

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**G. (No. 4)**

**v.**

**Eurocontrol**

**141st Session**

**Judgment No. 5160**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr R. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 11 December 2023 and corrected on 23 January 2024, Eurocontrol's reply of 30 April 2024, the complainant's rejoinder of 24 June 2024, Eurocontrol's surrejoinder of 23 September 2024, the complainant's additional submissions of 2 October 2024 and Eurocontrol's final comments thereon of 22 January 2025;

Considering the documents submitted by Eurocontrol on 7 July 2025 in response to a request for further submissions from the Vice-President of the Tribunal, acting by delegation of authority from the President;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to impose on him the disciplinary sanction of downgrading.

At the material time, the complainant, who had been a Eurocontrol official since 1 November 1996, held grade AST7, step 3. On 11 October 2018, he submitted an application to Eurocontrol's Sickness Insurance

Scheme seeking reimbursement of two pairs of spectacles, accompanied by a medical prescription issued by an ophthalmologist in Belgium and an invoice from an optician's shop in Italy. On 25 October 2018 Ms F., a staff member of the Scheme, informed the complainant, following a meeting between them on 18 October 2018, that reimbursement for the spectacles had been refused because the date on the medical prescription had been falsified to read 4 October 2018 instead of 4 October 2017, and that she had to inform her own supervisor, Ms B. It appears from the file that by an email of 19 October 2018, the complainant had told Ms F. that he had altered the year on the medical prescription submitted in support of his reimbursement claim, explaining that he had decided to do so following a conversation with the ophthalmologist's medical secretary, and had asked for his reimbursement claim to be cancelled. However, in reply, he was told that this request could not be granted because his file had been sent to the supervisor.

By an internal memorandum of 18 April 2019, the Head of Human Resources and Services brought it to the Director General's attention that allegations had been made against the complainant in relation to an attempt to defraud the Sickness Insurance Scheme and recommended that an administrative investigation be opened. She also added that, while on holiday in Italy, she had visited the optician in question and that the invoices issued by the optician did not match the one submitted by the complainant in support of his application for reimbursement.

On 7 May 2019 the Director General asked the Agency Security Officer to launch an administrative investigation pursuant to Article 88(2) of the Staff Regulations governing officials of the Eurocontrol Agency, to determine whether there had been a breach of Rule of Application No. 10 concerning sickness insurance cover.

By an internal memorandum of 6 October 2020, the Agency Security Officer informed the complainant of the opening of that investigation and notified him of the allegations of fraud made against him, namely that he may have falsified a medical prescription and the corresponding invoice. The Security Officer also asked the complainant to acknowledge receipt of the memorandum and stated that an interview

would be arranged shortly. As no response was received from the complainant in the following days, the Security Officer sent him a reminder on 14 October 2020, to no avail.

That same day, the complainant was placed on sick leave by his treating doctor.

In his investigation report dated 22 October 2020, the Security Officer concluded that the medical prescription submitted by the complainant in support of his claim for reimbursement of 11 October 2018 had been falsified. However, despite having major concerns on the matter, he could not uphold the allegation that the invoice was fake. He also stated in his report that it had not been possible for him to meet the complainant during the investigation.

On 19 October 2020 the complainant, acting through his counsel, lodged an internal complaint with the Director General in relation to the decision of 6 October 2020 by which he had been informed that an administrative investigation had been launched against him. In that internal complaint, he also stated that he had been morally harassed by three members of Eurocontrol staff. The complainant subsequently filed a complaint with the Tribunal – his second – which also concerned the dismissal of his harassment complaint of 19 October 2020. That complaint led to Judgment 4765, and the application for review of that judgment to Judgment 4956.

By an internal memorandum of 23 October 2020, the Director General asked the Head of Human Resources and Services to initiate disciplinary proceedings against the complainant.

On 9 September 2021 the Director General sent a report to the Disciplinary Board, in which he explained, in particular, that the complainant had been charged with forgery and attempted fraud under Article 34 of Rule of Application No. 10 and requested the Board to send him its reasoned opinion on the reality of the facts complained of and, where applicable, as to the penalty that should be imposed. By an email of that same date, the secretary of the Rules and Regulations and Social Dialogue department informed the complainant that disciplinary proceedings were being opened against him and sent him various documents, including the Director General's report to the Disciplinary

Board together with a link to download “all supporting annexes” to that report. The email also stated that the Disciplinary Board, chaired by Mr D., would be meeting on 27 September 2021 and that the complainant could choose to participate by video conference or in person, or to be represented.

On 21 September 2021 the complainant lodged an internal complaint against the decision to initiate disciplinary proceedings against him. Following that internal complaint of 21 September 2021, the complainant filed another complaint before the Tribunal – his third – which is the subject of Judgment 5161, also delivered this day.

By a letter of 25 September 2021, the complainant’s counsel submitted his written observations to the Disciplinary Board. He said that the state of the complainant’s health did not allow him to attend the hearing of 27 September 2021 and that he would not be represented.

In its opinion dated 3 November 2021, the Disciplinary Board unanimously concluded that the complainant had unilaterally modified a medical prescription and that his ophthalmologist’s secretariat had not confirmed his assertion that this had been done with the secretary’s agreement. The Board considered that the complainant should therefore “bear [the] consequences” of this “fault”, “not least in order to deter similar unacceptable conducts in future”. The Board also found that there had been regrettable procedural delays in the administrative investigation and recommended to the Director General that, in the future, this type of investigation, insofar as it concerned allegations of fraud, could be dealt with pursuant to Article 22a of the Staff Regulations. It therefore recommended imposing the disciplinary sanction of a reprimand.

On 13 January 2022 the Director General invited the complainant to a hearing prior to a decision in respect of the disciplinary proceedings. The complainant declined this invitation on 21 January 2022.

By a decision of 17 February 2022, the Director General notified the complainant of his decision not to follow all of the Disciplinary Board’s opinion, because he considered that his conduct warranted a more severe disciplinary sanction, namely a downgrading. On 11 April

2022 the complainant was officially downgraded, with effect from 1 May 2022, to grade AST6, step 3, in other words demoted by one grade within the same function group.

On 20 April 2022 the complainant lodged an internal complaint against the decisions of 17 February and 11 April 2022. On 6 May 2022 he was informed that his internal complaint had been referred to the Joint Committee for Disputes and that he would need to await the Director General's final decision before filing any complaint with the Tribunal. By letter of 9 November 2022, the complainant requested that a decision be taken on his internal complaint. He reiterated this request on 24 May 2023. Then, on 11 December 2023, he filed a complaint directly with the Tribunal, impugning an implied decision dismissing his internal complaint of 20 April 2022. He also asserted that the internal appeal procedure was paralysed.

On 12 January 2023 the Joint Committee for Disputes delivered its opinion on the complainant's internal complaints of 20 April 2022 and 21 September 2021. The Committee unanimously found that the imposition of the disciplinary sanction of downgrading was not properly substantiated and was disproportionate. The Committee therefore recommended that the sanction be cancelled.

On 1 April 2023 the complainant retired.

On 18 September 2024 the Director General informed the complainant of his decision to depart from the opinion of the Joint Committee for Disputes and to reject his internal complaints of 20 April 2022 and 21 September 2021.

In his complaint, the complainant asks the Tribunal to set aside the decisions of 17 February and 11 April 2022 downgrading him, to order Eurocontrol to remove the disciplinary sanction from his personnel file, and to order the Organisation to pay him the difference in salary between grades AST7, step 3, and AST6, step 3, for the period from May 2022 to March 2023 inclusive. He also asks the Tribunal to rule that Mr D., Chairman of the Disciplinary Board, and the Secretary of the Board morally harassed him. He seeks redress for the moral injury which he considers he has suffered and which he assesses as 75,000 euros, as well as 5,000 euros for the delay in dealing with his

internal complaint of 20 April 2022, and the payment of exemplary and punitive damages in the amount of 25,000 euros. Lastly, he seeks the award of 12,000 euros for costs, including 3,000 euros for the internal proceedings.

Eurocontrol asks the Tribunal to dismiss the complaint as partly irreceivable and entirely unfounded.

### CONSIDERATIONS

1. Apart from seeking redress for the moral injury he considers he has suffered and an order for Eurocontrol to pay him exemplary and punitive damages together with costs, the complainant asks the Tribunal to set aside the decisions of 17 February and 11 April 2022 downgrading him, to order Eurocontrol to remove the disciplinary sanction from his personnel file, and to order the Organisation to pay him the difference in salary between grades AST7, step 3, and AST6, step 3, for the period from May 2022 to March 2023 inclusive. He also asks the Tribunal to rule that Mr D., Chairman of the Disciplinary Board, and the Secretary of the Board morally harassed him.

2. In its reply, the Agency asks for this complaint to be joined with the complainant's third complaint. It submits in this regard that the Joint Committee for Disputes dealt with the complainant's internal complaints of 21 September 2021 and 20 April 2022, which led to the filing of his third and fourth complaints before the Tribunal, by way of one single opinion, and that the Director General responded to those two internal complaints in one single decision of 18 September 2024.

Even though the decisions impugned in each of those complaints were examined jointly by the Joint Committee for Disputes and were the subject of one single final decision taken by the Director General on 18 September 2024, the fact is that those complaints rest, to a large extent, on different pleas and also raise specific issues of receivability.

It is therefore not appropriate to grant this request for joinder.

3. Eurocontrol argues that the complaint is irreceivable, because the complainant filed it before the Tribunal even though he had been told that his internal complaint was in the process of being examined and that he therefore had to await the Director General's final decision on his internal complaint. However, in its rejoinder and additional submissions, the Organisation states that it no longer wishes to rely on this objection because a final decision was indeed taken by the Director General on 18 September 2024 and that decision "is incorporated into the complaint".

The Tribunal notes, in any event, that, in accordance with Article 92(2) of the Staff Regulations, in the version applicable in the present case, the complainant should have filed a complaint with the Tribunal within 90 days from the expiry of the four-month period within which the Administration had to respond to his internal complaint lodged on 20 April 2022, notwithstanding the fact that the matter had been referred to the Joint Committee for Disputes. The present complaint should therefore, in principle, be declared irreceivable as time-barred under Article VII, paragraph 2, of the Statute of the Tribunal, combined with Article 92(2) of the Staff Regulations.

However, in the present 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 failed to take into account 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 is deemed to constitute an implied decision rejecting it, which may be impugned before the Tribunal. Accordingly, there is no need to declare the complaint irreceivable as time-barred, insofar as it is directed against an implicit rejection decision by 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.

The Tribunal observes that while the complainant's failure to comply with the 90-day time limit to file a complaint with the Tribunal was recognised 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 eight months that had elapsed between 20 April 2022, when the complainant lodged his internal complaint, and 11 December 2023, 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 allowed 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, in particular, Judgments 4820, considerations 6 and 7, 4660, consideration 2, 4271, consideration 5, 4268, considerations 10 and 11, 4200, consideration 3, 3558, consideration 9, 2039, consideration 4, or 1486, consideration 11). The complaint was therefore receivable at the time it was filed.

The Tribunal notes, in addition, that a final decision was ultimately taken by the Director General on 18 September 2024 and that that decision was issued during the proceedings, as was the opinion of the Joint Committee for Disputes relating thereto. Since the Tribunal has the complete file in its possession and the parties have had the opportunity to comment fully in their written submissions on that decision, it

considers that, in accordance with its consistent case law on the subject, it is appropriate to treat the complaint as also being directed against the latter decision of 18 September 2024 insofar as it concerns the complainant's internal complaint of 20 April 2022 (see in particular, for similar cases, Judgments 4769, consideration 3, 4768, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3).

4. Among the numerous pleas relied on by the complainant in support of his complaint, there is one that is decisive for the outcome of the dispute. This is the plea alleging that a procedural flaw resulted from the infringement of Article 22a of the Staff Regulations and of the Director General's Office Notice No. 30/11 of 7 December 2011 concerning the implementation of that article. This infringement supposedly occurred because the administrative investigation was not carried out by the Examination Committee provided for by Article 22a and established by the aforementioned Office Notice.

5. Eurocontrol replies to this plea that, in this particular case, the basis for launching an administrative investigation was Article 88(2) of the Staff Regulations, meaning that the complainant's reference to Article 22a of the Staff Regulations is "irrelevant", especially given that the referral to the Examination Committee is not compulsory under that article, it being possible to refer the matter directly to the Director General.

6. Article 88(2) of the Staff Regulations provides as follows:

"Where the Director General or the body referred to in paragraph 1 of Article 22a becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations to verify whether such failure has occurred."

Paragraphs 1 and 2 of Article 22a of the Staff Regulations stipulate the following:

"1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Agency, or of conduct relating to the discharge of professional duties which may

constitute a serious failure to comply with the obligations of officials of the Agency shall without delay inform either his immediate superior or the Director General or the body constituted for this purpose direct.

[...]

2. Any official receiving the information referred to in paragraph 1 shall without delay transmit to the body referred to in paragraph 1 above any evidence of which he is aware from which the existence of the irregularities referred to in paragraph 1 may be presumed.

[...]”

By the aforementioned Office Notice No. 30/11, an Examination Committee was created as the body responsible for investigating the wrongdoing referred to in Article 22a of the Staff Regulations. The Office Notice states the following:

**“2. Body to investigate possible wrongdoing as referred to in [Article] 22a [...] of the Staff Regulations [...]**

[...]

2.2 The Examination Committee shall be composed of three members:

- The Agency’s Security Officer (ASO), who will chair the Examination Committee,
- Two officials/servants/contract staff members selected by the ASO from a list of six officials/servants/contract staff members designated to that effect by the Director General further to the consultation of the Staff Committees [...]

[...]

2.3 The Examination Committee shall:

- ultimately receive and register all alleged cases,
- carry out an initial assessment of the alleged cases,
- where appropriate, carry out an administrative investigation into any such alleged case in application of Article 88 of the Staff Regulations [...]

2.4 The Examination Committee shall carry out its activities with complete independence and impartiality.

[...]

3.1 Any official/servant/contract staff member shall, without delay, inform in writing either his/her immediate superior or the Director General, or directly inform the Examination Committee of any possible wrongdoing as foreseen in Article 22a of the Staff Regulations [...] he/she has become

aware of in the course of or in connection with the performance of his/her duties.

Upon receiving information from an official/servant/contract staff member on possible wrongdoing, their immediate superior or the Director General shall immediately transmit all information to the Chair of the Examination Committee.

[...]

**5. Administrative investigation by the Examination Committee**

5.1 The members of the Examination Committee [...] shall analyse, in all independence and impartiality, the allegation in question [...]

[...]

5.2 The Examination Committee shall draw up a final report which shall include the methodology followed, fact-finding including the point of view of the person(s) subject to the allegation, aggravating and/or extenuating circumstances, its conclusions and recommendations, as well as any supporting documentation it deems necessary.

5.3 The expected duration of the administrative investigation should be proportionate to the circumstances, nature and complexity of the case.

5.4 The final report of the Examination Committee shall be transmitted to:  
- the Director General, or to

[...]

The Examination Committee shall also inform the person(s) subject to the allegation of the conclusions of the final report and give the person(s) access to any documents/information related the allegations pertaining to him/her, subject to legitimate interest of third persons.

5.5 The addressee of the final report (i.e. the Director General or [...]) shall decide on any further action to be taken, and inform the Examination Committee thereof.

In case the addressee of the final report decides not to follow the conclusions and recommendations of the Examination Committee, he/she shall substantiate his/her decision.

The Examination Committee shall inform the official/servant/contract staff member who reported possible wrongdoing and the person(s) subject to the allegation of the decision of the final report's addressee."

7. It follows from the provisions cited above that, contrary to Eurocontrol's assertion, any administrative investigation must be carried out by the Examination Committee, even though the decision to launch such an investigation can also be made by the Director General.

Furthermore, again contrary to what Eurocontrol maintains, the reference to Article 22a is entirely relevant in this case, that article being expressly mentioned in Article 88(2) of the Staff Regulations. To uphold Eurocontrol's line of argument would, in any event, amount to recognising the existence of two kinds of administrative investigations within the Agency: one under Article 22a of the Staff Regulations, to which the various safeguards provided for in the aforementioned Office Notice No. 30/11 apply, and the other under Article 88 of the Staff Regulations which does not expressly provide for any safeguards.

It cannot be denied that an administrative investigation carried out by the Examination Committee affords additional safeguards in terms of impartiality, as the Committee consists of not only the Security Officer but also two other members designated after consultation with the Staff Committees. By entrusting the administrative investigation relating to the complainant to the Security Officer alone, Eurocontrol denied the complainant his right to due process and the procedural safeguards provided for under its own rules.

It must therefore be concluded that the administrative investigation carried out in this case was flawed.

8. It follows from the foregoing that the decision of the Director General of 18 September 2024, insofar as it concerns the internal complaint of 20 April 2022, together with the decisions of 17 February and 11 April 2022 downgrading the complainant, must be set aside, without there being any need to rule on the other pleas raised against them in the complaint, nor to order the production of documents requested by the complainant.

The Organisation will be responsible for removing all mention of the withdrawn sanction from his personnel file, as he requests.

9. However, the Tribunal will not grant the compensation claims for the material injury which the complainant considers he suffered as a result of his downgrading.

The complainant himself has admitted that he had falsified the date of the medical prescription submitted in support of his application of 11 October 2018 for the reimbursement of medical expenses so that it read 4 October 2018 instead of 4 October 2017. Under Article 34 of Eurocontrol's Rule of Application No. 10 concerning sickness insurance cover, only medical prescriptions dated within the last six months can be reimbursed. The same article also provides that an attempt to fraudulently obtain reimbursement of benefits may lead to disciplinary action. In the circumstances, the Tribunal considers that the Director General was entitled to conclude beyond all reasonable doubt that the complainant was guilty of attempted fraud and that an administrative investigation carried out by the Examination Committee could not, in any event, have altered that conclusion.

Lastly, the Tribunal considers that, contrary to what the complainant maintains, the disciplinary sanction of downgrading imposed on him was not disproportionate to his misconduct, which constitutes a serious breach of the duty of honesty incumbent on international civil servants (see, for example, Judgment 3953, consideration 14). In that regard, the Tribunal recalls that it accords a high degree of deference to decisions concerning sanctions where the misconduct relates to issues of dishonesty, misrepresentation and a lack of integrity (see also, on this point, Judgments 4749, consideration 10, 4308, consideration 18, and 2699, consideration 15).

10. Nonetheless, Eurocontrol's failure to observe the procedural safeguards laid down in its own rules caused the complainant moral injury, affecting his peace of mind during the investigation procedure. This injury will be fairly redressed by ordering Eurocontrol to pay him 3,000 euros.

11. The complainant also asks the Tribunal to order the Organisation to pay him compensation for the delay in handling his internal complaint.

The Tribunal considers that the period of almost two and a half years that elapsed between the lodging of his internal complaint on 20 April 2022 and the adoption of the Director General's decision on 18 September 2024 dismissing that complaint, is excessive, particularly in view of the nature of the challenged decision, and that the injury caused to the complainant will be fairly redressed by awarding him 1,500 euros.

12. As regards the complainant's allegations that he was morally harassed, the Tribunal recalls that, by Judgments 5161, also delivered this day, and 4765, it dismissed his complaints seeking redress for this alleged harassment. Furthermore, the complainant's claims for the Chairman and the Secretary of the Disciplinary Board to be declared guilty of this harassment amount, in any event, to seeking an injunction that the Tribunal is not competent to pronounce.

13. The complainant requests that the Agency be ordered to pay punitive and exemplary damages.

However, the Tribunal recalls that an award of punitive damages is only warranted in exceptional circumstances (see, in particular, Judgments 4659, consideration 14, 4658, consideration 10, 4506, consideration 10, and 4391, consideration 14), which are not evident in this case.

Furthermore, the Tribunal does not see any reason why Eurocontrol should be ordered to pay exemplary damages, in addition to the damages already awarded above.

These claims will therefore be rejected.

14. As the complainant succeeds in part, he is entitled to costs, which the Tribunal sets at 5,000 euros.

However, he will not be awarded costs for the internal appeal proceedings, which may only be awarded in exceptional circumstances (see, for example, Judgments 5034, consideration 21, 4963, consideration 24, 4819, consideration 23, and 4217, consideration 12), which are not established in the present case.

DECISION

For the above reasons,

1. The Director General's decision of 18 September 2024, insofar as it relates to the complainant's internal complaint of 20 April 2022, as well as the decisions of 17 February and 11 April 2022 downgrading the complainant, are set aside.
2. The Organisation shall pay the complainant a global amount of 4,500 euros in moral damages.
3. It shall also pay him 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 30 October 2025, Mr Patrick Frydman, Vice-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 10 February 2026 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLEMENT GASCON

RENÉ M. VARGAS M.