

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P. (No. 4)

v.

Eurocontrol

140th Session

Judgment No. 5033

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms M. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 3 March 2021, Eurocontrol's reply of 4 June 2021, the complainant's rejoinder of 27 August 2021 and Eurocontrol's surrejoinder of 17 November 2021;

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 requests the setting aside of the decision to convene an invalidity committee to rule on her situation, as well as the decision to reject her complaint of psychological harassment.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, situated at its Headquarters in Brussels, Belgium, in 1991. At the material time, she held the post of Senior Assistant at grade AST10, step 7, in the Collection, Accounting and Treasury Division of the Directorate Central Route Charges Office and Finance and was responsible for recovering unpaid debts from airlines. From 2017 onwards, she was placed on sick leave several times.

By an email of 30 March 2020, the complainant requested permission to retire with effect from 31 January 2021. The next day, her supervisor forwarded her request to the Head of Human Resources and Services, Ms D., who replied on 1 April that such a request had to be refused and that an invalidity committee would be set up very soon to examine the complainant's case and deliver its findings on her possible invalidity. Ms D. also stated that, as the complainant was to receive an automatic step advancement in December 2020, she "tri[ed] to postpone her departure [from the Organisation]".

Pursuant to Article 59(5) of the Staff Regulations governing officials of the Eurocontrol Agency and in view of the total number of days of sick leave accumulated by the complainant, Ms D., acting by delegation of authority from the Director General, had decided on 11 March 2020 to convene an invalidity committee to examine the complainant's case. The committee convened – made up of Dr V. (the Agency's Medical Adviser, appointed by Eurocontrol), Dr M. (appointed by the complainant) and Dr B. (appointed by mutual agreement of the other two doctors) – delivered its opinion on 9 April 2020 and unanimously concluded that the complainant did not have a permanent invalidity and that she was therefore required to continue working.

On 29 April 2020 the complainant received an overall assessment of "unsatisfactory" in the 2019 performance appraisal exercise. In accordance with the applicable rules, her appraisal report was forwarded to the Reports Committee, which, in its opinion of 29 June 2020, unanimously recommended that this assessment be maintained, which was endorsed by a decision of the Director General of 14 July 2020. On 1 October 2020 the complainant submitted an internal complaint against this decision, in which she stated that she had experienced both discrimination on account of her state of health and blatant psychological harassment and requested an investigation into Ms D., her supervisors and the Agency's doctors. This internal complaint gave rise to Judgment 5034, also delivered this day, on the complainant's fifth complaint to the Tribunal.

On 23 October 2020 the complainant received a letter from the Agency's Medical Service, informing her of Ms D.'s decision of 1 October 2020, taken by delegation of authority from the Director General and on the basis of an opinion from Dr V., to convene a new invalidity committee to assess her case in view of the number of days of absence she had accumulated.

On 11 November 2020 the complainant submitted an internal complaint against Ms D.'s decision of 1 October 2020. She alleged that the convening of a new invalidity committee reflected the Agency's intention to get rid of her as soon as possible and that it was an abuse of authority and an act intended to intimidate her. She asked to be provided with the Medical Adviser's opinion on the basis of which the contested decision had been taken, as well as a breakdown of her days of sick leave. In addition, she referred to her previous internal complaint of 1 October 2020, and alleged that she was still experiencing psychological harassment from Ms D. and Dr V. She requested an investigation into the matter.

In accordance with her request of 30 March 2020, which had been ultimately accepted, the complainant – who had returned to work at the beginning of November 2020 – retired on 1 February 2021. Owing to her retirement, the Organisation acknowledges in its reply that the internal complaint of 11 November 2020, which in its view had become moot, was not in the end forwarded to the Joint Committee for Disputes.

On 3 March 2021 the complainant filed the present complaint with the Tribunal against the implied rejection of her internal complaint of 11 November 2020. She asks the Tribunal to set aside the decision of 1 October 2020 and to recognise that Ms D. and Dr V. were guilty of psychological harassment against her. She also claims total compensation of 60,000 euros for the moral injury she considers she has suffered and punitive damages, which she assesses at 25,000 euros. Lastly, she claims costs in the amount of 9,500 euros for the internal appeal proceedings and the proceedings before the Tribunal.

By an email of 4 June 2021, the complainant was notified of the Director General's decision, dated 1 June 2021, to reject her complaint of psychological harassment – which was contained in her internal

complaint of 11 November 2020, which referred to her internal complaint of 1 October 2020 – as not meeting the “minimum criteria for receivability”^{*} laid down by Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations.

Eurocontrol submits that the complaint is irreceivable since the decision of 1 October 2020 to convene an invalidity committee “is merely a preparatory step for [an invalidity] procedure and as such has no legal effect on the [situation of the] complainant”^{*}. It also notes that the invalidity procedure initiated as a result of the contested decision was not completed by the Agency, as the complainant had, after many days of absence due to illness, returned to work at the beginning of November 2020. It adds that, even if the decision of 1 October were to be considered final, it could no longer have any effect on the complainant’s legal position since she has retired since 1 February 2021. It therefore asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant asks the Tribunal, firstly, to set aside both the implied decision rejecting her internal complaint of 11 November 2020 and the decision of the Head of Human Resources and Services, Ms D., of 1 October 2020 to convene an invalidity committee and, secondly, to find that Ms D. and Dr V., the Agency’s Medical Adviser, were guilty of psychological harassment against her.

2. Inasmuch as the complaint is directed against the decision of Ms D. of 1 October 2020, and also against the implied decision to reject the internal complaint of 11 November 2020 insofar as it relates to the decision of 1 October, the Tribunal considers that the decision to convene an invalidity committee is not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal, but a preparatory step which, in accordance with settled case law on the subject, cannot

^{*} Registry’s translation.

as such be impugned before the Tribunal and can only be challenged in the context of a complaint directed against a final decision (see, in particular, Judgments 4763, consideration 2 (concerning a similar case of a referral to a medical committee), 4704, consideration 5 (decision to carry out a medical examination), and 4636, consideration 4 (concerning a preparatory stage for a medical procedure)).

In addition, the Tribunal observes that the present dispute had become moot even before the complaint was filed on 3 March 2021, which constitutes another ground of irreceivability. The parties agree that in the end no invalidity committee met before the complainant retired on 1 February 2021.

The complaint is, therefore, irreceivable insofar as it is directed against these two decisions.

3. The complainant's internal complaint of 11 November 2020 against Ms D.'s decision of 1 October 2020 to convene an invalidity committee also contained a complaint of psychological harassment, in which the Director General was asked to order an investigation.

After the present complaint was filed with the Tribunal, the Director General rejected the complaint of psychological harassment by a decision of 1 June 2021 on the grounds that it was not receivable. Pursuant to Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency, that decision should have been challenged in a new internal complaint, which the complainant should have submitted within three months of the date of its notification.

The Tribunal has already ruled that a complaint of harassment, when it is 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, must therefore 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).

Accordingly, the complaint is likewise irreceivable insofar as it is directed against the decision to reject the complaint of psychological harassment.

4. In view of all the foregoing considerations, the complaint must be dismissed as irreceivable in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 26 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.