or the date of the last examination, which he refused to do.

On 27 September 2016 the complainant was notified of the decision taken when his family allowance entitlements were updated. This decision, taken on the basis of Rule of Application No. 7, concerning the remuneration of staff members, showed that the administration had taken the date of 30 June 2016 as the date on which the complainant's daughter had completed her studies; that the complainant should no longer receive either the education allowance or the dependent child allowance from 1 August 2016; and that the amount of the allowances received since that date would be "retroactively recovered"[*]. In respect of sickness insurance, the decision stated that the complainant's daughter could have complementary coverage until 31 July 2017. By email of 25 October 2016, the complainant was informed that the overpayment totalled 2,152.62 euros and that the reimbursement of this sum would involve two deductions of 1,076.31 euros each from his salary as from December 2016.

In the meantime, on 18 October, the complainant had lodged against the decision of 27 September 2016 an internal complaint in which he requested to be paid the two allowances in question until 13 September 2016. On 20 December 2016 he was informed that his internal complaint had been forwarded to the Chairman of the Joint Committee for Disputes and, on 21 February 2017, that it would be presented at the Committee's meeting scheduled for 13 March.

[*] Registry's translation.

The Joint Committee for Disputes delivered its opinion on 28 August 2017. The conclusion of that opinion stated that all members of the Committee considered the internal complaint unfounded.

By memorandum of 7 November 2017, the complainant was informed that his internal complaint had been rejected as unfounded for the reasons set out in the Committee's opinion. That is the impugned decision.

The complainant asks the Tribunal to set aside the decisions of 7 November 2017 and 27 September 2016, to order Eurocontrol to pay him 1 euro in nominal moral damages, and to award him costs.

Eurocontrol expresses doubts as to the receivability of the complaint before the Tribunal, in particular on the grounds that it is not consistent with the complainant's prior internal complaint. It asks the Tribunal to dismiss all of the complainant's claims as irreceivable or unfounded.

CONSIDERATIONS

1. The complainant asks the Tribunal in particular:

– to set aside both the final decision of 7 November 2017 and the initial decision of 27 September 2016; and

– to order Eurocontrol to pay him 1 euro in nominal moral damages.

2. He puts forward the following four pleas:

(1) a breach by the Joint Committee for Disputes of the principles of sound administrative management and sound administration in the procedure followed for considering his internal complaint, on various grounds;

(2) a lack of legal basis for the contested decisions;

(3) an obvious error of judgement in examining his internal complaint;

(4) a breach of the principle of equal treatment and non-discrimination by the contested decisions.

3. With regard to the first plea (irregularities in the procedure followed before the Joint Committee for Disputes), the complainant raises various grievances, which can be summarised as follows: (1) the Committee's opinion is signed by its chairman alone; (2) the opinion, which ends with the conclusion that "[a]ll members of the Committee consider that the internal complaint is unfounded"[*], does not reflect such unanimity; (3) the Committee ruled on the basis of an incomplete file or it did not have access to all the file; (4) the long period of uncertainty in which the complainant remained until the Committee delivered its opinion deprived him of the right to file a complaint with the Tribunal for more than six months; (5) there was a breach of due process in the proceedings.

In respect of the first grievance, the Tribunal observes that, as Eurocontrol submits, Article 4 of Office Notice No. 06/11 of 7 March 2011 on the functioning of the Joint Committee for Disputes provides that the Chairman of the Committee is to sign the Committee's opinion. He did so in this case and no other signature was required. The complainant's first grievance is therefore unfounded.

In respect of the second grievance, the opinion delivered by the Committee on 28 August 2017 shows that, while certain members regretted that the applicable rules were not different, all of its members agreed, albeit implicitly, with the conclusion that the internal complaint was unfounded. The second grievance is therefore also unfounded.

In respect of the third grievance, it is true that one member of the Committee referred to the fact that there was no certificate in the file submitted to the Committee showing that the complainant's daughter had passed her last examinations, and another member regretted the fact that the file contained no official document from the university that would have made it possible to define precisely the period for which entitlements to education or family allowances could be granted. However, the absence of such documents in the file sent to the Committee could not adversely affect the complainant from an objective point of view since they were not necessary for its members to reach an informed

[*] Registry's translation.

decision. First, it is not disputed that the complainant's daughter passed her last university examination in June 2016 and, second, that fact alone sufficed for the members of the Committee to determine whether Eurocontrol had correctly applied the relevant rules in force. The third grievance is therefore unfounded.

In respect of the fourth grievance, the Tribunal fails to see how the timeframe within which the Joint Committee for Disputes met and issued its opinion of itself renders that opinion and the subsequent decision unlawful. Although Article 4 of the aforementioned Office Notice No. 06/11 of 7 March 2011 provides that the Committee should "preferably" give a reasoned opinion within "sixty days subsequent to the receipt of the request for an opinion", this requirement is not absolute and failure to comply with this timeframe only means that the Director General of Eurocontrol may take his or her decision without receiving the Committee's opinion. Similarly, the second subparagraph of Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency provides, first, that the Director General is to notify the person concerned of her or his reasoned decision "within four months from the date on which the [internal] complaint was lodged" and, second, that "[i]f at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged [with the Tribunal]". Furthermore, the fact that over one year passed before an express decision was adopted on the complainant's internal complaint, even if that delay is considered unreasonable, cannot, of itself, have adversely affected his right of effective appeal to the Tribunal: first, he successfully filed this complaint and his entitlements would be fully restored if the Tribunal were to allow it; second, under Article VII, paragraph 3, of the Statute of the Tribunal, if he had wished, he could have filed a complaint against Eurocontrol's implicit decision earlier on account of the failure to reply to the internal complaint that he lodged on 18 October 2016. It must therefore also be concluded that the fourth grievance is unfounded.

Incidentally, the complainant also alleges a breach of due process in that the decision of 7 November 2017 was taken without his having had the opportunity to state his case. Assuming that this can be regarded as a fifth grievance, given the limited space that the complainant devotes to it in his submissions, the Tribunal considers that this grievance is clearly unfounded in this case. The submissions shows that the complainant had the opportunity to state his case in writing at the appropriate time, both when lodging his internal complaint and during the proceedings before the Joint Committee for Disputes. There was therefore no breach of due process.

It follows from all the foregoing that the first plea is unfounded.

4. In his second plea (lack of legal basis), the complainant submits that, by withdrawing the dependent child allowance and the education allowance in respect of his daughter on 1 August 2016, Eurocontrol breached Article 3 of Rule of Application No. 7. Furthermore, given that Eurocontrol states that it based its decision on Article 6 of the implementing provisions of Article 3 of Rule of Application No. 7, the complainant argues that the Organisation unlawfully restricted the scope of that latter provision.

The Tribunal notes that the award of the dependent child allowance is governed by Article 2 of Rule of Application No. 7, while the conditions for the grant of the education allowance are laid down in Article 3 of Rule of Application No. 7 and in Article 6 of the implementing provisions of Article 3. However, the criteria specified by these different provisions for the grant of the allowances in question differ according to whether the dependent child allowance or the education allowance is concerned.

5. Under Article 2(3) of Rule of Application No. 7:

> "The [dependent child] allowance shall be granted:
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> [...]
>
> b) on application, with supporting evidence, by the official for children between eighteen and twenty-six who are receiving educational or vocational training."

Since the complainant's daughter had passed her last university examination in June 2016, after that date she was no longer receiving educational training as required under that provision. The plea must be declared unfounded in so far as it refers to the refusal to pay dependent child allowance to the complainant as from 1 August 2016.

6. In respect of the refusal to pay the education allowance from 1 August 2016, the Tribunal observes that Article 3(1) of Rule of Application No. 7 – like Article 1(2), Articles 5 and 6 of the implementing provisions of Article 3, which are applicable in this case – refers to "[a] dependent child [...] who is [...] in regular full-time attendance [...] at an establishment of higher education" and provides that "[w]here a child does not continue his/her studies after the end of a given academic year", the education allowance is only paid "up to the end of the month following that in which the child completes his/her studies". The French version of this provision adds the clarification "(that is, the date of the last examination)".

In the light of these various provisions, the Tribunal finds that, as the complainant's daughter had passed her exams in the first session of the 2015-2016 academic year, she was no longer in regular attendance at an establishment of higher education from the end of June 2016. Eurocontrol was therefore entitled to stop paying an education allowance to the complainant as of 1 August 2016. Insofar as the complainant further alleges that Article 6 of the implementing provisions for Article 3 of Rule of Application No. 7 is unlawful because it is contrary to the spirit of that rule, the Tribunal notes, first, that Article 3(1) of the Rule allows such implementing provisions to be adopted and, second, that, in the exercise of that power, Article 1(2), the first paragraph of Article 3, and Articles 5 and 6 of those implementing provisions are not contrary to the spirit informing the aforementioned Article 3(1) in any way. The second plea is therefore unfounded.

7. In support of his third plea, the complainant submits that two members of the Joint Committee for Disputes assumed that his daughter had not continued her studies, which was an obvious error of judgement. The complainant's daughter had in fact been enrolled since 1 October

2016 at the University of Montpellier, where she was studying for a PhD in science and receiving an allowance of 1,758 euros per month in that connection. In the complainant's view, she should therefore have been considered as continuing her studies after completing her Master's degree and the 2015-2016 academic year at the *Université libre de Bruxelles*.

As a result of its consideration of the second plea, the Tribunal finds that the complainant's daughter was correctly considered to have stopped regularly attending an establishment of higher education from the end of June 2016, the date on which she passed her last Master's examination. Furthermore, the fact that the complainant's daughter had been studying for a PhD at the University of Montpellier since 1 October 2016 as a "contractual PhD student with no additional employment" under a fixed-term contract for working hours equivalent to 100 per cent of statutory working hours in France and that she received a gross monthly salary of 1,758 euros in that connection, does not, in any event, permit a finding that the complainant's daughter continued to satisfy the conditions laid down in the Eurocontrol rules applicable in that regard after June 2016.

This third plea is therefore unfounded.

8. With regard to his fourth plea, the complainant states that he does not understand why Eurocontrol stopped paying the dependent child allowance and the education allowance solely because his daughter passed her examinations in the first session in June 2016, while an official incurs the same education costs for his or her children, regardless of whether they pass their examinations in the first or second university session. The complainant submits that this is an error of both fact and law, as well as a breach of the principle of equal treatment and non-discrimination. In its submissions, Eurocontrol contends that the principle of equal treatment is observed in that all those entitled to the education allowance receive the same treatment: "The condition relating to the completion of studies (that is, 'the date of the last examination', regardless of whether this is in first or second examination session) is part of Rule of Application No. 7. This condition applies objectively to all children of eligible staff members" and is justified by the fact that

"a child who must attend during the September examination session in continues to be in regular full-time attendance at university[, which warrants in his or her case] the continued payment of the flat-rate education allowance".

The Tribunal's consideration of the second and third pleas leads it to conclude that, contrary to the complainant's submissions, the decision of 7 November 2017 is not affected by any error of fact or law.

The Tribunal further observes that the situation at issue involves a student in regular attendance at an establishment of higher education who successfully completes her or his final year of study at that establishment and consequently ceases to be in regular attendance. In such a situation, Eurocontrol's rules imply that entitlement to the above allowances ceases at the end of the month following the date on which the student passed her or his last examination of the year, regardless of whether this was in the first or second session. The Tribunal finds this to be an identical criterion applicable to everyone, that is objective and appropriate to the aim pursued by the grant of the allowances in question and, lastly, that does not appear to be disproportionate, since a student who has passed her or his examinations in the first session no longer has to incur the transport and tuition fees which students who are required to sit a second examination session must generally continue to pay.

The complainant's fourth plea is also unfounded.

9. Lastly, in his complaint, the complainant also asks that the initial decision of 27 September 2016 be set aside in that it withdrew his daughter's entitlement to sickness insurance coverage from 1 August 2016. However, apart from the fact that the decision in question did not withdraw the entitlement to sickness insurance coverage as from 1 August 2016 but extended it until 31 July 2017, the Tribunal observes that the complainant does not refer to any specific breach concerning that aspect of the initial decision. This last claim is in any event unfounded.

10. Since all the complainant's arguments are unfounded, the complaint must be dismissed in its entirety, without there being any need to rule on Eurocontrol's objections to receivability.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 23 November 2021, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ