

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P. (No. 5)
v.
Eurocontrol

140th Session

Judgment No. 5034

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms M. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 4 November 2022, Eurocontrol's reply of 3 February 2023, the complainant's rejoinder of 30 March 2023 and Eurocontrol's surrejoinder of 28 June 2023;

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 her 2019 performance appraisal and the subsequent decisions to "freeze"* her step advancement and to place her on a performance improvement plan, as well as the rejection of her complaint of psychological harassment.

The complainant, who was born on 9 November 1957, joined the Eurocontrol Agency, the Organisation's secretariat, located at its Headquarters in Brussels, Belgium, on 1 February 1991. At the material time, she held the post of Senior Assistant at grade AST10, step 7 – the penultimate step of that grade – within the Collection, Accounting and

* Registry's translation.

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 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 the 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]". The decision to convene an invalidity committee was taken on 11 March 2020 and, in its opinion of 9 April 2020, the committee found that the complainant did not have a "total permanent invalidity rendering [her] incapable of performing the duties attaching to a post in [her] grade" and that she was required to continue working on that account.

In her performance appraisal report covering the reference period from 1 January to 31 December 2019, which was finalised on 29 April 2020, the complainant was given an overall assessment of "unsatisfactory" on the grounds that, of the five objectives set, three had not been met, while the other two had not been achieved because of "external factors", namely periods of absence due to illness or the situation of an airline in the complainant's portfolio during the year under review. This report resulted in the complainant's automatic step advancement, which was to take place in December 2020, being withheld.

In accordance with Article 7 of Rule of Application No. 3 concerning the drawing up of the appraisal report provided for in Article 43 of the Staff Regulations governing officials of the Eurocontrol Agency, the finalised appraisal report for 2019 was sent to the Reports Committee, which, in its opinion of 29 June 2020, unanimously considered that the appraisal procedure had been followed correctly and recommended that the "unsatisfactory" assessment of the complainant's overall performance be maintained. The members of the Committee regretted, however, that

some of the objectives set had not been worded more precisely, that the criticisms levelled at the complainant had not been more detailed and that there was no indication of how the complainant's behaviour in the office had affected her colleagues and what changes were expected of her.

On 14 July 2020 the Director General confirmed that assessment and decided, firstly, that a "remedial plan"* for an initial period of six months would be put in place by the reporting manager, with the support of the human resources unit responsible for performance management, and, secondly, that the complainant's step advancement would be "halted"* until there was a duly assessed improvement in her performance.

On 1 October 2020 the complainant lodged an internal complaint against the decision of 14 July 2020. She argued that her appraisal report for 2019 did not take into account her long absences due to illness and that the Director General's decision had been based on incorrect information and was intended solely to prevent her from receiving a step advancement at the end of 2020, before she retired on 1 February 2021. She also stated that she had experienced discrimination on the grounds of her state of health and "blatant psychological harassment"* and requested an investigation into Ms D., her supervisors and reporting managers and one of the Agency's doctors. Ms D. acknowledged receipt of the internal complaint on 7 October 2020 and forwarded it to the Joint Committee for Disputes on the same day, advising the complainant that there might be a "moderate delay"* in dealing with her internal appeal and that she should await the Director General's final decision before taking her case to the Tribunal.

On 12 November 2020 the complainant was given the performance improvement plan mentioned in the decision of 14 July 2020 by the countersigning manager, Mr D. By a memorandum of 2 December 2020, sent to Mr D. and copied to the Director General, she challenged the lawfulness of and justification for the plan, arguing that it was a

* Registry's translation.

“continuation of the harassment [she had suffered] in an institutional and managerial form”*.

In accordance with her request of 30 March 2020, she retired on 1 February 2021, without having received the step advancement.

By a letter of 1 June 2021, the Director General informed the complainant that her complaint of psychological harassment – contained in her internal complaint of 1 October 2020 – did not satisfy the “minimum criteria for receivability”^{*} laid down by Rule of Application No. 40 concerning harassment pursuant to Article 12a of the Staff Regulations and that it therefore could not be pursued.

Between June 2021 and January 2022, the complainant and her counsel enquired several times about progress in dealing with the internal complaint of 1 October 2020 insofar as it related to the performance appraisal for 2019, while challenging the fact that it had been handled by Ms D., even though she was identified in the harassment complaint. They also asked to be given “all the documents provided by departments of the Directorate of [Human] Resources or any other department of the Agency to the [Joint Committee for Disputes]”^{*} in connection with the examination of the internal appeal. On 7 February 2022 the Director General informed the complainant’s counsel that the Joint Committee for Disputes had dealt with the internal complaint at its meeting on 10 (*recte* 17) June and that an opinion had been drawn up and was awaiting signature, following which he would take his final decision. He dismissed the request for documents on the grounds that these documents were allowed only to members of the Committee.

Alleging a paralysis in the internal appeal procedure, on 4 November 2022 the complainant filed the present complaint against the implied rejection of her internal complaint of 1 October 2020. She asks the Tribunal to set aside the negative appraisal reports for 2019, that is the report finalised on 29 April 2020 and an intermediate report drawn up in October 2019 which was allegedly not finalised, to order their removal from her personal file, to acknowledge that she experienced

* Registry’s translation.

psychological harassment and to order Eurocontrol to grant her an additional step with effect from 1 January 2021. By way of compensation for the material injury she alleges, she seeks payment of the “difference in salary and pension [entitlements]”^{*} to which she would have been entitled from 1 January 2021 if she had been granted an additional step. 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 seeks an award of 3,000 euros for costs incurred in the internal appeal procedure and 6,000 euros in costs for the present proceedings.

In its reply, Eurocontrol provides the divided opinion issued by the Joint Committee for Disputes on 25 January 2022, as well as the Director General’s final decision, dated 12 December 2022, rejecting as unfounded the internal complaint of 1 October 2020 and confirming the decision of 1 June 2021 to close the complainant’s complaint of psychological harassment. These documents were provided in English. Following two requests from the complainant, a French-language version of these documents was sent to her on 17 January 2023.

Eurocontrol submits that the complaint is irreceivable because the complainant did not wait for the Director General’s final decision before bringing the case to the Tribunal. It also notes that, insofar as the complainant asks the Tribunal to review the decision to reject her complaint of psychological harassment taken on 1 June 2021, her complaint is time-barred since that decision is a final decision that was not challenged within the time limits. The Organisation therefore asks the Tribunal to dismiss the complaint as irreceivable. Subsidiarily, it requests that the complaint be dismissed as unfounded.

In her rejoinder, the complainant asks the Tribunal to set aside the Director General’s decision of 12 December 2022 and to sanction the Organisation for “blocking” the internal appeal procedure and for communicating the explicit decision to reject her internal complaint and the opinion of the Joint Committee for Disputes during the proceedings.

^{*} Registry’s translation.

CONSIDERATIONS

1. The complainant seeks to have set aside, firstly, the decisions of the Director General of 14 July 2020 and 12 December 2022 to confirm the “unsatisfactory” overall assessment of her performance for 2019, as well as the subsequent decisions to “freeze”* her step advancement and to put her on a performance improvement plan, and, secondly, his decisions of 1 June 2021 and 12 December 2022 to reject her complaint of psychological harassment.

2. Eurocontrol raises its first objection to the receivability of the complaint in its entirety on the grounds that the forwarding of the internal complaint of 1 October 2020 to the Joint Committee for Disputes was, pursuant to Judgment 3889 of the Tribunal, a “decision upon [the] claim”, which forestalls an implied decision of rejection that could be referred to the Tribunal. The Organisation also strongly disputes any attempt on its part to paralyse the complainant’s exercise of internal means of redress. The delay in dealing with the complainant’s internal complaint was in fact due solely to the Covid-19 pandemic and the severe shortage of resources faced by the department responsible for dealing with internal appeals.

3. As the Tribunal has already stated on various occasions in respect of Eurocontrol, in particular in Judgment 4820, consideration 6:

“(a) Where the Administration takes any action to deal with a claim, by forwarding it to the competent internal appeal body for example, this step in itself constitutes a ‘decision upon the claim’ within the meaning of Article VII, paragraph 3, of the Statute of the Tribunal, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3715, consideration 4, 3428, consideration 18, and 3146, consideration 12).

(b) Under Article 92(2) of the Staff Regulations, the complainant should have filed a complaint before the Tribunal within 90 days from the expiry of the four-month time limit for the Administration to respond to his internal complaint, even if the matter had been referred to the Joint Committee for Disputes. The present complaint should therefore, in principle, be declared

* Registry’s translation.

irreceivable as time-barred under Article VII, paragraph 2, of the Statute of the Tribunal, combined with Article 92(2) of the Staff Regulations.

(c) However, in this case, the Tribunal considers that the complainant was misled by the Organisation when it indicated to him that, since his internal complaint had been referred to the Joint Committee for Disputes, he had, in accordance with the Tribunal's case law on the application of Article VII, paragraph 3, of its Statute, to await the final decision of the Director General before being able to file a complaint with the Tribunal. By so doing, the Organisation overlooked the fact that, pursuant to Article 92(2) of the Staff Regulations, failure by the Director General to respond to an internal complaint within four months from the date on which it was lodged shall be deemed to constitute an implied decision rejecting it, which may be impugned before the Tribunal. There is no need to declare the complaint irreceivable as time-barred, insofar as it is directed against an implied decision to reject from the Director General. To rule otherwise would amount to unduly depriving the complainant of his right to refer the matter to the Tribunal solely due to the conduct of the Organisation.

(d) The Tribunal observes that while the complainant's failure to comply with the 90-day time limit to file a complaint with the Tribunal is recognized above as admissible due to the fact that he was wrongly informed by the Organisation that he had to await an express decision, the complainant did not wait for this decision to be issued before filing his complaint. The complaint should therefore, in principle, be declared irreceivable for failure to exhaust internal means of redress, as required by Article VII, paragraph 1, of the Statute of the Tribunal. However, in this case, taking into account the period of one year and seven months that had elapsed between 5 June 2020, when the complainant filed his internal complaint, and 7 February 2022, when he filed his complaint with the Tribunal, and the fact that his counsel had followed up, to no avail, with the Director General, the Tribunal considers that the complainant was faced with a paralysis of the internal appeal procedure that would allow him to proceed directly to it. Under the Tribunal's case law, a complainant is entitled to file a complaint directly with the Tribunal against the initial decision which she or he intends to challenge where the competent bodies are not able to determine the internal appeal within a reasonable time having regard to the circumstances, provided that she or he has done her or his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a final decision within a reasonable time (see, for example, Judgments 4660, consideration 2, 4271, consideration 5, 4268, considerations 10 and 11, 4200, consideration 3, 3558, consideration 9, 2039, consideration 4, or 1486, consideration 11)."

(See also Judgment 4819, consideration 3.)

This case law applies *mutatis mutandis* to the present case.

In this case, taking into account the period of more than two years that elapsed between 1 October 2020, when the complainant lodged her internal complaint, and 4 November 2022, when she filed the present complaint, and the fact that her counsel had followed up on many occasions, to no avail, with the Director General and the Chairman of the Joint Committee for Disputes among others, the Tribunal considers that the complainant was faced with a paralysis of the internal appeal procedure that would allow her to proceed directly to the Tribunal.

There is therefore no reason to declare the present complaint irreceivable in its entirety.

4. In addition, the Tribunal notes that a final decision was ultimately taken by the Director General on 12 December 2022 and that that decision was produced in the course of the proceedings, as was the relating opinion of the Joint Committee for Disputes. Since the Tribunal has a complete file in its possession and the parties have had the opportunity to comment fully in their written submissions on that explicit decision to dismiss the complainant's internal complaint of 1 October 2020, it considers that, in accordance with its case law, it is appropriate to treat the present complaint as being directed against the decision of 12 December 2022 (see in particular, for similar cases, Judgments 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

5. The Organisation raises its second objection to the receivability of the complaint insofar as it is directed against the rejection of the complaint of psychological harassment, on the grounds that the complainant did not challenge the Director General's decision of 1 June 2021 rejecting that complaint under the internal appeal procedure within the prescribed time limit.

The Tribunal notes that the internal complaint lodged by the complainant against the Director General's decision of 14 July 2020 confirming the "unsatisfactory" overall assessment of her performance

for 2019 also contained a complaint of psychological harassment, in which the Director General was asked to order an investigation.

By the time the complainant filed the present complaint with the Tribunal, the Director General had rejected the complaint of psychological harassment by decision of 1 June 2021 on the grounds that it was not receivable. Such a decision should have been challenged in a new internal complaint pursuant to Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency.

The Tribunal has already ruled 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, 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).

The fact that the complainant was no longer a staff member of Eurocontrol when the decision was taken is irrelevant in this regard. The Tribunal has already held on various occasions that the internal complaint provided for by Article 92(2) of the Staff Regulations remains open to former staff members of Eurocontrol (see, for example, Judgments 4696, consideration 2, or 4695, consideration 2).

6. 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. 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 competent official or body of an international organisation which took the initial decision is also the one that will take the final decision, which is frequently the case in practice.

7. It follows that the present complaint must be declared irreceivable insofar as it is directed against the Director General's decision of 1 June 2021 to reject the complainant's complaint of psychological harassment. The same applies insofar as it is directed against the Director General's decision of 12 December 2022 to the extent that it concerns the harassment complaint, since that decision merely confirms the previous decision of 1 June 2021, without any further examination of the harassment complaint. It is the Tribunal's settled case law that a purely confirmatory decision does not set off a new time limit for bringing an internal appeal (see, to that effect, Judgments 4560, consideration 6, and 4116, consideration 4).

8. It follows from the foregoing considerations that the complaint is irreceivable insofar as the complainant seeks to challenge the decisions to reject her complaint of psychological harassment.

9. Since the dispute essentially concerns the appraisal of the complainant's performance for 2019, the Tribunal recalls its settled case law in that respect according to which assessment of an employee's merit during a specified period involves a value judgement; for this reason, the Tribunal must recognise the discretionary authority of the bodies responsible for conducting such an assessment. Although the Tribunal must ascertain whether the ratings given to the employee have been determined in full conformity with the rules, it cannot substitute its own opinion for the assessment made by the people and/or bodies responsible for appraising the staff members of an international organisation. The Tribunal will therefore intervene only if the disputed appraisal report was drawn up without authority or in breach of a rule of form or procedure, if it was based on an error of law or fact, if a material fact was overlooked, if a plainly wrong conclusion was drawn from the facts, or if there was abuse of authority (see, for example,

Judgments 4962, consideration 7, 4564, considerations 3 and 8, 4258, consideration 2, 3692, consideration 8, 3268, consideration 9, 3228, consideration 3, 3062, consideration 3, and 1688, consideration 5).

10. As regards the “unsatisfactory” overall assessment of the complainant’s performance for 2019, the complainant first of all submits that the appraisal procedure was tainted with various flaws. Firstly, reference is made to an intermediate appraisal report that was allegedly drawn up on 17 October 2019, although the complainant maintains that she was never interviewed in connection with that report and that no report was validated; secondly, she notes that her appraisal interview did not take place on 19 February 2020, but on 24 April 2020, after she had been found fit to work by the Invalidity Committee; thirdly, the appraisal report was not drawn up “not later than three months after expiry of the reference period”, in breach of Article 3 of Rule of Application No. 3 concerning the drawing up of the appraisal report provided for in Article 43 of the Staff Regulations; and, fourthly, drawing up a performance appraisal report for 2019 for her contravened paragraph 1.1 of the implementing provisions of Rule of Application No. 3, which provides that there is ordinarily no need to draw up an appraisal report if, “during the year following the reporting period, the appraisee terminates his service”.

11. The Tribunal observes, firstly, that it is clear from the evidence that an intermediate performance interview did take place in October 2019 when the complainant returned to work after an absence due to illness. The fact that she refused to sign the intermediate appraisal report drawn up by her supervisor at that time does not prevent the shortcomings brought to her attention during the intermediate interview from being mentioned in the final appraisal report for 2019.

Secondly, the fact that the supervisor and the countersigning manager of the performance appraisal report for 2019 made a mistake as to the date on which the final appraisal interview took place does not, in itself, have any bearing on the validity of the appraisal carried out for that year, and the complainant does not put forward any substantial

arguments capable of establishing that this clerical error adversely affected her.

Thirdly, it is true that, according to the second sentence of the first paragraph of Article 3 of Rule of Application No. 3, an annual appraisal report must be drawn up “not later than three months after expiry of the reference period”. However, the Tribunal recalls that it is apparent from its settled case law that annual appraisal reports continue to be useful even if deadlines have not been respected, with the consequence that failure to meet a deadline cannot on its own be a reason for setting aside reports but, depending on the case, the effect that the delay has on the report’s content will be taken into account (see, for example, Judgments 4962, consideration 9, 3039, consideration 9, and 2064, consideration 5). In this case, the Tribunal considers, in any event, that the delay in the finalisation of the complainant’s performance appraisal report for 2019 is excusable in view of the circumstances of the case, in particular her various periods of absence due to sickness.

Fourthly, the Tribunal does not see how Eurocontrol infringed paragraph 1.1 of the implementing provisions of aforementioned Rule of Application No. 3 in that the contested appraisal related to her performance in 2019 even though the complainant’s retirement took place on 1 February 2021. The complainant did not, in fact, terminate her service “during the year following the reporting period” for which her performance was appraised.

It follows from all the foregoing considerations that the plea based on the existence of various flaws in the performance appraisal procedure must be rejected.

12. As regards the appraisal of her performance strictly speaking, the complainant considers that the appraisal report was drawn up without taking into account her health problems, which had led to various absences due to illness during the reporting period.

However, the Tribunal observes that the reporting manager did take account of the complainant’s absences due to illness when he considered it necessary to do so, as was the case for the assessment of Objective 4. During his hearing before the Reports Committee, the

reporting manager explained that he had considered that the failure to meet this objective did not owe to the complainant's sickness-related absences (objective "not met due to internal/external factors"), but rather to her failure to demonstrate the necessary diligence in starting to achieve the objective before her sickness-related absence and in completing the objective when she returned from sick leave (objective "not met"). Similarly, the reporting manager considered that, when the complainant had been at work, he had not seen her focusing on achieving her objectives or working to a consistently high standard, which had had a negative impact on the rest of the team. The countersigning manager of the appraisal report also stated that he had only been able to observe that the complainant, when present in the office, spent a large part of her time talking to colleagues rather than doing her work, which had affected her performance and had adversely impacted on her colleagues' motivation.

This plea must therefore also be rejected as unfounded.

13. The complainant also alleges an "abuse of process" and an "abuse of authority", which, as she describes them, amount to a misuse of authority. This relates to the fact that Eurocontrol's sole aim in drawing up a negative performance appraisal report for 2019 was supposedly to prevent her last automatic step advancement before she retired on 1 February 2021.

However, the Tribunal recalls that, under its settled case law, misuse of authority may not be presumed and the burden of proof is on the party that pleads it (see Judgments 4696, consideration 17, 4552, consideration 9, and 4437, consideration 23). In the present case, the complainant's assertion is not based on any evidence.

This plea must therefore be rejected.

14. With regard to the opinion of the Reports Committee of 29 June 2020, the complainant considers that it was drafted solely on the basis of her managers' criticisms, without taking any account of her arguments. She therefore concludes that the opinion should be regarded as null and void, particularly as its final conclusion is not consistent

with the recommendations that were made. She adds that the Committee failed in its role and demonstrated bias and a lack of objectivity. Similarly, she considers that the Director General's initial decision of 14 July 2020 is, consequently, itself unlawful because it was based on the Committee's opinion.

However, the Tribunal notes, in view of the opinion of the Reports Committee, that the Committee did take into consideration the complainant's various arguments.

Moreover, it should be recalled that, according to settled case law, bias may not be presumed and that any allegation of bias must be supported by evidence of sufficient quality and weight to persuade the Tribunal that it is well-founded (see, for example, Judgments 4891, consideration 12, 4713, consideration 12, 4543, consideration 8, 4451, consideration 16, 4408, consideration 22, and 3380, consideration 9). In the present case, it must be found that the complainant has not adduced any tangible evidence to substantiate her allegation.

Furthermore, the Tribunal sees no inconsistency in the fact that the Reports Committee, while considering unanimously that the "unsatisfactory" overall assessment of the complainant's performance for 2019 should be maintained, noted however that the assessment of Objectives 2 and 4 contained a degree of ambiguity and that more details could have been provided regarding the procedures that the complainant had failed to follow, the actions that she had failed to take, and the negative impact that her conduct had on her colleagues and on the team spirit when she was present in the office. These various comments should be understood merely as a criticism by the Committee to the effect that it would have been preferable for the information provided to it by the reporting manager and the countersigning manager of the appraisal report to have been included in the appraisal report itself.

This plea must also be rejected.

15. The complainant also argues that the performance improvement plan sent to her on 12 November 2020 – and which had first been mentioned in the decision of 14 July 2020 – is itself tainted with various procedural flaws.

However, the Tribunal considers that any flaws in the performance improvement plan do not, in any event, affect the lawfulness of the contested decisions. Moreover, the Tribunal observes that, as the complainant herself points out in her written submissions, this plan was in any event not implemented before her retirement on 1 February 2021.

This plea must therefore be rejected.

16. It follows from considerations 9 to 15 above that it must be concluded that there were no flaws in the performance appraisal procedure and that the complainant's appraisal reports for 2019 are lawful.

17. As regards the procedure followed when examining her internal complaint, the complainant alleges a breach of the adversarial principle in that the documents sent by Eurocontrol to the Joint Committee for Disputes were not provided to her in advance.

In Eurocontrol's view, the adversarial principle was, on the contrary, fully observed because the internal appeal procedure does not provide for the staff member to be able to react once her or his internal complaint has been lodged, the file provided by the secretary of the Joint Committee for Disputes is merely an internal preparatory document intended for the Committee and the Committee's opinion contains sufficient explanations to enable the staff member concerned to understand the arguments on which it is based. The Organisation also observes that, in any event, the adversarial principle has been complied with before the Tribunal.

18. However, the Tribunal has repeatedly held that organisations do not comply with the adversarial principle by not disclosing to staff members documents 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 redacted form for reasons of confidentiality (see, to that effect, Judgments 4961, consideration 13, 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 a letter of 10 June 2021 sent to the Chairman and the members of the Joint Committee for Disputes, that is, before the Committee had finalised its opinion, had expressly asked to receive “all the documents provided by the departments of the Directorate of [Human] Resources or any other department of the Agency to the [Committee]”^{*} in connection with the examination of her internal appeal.

This plea is therefore well founded.

However, the Tribunal finds that, in the circumstances of the case, this procedural flaw does not justify setting aside the impugned decision of 12 December 2022 but only compensation for the moral injury it caused to the complainant. This injury will be fairly redressed by awarding the complainant compensation in the amount of 2,000 euros.

19. Lastly, the complainant complains that Eurocontrol took, in her view, an inordinately long time to deal with her internal appeal.

Contrary to what the complainant submits, excessive delay in dealing with her internal complaint does not in itself mean that the final decision in the matter should be set aside.

However, the Tribunal recalls that that a failure by the competent bodies to examine appeals within a reasonable time breaches the requirement that internal appeals be dealt with expeditiously. The amount of compensation that may be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4962, consideration 22, 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, and 4100, consideration 7).

^{*} Registry’s translation.

In this case, the Tribunal notes that almost two years and two months passed between the lodging of the internal complaint on 1 October 2020 and the adoption of the Director General's final decision on 12 December 2022.

Such a delay is excessive and was such as to cause the complainant moral injury, which, bearing in mind the circumstances of the case, will be fairly redressed by awarding her compensation of 2,000 euros.

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

However, it is the Tribunal's settled case law that an order for an organisation to pay punitive damages can only be justified under exceptional circumstances (see, for example, Judgments 4963, consideration 23, 4962, consideration 25, 4961, consideration 25, 4819, consideration 22, 4640, consideration 15, 4493, consideration 11, and 4484, consideration 9). Despite the Organisation's cavalier attitude towards its obligation to deal with the complainant's internal complaint in an appropriate and diligent manner, the Tribunal considers that such circumstances are not evident in this case. There are therefore no grounds to grant this claim.

21. The complainant considers that the Organisation's conduct throughout the proceedings forced her to incur unnecessary costs to defend her interests, in particular in the internal appeal which remained pending for a very long time. Consequently, she seeks an award of costs in the amount of 3,000 euros for the internal appeal proceedings.

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

22. As the complainant partly succeeds, she will be awarded the sum of 4,000 euros in costs for the proceedings before the Tribunal.

23. All other claims must be dismissed.

DECISION

For the above reasons,

1. Eurocontrol shall pay the complainant moral damages in the total amount of 4,000 euros.
2. It shall also pay her 4,000 euros in costs for the proceedings before the Tribunal.
3. All other claims are 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.