

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**W. (No. 3)**  
**v.**  
**Eurocontrol**

**139th Session**

**Judgment No. 4961**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms A. W. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 25 July 2022 and corrected on 29 August 2022, Eurocontrol's reply of 11 November 2022, the complainant's rejoinder of 16 February 2023, Eurocontrol's surrejoinder of 12 May 2023, the complainant's further submissions of 4 October 2023, Eurocontrol's observations thereon of 4 December 2023, the complainant's second further submissions of 25 July 2024 and Eurocontrol's observations thereon of 2 August 2024, the complainant's third further submissions of 16 September 2024 and Eurocontrol's final observations of 26 September 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 decision to reject her complaint of moral harassment, as well as what she regards as a decision to cancel her performance appraisal for 2019 and the decision to reinstate her former line manager and to make him responsible for conducting her annual appraisal for 2019.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, at its Headquarters in Brussels (Belgium) in June 2003, at grade A7. At the material time, she held the post of "Administrator" of Agreements and Economic Affairs in the Directorate Central Route Charges Office, Finance and central IT (Directorate CFI), at grade AD10, in the AD5-AD12 grade bracket.

In September 2019 she received a rather negative intermediate appraisal report from her then supervisor, Mr St., in which he criticised her for various shortcomings in her management skills. Mr St. had previously informed the complainant that she had been removed from the list of staff members eligible for promotion in the 2019 annual exercise.

On 21 October 2019 the complainant lodged with the former Director General a formal complaint of moral harassment against the Head of Human Resources and Services, Ms D., and two staff members who reported to her, Ms M. and Ms G., as well as against Mr St. She also indicated that Mr H., Director of Directorate CFI, should be heard at least as a witness but also as a possible co-perpetrator. The complainant further indicated that this harassment had started in the form of retaliation in respect of previous decisions that she had challenged, which gave rise to her first and second complaints, and on which the Tribunal issued respectively Judgment 4594, delivered in public on 1 February 2023, and Judgment 4960, also delivered in public this day.

On 14 November 2019 the former Director General decided to open an investigation into these allegations of harassment in accordance with Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations governing officials of the Eurocontrol Agency. He stated that the investigation – which would be conducted by an internal investigator and a representative of an outside firm – would focus on the four alleged harassers specifically named in the complaint of harassment. As a protective measure, he also decided to place the complainant temporarily under the supervision of a different staff member, Mr Ko., with immediate effect.

By a letter of 18 November 2019, the complainant's counsel objected to the appointment of the external investigator and requested that his client's temporary reporting line be changed so that she could report directly to her head of unit. On 28 November 2019 the Director General informed the complainant that the choice of the external investigator and her temporary reporting line were maintained.

On 19 February 2020 the investigation report was sent to the Director General. It concluded, *inter alia*, that although the "perception of the established facts [varied] greatly from one person to another"\* and it was clear that the parties concerned and several witnesses were suffering from the situation, "[t]he investigation [had] found no evidence confirming harassment"\*. In the "Recommendations" section, the investigators recommended, in particular, "[t]o determine whether future cooperation between the parties concerned [could] be envisaged. If so, mediation could contribute to improved understanding in the future"\* and make it possible "[t]o clarify the role of the reporting line and [of Human Resources] with a view to a better understanding of the situation by the [complainant]"\*.

On 7 February 2020 Mr Ko. carried out the complainant's performance appraisal for 2019, which was very positive and included the overall evaluation of "satisfactory". The report was countersigned by Mr M. on the same day, and by Mr Kr., as the specific supervisor for one of the four objectives set for the complainant, namely the creation of a centralised database.

By an email of 27 February 2020 Mr J., Ethics, Diversion and Inclusion Officer of the Human Resources and Services Unit, who was also responsible for monitoring performance appraisal reports within the Agency, informed the complainant that, in view of Mr Ko.'s temporary role in 2019, her performance appraisal for the entire year could not be finalised by him acting alone, that accordingly the appraisal he had carried out on 7 February 2020 should be considered "null and void", and that Mr St. therefore remained her line manager for the period concerned. He also noted that her second-level supervisor

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\* Registry's translation.

at the time, Mr H., should remain the countersigning manager for the report.

By a letter of 19 March 2020, the former Director General informed the complainant of his decision to close her complaint of moral harassment on the grounds that the facts established during the investigation did not constitute evidence confirming the existence of harassment. An excerpt of the conclusions of the investigation report was attached to the letter. The Director General added that she and the persons against whom her complaint was directed would receive an invitation to enter mediation. On 31 March 2020 the Psychosocial Prevention Officer, Ms Do., asked the complainant to confirm within 15 days whether she would participate in the mediation process.

In response to the aforementioned decision of 19 March 2020, the complainant's counsel wrote to the Director General on 3 April 2020, stating that his client had provided all the evidence necessary to establish the harassment of which she complained and to which she was still being subjected, in particular in respect of the cancellation of her performance appraisal for 2019 which had been conducted by Mr Ko. He criticised the reasons given for closing the complaint as "false and unlawful"\* and explained why the complainant refused to participate in the mediation process. He asked to be sent the complete investigation report, as well as the "statements from harassers and witnesses heard during the investigation"\*. Lastly, he asked the Director General whether Mr J. had the authority to decide to cancel the appraisal report established by Mr Ko. in February 2020.

By a memorandum of 4 May 2020, the former Director General informed the complainant that, owing to her refusal to accept the mediation proposed by Ms Do., the protective measure taken for the duration of the investigation, that is the temporary change of line manager, was lifted. Thus, she would again report directly to her former supervisor, Mr St., who would be responsible for finalising the appraisal report for 2019 and also setting the objectives to be achieved in 2020. He stated that Mr Ko. would be invited to participate in her

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\* Registry's translation.

performance appraisal as an “other manager”, which would allow him to comment on her performance for the period between 14 November and 31 December 2019.

On 16 May 2020 the complainant lodged an internal complaint against: (a) the former Director General’s decision of 19 March 2020 rejecting her complaint of moral harassment; (b) Mr J.’s decision of 27 February 2020 cancelling the annual appraisal for 2019 carried out by Mr Ko. on 7 February 2020; and (c) the former Director General’s decision of 4 May 2020 to reinstate Mr St. as her line manager and staff member responsible for her annual appraisal for 2019. She requested, *inter alia*, the setting aside of those decisions, the recognition that she had been subjected to harassment and the opening of an investigation into Mr J.’s actions. In addition, she asked to be sent all the reports and documents relating to the investigation procedure.

On 27 May 2020 Mr St., in the presence of two observers, held a meeting concerning the complainant’s performance appraisal for 2019, during which he informed her of his intention to propose an overall evaluation of “not satisfactory”. That evaluation was maintained in the final report signed by Mr St. on 29 June 2020 and countersigned by Mr H. on 2 July 2020. The complainant expressed her disagreement with the report on 28 June 2020.

On 11 June 2020 the Head of Human Resources and Services informed the complainant that her internal complaint had been forwarded to the Joint Committee for Disputes to be discussed at a future session, but that there might be a “moderate delay”<sup>\*</sup> in dealing with it owing to the Covid-19 pandemic, unexpected staffing difficulties and the suspension of all recruitment activities at the Agency. She stated that the forwarding of her internal complaint to the Committee constituted a “decision upon [the] claim” within the meaning of Judgment 3889, delivered in public on 28 June 2017, which interrupted the 60-day time limit in which she could file with the Tribunal a complaint directed against an implied rejection of her internal complaint. Consequently, the complainant was informed that she would

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<sup>\*</sup> Registry’s translation.

have to await the Director General's final decision before bringing the matter before the Tribunal.

On 13 September 2020 the complainant wrote to the Chairman and the members of the Joint Committee for Disputes, as well as to the Chairman of the Staff Committee, to enquire about the progress in handling her internal complaint, and stated that she was still being subjected to harassment by the Agency. She sought the disclosure of all documents provided by the Directorate of Human Resources or any other service to the Joint Committee for Disputes in the context of her internal appeal and to be heard by it. On 13 December 2021 the secretary of the Committee replied that her internal complaint had been safely received and that the opinion relating to it was being drawn up.

On 20 and 31 January 2022 the complainant and her counsel requested the Director General to take, without delay, a final decision on the internal complaint of 16 May 2020 and append to it the opinion of the Joint Committee for Disputes or, if appropriate, to inform them of the reasons for his refusal to take such a decision. On 8 February 2022 the Director General disputed the version of the facts presented in the letter of 31 January 2022 and, in response to the allegations of the complainant's counsel that the internal appeal mechanism was intentionally flawed, stated that "staff have access to an efficient and respectful procedure that assesses their internal complaints and maintains a harassment-free work environment"

The Joint Committee for Disputes issued its opinion on 24 January 2022 without hearing the parties. It unanimously considered that the internal complaint was justified and "the [complainant's] situation [could] not continue". It recommended "mobility initiated by the Agency". However, this opinion was not communicated to the complainant before she filed the present complaint, her third, with the Tribunal on 25 July 2022.

On 11 July 2024, that is after the end of the written procedure before the Tribunal, the new Director General issued a final decision rejecting the internal complaint of 16 May 2020 as partly irreceivable

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\* Registry's translation.

and unfounded. At the request of the President of the Tribunal, Eurocontrol provided a copy of that decision and the parties had the opportunity to comment on it in further submissions.

In her complaint, the complainant asks the Tribunal to set aside the decision of the former Director General of 19 March 2020 to reject her complaint of harassment, as well as the decision of Mr J. of 27 February 2020 to cancel the 2019 performance appraisal conducted by Mr Ko. on 7 February 2020 and the decision of the former Director General of 4 May 2020 to place her back under the authority of her former supervisor, Mr St., and to recognise that she was subjected to moral harassment. In addition, she seeks disclosure of all the reports and records from the investigation into harassment and the removal from her personal file of the intermediate appraisal report completed by Mr St. in September 2019. She also claims various types of compensation – including 20,000 euros for the loss of opportunity to be promoted, 100,000 euros for the moral injury she alleges to have suffered, and 25,000 euros in exemplary and punitive damages – and an award of costs in the amount of 11,000 euros for the expenses incurred in connection with the harassment procedure and her internal appeal, and 7,000 euros for the present proceedings.

In her further submissions of 25 July 2024, the complainant also requests that the scope of her complaint be extended to the setting aside of the decision of the new Director General of 11 July 2024 and that the amount of costs due in connection with the present proceedings be increased to 12,000 euros.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded and, accordingly, to reject all the complainant's claims.

#### CONSIDERATIONS

1. The complainant seeks the setting aside of the three decisions challenged in her internal complaint of 16 May 2020, namely: (1) the former Director General's decision of 19 March 2020 rejecting her complaint of moral harassment; (2) the decision of the Ethics, Diversity and Inclusion Officer of the Human Resources and Services Unit, Mr J.,

of 27 February 2020 cancelling the annual appraisal for 2019 carried out on 7 February 2020 by Mr Ko., the staff member appointed to supervise her temporarily when the investigation into her complaint of harassment was opened; and (3) the decision taken by the former Director General on 4 May 2020, who, having concluded that she had not been subjected to harassment, decided to reinstate her previous line manager Mr St., one of the persons against whom her complaint of harassment was directed, as her supervisor and the staff member responsible for her annual appraisal for 2019. She also asks the Tribunal to recognise that she was subjected to harassment, to order the production of all reports and records from the investigation into her complaint of harassment and the removal from her personal file of the intermediate appraisal report completed by Mr St. in September 2019, and to award her compensation for the various injuries she considers she has suffered.

2. The Organisation requests the joinder of the complainant's third, fourth, fifth and sixth complaints.

The Tribunal recalls its case law according to which the decisive criterion for joining complaints is generally that they raise the same or similar questions of law or fact, and it is not sufficient that they stem from the same continuum of events (see Judgment 4753, consideration 6).

In this case, given that the four complaints seek to challenge several distinct decisions, that they were dealt with in different internal procedures which resulted or should have resulted in separate opinions of the Joint Committee for Disputes and that, although the allegations of harassment appear in all the cases, each complaint raises specific questions and pleas, the Tribunal considers that it is appropriate to deal with the various cases separately and to deliver separate judgments on each of them.

Accordingly, the complaints will not be joined.

On the receivability of the complaint in its entirety

3. Although the Organisation does not raise any objections to the receivability of the complaint in its entirety, the Tribunal considers it useful to clarify that the complaint must be considered as receivable on the same grounds as those set out in Judgments 4820, consideration 6, and 4819, consideration 3, delivered in public on 8 July 2024.

The Tribunal also observes that a final decision rejecting the internal complaint of 16 May 2020 was taken by the new Director General on 11 July 2024. That decision was produced after Eurocontrol had filed its surrejoinder, following which the parties had the opportunity to comment on it in further submissions. Thus, in accordance with the Tribunal's case law, it is appropriate to treat the present complaint, initially directed against an implied decision, as directed against the new Director General's decision of 11 July 2024, as the complainant requests in her further submissions of 25 July 2024 (see in particular, for similar cases, Judgments 4820, consideration 6, 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

On the decision of 27 February 2020 of the Ethics, Diversity and Inclusion Officer of the Human Resources and Services Unit to cancel the performance appraisal carried out in February 2020 by the complainant's temporary supervisor

4. In respect of the decision of 27 February 2020 of Mr J., Ethics, Diversity and Inclusion Officer of the Human Resources and Services Unit, to declare the appraisal report drawn up by Mr Ko. on 7 February 2020 "null and void", the Tribunal notes that this decision was, in any event, endorsed by the former Director General in his aforementioned decision of 4 May 2020. In that decision, the Director General considered that the complainant's performance appraisal procedure for 2019 should be restarted, which implicitly but necessarily implies that he too considered that the appraisal report of 7 February 2020 should be cancelled. Although the complainant has disputed Mr J.'s authority to cancel the appraisal report and further criticised

other aspects of the decision of 4 May 2020 – which will be discussed below – she has not challenged the Director General’s authority to cancel an appraisal report. The complaint therefore shows no cause of action insofar as it concerns Mr J.’s email of 27 February 2020.

On the decisions of 19 March 2020 and 11 July 2024  
rejecting the complaint of moral harassment

5. The complainant asserts that the investigation conducted into her complaint of moral harassment was unlawful, in particular because, firstly, several incidents brought to the investigators’ attention were not taken into consideration and/or properly investigated and, secondly, the investigation did not comply with the adversarial principle and was not rigorous or impartial because the investigators lacked the necessary skills and the external investigator had a conflict of interest. The complainant further submits that she was not provided with the investigation report until the submission of the reply and that she was only provided with four records of interviews with persons heard by the investigators, and then only at the surrejoinder stage. She also questions the adequacy of the reasons given in both the former Director General’s initial decision of 19 March 2020 and his successor’s final decision of 11 July 2024. Moreover, in her view, those decisions were based on erroneous findings by the investigators, since harassment had been established and continued even after the end of the investigation as evidenced in particular by the decision to place her back under the authority of her former supervisor, Mr St., about whom she had complained, which, in her view, constitutes an act of retaliation. Lastly, the complainant argues that her right to an effective internal appeal was violated because the Organisation took steps to paralyse the procedure by deliberately delaying the final decision on her internal complaint, which, she alleges, is a recurring practice at Eurocontrol.

6. The Tribunal recalls that, according to its settled case law, the question whether harassment occurred must be determined in the light of a careful examination of all the objective circumstances surrounding the acts complained of (see, in particular, Judgments 4471,

consideration 18, and 4241, consideration 9) and that an allegation of harassment must be borne out by specific acts, the burden of proof being on the person who pleads it, but there is no need to prove that the accused person acted with intent (see, for example, Judgments 4344, consideration 3, 3871, consideration 12, and 3692, consideration 18). When a specific procedure is laid down by the organisation concerned, it must be followed and the rules correctly applied. The Tribunal has also ruled that investigations must be objective, rigorous and thorough in that they must be conducted in a manner designed to ascertain all relevant facts without compromising the good name of the person accused and that she or he be given an opportunity to test the evidence put against him or her and to answer the charge made (see, in particular, Judgments 4663, consideration 11, 4253, consideration 3, 3314, consideration 14, and 2771, consideration 15). It is, however, understood that a staff member who alleges harassment does not need to establish, nor does the person or body evaluating the claim, that the facts establish beyond reasonable doubt that harassment occurred (see, to that effect, Judgments 4663, consideration 12, and 4289, consideration 10). The main factor in the recognition of harassment is the perception that the person concerned may reasonably and objectively have of acts or remarks liable to demean or humiliate her or him (see Judgments 4663, consideration 13, and 4541, consideration 8).

Furthermore, it is not the Tribunal's role to reweigh the evidence before an investigative body which, as the primary trier of fact, has had the benefit of actually seeing and hearing many of the persons involved, and of assessing the reliability of what they have said (see, to that effect, Judgments 4291, consideration 12, and 3593, consideration 12). The Tribunal will therefore interfere only in the case of manifest error (see, in particular, Judgments 4344, consideration 8, 4091, consideration 17, and 3597, consideration 2).

7. Among the various flaws alleged by the complainant concerning the consideration of her complaint of harassment, there are four which appear to the Tribunal to be significant, with the result that, if recognised as well-founded, they would, by themselves and by virtue of the procedural flaws thus recognised, lead to a finding that the former

Director General's decision of 19 March 2020 dismissing the complaint of moral harassment and the new Director General's decision of 11 July 2024 dismissing the complainant's internal complaint were unlawful.

8. In the first place, the Tribunal observes that the complainant was not provided with all the records of interviews with persons who were heard by the investigators or at least informed of their content. Although the investigation report included the substance of statements made by the four staff members expressly identified in the complaint of harassment as alleged harassers, it appears that the other witness statements taken by the investigators were not provided to the complainant at any stage of the internal procedure at least in terms of their substance and, where appropriate, in redacted form. Four of those witness statements were not disclosed to the complainant until the surrejoinder was filed, while the statements in their entirety were disclosed to her only upon the express invitation of the President of the Tribunal.

This goes against the Tribunal's case law according to which, pursuant to the adversarial principle and the right to due process, the staff member submitting a complaint of harassment must, before the investigation even ends, be kept informed at the very least of the content of statements made by the person(s) accused and any testimony gathered as part of the investigation, in order to challenge them if necessary (see, in that regard, Judgments 4900, consideration 43, 4781, consideration 9, 3065, considerations 5 to 8, and 2973, consideration 14).

This first flaw in the formal consideration of the complaint of harassment therefore renders both the initial decision of rejection of 19 March 2020 and the final decision of 11 July 2024 unlawful.

9. In the second place, as the Organisation itself acknowledges in its reply, the investigation report of 19 February 2020 was not notified to the complainant in sufficient time for her to make use of it, in particular during the internal appeal procedure. In fact, only an excerpt of the conclusions of the investigation report was enclosed with the letter of 19 March 2020 in which the former Director General

informed the complainant that her complaint of harassment had been closed. Despite several requests, including in her counsel's letter of 3 April 2020, the complainant did not receive a copy of that report, even in a redacted form.

The Tribunal has already considered that such limited disclosure of the conclusions of an investigation report does not meet the requirements laid down in the relevant case law since the complainant was unable to verify, including at the internal appeal stage, the content of the witness statements or the seriousness of the investigation conducted (compare, in particular, with Judgment 4820, consideration 10).

In this connection, it should be recalled that, according to the Tribunal's case law, a staff member must, as a general rule, have access to all the evidence on which the competent authority bases its decision concerning her or him (see, for example, Judgments 4739, consideration 10, and the case law cited, as well as Judgments 4217, consideration 4, 3995, consideration 5, 3295, consideration 13, 3214, consideration 24, 2700, consideration 6, or 2229, consideration 3(b)). This implies, among other things, that an organisation must forward to the staff member who has filed a complaint of harassment the report drawn up at the end of the investigation of that complaint, if only in redacted form (see, in particular, Judgments 4820, consideration 11, 4217, consideration 4, 3995, consideration 5, 3831, consideration 17, and 3347, considerations 19 to 21).

10. Referring, in particular, to the first subparagraph of paragraph 5.2(c) of Article 5 of Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations – which states that the Director General is to communicate the “conclusions” of the investigation report to the person complaining of harassment at the same time as his duly justified decision – Eurocontrol submits that the Director General intended to provide a copy of the investigation report to the complainant when a final decision was taken on her internal complaint, which was not until 11 July 2024. In any event, it submitted a copy of the report as an annex to its reply.

While it can be accepted in some cases that the non-disclosure of evidence can be subsequently remedied, including in proceedings before the Tribunal (see, for example, Judgments 4217, consideration 4, and 3117, consideration 11), that is not the case where the document in question is of vital importance having regard to the subject-matter of the dispute, as is the case here (see Judgments 4820, consideration 11, 4217, consideration 4, 3995, consideration 5, 3831, considerations 16, 17 and 29, 3490, consideration 33, and 2315, consideration 27). It is self-evident that, in view of the aforementioned case law, the provision in question of Rule of Application No. 40 cannot, in any event, be formally construed as intended to apply only to the part of an investigation report dealing with the “conclusions” since those “conclusions” do not allow the person concerned to have sufficient knowledge of the report as a whole.

This second substantive flaw renders the final decision of 11 July 2024 unlawful.

11. In the third place, relying on Judgment 4111, consideration 3, the complainant points out that all the witnesses named in her complaint of harassment of 21 October 2019 were not heard, which had the effect of breaching due process.

It is true that, of the six witnesses identified in the complaint of harassment for a hearing by the investigators, three do not seem to have been heard, namely, Mr B., the Director General, Mr Kr., the complainant’s supervisor for a specific task (the creation of a centralised database) who countersigned the performance appraisal report drawn up by Mr Ko. on 7 February 2020, and Ms S., Head of the Legal Service.

In its reply, the Organisation states that it is up to the investigators to determine whether the needs of the investigation require that all witnesses named in a complaint of harassment be heard. It adds that in this case that the three abovementioned witnesses were not heard because of the poor working relationship between the complainant and other staff members accused of harassment, “without the Director General, the then Director of the finance department and the Head of

the Legal Service, as named witnesses, being able to provide any evidence useful to the investigation”\*

12. The Tribunal points out in this respect that the investigation report merely mentions that six witnesses were heard, without specifying whether they were witnesses expressly mentioned by the complainant in her complaint of harassment. Similarly, the investigation report does not mention the reasons for the decision not to hear some of the witnesses named in the complaint of harassment.

As the Tribunal has already held, particularly in Judgment 4111, consideration 3, the refusal without valid grounds by the investigators concerned to hear witnesses with regard to the complainant’s allegations constitutes a breach of due process.

The Tribunal sees no reason to rule otherwise in this case, especially since the fourth subparagraph of paragraph 5.2(b) of Article 5 of Rule of Application No. 40 grants the person complaining of harassment, and the alleged harasser, the opportunity to submit a list of witnesses “that the investigators shall hear”.

It follows that the third objection is likewise well-founded and also results from a substantive breach of the formal procedure for considering the complaint of harassment, rendering the decisions taken unlawful.

13. In the fourth place, the complainant alleges a breach of the adversarial principle in that she was not informed in advance of Eurocontrol’s position, which was communicated to the Joint Committee for Disputes and by which the Organisation sought to have the internal complaint rejected.

In this regard, the Tribunal has repeatedly held that organisations do not comply with the adversarial principle by not disclosing to staff members documents and opinions produced before the internal appeal body, as staff members must have access to relevant evidence on the basis of which decisions concerning them are made, even if only in

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\* Registry’s translation.

redacted form for reasons of confidentiality. (see, to that effect, Judgments 3380, consideration 12, 3264, consideration 15, 2899, consideration 23, and 2700, consideration 6). This is particularly true in the present case, given that the complainant, by an email of 13 September 2020 sent to the Chairman and the members of the Joint Committee for Disputes before the Committee had finalised its opinion, had expressly asked to receive all the documents provided by the Directorate of Human Resources or any other service of the Agency to the Committee in the context of her internal appeal.

This fourth plea is therefore also well-founded and also results from a substantive breach of the formal procedure followed in the examination of the internal appeal in this case.

14. It follows from the preceding considerations that the complainant was repeatedly deprived of the opportunity to effectively challenge the conclusions of the investigation during the examination of her complaint of moral harassment, in breach of the adversarial principle and her right to due process.

The four substantive procedural flaws thus identified are sufficient in themselves to lead to a finding that the decisions of 19 March 2020 and 11 July 2024 were unlawful.

15. At this stage in the consideration of the complaint, the case should therefore be remitted to the Organisation for the examination of the complaint of harassment to be recommenced at the stage where the abovementioned procedural flaws were committed.

However, given the time that has elapsed since the complaint of harassment was lodged on 21 October 2019, the fact that the complainant's service has in the meantime been terminated on grounds of invalidity, the fact that some alleged harassers and witnesses are no longer employed by Eurocontrol, and the more than considerable time that has already been taken to deal with the case internally, the Tribunal considers it appropriate not to refer the case back to Eurocontrol.

The Tribunal further considers that it is not in a position to determine whether the complaint of harassment lodged by the complainant on 21 October 2019 was well-founded.

However, the fact that the complainant was deprived of the opportunity to have her complaint of harassment properly investigated caused her moral injury, which may be fairly redressed by awarding her compensation in the amount of 30,000 euros.

*On the decision of 4 May 2020 to place the complainant back under the authority of her former line manager and to make him responsible for drawing up the complainant's performance appraisal report for 2019*

16. The Tribunal firstly wishes to recall that the subject-matter of the dispute in this regard is limited to the decision to reinstate Mr St. as the complainant's supervisor with particular responsibility for finalising her 2019 performance appraisal report. Following that reinstatement, the appraisal report was finalised at the beginning of July 2020. Having challenged that report through the internal appeal procedure, the complainant also filed a complaint with the Tribunal, her fourth, in which she sets out pleas specifically directed against the manner in which that report was drawn up which was, in her view, unlawful. That complaint is the subject of Judgment 4962, also delivered in public this day.

17. As regards the reinstatement of Mr St. narrowly speaking, the complainant considers it to be unlawful, in particular because it followed her refusal to participate in a mediation procedure, which was itself unlawful, and was decided solely as a measure of retaliation against her, with the aim of enabling Mr St. to give her an overall performance evaluation of "not satisfactory" for 2019. The reinstatement was thus part of the ongoing harassment which the complainant had reported in her complaint of harassment of 21 October 2019.

The Organisation disputes these allegations by setting out the timeline for the various decisions concerning the appointment of a supervisor for the complainant following the submission of her complaint of harassment and defending the lawfulness of these various decisions at the time each was made.

18. Insofar as the complainant refers to the occurrence of a new incident of harassment in her respect, the Tribunal notes that it is not necessary to decide how the parties should have dealt with this alleged incident, which took place after the initial decision of 19 March 2020, by which the former Director General had decided to reject the complaint of harassment of 21 October 2019 and which therefore in any event does not fall within the scope of the present dispute. This argument will therefore not be examined.

19. The Tribunal next notes that the decision to appoint a new line manager for the complainant, Mr Ko., as a temporary measure from 14 November 2019, was taken by the former Director General on 14 November 2019 owing the lodging of the complaint of harassment and his decision to open an investigation into it. Following the rejection of that complaint on 19 March 2020, the former Director General informed the complainant, as the investigators had invited him to do, that she would soon receive an invitation to enter mediation with the persons against whom her complaint was directed. In the end, the invitation was sent to her by a letter of the Psychosocial Prevention Officer, Ms Do., on 31 March 2020. On 3 April 2020 the complainant, through her counsel, declined the invitation because the mediation procedure was not mandatory and not appropriate in view of the circumstances of the case. By a memorandum of 4 May 2020, the former Director General informed the complainant that the protective measure of a temporary change of line manager during the investigation was withdrawn with immediate effect because of her refusal to participate in mediation as a “conflict resolution mechanism”\*. It therefore logically followed, as also stated in the memorandum, that the

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\* Registry’s translation.

complainant would again report directly to Mr St. and that it was the latter's responsibility to complete her 2019 performance appraisal, although Mr Ko. would be invited as an "other manager" to provide his appraisal in the ad hoc forms for the period from 14 November to 31 December 2019. The former Director General added lastly that he was continuing to monitor the situation and that he would, if needed, take any appropriate, necessary and proportionate administrative decision to ensure the smooth functioning of the service.

Following an interview on 27 May 2020, the complainant's performance appraisal report for 2019 – which ended with the overall evaluation of "not satisfactory" – was signed by Mr St. on 29 June 2020 and countersigned by Mr H. on 2 July 2020. However, the complainant expressed her disagreement with the report on 28 June 2020 and asked to be protected while it was finalised. By a letter of 12 June 2020, the former Director General eventually decided to appoint Mr Si. as the complainant's new supervisor for a temporary period of six weeks starting from 15 June 2020. The Director General also stated that this measure did not call into question his earlier decision to reject the complaint of harassment and could not in any event be regarded as recognition by the Agency that the complainant had been subjected to institutional moral harassment.

In these circumstances, the Tribunal considers that the manner in which the former Director General acted towards the complainant does not appear unlawful. Where no provision provides to the contrary, the Tribunal has consistently held that the lodging of an internal appeal does not in itself have a suspensory effect on the implementation of the decision challenged therein (see, to that effect, Judgment 2899, consideration 29). It follows that the former Director General was entitled to reinstate Mr St. as the complainant's line manager from 4 May 2020 and to specify that Mr St. would therefore be responsible for "concluding"\* her performance appraisal report for 2019 in collaboration with Mr Ko., for the six-week period in which the latter had acted as her temporary line manager.

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\* Registry's translation.

In this regard, the Tribunal considers that it is entirely conceivable that the normal reporting line may be re-established where, as in the present case, a complaint of harassment lodged by a staff member against one of her or his managers has been internally dismissed in order to ensure the smooth functioning of an international organization. In this connection, the decision to entrust Mr St. with appraising the complainant's performance for 2019, in collaboration with Mr Ko. as an "other manager" temporarily appointed for a period of six weeks, complied with the applicable rules and was completely logical. The Tribunal also considers it reasonable that a new line manager was appointed on 12 June 2020 after it emerged that the complainant intended to challenge the performance appraisal report drawn up by Mr St. for 2019.

While what was decided in this case may have appeared "strange" or "inappropriate"\* to some members of the Joint Committee for Disputes, the fact remains that the various decisions taken by the Director General in this matter were not unlawful.

The plea is therefore also unfounded in this respect.

20. It follows from all the foregoing considerations that the plea in part falls outside the scope of the present dispute and in part is unfounded. It must therefore be dismissed.

*On the complainant's other claims*

21. The complainant submits that the time taken to decide on her internal complaint was "quite simply unacceptable"\* and caused her substantial moral injury.

22. The Tribunal notes that almost four years and two months elapsed between the lodging of the internal complaint on 16 May 2020 and the final decision of the new Director General on 11 July 2024. Similarly, almost two years and seven months passed between the

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\* Registry's translation.

delivery of the opinion of the Joint Committee for Disputes on 24 January 2022 and the date on which the new Director General took his final decision on 11 July 2024. Moreover, the Joint Committee for Disputes waited for over two years after the case had been referred to it to deliver its opinion. Such delays are excessive, especially as the Tribunal has consistently emphasised the importance of dealing with all complaints of moral harassment promptly (see, for example, Judgments 3269, consideration 7(a), and 3233, consideration 5(b)).

In the circumstances of the case, the Tribunal considers that fair redress for the moral injury suffered by the complainant on this account will be made by ordering the Organisation to pay her the sum of 10,000 euros.

23. The complainant asks for an order that the intermediate appraisal report completed by Mr St. in September 2019 be removed from her personal file.

However, the Tribunal considers that this claim is beyond the scope of the present complaint. It will thus not be examined.

This claim will therefore not be granted in this judgment.

24. Lastly, the complainant asks that the Organisation be ordered to pay her the sum of 20,000 euros for the loss of an opportunity to be promoted. It appears that this relates to the complainant's removal from the list of staff members eligible for promotion in the 2019 annual exercise, of which she was informed by her then line manager, Mr St., on 2 September 2019.

The Tribunal notes that the complainant does not advance any plea specifically directed against that decision and does not ask for it to be set aside.

This claim will not therefore be granted.

25. The complainant considers that the bad faith and malice demonstrated towards her warrant an award of 25,000 euros in punitive damages.

However, the Tribunal has consistently held in its case law that an order for an organisation to pay punitive damages can only be justified under exceptional circumstances (see, for example, Judgments 4819, consideration 22, 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 adequate and diligent manner, the Tribunal considers that such circumstances are not evident in this case. There is therefore no reason to grant this claim.

26. The complainant submits that she was forced to incur costs to defend her interests that it would be unfair to leave her to bear in the circumstances of the case. She seeks costs in the amount of 8,000 euros for the procedure related to the complaint of moral harassment and 3,000 euros for the internal appeal procedure.

In the absence of an express provision to that effect, it is inappropriate to award costs for expenses incurred in the consideration of the complainant's complaint of harassment.

Moreover, according to the Tribunal's case law, costs for the internal appeal proceedings within international organisations may only be awarded 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 established in the present case.

27. The complainant is also entitled to the sum of 10,000 euros in costs for the proceedings before the Tribunal.

DECISION

For the above reasons,

1. The decision of the former Director General of 19 March 2020 and the decision of his successor of 11 July 2024 are set aside insofar as they reject the complaint of moral harassment of 21 October 2019.
2. Eurocontrol shall pay the complainant moral damages in a total amount of 40,000 euros.
3. It shall also pay her 10,000 euros in costs for the proceedings before the Tribunal.
4. All other claims are dismissed.

In witness of this judgment, adopted on 6 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