

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**G. (G.) (No. 2)**

**v.**

**Eurocontrol**

**139th Session**

**Judgment No. 4959**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr G. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 31 August 2021, Eurocontrol's reply of 5 January 2022, the complainant's rejoinder of 1 March 2022 and Eurocontrol's surrejoinder of 25 May 2022;

Considering the application to intervene filed by Mr R. G. on 25 July 2022 and Eurocontrol's observations thereon of 18 October 2022;

Considering the additional information provided by Eurocontrol at the Tribunal's request on 24 September 2024, the complainant's additional observations of 2 October 2024 and Eurocontrol's final comments of 8 October 2024;

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 calculation of his leave entitlement for public holidays in 2021 and of the deductions made in this respect because he worked part-time.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, in 1991. By a decision of 27 August 2019, he was informed that from 1 January 2020 he would work part-time (50 per cent) while receiving 66.16667 per cent of his base salary in preparation for his planned retirement on 1 January 2022. With regard to his leave entitlement, he was told that time taken off as a part-time employee could not exceed half the working days of a given month. At the time, the complainant was a member of the operational staff of the Network Management Directorate (DNM) and worked in shifts.

By Office Notice No. 15/20 of 15 June 2020, the Director General established the list of public holidays for 2021. He explained that certain staff members working shifts were subject to specific rules. Operational staff in the Network Management Directorate were covered by Rule of Application No. 29, which stated that "staff must be given a day off in lieu for all public holidays".

In February 2021 the complainant received his personal leave balance report for 2021. This report included a breakdown of the hours and minutes of work included in the duty roster for 2021. On 7 February 2021 he asked the Administration to review the calculation of his leave entitlements and to explain the reduction made on account of his part-time work. There followed an exchange of emails in which the complainant contested the reduction of his "public holidays/compensation days" in proportion to his part-time work and asked on what legal basis this reduction had been authorised. In his view, the rules in force did not allow any reduction in "public holidays/compensation days". The Administration maintained that the calculation was correct and that a new calculation tool had been used. By an email of 30 March 2021, the Head of Compensation and Benefits confirmed that public holidays/compensation days were treated as additional days of annual leave for shift workers and that it was impossible to grant full days of leave in compensation for part-time work. She added that this approach had been applied for many years.

On 30 April 2021 the complainant lodged an internal complaint with the Director General to contest the calculation of leave in hours. He explained that he was entitled to 24 working days' leave under

Article 57 of the Staff Regulations, six additional days on account of his grade and age under the Implementing Provisions for Rule of Application No. 6 concerning the terms and conditions governing leave, and 17 public holidays for 2021 pursuant to aforementioned Office Notice No. 15/20. He added that the reduction proportional to his part-time work applied only to annual leave. However, the administration had reduced his compensatory leave for public holidays by 50 per cent.

As the complainant received no response within the 60-day period provided for in Article VII, paragraph 3, of the Tribunal's Statute after lodging his internal complaint, on 31 August 2021 he filed a complaint with the Tribunal against the implied rejection of his internal complaint.

The complainant asks the Tribunal to set aside the decision to reduce his entitlement to "public holidays/compensation days", to declare that this withdrawal/reduction of his "public holidays/compensation days" was unlawful, and to award him damages in the amount of 4,092 euros in compensation for his material injury, as well as compensation of 25,000 euros for the moral injury he considers he has suffered. He also claims 10,000 euros on account of the way in which his internal complaint was handled. Lastly, he claims the sum of 7,000 euros in costs, "increased by the costs of the internal complaint"\*, in a total amount of 9,500 euros. In his additional observations, he seeks further compensation of 25,000 euros in exemplary and punitive damages, and an award of additional costs of 2,000 euros.

Eurocontrol asks the Tribunal to declare that the complaint is unfounded.

#### CONSIDERATIONS

1. The complainant is a former staff member of Eurocontrol who was employed by the Organisation from 1 December 1991 until 1 January 2022, when he retired. He impugns before the Tribunal the implied rejection of the internal complaint he had lodged on 30 April

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\* Registry's translation.

2021 against the calculation of his public holidays and compensation days for 2021. In that internal complaint, he had challenged the Organisation's decision to halve the number of public holidays/compensation days to which he was entitled for 2021 on the grounds that he was then working part-time and did not work the same number of hours per week as a full-time staff member.

2. Although Article 92 of the Staff Regulations governing officials of the Eurocontrol Agency granted the Organisation a period of four months for the Director General to take a decision on the complainant's internal complaint, it appears firstly that, on 31 August 2021, the date on which the present complaint was filed, the internal complaint had still not been referred to the Joint Committee for Disputes for an opinion or dealt with in a decision by the Director General.

Secondly, according to the submissions and evidence in the file, the internal complaint was not referred to the Joint Committee for Disputes until 25 November 2021 and the Committee's opinion was not delivered until 9 December 2022, that is almost 20 months after the internal complaint was lodged, without the complainant being notified of the opinion at that stage. In fact, following a request for clarification sent by the Tribunal to the Organisation on 20 September 2024, to which it replied on 23 September 2024, it transpired that the Committee had delivered that opinion almost 22 months earlier.

In contrast, no express decision has yet been taken by the Director General at the time of the Tribunal's deliberations, almost 23 months after the Committee's opinion was issued and more than 42 months after the internal complaint was lodged.

3. On the merits, the complainant's internal complaint ultimately raises a well-defined question of interpretation of the Organisation's applicable statutory provisions: in a situation where a staff member works part-time in shifts in a given year, does this affect the calculation of the time in lieu to which she or he is otherwise entitled for public holidays in the year concerned?

In the complainant's view, in the absence of a provision stating that it does, the answer must be in the negative. In the Organisation's view, since, in particular, the Tribunal has already ruled to this effect in Judgment 3029, consideration 11, and excessive formalism in this respect would create unjustified discrimination between staff members, the answer must be in the affirmative.

In the present case, the complainant worked part-time (equivalent to 50 per cent) in 2021 in preparation for his retirement, which took place on 1 January 2022. The total number of public holidays and compensation days, which was 17 for 2021, was limited in his case to the equivalent of 8.5 days, calculated on the basis of 7 hours and 30 minutes per working day, since the complainant was a shift worker belonging to Network Management Directorate operational staff.

4. Article 57 of Eurocontrol's Staff Regulations is the relevant provision concerning a staff member's leave. It reads as follows:

"Article 57

Officials shall be entitled to annual leave of not less than twenty-four working days nor more than thirty working days per calendar year.

Apart from this annual leave an official, on application, may exceptionally be granted special leave.

The rules relating to granting such leave are laid down in a Rule of Application of the Director General.

[...]" (Emphasis added.)

5. Furthermore, Article 9 of Rule of Application No. 6 concerning the terms and conditions governing leave states the following in respect of public holidays:

"Article 9

The list of public holidays in each State of posting shall be drawn up by Office Notice of the Director General each year in respect of the following year." (Emphasis added.)

Article 10 of the Implementing Provisions for this Rule sets out the following arrangements for part-time work:

“Article 10  
Part-time work

The rules for reducing the number of leave days for officials working under the normal part-time arrangements shall not apply by analogy to officials working under part-time medical leave.

The annual leave entitlements (basic entitlement of 24 days plus leave for age and grade of up to 6 days) of an official who is authorised to work part-time shall be reduced proportionally for the period of part-time work. This reduction shall be calculated on the basis of a maximum entitlement of 30 days.

The amount of special leave shall be determined in calendar days and shall be the same for all officials, whatever their working arrangements. For officials authorised to work part-time, the period shall thus correspond to the timetable worked on the day or days taken as special leave.

If medical part-time is granted during a period of part-time working, the latter must be suspended during the period of medical part-time.” (Emphasis added.)

6. Lastly, Rule of Application No. 29 lays down the applicable provisions concerning the working conditions of DNM operational staff (to which the complainant belonged), which are established on the basis of the number of hours worked.

Article 3 of this Rule reads as follows:

“Article 3

1. On the basis of the proposals made by Director [of DNM], after consultation with the Staff Committee, the Director General shall draw up special time-tables of work for staff who have to perform specific duties or ensure the operation of certain services at the [DNM] by a system of shifts worked in rotation in accordance with the conditions set out in the present Article.
2. The special time-tables shall be drawn up on the basis of an average of 37½ hours of work per period of seven consecutive days, including Sundays and public holidays. Each such period shall include two rest days, which shall, if possible, be consecutive and be granted having regard to the exigencies of the service and the preferences of the staff concerned. A rest day shall consist of at least thirty consecutive hours off duty; when, however, the rest period exceeds thirty hours, the subsequent rest days shall consist of twenty-four hours.

3. Under paragraph 2 of this Article, a number of rest days may be granted on Sundays; the number of rest days as granted shall be the same for all staff. An official should normally not work more than three consecutive Sundays.
4. Public holidays shall be compensated by an equal number of days of leave.
5. The breaks considered necessary for relaxation and meals shall be regarded as normal working time.” (Emphasis added.)

7. Office Notice No. 17/97 of 15 September 1997 concerning part-time work supplements these provisions and states the following in points 3 and 4 relating to leave entitlement and procedures for authorisation of a reduction in working time:

**“3. Leave entitlement**

The number of days’ leave provided for under Rule No.6 will be reduced in proportion to the time not worked. Annual leave (24 days) and additional leave according to age (1-6 days) will be included when calculating the reduction in annual leave. Travelling time and compensation days will not be taken into account, except in the case of staff members working 50% time.

Fractions of days’ leave to be deducted will be rounded down to the nearest half-day.

**4. Procedures for authorisation of a reduction in working time**

[...]

**II. Part-time staff working a reduced number of hours per day:**

The reduction in working time will be calculated as follows on the basis of a 37½ hour week:

Percentage working time	Reduction expressed in hours per week
50%	18,45
60%	15
70%	11,15
80%	7,30
90%	3,45

The weekly reduction is fixed for the entire authorisation period.

Consequently, the notion of additional ‘part-time leave’ is not applicable.

When applying to work part-time, a staff member must specify the weekly timetable he/she wishes to follow.

To offset the difference between the duration of a normal day's annual leave (7½ hour) and that of a reduced working day, an adjustment will be made to the annual leave entitlement.

[...]" (Emphasis added.)

8. As this dispute revolves around the interpretation of Eurocontrol's applicable statutory provisions, it is appropriate to recall the rules of statutory interpretation established by the Tribunal's case law. These rules state that words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgments 4796, consideration 3, 4639, consideration 3, 4506, consideration 5, 4066, consideration 7, 4031, consideration 5, or 3744, consideration 8). On the other hand, it is also accepted that any ambiguity in a provision should be construed in favour of the staff member and not the organisation (see, for example, Judgments 3701, consideration 4, 3434, consideration 6, and 2276, consideration 4).

9. First of all, the Tribunal makes a fundamental finding: as the complainant rightly submits, nowhere in the Organisation's applicable statutory provisions is it expressly provided that public holidays are days of leave which must be reduced proportionately, either in days or in hours, when a staff member works part-time.

10. Firstly, Eurocontrol has separately and distinctly identified the words or expressions "leave", "annual leave", "special leave" and "public holiday" in both Article 57 of the Staff Regulations and Rule of Application No. 6.

Secondly, in Article 10 of the Implementing Provisions for Rule of Application No. 6, which concerns part-time work, Eurocontrol has specifically provided that the annual leave entitlements of an official who is authorised to work part-time are to be reduced proportionally for the period of part-time work. The Article also refers to the situation of special leave when it deals with the rules for reducing the days of leave

for officials working under normal part-time arrangements, as well as to the particular situation of part-time medical leave. It does not mention public holidays.

Finally, in the case of “annual leave”, the Organisation considered it necessary to provide expressly, in the aforementioned point 3 of Office Notice No. 17/97 concerning part-time work, that what it describes as “days’ leave provided for under Rule No. 6” are reduced in proportion to the time not worked, without, however, mentioning “public holidays”.

11. The Tribunal next observes that a table provided by the Organisation covering 17 public holidays for shift workers as of 1 January 2011, approved in 2009 for shift and non-shift staff, expressly states that, in respect of what are termed “Additional Compensation days”, there is no reduction in compensation days in a situation such as that of the complainant in the present case, where part-time work precedes retirement. Although the Organisation maintains in its submissions that this document, which it describes as “very old”\*, has no legal value and cannot replace the rules of the Staff Regulations, the Tribunal considers that it cannot disregard its content since it has not been established that this table is obsolete nor, contrary to what the Organisation submits, contrary to the applicable provisions in this area.

12. The Tribunal also notes that while, according to Article 3(4) of Rule of Application No. 29, public holidays are to be “compensated” by days of leave, the aforementioned relevant articles of Rule of Application No. 6 do not mention “compensation” days. The Implementing Provisions of Rule of Application No. 6 effectively equate the concept of a public holiday with that of a rest day, which seems difficult to reconcile with the Organisation’s assertion that public holidays may be reduced proportionately depending, for example, on the number of hours worked.

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\* Registry’s translation.

Moreover, the fact that Article 3(4) of Rule of Application No. 29 provides that “[p]ublic holidays shall be compensated by an equal number of days of leave” does not in itself imply that the “days of leave” referred to are “compensation days” as referred to in point 3 of aforementioned Office Notice No. 17/97.

13. Lastly, the Tribunal notes that the Organisation’s central arguments in support of its position focus, firstly, on consideration 11 of Judgment 3029, which, in its view, settles the issue and, secondly, on the assertion that the Organisation has “for years”\* followed the practice adopted in the complainant’s situation with respect to the calculation of his entitlement to compensation for public holidays in 2021.

However, the Tribunal considers that the second of these arguments should be dismissed in a context in which not only is the assertion of this past practice firmly refuted by the complainant and contradicted by the “very old”\* document referred to above, but also where the Organisation does not present any documentary evidence that could in any way corroborate this assertion, which should normally be easily established if appropriate.

As regards the first of these arguments, the Tribunal considers that it cannot accept the Organisation’s proposed interpretation of consideration 11 of Judgment 3029, which emphasises the following:

“11. It is true that Article 57 of the Staff Regulations and Article 1 of Rule of Application No. 6 refer to annual leave defined as a number of ‘working days’ and not as a number of hours of authorised leave. While the notion of a ‘working day’, to which these texts refer, is not difficult to apply when determining the leave entitlement of officials subject to normal office hours, it plainly requires some interpretation when it has to be applied to officials with special working hours. Such is the case, for example, of part-time staff and particularly of officials working shifts like the complainants. The Tribunal therefore considers that the reference to ‘working days’ contained in the above-mentioned provisions must be deemed to allow the allocation to the officials concerned of leave of a length equivalent to that specified in these provisions, even though it is calculated in hours, and not

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\* Registry’s translation.

days, of leave. The opposite conclusion, which would require leave to be set in days for the sake of consistency with the literal wording of the texts, would indeed be an unduly pedantic approach. Moreover, as stated earlier, the complainants' annual leave entitlement, albeit set in hours, is in fact determined by converting the number of days of leave which the complainants can claim under Article 57 of the Staff Regulations and Rule of Application No. 6."

An analysis of this consideration shows that the situation dealt with in that case was that of a proportional reduction in annual leave entitlements in a context of part-time work, that is, a situation in which statutory provisions were applicable, which is not the case here. The Organisation is therefore mistaken as to the interpretation of and inferences that can be drawn from the passage concerned of this judgment.

Moreover, the Tribunal notes that the next consideration of Judgment 3029 states the following:

"12. It goes without saying that this leave accounting in hours would not be acceptable if the method of calculation that it entails were to penalise the complainants in the determination of their overall leave entitlement. [...]"

However, the Organisation's proposed reading of the applicable statutory provisions would have precisely the effect of penalising the complainant in the determination of his entitlements to compensation for public holidays in 2021.

14. The Tribunal adds that, in the advisory opinion of the Joint Committee for Disputes, the majority of the Committee's members emphasised that the various articles of Rule of Application No. 6 referred only to days of annual leave and not to public holidays or compensation days, that Office Notice No. 15/20 of 15 June 2020 concerning public holidays in 2021 did not specify how these public holidays or compensation days were to be calculated for staff members who worked part-time and that, by way of comparison, no reduction in the number of public holidays or compensation days was applied to Eurocontrol's operational staff in Maastricht working part-time in posts involving shift work.

The Tribunal considers it highly regrettable that the Director General did not take a decision on the complainant's internal complaint, in which he could have, if appropriate, clearly and convincingly explained why he should not endorse the opinion of the majority of the members of the Committee concerning the correct interpretation of the applicable statutory provisions. As the Tribunal has often recalled, one of the main justifications for the mandatory nature of an internal appeal procedure is to enable the Tribunal, in the event that a complaint is ultimately filed, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies. Appeal bodies play a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from their composition and their extensive knowledge of the functioning of the organisation (see, for example, Judgments 4168, consideration 2, 4072, consideration 1, and 3424, consideration 11(b)).

In the present case, given the opinion expressed by the majority of the members of the Committee, it would have been useful for the Tribunal to have received the reasons for a decision of the Director General that departed from that opinion.

15. In view of all these considerations, the Tribunal finds that the interpretation proposed by the complainant must prevail. The alleged discrimination between staff members that would result according to Eurocontrol has not been established. It is not being excessively formalistic to interpret the statutory provisions on the basis of what the Organisation has chosen to specify or not specify in the texts it has enacted. The Tribunal concludes that the Organisation was therefore not justified in halving the number of public holidays/compensation days to which the complainant was entitled in 2021.

16. It follows from the foregoing that the Director General's implied decision of rejection must be set aside, without there being any need to rule on the complainant's other pleas.

The complainant is entitled to compensation for the injury caused by the decision set aside.

17. Turning first to the material injury, the complainant is entitled to compensation for the amount of pay of which he was unduly deprived for public holidays in 2021. In his complaint, the complainant puts that amount at 4,092 euros. While Eurocontrol disputes the accuracy of the calculation of that sum, it does not propose an alternative figure. In the circumstances, the Tribunal considers that the complainant should be awarded compensation in the abovementioned amount.

18. Turning next to the moral injury in the amount of 25,000 euros that the complainant alleges he suffered, the Tribunal notes that he does not provide any concrete evidence of such injury and, in view of the nature of the decision in question, which has solely pecuniary effects, the Tribunal finds that the reimbursement of the amount of pay of which he was unduly deprived in respect of public holidays in 2021 is sufficient to compensate him, in this case, for all the injury caused by the impugned decision (see, for a similar case, Judgment 4469, consideration 15).

19. The complainant also claims compensation of 10,000 euros for the Organisation's failure to deal with his internal complaint properly and its total disregard of the applicable mandatory time limits.

The Tribunal recalls in this respect that, according to its consistent case law, international civil servants are entitled to expect their cases to be considered by internal appeal bodies within a reasonable timeframe and that any failure to comply with this requirement of expeditious proceedings is liable to warrant an award of compensation under this head (see, for example, Judgments 4655, consideration 21, 3510, consideration 24, or 2116, consideration 11). The case law has established that the amount of compensation liable to be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, or 3160, consideration 17).

In the present case, the Tribunal notes that, although the complainant's internal complaint was lodged on 30 April 2021, no decision had yet been taken on it when the Organisation filed its final submissions with the Tribunal on 8 October 2024, almost three and a half years later. Such a delay is clearly excessive. Although the consequences of this delay for the complainant were limited in view of the nature of the decision in question, he nonetheless suffered some injury as a result of the unreasonable delay, which will be fairly redressed by awarding him compensation in the amount of 5,000 euros.

20. In his additional observations, the complainant further submits that he is entitled to compensation of 25,000 euros by way of exemplary and punitive damages on account of the inordinate delays incurred since the beginning of this case and the unacceptable circumstance that, after almost three and a half years, he has not even been able to obtain a final and definitive express decision on the substance of his internal complaint, despite an opinion of the Joint Committee for Disputes that was favourable to him on the merits.

However, the Tribunal has consistently held in its case law that an order for an organisation to pay such damages can only be justified in exceptional circumstances (see, for example, Judgments 4819, consideration 21, 4640, consideration 15, 4493, consideration 11, and 4484, consideration 9). Despite the Organisation's cavalier attitude and regrettable disregard for its obligation to deal with the complainant's internal complaint in an appropriate and diligent manner, the Tribunal considers that such circumstances do not exist in this case. It is thus unnecessary to grant this claim.

21. Lastly, the complainant seeks an award of 2,500 euros in costs for the internal appeal.

However, according to the Tribunal's case law, costs relating to the internal appeal proceedings within international organisations may be awarded only under exceptional circumstances, unless there is an express provision to the contrary (see, for example, Judgments 4819,

consideration 23, and 4217, consideration 12). Such exceptional circumstances have not been demonstrated in the present case.

22. Since the complainant succeeds, he is entitled to the costs he claims in respect of the proceedings before the Tribunal, which, in his final submissions, amount to the sum of 9,000 euros.

23. The Organisation accepts that the intervener is in a legal and factual situation similar to that of the complainant and does not object to his application to intervene. He is therefore entitled to material damages as indicated in this judgment, the amount of which will be calculated on the basis of his own situation (see for example, in this connection, Judgment 4670, consideration 29). According to the submissions relating to the application to intervene, that amount is 5,311 euros. The intervener is also entitled to moral damages in the same amount as that awarded to the complainant. In accordance with the Tribunal's case law, he is not, however, entitled to costs (see, for example, in this connection, Judgments 3692, consideration 11, and 3571, consideration 10).

#### DECISION

For the above reasons,

1. The implied decision to reject the complainant's internal complaint of 30 April 2021 is set aside.
2. Eurocontrol shall pay the complainant material damages in the amount of 4,092 euros.
3. The Organisation shall pay the complainant moral damages in the amount of 5,000 euros.
4. It shall also pay him 9,000 euros in costs.
5. All other claims in the complaint are dismissed.

6. Furthermore, Eurocontrol shall pay the intervener material damages in the amount of 5,311 euros.
7. It shall also pay the intervener moral damages in the amount of 5,000 euros.
8. All other claims in the application to intervene are dismissed.

In witness of this judgment, adopted on 13 November 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

MIRKA DREGER