

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**W. (No. 5)**  
**v.**  
**Eurocontrol**

**139th Session**

**Judgment No. 4963**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms A. W. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 4 October 2023, Eurocontrol's reply of 11 December 2023, the complainant's rejoinder of 7 February 2024, Eurocontrol's surrejoinder of 30 April 2024, the complainant's further submissions of 25 July 2024, Eurocontrol's observations thereon of 2 August and 16 September 2024, the complainant's second 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 – whose post was abolished – challenges the decision to assign her to a new post while downgrading her by two grades, the decision to assign her temporarily to another post with retroactive effect, and the decision to reject her application to a competition procedure.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, at its Headquarters in Brussels (Belgium) on 1 June 2003, at grade A7, renamed AD8 as from 1 July 2010. She was promoted to grade AD9 on 1 July 2011. On 1 July 2014 she was appointed Head of Agreements and Economic Affairs, at grade AD10, in the AD5-AD12 grade bracket. In July 2016 her post was renamed "Administrator" in the AD5-AD12 grade bracket, while she remained at grade AD10. Since 20 April 2018, the complainant has been assigned to the Directorate Central Route Charges Office, Finance and central IT (Directorate CFI), to the Finance and Procurement Unit (CFI/AFS/FPR) within Finance Services (CFI/AFS). That unit was renamed the Procurement and Agreements Unit (CFI/AFS/PAR) from 4 July 2019. In her service, she led a team of eight to ten persons.

The facts relating to the period preceding the present case, which gave rise to other complaints filed by the complainant before the Tribunal, are set out in Judgment 4594, concerning a request for the cancellation of a previous competition in which she had taken part, as well as in Judgments 4960, 4961 and 4962, also delivered in public this day, concerning, respectively, two decisions refusing to promote her and rejecting her request for a post reclassification, a decision rejecting her moral harassment complaint and a decision refusing to cancel her performance appraisal report for 2019.

As regards the present case, in the context of a partial reorganisation of Directorate CFI decided on 1 March 2021 and finalised on 1 May 2021 with the assistance of an external consultancy, the complainant – who was concerned about her situation on account of rumours that her post was to be abolished – wrote to the Director General on 16 April 2021 asking him to ensure that the Agency did not "punish"\* her for having lodged appeals concerning other cases. On 19 April she received the reply that the reorganisation of a directorate was under the remit of each director and that any organisational decision must be taken on a business-oriented basis and not be based on individual staff situations.

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\* Registry's translation.

By a letter of 28 April 2021 entitled “Reorganisation of the Procurement and Agreements Unit”, the Director General, referring to a meeting of 22 April 2021 at which the partial reorganisation of Directorate CFI had been presented to all the staff of that directorate by its Director, Mr H., explained to the complainant both the shortcomings of the CFI/AFS/PAR Unit, including those of the service that she headed, and the expected advantages of removing the Unit from the structure of the Directorate at the time. He informed the complainant that the reorganisation would result in many tasks undertaken by her service being terminated or fundamentally modified and then divided between several other services. He also stated that her post was to be abolished and that a reassignment procedure would be initiated for her as provided for by Article 5 of Annex X to the Staff Regulations governing officials of the Eurocontrol Agency. All these changes were justified by the fact that the CFI/AFS/PAR Unit, in which she worked, was abolished as such and would be replaced by the Procurement Unit (CFI/AFS/PROC), while several tasks assigned to the service she headed were transferred to the Corporate Communications Unit (CFI/AFS/Project Office).

Also on 28 April 2021, at a meeting chaired by the Head of the Human Resources and Services Unit, Ms D., in the presence of two of her subordinates, the complainant was informed about the reassignment procedure laid down in Annex X of the Staff Regulations. She was also informed that staff members responsible for recruitment would contact her the following week with proposed vacancies that the Agency considered to be a good choice for her in view of her skills, and she was invited to express her wishes in terms of reassignment. At a further meeting, which took place on 29 July 2021, after several exchanges of emails, Ms D. proposed to the complainant a transfer to the vacant post of “Procurement Specialist” at grade AD8 in the Network Management Directorate (NMD). She was also told that the procedure to terminate her appointment would commence if she refused, also pursuant to the provisions of aforementioned Annex X. The decision to transfer the complainant was taken by the former Director General on 30 July 2021, with effect from 1 August. On the same day, the complainant received a further – undated – decision of the Director General to transfer her,

temporarily and with retroactive effect for the period from 1 May to 31 July 2021, to a post in the Office of the Director of Directorate CFI.

In the meantime, a transfer notice had been published for the 28 staff members affected by the reorganisation decided on 1 March 2021. Twenty-four of them had been directly assigned a new post in which their grade and step were maintained, while four others, including the complainant and her head of unit and also immediate supervisor, Mr St., had been made available.

On 15 July 2021 an internal competition notice had been published concerning the post of Head of Billing, Customer Relations and Economics, in the AD9-AD13 grade bracket, which corresponded to a post of head of unit or equivalent, and, at the same time, a selection board had been set up, in accordance with Article 30 of the Staff Regulations and Rule of Application No. 2 concerning the procedure for assignment to a post in accordance with Articles 7, 30 and 33 of the Staff Regulations. The complainant applied on 27 July 2021.

In response to the transfer decision of 30 July 2021, the Vice-President of the European Civil Service Federation trade union wrote to the former Director General on 16 August criticising, firstly, the complainant's allegedly discriminatory treatment in comparison to the three other staff members who had also been made available following the reorganisation of Directorate CFI, and who had since found a post corresponding to their grade and step, and, secondly, the complainant's downgrading, which he considered to be a disguised disciplinary sanction.

Following a meeting of the selection board for the aforementioned post of Head of Billing, Customer Relations and Economics, at which an initial examination of applications was carried out, the complainant was not included among the candidates selected for an interview and a subsequent evaluation of their skills and aptitudes. She was informed accordingly by an email of 3 September 2021 from the Recruitment Service. On 29 September 2021 she asked why she had been excluded, to which she received a reply on 19 October 2021 that she did not have the required 10 years of experience in management or strategic activities.

On 27 October 2021 the complainant lodged an internal complaint directed against: (a) the former Director General's decision of 30 July 2021 to transfer her to the post of Procurement Specialist at grade AD8, step 5, in Directorate NMD from 1 August 2021; (b) the undated decision of the Director General to assign her, temporarily and with retroactive effect, to a post in the Office of the Director of Directorate CFI; and (c) the decision of the Recruitment Service of 3 September 2021 to reject her application for the post of Head of Billing, Customer Relations and Economics, in the AD9-AD13 grade bracket.

On 29 October 2021 the Head of the Human Resources and Services Unit 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"\* 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 a complaint with the Tribunal against an implied rejection of her internal complaint. Consequently, the complainant was told that she had to await the Director General's final decision before bringing the matter before the Tribunal.

As she received no further communication regarding the progress of her internal complaint, the complainant filed the present complaint on 4 October 2023 against what she considers as an implied decision to reject her internal complaint.

The internal complaint was eventually examined by the Joint Committee for Disputes at its session of 25 May 2022. The Committee issued its opinion on 28 November 2022, recommending that a large part of the internal complaint be allowed.

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\* Registry's translation.

Moreover, the complainant was placed on sick leave from 16 September 2021 and her service was terminated on the grounds of invalidity as of 1 April 2023, since which time she has received an invalidity allowance. The decision to end her service on the grounds of invalidity is the subject of the complainant's sixth complaint, which is still pending before the Tribunal.

The complainant asks the Tribunal to set aside the transfer decision of the Director General of 30 July 2021, as well as his decision, received on the same day, to reassign her, temporarily and with retroactive effect, to the Office of the Director of Directorate CFI, and the decision of the Recruitment Service of 3 September 2021 to reject her application for the post of Head of Billing, Customer Relations and Economics, and to order that the competition procedure for that post be restarted "at the point where [it] was stopped"\* in her respect. She also seeks an order for Eurocontrol to reinstate her at grade AD10, to assign her a post corresponding to her grade and functions, and to pay her retroactively from 1 August 2021 the difference in salary, allowances and bonuses between grade AD10 and grade AD8, with interest at the rate of 8 per cent per annum. Lastly, she claims various types of compensation – including 200,000 euros in damages for the moral injury she alleges to have suffered and 25,000 euros in punitive damages – and an award of costs in the amount of 5,000 euros for the internal appeal procedure and 8,000 euros for the proceedings before the Tribunal.

On 30 August 2024 the President of the Tribunal requested the Organisation for an update on progress in the examination of the internal complaint lodged by the complainant on 27 October 2021. In response to that enquiry, Eurocontrol communicated the decision of the new Director General of 11 July 2024 cancelling the transfer decision taken by his predecessor on 30 July 2021 and otherwise rejecting the internal complaint. That decision also stated that the appropriate service would soon send the complainant a decision to that effect "including both a recalculation of [her] salary for the period during which [she was] employed (until 31 March 2023) and an increase of the amount of

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\* Registry's translation.

[her] invalidity allowance”\*. In response to a further request by the President of the Tribunal to that effect, Eurocontrol produced a letter from the Administration of 22 August 2024 reflecting the calculation of the back pay resulting from the complainant’s reinstatement at grade AD10 and the corresponding adjustment of her invalidity allowance to the same grade.

In her further submissions of 25 July and 16 September 2024, the complainant maintains all her previous claims and increases to 12,500 euros the amount she claims in costs for the present proceedings.

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

#### CONSIDERATIONS

1. The complainant seeks the setting aside of two decisions of the former Director General, the first dated 30 July 2021 and the second undated but notified on the same day. Article 1 of the first decision assigns the complainant, from 1 August 2021, to the post of Procurement Specialist in the Network Management Directorate of the Business Coordination Service (NMD/BCS), while Article 2 reclassifies her in her new post, pursuant to Article 5 of Annex X to the Staff Regulations governing officials of the Eurocontrol Agency, downgrading her from grade AD10 to grade AD8. The second decision is intended to cover, retroactively, the period between the abolition of the complainant’s previous post on 1 May 2021 and the entry into force of her assignment to Directorate NMD/BCS on 1 August 2021.

She also seeks the setting aside of the decision rejecting her application to a competition of which she was informed by an email of 3 September 2021 from the Recruitment Service and requests that Eurocontrol be ordered to restart the competition procedure “at the point where [it] was stopped”\* in her respect.

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\* Registry’s translation.

On the application for joinder

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 those decisions 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 for the same reasons as those set out in Judgments 4820, consideration 6, and 4819, consideration 3, delivered in public on 8 July 2024.

The Tribunal observes that a final decision on the internal complaint of 27 October 2021 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 decision of 11 July 2024, as the complainant appears to request 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 30 July 2021 to reassign the complainant entailing a downgrading by two grades

4. The Tribunal notes that, by his decision of 11 July 2024, the new Director General cancelled, in its entirety and with retroactive effect from 1 August 2021, his predecessor's decision of 30 July 2021 to reassign the complainant to a post in Directorate NMD entailing a downgrading by two grades. It follows that the present complaint has become moot insofar as it seeks the setting aside of the reassignment decision of 30 July 2021 taken as a result of the abolition of the complainant's previous post.

The question of compensation for the injury, both material and moral, caused by the reassignment decision cancelled by the new Director General will be examined in considerations 20 and 21 below.

On the decision to reassign the complainant temporarily and retroactively to another post

5. As regards the decision, taken by the former Director General on an unspecified date but notified to the complainant on 30 July 2021, to assign her, temporarily and retroactively, to a post in the Office of the Director of Directorate CFI from 1 May to 31 July 2021, the complainant contends that this was merely a "cosmetic"\* decision to appoint her to a fictitious post, which amounted to "sidelining"\*. It was therefore an irregularity intended to rectify another unlawful decision, namely the decision to abolish her post. The decision was in any event unlawful because it was "retroactive, undated [and] never implemented".

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\* Registry's translation.

However, the Tribunal observes that this assignment, even without the allocation of actual duties, was intended to place the complainant temporarily in a situation that allowed her to retain her grade and step in the period between the date on which the abolition of her post took effect and the date on which she took up her new duties in another directorate. The fact that the decision in question, although signed by the Director General, was undated does not constitute a substantial flaw liable to render it unlawful. Moreover, given the fact that the decision was intended to cover a period that had already elapsed while maintaining the complainant in the same situation in respect of her salary and other related financial benefits, retroactivity was inevitable, as was the placing of the complainant in a fictitious situation on account of that retroactivity.

As the complainant does not adduce any tangible evidence of a flaw such as to lead to the decision in question being set aside, the claim directed against it must be dismissed.

*On the decision of the selection board of 3 September 2021 to dismiss the complainant's application to a competition*

6. In respect of the selection board's decision to reject the complainant's application to a competition for the post of Head of Billing, Customer Relations and Economics at grade AD10 in the AD9-AD13 grade bracket, the complainant considers, in her first plea, that the reasons for this decision, as notified to her by the Recruitment Service, were not stated, in contravention of Article 25 of the Staff Regulations, which provides that "[a]ny decision [adversely affecting] a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned [and] shall state the grounds on which it is based".

However, the file shows that the complainant was informed, by an email of 19 October 2021 from the Recruitment Service, that her application had been rejected by the selection board because she did not fulfil one of the criteria set out in the vacancy notice, namely having 10 years of experience in management or strategic activities. The file

also shows that the complainant was able to challenge in good time the merits of that reason in the internal complaint that she lodged on 27 October 2021, and then in the present complaint.

Even though the provisions of Article 25 of the Staff Regulations were admittedly not fully observed in the present case as the selection board's grounds for the decision were not communicated to the complainant at once, the Tribunal considers that this is not a serious defect such as would justify the setting aside of the decision of 3 September 2021.

The first plea must therefore be rejected.

However, the late notification of the selection board's grounds caused the complainant moral injury. The question of compensation for that injury will be examined in consideration 21 below.

7. In her second plea, the complainant submits that the decision to exclude her from the competition was flawed in that it was not clear who had taken that decision nor whether the decision-maker had the authority to do so.

However, the Tribunal notes that, in support of its final observations and at the request of the President of the Tribunal, Eurocontrol has produced the report of the selection board, drawn up after the meeting held on 9 June 2021 and from which it is plain that it was in fact the board that took the decision in question.

The Tribunal also observes that the second paragraph of Article 15 of Rule of Application No. 2 concerning the procedure for assignment to a post in accordance with Articles 7, 30 and 33 of the Staff Regulations provides that "[t]he selection board shall assess the candidates' merits by reference to the requirements set out in the notice of competition and shall then eliminate those candidates who do not meet the requirements set out in the notice of competition". It follows that the board did have the authority to take the decision to reject the complainant's application to the competition.

The second plea is therefore unfounded.

8. In support of her third plea, which she puts forward in her further submissions having been able to inspect the selection board's report, the complainant submits, firstly, that the report makes no reference to her application.

Secondly, she considers that the reason for the rejection of her application, which was notified to her by an email of 19 October 2021, was based on a "lie"\* because the email stated that the board had considered that she did not have the necessary 10 years of experience in management or strategic activities. However, there is nothing like this in the board's report.

Thirdly, the complainant submits that the reason notified to her, which was therefore that of the selection board, was in any event based on an error in the assessment of one of the criteria set out in the notice of competition, since she had had 10 years of experience in management or strategic activities since joining the Agency, which implies that a proper examination of her application should have been carried out in good faith and with complete objectivity. The provisions governing the competition procedure were therefore incorrectly applied and there was an abuse of authority and process, given that she considers that she had managed large teams within the Organisation for well over 10 years (particularly as the Head of Agreements and Economic Affairs) and had carried out particularly strategic activities for Eurocontrol (contracts, economic affairs, pension funds). In her view, her application was simply rejected as a retaliatory measure and because she had become "undesirable"\* for the advertised post.

9. The Tribunal recalls that, according to its settled case law, a staff appointment by an international organisation is a decision that lies within the discretion of its executive head. Such a decision is therefore subject to only limited review by the Tribunal, which will interfere only if the decision was taken without authority, if it was based on a mistake of law or of fact, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts, if a rule of form or

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\* Registry's translation.

procedure was breached or if there was abuse of authority (see, in particular, Judgments 4552, consideration 2, 3652, consideration 7, and 3537, consideration 10).

Nevertheless, anyone who applies for a post to be filled by some process of selection is entitled to have her or his application considered in good faith and in keeping with the basic rules of fair and open competition. That is a right that every applicant must enjoy, whatever her or his hope of success may be (see, for example, Judgments 3652, consideration 7, 3209, consideration 11, and 2163, consideration 1). It has also been stated in the case law that an organisation must abide by the rules on selection and, when the process proves to be flawed, the Tribunal can quash any resulting appointment, albeit on the understanding that the organisation must ensure that the successful candidate is shielded from any injury which may result from the cancellation of her or his appointment, which she or he accepted in good faith (see Judgments 3652, consideration 7, and 3130, considerations 10 and 11).

10. Paragraph 2 of Article 30 of the Staff Regulations states that “[t]he procedure regarding the examination of applications for assignment to a post [...] shall be defined in a Rule of Application of the Director General”, while, according to paragraph 3 thereof, “[f]or each competition, a selection board shall be appointed by the Director General. This Board shall draw up a list of suitable candidates. The Director General shall decide which of these candidates to appoint to the vacant posts. These candidates shall have access to adequate information on appropriate vacancies published by the Agency.”

In application of these provisions, the second to fifth paragraphs of Article 15 of Rule of Application No. 2 state the following:

“The selection board shall assess the candidates’ merits by reference to the requirements set out in the notice of competition and shall then eliminate those candidates who do not meet the requirements set out in the notice of competition.

The selection board shall select the candidates to be invited to participate in the subsequent phases of the selection procedure, *i.e.* tests and assessments.

On completion of its proceedings, the selection board shall draw up a list of suitable candidates, accompanied by a substantiated report on each candidate, making reference to their diplomas, qualifications and individual merits. Suitable candidates shall be grouped in a single list [...] in order of merit and without distinction of nationality. Candidates of equal merit shall be classified 'ex aequo'.

The selection board shall forward this list to the Director General, accompanied by a reasoned report by the selection board including any comments its members may wish to make.”

11. In this case, the selection board's report shows that 21 applications were made to the competition, of which four were internal and 17 external, and that the members of the board considered that only six candidates fulfilled the criteria set out in the notice of competition as far as the “required qualifications, experience and competencies” section was concerned. According to the board, none of the other candidates satisfied these criteria, including the complainant. These other candidates were therefore not selected for further consideration. The only justification given in the report in this respect is that they did not fulfil the requirements set out in the aforementioned section of the notice of competition.

12. The Tribunal notes firstly that, contrary to what the complainant submits, her application was mentioned in the selection board's report. In fact, her name appears on the list of candidates annexed to the report, with the remark “unqualified”.

It is indisputable that one of the criteria set out in the notice of competition was to be able to demonstrate “a minimum of 14 years' relevant professional experience including 10 years in management or strategic activities”. Although the reason stated in the selection board's report refers to all the criteria in the “required qualifications, experience and competencies” section of the notice of competition, the Tribunal considers that it is reasonable to regard this as the criterion to which the board intended to refer when it decided to reject the complainant's application.

However, the complainant, referring on this point to her application and curriculum vitae, submits that, on the contrary, she could demonstrate that she had 10 years of such experience on the basis of both her career at Eurocontrol and her previous professional career.

The Tribunal notes that the reason stated in the contested decision is undeniably brief, but observes that, although the complainant relies on the contrary reason stated in the opinion of the Joint Committee for Disputes, that reason, according to which “the [complainant] had the grade and experience required to apply”\*, was no more explicit.

However, in view of the ordinary meaning of the words used in the notice of competition and the complainant’s application, the Tribunal considers that the selection board did not commit a manifest error of assessment in considering that the complainant did not fulfil the requirement that any candidate in the competition should have “10 years’ experience in management or strategic activities”. In this regard, the Tribunal observes in particular that, both in her application letter of 27 July 2021 and in the curriculum vitae she appended to it, the complainant stated that she had been head of the team responsible for Agreements and Economic Affairs from March 2014 to April 2021, which does not correspond to the 10 years in “management” required in the notice of competition. Similarly, the other professional experience cited by the complainant, either after or before her appointment to the Organisation, did not allow her to fulfil the criterion of 10 years of experience in management or strategic activities, even when combined with her experience as head of the aforementioned team.

It follows from the foregoing considerations, firstly, that, contrary to what the complainant alleges, her application was in fact examined by the selection board and, secondly, that the reason for the rejection of her application, which was notified to her in an email from the Recruitment Service of 19 October 2021, was not based on a “lie”\*.

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\* Registry’s translation.

Lastly, there is nothing in the file that allows the Tribunal to consider, as the complainant further asserts, that the real reason for the rejection of her application lay in the desire to downgrade her and force her out of Directorate CFI.

The third plea must therefore be rejected.

13. In support of her fourth plea, alleging a lack of transparency in the competition procedure, the complainant submits, firstly, that the procedure was tainted by several formal defects. Secondly, despite her express request to that effect, she was not provided with the selection board's report, which made it impossible for her to ascertain whether her application had been examined with complete objectivity. Thirdly, and also despite her request to that effect, she was not informed of the composition of the board, which prevented her from satisfying herself that it did not pose any problem of bias in her regard. Fourthly, the result of the competition was not notified to the complainant or published on the Organisation's Intranet.

In respect of the last claim, the Tribunal observes that the Organisation submits that "the competition results are available and were communicated to staff on the Agency's intranet at the time". Although the Organisation does not provide formal evidence of this double assertion, the Tribunal has no reason to doubt its accuracy and underscores that, in any event, the fact that the competition results were allegedly not published or notified to the complainant has no bearing on the lawfulness of the contested decision.

As regards the three other claims, the Organisation merely cites the last paragraph of Article 15 of aforementioned Rule of Application No. 2, pursuant to which "[t]he proceedings of the selection board shall be secret".

The Tribunal recalls first of all that the decision to reject the complainant's application at the initial stage was indeed taken by the selection board.

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\* Registry's translation.

The Tribunal next considers that the fact that the proceedings of a selection board are secret does not prevent any staff member who has applied to a competition from receiving, at her or his request, extracts from the report of the selection board which relate to her or him personally and from being informed of the composition of the selection board.

However, it notes in that regard, firstly, that, in his final decision of 11 July 2024, the new Director General stated that, “in a spirit of good faith and sound administration”\*, he would instruct the relevant departments to provide the complainant with “feedback on [her] application”\* and to send her “a more detailed explanation of the reasons why [her] application [had] not [been] successful”\* and, secondly, that the submission of the selection board’s report by Eurocontrol at the request of the President of the Tribunal had ensured transparency, informed the complainant of the composition of the board and enabled her to satisfy herself that the procedure followed was objective.

The Tribunal concludes from the foregoing that, despite the fact that several obligations incumbent on the Organisation pursuant to the Tribunal’s case law were not fulfilled in a timely manner (compare, in particular, with Judgment 4594, consideration 9), the various flaws identified above were remedied during the proceedings before the Tribunal and, in any event, cannot be considered so substantial as to render the decision rejecting the complainant’s application unlawful.

However, as the Organisation failed to comply with several of its duties during the competition procedure and the handling of the internal appeal lodged against it, the complainant is entitled to be awarded moral damages for these breaches. The question of compensation for the moral injury caused will be examined in consideration 21 below.

14. In her fifth plea, the complainant submits that the selection board was wrong to reject her application without her being invited to be heard on this point.

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\* Registry’s translation.

However, the Tribunal observes that no obligation to conduct such a hearing is apparent from the applicable provisions or its relevant case law.

This plea must therefore be rejected.

15. The complainant puts forward a sixth plea, alleging that two of the three members of the board had a conflict of interest. The chair, Ms M., a member of the Directorate of Human Resources, had been named as an alleged harasser in the harassment complaint lodged by the complainant on 21 October 2019, while the Director of Directorate CFI, Mr H., was also referred to in that complaint as a witness or potential co-perpetrator of harassment.

The Tribunal recalls its settled case law that an allegation of conflict of interest has to be substantiated and based on specific facts, not on mere suspicions or hypotheses, and the complainant bears the burden of proof of such a conflict (see, for example, Judgments 4891, consideration 11, 4617, consideration 9, and 4616, consideration 6). In this case, the Tribunal considers that the complainant has tangibly failed to provide such proof.

Similarly, the Tribunal does not see how the complainant's observation, firstly, that she was the only internal candidate to have her application rejected at the first stage of the competition procedure and, secondly, that she was the only woman among the internal candidates to have her application rejected in contrast to those of her three male colleagues establishes by itself that the members of the selection board deliberately intended to exclude her application.

Accordingly, the sixth plea must also be rejected.

16. It follows from all the foregoing considerations that the complaint must be dismissed insofar as it seeks the setting aside of the decision of the selection board to dismiss the complainant's application for the post of Head of Billing, Customer Relations and Economics. The same is true of her claim that the competition procedure for that post

should be recommenced “at the point where [it] was stopped”<sup>\*</sup> in her respect.

*On the issue of harassment*

17. The complainant submits that the decision of 30 July 2021 to transfer her to the post of “Procurement Specialist” at grade AD8, step 5, in Directorate NMD from 1 August 2021 was part of the pattern of moral harassment to which she had been subjected since 2019, which gave rise to a harassment complaint which she lodged on 21 October 2019 and which was rejected by the Director General on 11 July 2024, after the lodging of an internal complaint on 16 May 2020.

However, following the third complaint filed by the complainant in that respect, the Tribunal, by its aforementioned Judgment 4961, set aside the Director General’s decision of 11 July 2024 confirming the rejection of the harassment complaint, but decided not to remit the case to the Organisation and to award moral damages to the complainant on account of the various procedural errors committed both in the examination of the substance of the harassment complaint and in the internal appeal procedure. In the same judgment, the Tribunal also considered that it was not necessary to rule on how the allegations of harassment relating to acts committed after the initial decision of 19 March 2020 to reject the harassment complaint ought to have been dealt with, as that fell outside the scope of the complainant’s third complaint.

The Tribunal sees no reason to decide otherwise in this case, and the question of moral harassment will therefore not be considered in this judgment.

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<sup>\*</sup> Registry’s translation.

*On the complainant's other claims*

18. The complainant requests that the Tribunal order the Organisation to reinstate her at her original grade AD10 and to assign her a post corresponding to her “grade and functions”.

However, the Tribunal notes that the first of these requests has already been granted by the decision of the new Director General of 11 July 2024.

As regards the second request, the Tribunal considers that, inasmuch as the file shows that the complainant's service was ended on the grounds of invalidity as from 1 April 2023, there is no need, as matters stand, to order the Organisation to assign her a post corresponding to her grade and skills.

19. As compensation for the material injury suffered on account of the unlawful decision to downgrade her, the complainant requests that the Organisation be ordered to pay her “the difference in salary and all allowances and bonuses between grade AD10 and grade AD8 with retroactive effect from 1 August 2021, with interest on the total amount at the rate of 8 [per cent] per annum”\*. In her second further submissions, she also requests that account be taken of a reform introduced at the end of 2022 that had the effect of automatically raising her previous grade from AD10 to AD11 on 1 November 2022.

The Tribunal observes, however, that it should be borne in mind that, as has just been stated, the complainant's service was ended on the grounds of invalidity as from 1 April 2023, with the result that her salary was replaced by an invalidity allowance from that date. As already indicated in the facts set out above, the decision to end her service on the grounds of invalidity is the subject of her sixth complaint, which is pending before the Tribunal.

By contrast, the Tribunal notes that the increase of the complainant's grade from AD10 to AD11 from 1 November 2022 was acknowledged by Eurocontrol in a letter sent to her on 22 August 2024.

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\* Registry's translation.

20. As the complainant indisputably suffered material injury, it is appropriate for the Tribunal to order the Organisation:

- firstly, to pay the complainant a sum equivalent to the difference between the salary, allowances and other ancillary salary-related benefits, including the contributions that would have been paid in respect of her acquisition of pension entitlements, which she would have received at grade AD10 and then at grade AD11 from 1 November 2022, between 1 August 2021 and 1 April 2023, and the salary, allowances and other ancillary salary-related benefits that she received during the same period at grade AD8;
- secondly, to pay her, with effect from 1 April 2023, a sum equivalent to the difference between the invalidity allowance that she should have received on the basis of grade AD11 and the allowance that she received, calculated on the basis of grade AD8.

All these sums will bear interest at the rate of 5 per cent per annum as from their respective due dates until the date of their payment.

As the parties have agreed, the sum of 78,694.15 euros already paid to the complainant by Eurocontrol will be deducted from the amount due.

21. The complainant also seeks damages in the amount of 200,000 euros as compensation for all the moral injury that the contested decisions allegedly caused her.

As to the existence of the moral injury referred to in consideration 4 above, suffered as a result of the decision of 30 July 2021 to reassign the complainant while downgrading her by two grades, the Tribunal considers that, given the nature of that decision, there is no doubt that such injury was caused.

The Tribunal considers that this injury will be fairly redressed by awarding the complainant damages in the amount of 30,000 euros.

As regards the moral injury identified in consideration 12 above, suffered on account on the Organisation's failure to comply with several of its duties in the competition procedure and in the examination of the internal appeal, the Tribunal considers that this injury will be

fairly remedied by awarding the complainant damages in the amount of 5,000 euros.

22. The complainant further takes issue with the excessively long delay in examining her internal complaint.

In this case, the Tribunal notes that almost two years and nine months passed between the lodging of the internal complaint on 27 October 2021 and the final decision of the new Director General of 11 July 2024.

Such a delay is clearly excessive and was such as to cause the complainant moral injury, which will be fairly redressed by awarding her the sum of 5,000 euros.

23. The complainant asks that Eurocontrol be ordered to pay punitive damages for the flagrant bad faith and malice shown towards her throughout the proceedings, both internally and before the Tribunal. She assesses these damages at 25,000 euros.

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.

24. The complainant considers that the Organisation's attitude throughout the proceedings forced her to incur unnecessary costs to defend her interests, especially in the internal appeal which remained pending for a very long time. Consequently, she seeks an award of costs in the amount of 5,000 euros for the internal appeal.

However, 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.

25. As the complainant largely succeeds, she will be awarded the sum of 10,000 euros for the proceedings before the Tribunal.

#### DECISION

For the above reasons,

1. There is no need to rule on the complaint insofar as it seeks the setting aside of the decision of the Director General of 30 July 2021 to reassign the complainant resulting in her downgrading by two grades.
2. Eurocontrol shall pay the complainant material damages as indicated in consideration 20 above.
3. The Organisation shall pay the complainant moral damages in a total amount of 40,000 euros.
4. It shall also pay her 10,000 euros in costs for the proceedings before the Tribunal.
5. All other claims are dismissed.

In witness of this judgment, adopted on 14 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