

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**B. (No. 2)**

**v.**

**Eurocontrol**

**141st Session**

**Judgment No. 5163**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr C. G. B against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 7 March 2023 and corrected on 16 March 2023, Eurocontrol's reply of 14 June 2023, the complainant's rejoinder of 14 August 2023, Eurocontrol's surrejoinder of 17 November 2023, the complainant's further submissions of 8 January 2024 and Eurocontrol's final comments of 15 April 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, as a staff union representative and Vice-President of the Staff Committee, contests the decision to use external suppliers and cancel an ongoing recruitment process for regular staff for the functions thus outsourced.

The complainant, a grade AD11 Administrator, has been a Eurocontrol staff representative since January 2023, when he succeeded Mr Ba. as President of the Eurocontrol section of the European Civil Service Federation (hereinafter "the FFPE trade union"). He thus ceased to perform his operational functions in the control room of the

Eurocontrol Network Management Directorate (DNM, formerly CFMU (Central Flow Management Unit)), a directorate established by Office Notice No. 17/06 of 18 October 2006. All the DNM operational air traffic control and safety functions were regrouped within an “Operations” Division (CSO), and the staff assigned to the restricted access operations room of the Division were subject to special recruitment, training, certification and service conditions.

During the year 2020, a competition was launched to recruit three multi-systems assistants (MSA) for the CSO Division of DNM. Although the competitive process was completed and three candidates were selected, the Director General decided not to appoint them and instead initiated an outsourcing process using private external suppliers to perform part of DNM’s tasks in the operations room responsible for managing air traffic flow.

On 19 October 2020 Mr Ba., in his capacity as President of the FFPE trade union, sent an official letter to the Director General contesting the outsourcing decision. He denounced the failure to comply with the training, certification and periodic validation requirements imposed on regular staff members, the breach of the “single framework”<sup>\*</sup> introduced by aforementioned Office Notice No. 17/06, the creation of two categories of staff performing the same tasks – which amounted to internal discrimination and “social dumping” due to the inferior pay and contractual conditions that could be applied by private suppliers – the liability unfairly imposed on staff members for errors that could be made by external staff, the threat of casualisation of regular jobs and the breach of the Memorandum of Understanding of 16 July 2003 governing relations between Eurocontrol and three representative staff unions, and the lack of consultation with the unions and the Staff Committee. He requested that Eurocontrol Agency abandon outsourcing, proceed with the appointment of the successful candidates in the MSA competition and engage in social dialogue.

---

<sup>\*</sup> Registry’s translation.

By a letter of 27 October 2020, the Director General replied that the use of external suppliers to provide information technology support functions within the CSO Division fell within his managerial remit. He also asserted that this practice did not affect regular staff members' employment conditions and that no social dialogue was therefore required.

On 30 November 2020 Mr Ba. lodged, in his capacities as President of the FFPE trade union and Vice-President of the Staff Committee, a formal internal complaint pursuant to Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency. He requested the setting aside of the decision of 27 October 2020, the immediate cessation of the use of external staff, the immediate appointment of the three successful candidates of the competition, respect for union rights and the award of 50,000 euros in compensation for the moral injury suffered by the FFPE trade union and the Staff Committee.

On 19 January 2021 the Head of the Human Resources and Services Unit acknowledged receipt of the internal complaint. She indicated that it had been forwarded to the Joint Committee for Disputes and would be considered as a matter of priority, while warning of a possible delay due to the COVID-19 pandemic and the lack of staff. She stated that no referral to the Tribunal was receivable until a decision had been made by the Director General.

Between September 2021 and January 2022, Mr Ba. made several attempts to contact the President of the Joint Committee for Disputes, without success. By a letter of 31 January 2022, the Director General confirmed receipt of a new request for a decision but did not act on it.

In April 2022 Mr Ba. retired. By a letter of 26 May 2022, his successor, the complainant, took up the internal complaint as the new President of the FFPE trade union and Vice-President of the Staff Committee.

The Joint Committee for Disputes issued its opinion on 15 June 2022, recommending that the internal complaint be allowed. It considered that the internal complaint lodged on 30 November 2020 by

Mr Ba. was “partially receivable”\*, recognizing his cause of action as President of FFPE Eurocontrol and Vice-President of the Staff Committee in defending the collective interests of staff, while noting that his retirement in April 2022 posed an issue of continuity of mandate. On the substance, it considered that the outsourcing decided by the Director General, concerning certain functions of the CSO service that fell under Article 5(6) of the Service Regulations, was not in conformity with the statutory framework and risked affecting the safety of air navigation, as well as staff members’ working conditions. As a result, it recommended putting an end to this outsourcing and consulting the social partners. On the other hand, it considered that the request to finalise the MSA competition was irreceivable, noting that Mr Ba. could not represent the successful candidates from outside the Agency, and that the request based on alleged discrimination between staff members and external contractors was unfounded, since the latter fell under separate legal regimes.

On 15 December 2022, however, the Director General notified his decision to reject the internal complaint in its entirety. He asserted that the outsourcing of certain information technology support tasks to an external supplier fell within his managerial remit and was not contrary to the Service Regulations, that the “single framework”\* for operational staff provided for in Article 5 of the Service Regulations had not been called into question, that the Memorandum of Understanding of 16 July 2003 was not applicable to service contracts and that the statutory rights of staff members to fair treatment had been respected. That is the impugned decision.

The complainant asks the Tribunal to set aside the decision which put an end to the competitive recruitment of staff members to the CSO service and to order the Agency to resume that process, to order the Agency to stop recruiting external staff through subcontracting and to end all outsourcing of functions, to comply with its own texts as well as the provisions applicable in Belgium (European Directive and European Social Charter), and to ensure a genuine social dialogue with

---

\* Registry’s translation.

the representative staff bodies. He also asks that the Agency be ordered to pay the symbolic sum of 1 euro in moral damages to the FFPE trade union, 3,000 euros to cover the costs associated with the internal appeal that was incorrectly processed, and costs for the present proceedings, estimated at 6,000 euros. In his further submissions of 8 January 2024, the complainant reassessed the moral injury suffered by the FFPE trade union at 25,000 euros and made a claim for “punitive and exemplary”<sup>\*</sup> damages of 25,000 euros.

Eurocontrol asks the Tribunal to reject the complaint as irreceivable and, subsidiarily, as unfounded.

#### CONSIDERATIONS

1. In addition to setting aside the impugned decision of 15 December 2022, the complainant asks the Tribunal to:

- “– order the Agency to stop recruiting external staff through subcontracting and [to] instruct it to comply with the employment conditions for operational staff;
- order the Agency to end all outsourcing of staff;
- order the Agency to comply with its own texts, the texts applicable in Belgium – the European Directive and the European Social Charter – and to respect social dialogue with the representative staff bodies”<sup>\*</sup>.

The Tribunal is not, however, competent to issue injunctions of the kind sought by the complainant against an international organisation (see, for example, Judgments 4769, consideration 10, and 4768, consideration 9).

The claims made in this regard must therefore be dismissed.

2. In support of his claims to set aside the impugned decision, the complainant invokes a breach of the obligation to consult set out in the Memorandum of Understanding of 16 July 2003 governing

---

<sup>\*</sup> Registry’s translation.

relations between Eurocontrol and three representative staff unions. Paragraph 2 of the Memorandum of Understanding states:

“The Director General will consult with the trade union organisations concerned [...] on all general matters connected with the staff and their employment conditions, including working conditions, remuneration and related aspects, before taking a decision or submitting proposals for a decision to the Provisional Council/Permanent Commission.”

The Organisation maintains that, since the contested outsourcing concerned a service contract, it did not affect the working conditions of the operational staff of the Network Management Directorate but solely the management of human resources by the Agency and its effective functioning, matters which fell within the scope of the Director General’s managerial remit.

It argues that, in any event, meetings took place with the trade unions, including a consultation meeting on 25 April 2019, at which the contested outsourcing was discussed. It also asserts that the operational staff of the Network Management Directorate were duly informed of this outsourcing.

3. The Tribunal notes, however, that a single framework was established by the Agency, in particular by adopting Office Notice No. 17/06 of 18 October 2006, for staff assigned to the Operations Division’s restricted access operations room, who were subject, at the material time, to special recruitment, certification and service conditions.

It is clear from the file that, as the complainant rightly points out, the decision to outsource certain jobs within the Division had the effect of significantly altering the functioning of the operations room and amending the employment conditions, in particular the working conditions, of ordinary staff members of the Operations Division.

On this subject, contrary to the Organisation’s assertions, the fact that the outsourcing of services was the result of the conclusion of a service contract does not preclude the need for the decision on proceeding with such outsourcing to be subject to prior consultation with representative staff organisations.

Furthermore, the Tribunal notes that it cannot be considered, on the basis of the documents submitted by the Organisation, that these organisations were regularly consulted on the matter of this outsourcing decision. Indeed, the document provided by the Organisation in support of its surrejoinder and concerning the meeting of the social partners of 25 April 2019 shows only that, at the meeting, the administration had raised the possibility of outsourcing certain basic information technology support functions and does not establish that there was sufficient consultation in that respect. Moreover, the complainant provides evidence, in support of his further submissions, that this possibility was no longer referred to at the consultation meeting of 14 October 2019, at which the minutes of the meeting of 25 April 2019 were approved. Lastly, the fact that operational staff were informed of the outsourcing in question is not, in itself, sufficient to compensate for the lack of appropriate consultation with the trade unions.

4. It follows from the above considerations that paragraph 2 of the Memorandum of Understanding of 16 July 2003 has been breached. The plea based on that breach is, therefore, well founded and is sufficient, on its own, to conclude that the impugned decision of 15 December 2022, as well as the contested decision of 27 October 2020, should be set aside. There is therefore no need to consider the complainant's other pleas concerning these decisions.

5. In respect of the moral injury allegedly suffered by the staff union that he represents, the complainant seeks the symbolic payment of 1 euro. In his further submissions, he increases this amount to 25,000 euros.

However, the Tribunal considers, in any event, that the setting aside of the Director General's decisions of 27 October 2020 and 15 December 2022, for the reasons set out above, is in itself a sufficient remedy for any moral injury conceivably suffered by the staff union that the complainant represents (see, for example, Judgments 4575, consideration 9, and 4551, consideration 16).

6. The complainant also requests the setting aside of the competitive process for “the recruitment of CSO staff”\*, and the resumption of the process “at the point at which it was halted”\*.

The Tribunal considers, nonetheless, that due to the time that has elapsed and taking into account the fact that significant amendments were made to the Service Regulations and various Agency regulations in November 2022, in particular with a view to carrying out an in-depth overhaul of the Network Management Directorate, it is not appropriate to grant this request.

7. In his further submissions, the complainant criticises the Organisation for having tried to mislead the Tribunal by providing documents in support of its surrejoinder that were produced much later and have no connection to the present dispute, which meant that he had to make further submissions. As a result, he claims the exceptional payment of “punitive and exemplary”\* damages of 25,000 euros.

However, this claim, as formulated, must be rejected on the grounds that the costs incurred to produce these further submissions are in fact legal costs and not, in any event, such damages.

8. The complainant requests that the Organisation be ordered to pay 3,000 euros to cover the costs incurred in the internal appeal proceedings.

The Tribunal recalls, however, that, according to its case law, costs for internal appeal proceedings within international organisations may be awarded only under exceptional circumstances (see, for example, Judgments 5034, consideration 21, 5030, consideration 10, 4963, consideration 24, 4962, consideration 26, 4961, consideration 26, 4819, consideration 23, and 4217, consideration 12). Such exceptional circumstances have not been established in the present case.

This claim will therefore be dismissed.

---

\* Registry’s translation.

9. Since the complainant succeeds, he is entitled, however, to the costs he claims in respect of the present proceedings, that is 6,000 euros.

### DECISION

For the above reasons,

1. The decisions of the Director General of 15 November 2022, which rejected the internal complaint lodged on 30 November 2020, and of 27 October 2020 are set aside.
2. Eurocontrol shall pay the complainant 6,000 euros in costs for the proceedings before the Tribunal.
3. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 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.