

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

G.

v.

Eurocontrol

141st Session

Judgment No. 5165

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. G. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 16 May 2022, Eurocontrol's reply of 9 September 2022, the complainant's rejoinder of 15 December 2022, Eurocontrol's surrejoinder of 17 March 2023, the complainant's further submissions of 4 November 2024 and Eurocontrol's final comments of 27 January 2025;

Considering the applications to intervene filed by Ms F. A., Mr P. M., Mr P. Q. and Ms S. Z. on 8 June 2023 and Eurocontrol's comments thereon of 27 October 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 the decision to withdraw her "travelling expenses" pursuant to Office Notice No. 18/20 of 24 July 2020.

The complainant, a French national, has been a staff member of the Eurocontrol Agency, the Organisation's secretariat, since 1 November 1998, employed in Brétigny-sur-Orge (France) and recruited from Toulon (France). Her place of origin was determined as Toulon. This place of origin granted entitlement to the annual reimbursement of travel

expenses (or “travelling expenses” to use the complainant’s expression) for herself and her family, calculated from Brétigny-sur-Orge to Toulon, as well as to supplementary leave for “travelling time”. These benefits were granted on that basis until 30 June 2020.

As part of an administrative reform initiated in 2016 and announced in Office Notice No. 16/18 of 10 December 2018, the Eurocontrol Agency indicated that it was deferring the adoption of new travel expense reimbursement rules pending the outcome of litigation on the matter before the Court of Justice of the European Union (CJEU). After those actions were dismissed on 30 April 2019, the Agency started implementing the new provisions. In Office Notice No. 18/20 of 24 July 2020 amending Rule of Application No. 8 (Articles 3 and 4), travel expenses were withdrawn for officials without expatriate status. In accordance with new Article 4(1), only staff members entitled to the expatriation or foreign residence allowance retained entitlement to an annual flat-rate payment of travel expenses.

The complainant’s travel expenses were withdrawn with effect from 1 July 2020. As a result, her travel expenses were reimbursed only for the first half of 2020, and then completely withdrawn for the subsequent years. The complainant was initially informed of this by her statement of reimbursement dated 1 September 2020.

On 20 October 2020 the complainant lodged an internal complaint under Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency, challenging the application of the new Rule of Application No. 8 and the withdrawal of her entitlement to “travelling expenses”. In a memorandum of 20 October 2020, Eurocontrol’s Head of Human Resources and Services acknowledged receipt of the internal complaint on behalf of the Director General, and she forwarded it to the Joint Committee for Disputes on the same day.

As she did not receive a reaction, the complainant wrote to the Chairman of the Joint Committee for Disputes on 25 September 2021, who replied on 11 October 2021 that the Committee had met on 16 December 2020 but that the opinion was still being drafted. She then referred the matter to the Director General on 1 February 2022.

In the meantime, on 24 January 2022, the Joint Committee for Disputes had issued a single opinion on the internal complaints of a number of Eurocontrol staff members who were in a similar position, including the complainant, but did not forward the opinion to her. The findings in this opinion were divided, with two members considering that the internal complaints were well-founded and two members taking the view that they were not. One member deemed the internal complaints to be unfounded, concluding that Eurocontrol had acted reasonably within its discretion and in line with the European civil service reforms, without breaching any acquired rights. A second member considered the internal complaints to be well-founded, citing a substantial reduction in staff members' rights, discrimination on the grounds of nationality, unlawful retroactivity and absence of individual decisions. A third member acknowledged the loss of benefits but concluded that the reform fell within the Organisation's competence and that the internal complaints should be rejected as unfounded. Lastly, a fourth member identified procedural flaws, recalled the case law on acquired rights, criticised the unfair effects of the reform and concluded that the internal complaints were well-founded, drawing attention to the prohibition of retroactivity.

On 18 February 2022 the Head of Human Resources and Services, acting on behalf of the Director General and by delegation of authority, notified the complainant of the rejection of her internal complaint. The original English version of the opinion of the Joint Committee for Disputes was appended to the final decision. The French translation was sent to the complainant on 11 March 2022, at her request. In the final decision, after noting that "all the members"* of the Joint Committee for Disputes had "reached the conclusion that [the internal complaint] was unfounded"*, the Head of Human Resources and Services stated that she "endorse[d] their position"*. She recalled the broad discretion afforded to international organisations in carrying out reforms and stated that it had been exercised here after consultation with the social partners and unanimous approval by the Permanent Commission. She pointed out that there was no acquired right to the reimbursement of

* Registry's translation.

travel expenses and that, even though it had been granted in the past, this financial benefit could be altered by subsequent rules. According to her, the reform had not changed the criteria for identifying the place of origin, but only the method for calculating travel expenses, which was now based on the capital of the Member State of which the staff member was a national, an approach regarded as fair. As there had not been any breach of procedure, error of law or fact, or misuse of authority, the Head of Human Resources and Services considered the internal complaint to be unfounded. That is the impugned decision.

In her complaint, the complainant asks the Tribunal to set aside the decision of 18 February 2022 and to order Eurocontrol to restore her entitlement to “travelling expenses”. She also claims compensation for the effective withdrawal of her “travelling expenses” from 1 July 2020 and payment of the corresponding sums, together with interest at the rate of 5 per cent per annum for late payment. Lastly, she claims compensation of 40,000 euros for “emotional” injury, 50,000 euros in moral damages and 10,000 euros for the delay in and the handling of her internal complaint, as well as costs, which she quantifies at 7,000 euros.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant seeks the setting aside of the decision of Eurocontrol’s Head of Human Resources and Services of 18 February 2022, taken by delegation of authority from the Director General, as well as an order that Eurocontrol restore her entitlement to travel expenses and compensate her for the material, “emotional” and moral injury she has allegedly suffered as a result, firstly, of the effective withdrawal of these expenses since 1 July 2020 and, secondly, of the delay in handling her internal complaint of 20 October 2020.

The present complaint, which relates to travel expenses, follows an initial complaint by another complainant, Mr R., which concerned travelling time and in which the present complainant had filed an application to intervene. In her written submissions, the complainant repeatedly refers to travelling time and “travelling expenses” as forming part of a whole. Some of the pleas advanced in the complaints, whether relating to travelling time or “travelling expenses”, are similar, if not identical. The first complaint was decided by the Tribunal in Judgment 4593, delivered on 1 February 2023, which dismissed it. On certain points, the Tribunal will refer to this other judgment in order to avoid unnecessary repetition.

2. Eurocontrol requests that the complainant’s complaint be joined with another, Mr R.’s second complaint, to which the complainant objects. In consideration 2 of Judgment 5164 also delivered this day, the Tribunal dismissed this request for joinder.

The Tribunal observes, however, that several pleas are common to both cases and often expressed in identical terms, since the same counsel is acting for the complainants concerned. As was stated in relation to aforementioned Judgment 4593, the Tribunal will refer on some points to Judgment 5164 in order to avoid unnecessary repetition.

3. The Tribunal notes that the complainant is a French national and has been employed by Eurocontrol since 1 November 1998. When she was recruited from Toulon (France), she was assigned to the Brétigny-sur-Orge site (France), in the Paris region. Her place of origin was then determined to be Toulon. She does not hold expatriate status because she does not meet the condition of holding a nationality different from that of the State of her place of employment.

4. Until 30 June 2020, Article 4 of Rule of Application No. 8 concerning reimbursement of expenses, included in Section 3 entitled “Travel expenses”, provided as follows in the version then in force:

“Article 4

1. An official shall be entitled to be paid in each calendar year a sum equivalent to the cost of travel from the place where he is employed to his place of origin as defined in Article 3 for himself and, if he is entitled to the household allowance, for his spouse and dependants within the meaning of Article 2 of the Rule of Application No. 7 concerning remuneration [...]

[...]

2. The flat-rate payment shall be based on an allowance per kilometre of distance between the official’s place of employment and place of recruitment or origin; [...]

5. Moreover, the Implementing Provisions for Rule of Application No. 8 provided as follows regarding the determination of the place of origin:

“Article 1

An official’s place of origin as referred to in Article 3.3 of Rule of Application No. 8 shall be determined or changed by the Director General according to the criteria laid down in these implementing rules.

Article 2

1. When officials take up their duties, their place of origin shall be assumed to be the place from where they are recruited.

Upon express reasoned request, submitted by the official in writing within one year of taking up his duties, and on production of appropriate documentary evidence, his centre of interests shall be determined as his place of origin, if the centre of interests is not the same as the place of recruitment.

2. For the purposes of applying these implementing rules:
 - ‘place of recruitment’ shall mean the place where an official was habitually resident at the time of recruitment. Places of temporary residence, e.g. for the purpose of study, military service, training periods or holidays, shall not be regarded as places of habitual residence;
 - ‘centre of interests’ shall mean the place where an official retains:
 - a) his or her main family ties [...];
 - b) heritable interests constituted by immovable property in the form of buildings;
 - c) essential civic interests, both active and passive.

[...]”

6. On 24 July 2020 Eurocontrol reformed its rules in Office Notice No. 18/20 of the Director General, effective from 1 July 2020, and amended Article 4(1) and (2) of Rule of Application No. 8 as follows, withdrawing travel expenses for officials not entitled to an expatriation or foreign residence allowance:

“Article 4

1. Officials entitled to the expatriation or foreign residence allowance shall be entitled to be paid in each calendar year [...] a flat-rate payment corresponding to the cost of travel from the place of employment to the place of origin as defined in Article 3 for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2 of the Rule of Application No. 7 concerning remuneration.

[...]

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official’s place of employment and his place of origin.

Where the place of origin as defined in Article 3 is outside the territories of the Member States of the Organisation, the flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official’s place of employment and the capital city of the Member State whose nationality he holds. Officials whose place of origin is outside the territories of the Member States of the Organisation and who are not nationals of one of the Member States shall not be entitled to the flat-rate payment.

[...]”

7. With effect from 1 July 2020, the allowance for travel expenses allocated to the complainant, whose place of origin was approximately 670 kilometres from her place of employment and who had previously received reimbursement for these expenses (calculated to be, for example, 412.50 euros for 2019), was thereby halved for 2020 and, subsequently, entirely withdrawn.

8. In her complaint, the complainant puts forward numerous pleas, which the Tribunal considers appropriate to group together in the following order, alleging, firstly, a lack of delegation of authority to the signatory of the impugned decisions of 18 February 2022; secondly, a

breach of the complainant's right to be heard and an inadequate statement of the reasons for the impugned decision and the withdrawal of travel expenses; thirdly, a failure to comply with the procedure regarding consultation of authorised and representative trade unions; fourthly, an unlawful retroactive application of the amendments; fifthly, a breach of the complainant's acquired rights; sixthly, discrimination against her on the grounds of nationality; and seventhly and lastly, an unreasonably long delay in handling her internal complaint.

9. As regards the first four pleas, the complainant's arguments are identical in every respect to the arguments to the same effect on which the Tribunal ruled in considerations 9, 10, 11 and 12 of Judgment 5164, also delivered this day.

The first, second and third pleas are therefore equally unfounded in the present case for the same reasons as those already set out in that other judgment.

However, the fourth plea is well-founded on the grounds set out in consideration 12 of Judgment 5164 and the Tribunal considers that Eurocontrol must accordingly be ordered to reimburse to the complainant, within 30 days of the public delivery of this judgment, 23/183 of the amount of the reimbursement of travel expenses which she received for the first half of 2020 (which, being a leap year, had 366 days), together with interest at the rate of 5 per cent per annum for late payment from 1 September 2020.

10. The fifth and sixth pleas are the complainant's main pleas.

As regards her fifth plea, alleging a breach of what she considers to be her acquired right to reimbursement of her travel expenses, the complainant submits that this was an essential and determining condition of her acceptance of her appointment due to the "significant"* distance between her place of origin and her place of employment. She explains in particular that it allowed her to return regularly to her place

* Registry's translation.

of origin to maintain the family ties and heritable interests which had led to its determination.

11. The Tribunal recalls that, according to its settled case law, the amendment of a rule governing an official's situation to her or his detriment constitutes a breach of an acquired right only when the structure of the contract of appointment is disturbed or there is impairment of a fundamental term of appointment in consideration of which the official accepted appointment, or which subsequently induced her or him to stay on. In order for there to be a breach of an acquired right, the amendment made to the applicable provision must therefore relate to a fundamental and essential term of appointment (see, for example, Judgments 4593, consideration 10, 4398, consideration 10, 4381, considerations 13 and 14, and 3074, consideration 16, and the case law cited therein).

In the present case, for the reasons which will become plain in the considerations below, the Tribunal cannot agree with the complainant's argument that the structure of her contract was so disturbed by the amendment or that the amendment related to such an essential and fundamental term of appointment that she would not have accepted her appointment with Eurocontrol or would not have stayed on.

12. The Tribunal considers, firstly, that a financial benefit consisting merely of an incidental allowance, the amount of which was, all in all, minimal in relation to the complainant's total remuneration, cannot be described as fundamental or essential. By way of illustration, the Tribunal notes in this regard that, according to Eurocontrol's uncontradicted assertions on the matter, in the complainant's case, these travel expenses corresponded to approximately 1/220 of her total remuneration.

The Tribunal recalls that, in Judgment 4593 concerning travelling time, it had found, among the considerations that led to the dismissal of the plea relating to acquired rights, that a 3 per cent change in the complainant's working time without any reduction in her overall remuneration could not be regarded as having disturbed the structure of

her contract of appointment. With regard to the travel expenses relevant to this case, the impact is *mutatis mutandis* much less serious.

13. The Tribunal further points out that, according to settled case law cited in particular in Judgment 4028, consideration 13, it is recognised that “international organisations’ staff members are not entitled to have all the conditions of employment or retirement laid down in the provisions of the staff rules and regulations in force at the time of their recruitment applied to them throughout their career and retirement. Most of those conditions can be altered during or after an employment relationship as a result of amendments to those provisions (see also Judgment 3876, [consideration] 7).”

However, as Eurocontrol rightly observes in its written submissions, travel expenses are an incidental element of the complainant’s remuneration and merely constitute a reimbursement of expenses, the conditions for which are laid down by a rule of application of the Director General, who may amend the arrangements therefor. This reimbursement is one of a number of benefits that are subject to constant change in the light of the economic situation and which staff cannot reasonably expect to remain unchanged throughout their careers.

In that regard, it is clear from the rest of the evidence in file that the Agency adopted amendments to the conditions for reimbursing travel expenses with the aim of increasing transparency, simplifying reimbursement procedures and improving the Organisation’s financial situation, all of which fall within an administration’s normal prerogatives.

14. Furthermore, although the complainant stated in her written submissions that “[t]he travelling expenses provided for in the rules in force were an essential and decisive condition for [her] given the significant distance between her place of origin and her posting, as they enabled her to travel to Var at least once a year [...]”*, it must be noted that the distance was in fact less than 700 kilometres. This categorical

* Registry’s translation.

and unqualified assertion, which is, moreover, identical to that of other complainants for whom the distance concerned was much greater, appears surprising in the circumstances of the case and is not liable to strengthen the credibility of the argument.

In these conditions, the Tribunal considers that it would be wrong to conclude, as the complainant invites it to do, that “[f]rom an examination of the complainant’s situation, it is clear that the award of Travelling Expenses was a decisive factor when she was recruited [...]”*. The burden of proof on this point rests with the complainant (see Judgment 4381, consideration 30), and she fails to establish the grounds for this assertion.

The fifth plea must therefore be dismissed.

15. With regard to the sixth plea, concerning the unlawfulness of the impugned decision on the ground that the withdrawal of the complainant’s travel expenses discriminated against her because it was based on nationality, the Tribunal notes first of all, as it has already observed in Judgment 4593, consideration 11, concerning travelling time, that the decisive criterion used by Eurocontrol for reimbursing travelling time, namely eligibility for the expatriation or foreign residence allowance, is relevant to the purpose of travel expenses, as it concerns the distinction made between a staff member’s country of origin and her or his place of employment.

Moreover, as stated in Judgment 4593 in the same consideration, the complainant’s central argument on this point, that use of this new criterion results in discrimination based on nationality, is in any event ineffective in the present dispute because the objection is not directed against the conditions for the award of expatriation or foreign residence allowances, to which the complainant acknowledges she is not eligible.

In addition, it must be found that the complainant is not treated less favourably than other staff members who are not entitled to reimbursement of travel expenses because they are not entitled to an

* Registry’s translation.

expatriation or foreign residence allowance. This rule is the same for all Eurocontrol staff members, regardless of nationality or distance from their place of origin, and the complainant is in the same position as any non-expatriate staff member. Moreover, the complainant has not provided evidence which proves that the withdrawal of reimbursement of her travel expenses created discrimination or inequality between herself and other Eurocontrol staff in a like situation (see, for example, Judgments 4073, consideration 11, 4067, consideration 10, and 3868, consideration 6). There are no specific and proven facts to establish the reality of the alleged discrimination.

16. In her further submissions, the complainant raises another argument in support of her plea alleging a breach of the principle of non-discrimination on the grounds of nationality. Since the Agency stated, *inter alia*, in Office Notice No. 18/20 of 24 July 2020 that it undertook to apply the contested amendments to the rules only on the condition that the CJEU dismissed the actions brought by European Union officials concerning a similar reform of their travel expenses, the complainant submits that the Tribunal should apply to her the findings of a CJEU judgment of 18 April 2024, which held that the plea was well-founded.

This argument must be dismissed for two reasons.

Firstly, as the Tribunal recalled in Judgment 4593, consideration 9, on travelling time, on that occasion in response to arguments put forward by Eurocontrol, it is established that the Tribunal is not bound by the case law of other international or regional courts (see, for example, Judgments 4493, consideration 10, 4363, consideration 12, and 4167, consideration 7). Secondly, and in any event, as the Agency rightly notes in its written submissions, the complainant's situation is markedly different from that in the CJEU judgment she refers to, where the officials in question received an expatriation or foreign residence allowance and where the provision at issue was partly analogous to the second subparagraph of Article 4(2) of Rule of Application No. 8, on which the complainant does not rely in the present case.

The sixth plea is therefore entirely unfounded.

17. As regards the complainant's seventh and final plea, which seeks compensation for the delay in dealing with her internal complaint, the Tribunal notes that the complainant's situation in this regard is identical in every respect to that of the complainant in aforementioned Judgment 5164. The seventh plea must therefore be dismissed on the same grounds as those set out in consideration 20 of that judgment.

18. It follows from the foregoing that only the complainant's fourth plea, relating to the limited unlawful retroactive effect of the withdrawal of entitlement to reimbursement of travel expenses, is well-founded. As already stated in consideration 9 above, the claim for compensation for the material injury caused to the complainant by that unlawful retroactive effect is also well-founded. However, the complainant does not establish the nature of the so-called "emotional" injury or of the moral injury that she alleges in connection with this breach.

Since the Tribunal considers that all the complainant's pleas other than the fourth are unfounded, it follows that her claims for compensation for the material, "emotional" or moral injury which may result must also be dismissed.

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

20. Lastly, four staff members who consider themselves to be in a legal and factual situation similar to that of the complainant have filed applications to intervene in her complaint. Since the Agency acknowledged in its comments on these applications that these four staff members were indeed in legal and factual situations similar to that of the complainant, these applications to intervene should be allowed. Consequently, compensation for the material injury caused by the unlawful retroactive effect of the withdrawal of entitlement to reimbursement of travel expenses, as explained in consideration 9 above, will also be awarded to each of the interveners.

DECISION

For the above reasons,

1. The impugned decision of 18 February 2022 is set aside insofar as it concerned the period from 1 to 23 July 2020.
2. Eurocontrol shall pay the complainant and each of the interveners material damages, together with interest, as set out in consideration 9, above.
3. The Organisation shall also pay the complainant 5,000 euros in costs.
4. All other claims in the complaint and the applications to intervene are dismissed.

In witness of this judgment, adopted on 7 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.