

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G. (No. 6)

v.

Eurocontrol

140th Session

Judgment No. 5030

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms F. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 28 April 2022, Eurocontrol's reply of 12 September 2022, the complainant's rejoinder of 2 January 2023, Eurocontrol's surrejoinder of 23 March 2023, the complainant's further submissions of 24 June 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 not to grant her authorisation to telework despite her poor health, as well as the decision to reject her complaint of psychological harassment.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, located at its Headquarters in Brussels, Belgium, in 1993. At the material time, she held the post of administrative assistant at grade AST6 in the Central Route Charges Office (CRCO). From 1 April 2019, she was recognised to have a permanent partial invalidity at the rate of 50 per cent. Her working hours were reduced to the same

extent. From March 2021, her partial invalidity rating was reduced from 50 to 20 per cent, and her working hours were adjusted accordingly.

In line with national recommendations to combat the spread of the virus during the Covid-19 pandemic, staff were informed by email of 17 March 2020 that they would be temporarily required to telework from home. From mid-March 2020, when the mandatory national lockdown began in Belgium, until mid-June 2020, when the lockdown was lifted and on-site work at Eurocontrol gradually resumed, the complainant recorded her hours of compulsory telework.

Based on a certificate issued by her treating physician on 23 April 2020, which stated that she was at a “higher than average risk in relation to the Covid-19 virus”*, the complainant requested that the Agency’s Medical Adviser, Dr V., recognise her as a “vulnerable” person in accordance with the Organisation’s guidelines and, consequently, that she be authorised to continue teleworking from home. She completed the appropriate form on the same day, reporting two different health conditions. On 5 May 2020 she sent an email to Dr V. in which she stated that medical reports should be exchanged by doctors and gave the contact details of her two treating physicians, who could provide all the necessary medical information. On 6 May 2020 Dr V. replied: “[...] I am fairly familiar with your case, [b]ut nervous tension does not justify putting you on the list of ‘vulnerable’ persons [within the meaning of the recommendations issued by the World Health Organization]”*.

On 25 May 2020 the complainant asked her supervisor, Mr D., to extend her telework “for as long as possible”* citing her “personal and professional situation”* and stating that her physical presence in the office was no longer really necessary. In an email sent the same day, Mr D. replied that the Medical Service should issue her with a medical certificate recommending telework, after which it could be taken into account in the site attendance schedule. The following day, the complainant informed him that she had contacted Dr B., a member of the Agency’s Medical Service, who had confirmed that the request to telework had to come from her supervisor. This was followed by an

* Registry’s translation.

exchange of emails between Mr D., the Medical Service and the complainant, without her being granted an extension of telework.

On 5 June 2020 staff members were informed that the Agency's work resumption plan provided for a return to in-person work for 50 per cent of staff from 8 June, then 100 per cent from 22 June. Special measures continued to apply to protect "vulnerable" persons, recognised as such on the basis of a medical report, who were at risk of developing a serious form of Covid-19.

On 19 June 2020 the complainant contacted human resources, Dr B. and the Eurocontrol trade unions to express her concern and distress following her return to the office on 15 June. She stated that she had noticed that the applicable preventive measures were not being observed in the workplace. From then on, she was placed on sick leave on the basis of medical certificates that she submitted to the Agency. On 22 June 2020 the Head of Human Resources and Services, Ms D., informed her that telework was not generally authorised in the CRCO in the interests of the service and that she was invited to return to the workplace unless she was placed on sick leave.

On 17 August 2020 the complainant submitted an internal complaint to the Director General against the decision of 22 June 2020 rejecting her request for authorisation to telework. She requested that an investigation be initiated into psychological harassment by her supervisors, Drs V. and B., and Ms D. The latter acknowledged receipt of the internal complaint on 11 September 2020 and forwarded it to the Joint Committee for Disputes, advising the complainant that there might be a "moderate delay"* in handling her internal appeal and that she should await the Director General's final decision before referring the matter to the Tribunal.

On 31 January 2022 the complainant's counsel enquired about the progress of the proceedings and requested that a decision be taken on his client's internal complaint. He also criticised Eurocontrol's handling of staff members' harassment complaints and internal complaints, which in his view denied them their right to an effective internal appeal.

* Registry's translation.

He also questioned the impartiality of the human resources unit and the Joint Committee for Disputes and accused the Director General of systematically rejecting complaints of psychological harassment without addressing them. On 2 February 2022 the complainant was informed that the Committee had delivered its opinion on her internal complaint of 17 August 2020 and that the Director General would take a decision.

On 8 February 2022 the Director General replied to the email from the complainant's counsel, informing him that staff members had an appropriate procedure for dealing with their internal complaints and that the working environment at Eurocontrol was free from harassment. He added that he would no longer tolerate "erroneous accusations"* against the Agency staff responsible for handling internal complaints. By a letter of the same day, he rejected the complaint of psychological harassment – which was contained in the internal complaint of 17 August 2020 – on the grounds that it did not meet the "minimum criteria for receivability"* laid down in Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations. That is one of the two impugned decisions.

On 10 February 2022 the complainant wrote to the Director General in connection with her internal complaint insofar as it rejected her request to telework. She asserted that her internal complaint had been managed unlawfully by Ms D., an alleged harasser, that the prescribed time limits for dealing with her appeal had been far exceeded and that her internal complaint had in fact been blocked, which deprived her of her rights. She asked for a final decision to be taken, failing which she would refer the matter directly to the Tribunal. On 24 February 2022 the Local Committee for Prevention and Protection at Work sent a letter to Ms D. asking her to explain, among other things, the failure to take account of particular recommendations made by the Committee during the Covid-19 sanitary crisis, the refusal to apply the Belgian law on telework for non-essential staff, and the failure to deal with formal complaints of psychological harassment in accordance with the applicable rules.

* Registry's translation.

In the present complaint, the complainant asks the Tribunal to set aside the Director General's decision of 8 February 2022 to close her complaint of harassment, as well as the decision of the Head of Human Resources and Services of 22 June 2020 rejecting her request to telework, and to recognise that she has experienced psychological harassment and discrimination on account of her state of health and her trade union activity. In the alternative, she requests that the Tribunal order an investigation into these allegations. In any event, she claims compensation of 50,000 euros for the moral injury she considers she has suffered and punitive damages, which she puts at 25,000 euros. Finally, she seeks an award of 2,500 euros for the costs incurred in the harassment proceedings and her internal appeal, and 7,000 euros in respect of the costs of the present proceedings.

In its reply, Eurocontrol has produced the opinion delivered by the Joint Committee for Disputes on 8 February 2022, concluding that the internal complaint of 17 August 2020 was receivable and well-founded insofar as it concerned the rejection of the request to telework. It asks the Tribunal to dismiss the complaint as irreceivable on the grounds that it is premature, since the complainant did not await the Director General's final decision, and as otherwise unfounded.

By an email of 15 December 2022 – which the complainant alleges she never received – the Organisation eventually forwarded to the complainant the final decision taken by the Director General on 15 November 2022 to reject her internal complaint as unfounded. Eurocontrol appends that decision to its rejoinder and withdraws its objection to receivability.

In her further submissions, the complainant asks the Tribunal to also set aside the decision of 15 November 2022.

CONSIDERATIONS

1. In her complaint and rejoinder, the complainant asks the Tribunal to set aside the Director General's decision of 8 February 2022 to close her complaint of psychological harassment, the decision of the Head of Human Resources and Services of 22 June 2020 refusing her

request to telework, and the implicit decision to reject her internal complaint insofar as it is directed against that refusal.

2. The complainant's internal complaint of 17 August 2020 against the aforementioned decision of 22 June 2020 also contained a complaint of psychological harassment, in which the Director General was asked to order an investigation.

By the time she filed the present complaint, the Director General had closed that harassment complaint by a decision of 8 February 2022, against which the complainant should have lodged a new internal complaint, pursuant to Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency, within three months of the date of its notification.

The Tribunal has already held that a complaint of harassment, when contained in an internal complaint lodged on the basis of Article 92(2) of the Staff Regulations, must be regarded as having been submitted under a separate procedure, provided for by Article 5(2)(a) of Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations. In accordance with aforementioned Rule of Application No. 40, any decision on that complaint of harassment, whether express or implicit, ought therefore to be challenged using the remedies and within the time limits specified by Article 92 of the Staff Regulations (see Judgment 4956, consideration 4).

By failing to do so before referring her case to the Tribunal, the complainant contravened the requirement laid down in Article VII, paragraph 1, of the Statute of the Tribunal that internal means of redress be exhausted (see Judgment 4956, consideration 4).

In her rejoinder, the complainant submits that she no longer had to challenge an initial decision taken by the Director General under the internal appeal procedure, as it would have been absurd for her to think that the Director General could go back on his decision and retrospectively reverse it. However, this attempt at justification clearly cannot be accepted, as it would be tantamount to presupposing the futility of an internal appeal and, *a fortiori*, of the internal appeal procedure as a whole, whenever the official or body of an international

organisation which took the initial decision is also the one required to take the final decision, which is frequently the case in practice.

It follows that, under Article VII, paragraph 1, of the Statute of the Tribunal, the present complaint must be declared irreceivable insofar as it is directed against the Director General's decision of 8 February 2022 to close the complainant's complaint of psychological harassment.

3. As regards the request for the setting aside of the implicit decision rejecting the complainant's internal complaint insofar as it is directed against the decision of the Head of the Human Resources and Services of 22 June 2020 to refuse her request to telework, the Tribunal notes that the Joint Committee for Disputes delivered its opinion on 8 February 2022 and that the Director General took his final decision on the internal complaint on 15 November 2022, meaning that the complainant's initial plea that the Committee was not involved in considering her internal appeal has become groundless and the request to set aside the implicit decision rejecting it has become moot.

The Committee's opinion and the final decision were adduced by Eurocontrol at the stage of the reply and the surrejoinder respectively, following which the parties were given the opportunity to express their views on them in further submissions. Thus, in accordance with the Tribunal's case law, it is appropriate to treat the present complaint, initially directed against an implicit decision, as directed against the Director General's decision of 15 November 2022 (see in particular, for similar cases, Judgments 4963, consideration 3, 4962, consideration 3, 4961, consideration 3, 4820, consideration 6, 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

4. Among the many pleas entered by the complainant, there is one that is decisive for the outcome of this dispute. That plea alleges that her status as a "vulnerable person" was not taken into account when she was refused authorisation to telework in the context of the lifting of the restrictions applied during the Covid-19 pandemic.

The Tribunal observes that, as the complainant rightly points out, her state of health was never actually examined before a decision to refuse her request was taken by the Head of Human Resources and Services on 22 June 2020.

5. The Tribunal notes first of all that Ms D.'s decision of 22 June 2020 did not refer to medical opinions provided by the members of the Agency's Medical Service following the complainant's request that she be recognised as a "vulnerable person". The decision was essentially based, firstly, on the fact that staff members who had not been recognised as "vulnerable persons" ought to follow the rules in force and, secondly, on the fact that telework was not authorised in the CRCO on account of service requirements and in accordance with the applicable rules. However, it is clear from the instructions issued by the Organisation itself that such a request had to be examined on the basis of a medical opinion, as well as an assessment of the well-being and personal situation of the staff member concerned.

As for the Director General's decision of 15 November 2022, it referred explicitly only to Dr V.'s email of 6 May 2020, considering that this email sufficed in itself to refuse the request to telework. It can thus be inferred that the Director General had not considered it necessary, in particular, to take into account the medical certificate submitted by the complainant in support of the request form she had submitted, nor to seek the opinion of the two treating physicians referred to by the complainant in her email of 5 May 2020 to Dr V.

The Tribunal also notes that Dr V.'s email of 6 May 2020, replying to the complainant's initial request of 23 April 2020 and to her email of 5 May 2020, merely stated that he was "fairly familiar with [the complainant's] case"* and that he considered that "nervous tension [did] not justify [...] placing [her] on the list of 'vulnerable' persons"*. The Tribunal considers that this cursory email, written as part of an exchange of informal messages, could not be regarded as a genuine

* Registry's translation.

medical opinion. Moreover, the content of the email in question related to only one aspect of the complainant's medical situation.

In addition, the complainant reiterated her request to be recognised as a "vulnerable person" by an email of 19 June 2020, in which she pointed out new risk factors that she had observed on her return to work on 15 June. However, there is nothing in the file to show that a medical opinion was given by the Agency's Medical Service on that new request, even though the context at the time was completely different from the one in which Dr V. provided his views in May 2020. More specifically, although the email exchanges mention a possible involvement of Dr B., the Organisation does not provide any proof that he delivered a medical opinion. In this respect, it should be noted that, in his decision of 15 November 2022, the Director General in any event only refers to Dr V.'s remarks.

In the light of the foregoing considerations, the Tribunal finds that the Organisation did not duly ascertain, before deciding on the complainant's request for authorisation to telework, whether she could be considered a "vulnerable person".

6. The Organisation argues that telework was not permitted throughout the CRCO for reasons relating to the interest of the service and that this is reflected in Rule of Application No. 36 concerning the arrangements for part-time work, job-sharing and teleworking.

However, that circumstance obviously did not preclude staff members who had been recognised as "vulnerable persons" from being granted authorisation to telework, even if they belonged to the CRCO.

This argument must therefore be dismissed.

7. It follows that the Director General's decision of 15 November 2022 and the decision of the Head of Human Resources and Services of 22 June 2020 must be set aside, without there being any need to rule on the other pleas directed against them.

8. In the circumstances of the case, the Tribunal finds that the refusal to authorise the complainant to telework during the pandemic was, as the complainant states in her submissions, liable to cause her moral injury, which the Tribunal considers will be fairly redressed by granting her compensation of 5,000 euros.

9. The complainant asks that Eurocontrol be ordered to pay punitive damages on account, in particular, of the flagrant bad faith and malice shown towards her throughout the proceedings.

However, the Tribunal recalls that punitive damages may only be awarded in exceptional circumstances (see, in particular, Judgments 4659, consideration 14, 4658, consideration 10, 4506, consideration 10, and 4391, consideration 14), namely if a complainant has provided persuasive evidence and analysis to demonstrate that there was bias, ill will, malice, animosity, bad faith or other improper purpose attending the impugned decision (see Judgments 4820, consideration 22, 4690, consideration 16, and 4633, consideration 16).

The Tribunal finds that such exceptional circumstances are not evident in the present case.

10. The complainant seeks an award of 2,500 euros in respect of the costs of the internal appeal proceedings and the proceedings relating to her complaint of psychological harassment.

According to the Tribunal's case law, costs relating to the internal appeal proceedings within international organisations may be awarded only under exceptional circumstances (see, for example, Judgments 4963, consideration 24, 4962, consideration 26, 4961, consideration 26, 4819, consideration 23, and 4217, consideration 12). Such exceptional circumstances are not evident in this case.

Furthermore, the complainant is not entitled, in any event, to the costs relating to the procedure for examining her complaint of harassment, since the present complaint has been declared irreceivable insofar as it relates thereto.

11. As she succeeds, the complainant is nevertheless entitled to the sum of 7,000 euros which she claims in costs for the proceedings before the Tribunal.

DECISION

For the above reasons,

1. The decision of the Director General of 15 November 2022 and the decision of the Head of Human Resources and Services of 22 June 2020 are set aside.
2. Eurocontrol shall pay the complainant moral damages in the amount of 5,000 euros.
3. It shall also pay her 7,000 euros in costs for the proceedings before the Tribunal.
4. All other claims are dismissed.

In witness of this judgment, adopted on 28 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.