

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**R. (No. 3)**

**v.**

**Eurocontrol**

**141st Session**

**Judgment No. 5166**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr J.-P. R. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 1 September 2022, Eurocontrol's reply of 21 December 2022, the complainant's rejoinder of 23 March 2023 and Eurocontrol's surrejoinder of 14 June 2023;

Considering the application to intervene filed by Ms T. R. on 13 July 2023 and Eurocontrol's observations thereon of 20 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 cancel the promotion exercise for 2020.

The complainant joined the Eurocontrol Agency, the Organisation's secretariat, in 1991 as an expert, at grade A7, at the Experimental Centre in Brétigny-sur-Orge (France). He was promoted to grade A6 in 1997, and in 2001 to grade A5, a grade which was renamed AD11 from 1 July 2010.

On 2 February 2020 the Eurocontrol Agency published a guideline for the annual promotion exercise for 2020, for which a budget of 500,000 euros had been approved, as well as a list of staff members eligible for promotion, which included the complainant.

However, in Office Notice No. 19/20, published on 28 July 2020, the Director General announced his decision to cancel the promotion exercise for 2020 because of the financial crisis caused by the Covid-19 pandemic. In particular, he stated that the Agency was facing major financial difficulties in 2020 as a result of the pandemic and its impact on the aviation sector, which had plunged it into “unprecedented financial distress”. The Director General added that some Member States had withheld part of their contributions and that others had already announced that they would probably not be in a position to pay them. Consequently, he had presented the Organisation’s Provisional Council with a package of financial measures designed to reduce Member States’ contributions, including cancelling the abovementioned promotion exercise.

On 21 September 2020 the complainant lodged an internal complaint with the Director General against the cancellation of the promotion exercise for 2020.

By a letter of 22 September 2020, Eurocontrol’s Head of Human Resources and Services acknowledged receipt of the internal complaint and informed the complainant that it had been forwarded to the Joint Committee for Disputes. After advising him that there could be a moderate delay in dealing with it due to the Covid-19 pandemic, she also stated that he should await the Director General’s final decision before filing a complaint with the Tribunal.

The Joint Committee for Disputes met on 19 November 2020 and issued its report on 6 December 2021. The report dealt with the complainant’s internal complaint, as well as that lodged by another staff member, Ms R. – also an intervener in the present case – which similarly challenged aforementioned Office Notice No. 19/20. The Committee unanimously found the internal complaints receivable. On the merits, two members of the Committee recommended that the complaints be rejected, considering, in particular, that, under the

Tribunal's case law, staff members were not entitled to promotion and that the cancellation of the promotion exercise was duly justified by exceptional circumstances associated with the Covid-19 pandemic. However, the other two members of the Committee concluded that the complaints were well-founded. They considered inter alia that the Director General's financial grounds for cancelling the promotion exercise were unsound as the budget to finance promotions and step and grade advancements in 2020 had been approved by the Member States in 2019. They also pointed out that the Agency had not provided any evidence to establish that the Member States would not pay their budget contributions. These two members also observed that the Director General's decision had been adopted in breach of Article 45 of the Staff Regulations governing officials of the Agency and Rule of Application No. 4 concerning the procedure for grade promotion of officials.

By a memorandum of 20 June 2022, the Head of Human Resources and Services informed the complainant of the decision, taken by delegation of authority from the Director General, to reject his internal complaint as irreceivable, thereby departing from the recommendation of the Joint Committee for Disputes concerning its receivability, on the grounds that the contested Office Notice No. 19/20 "[could] not be regarded as a decision [...] adversely affecting [the complainant]"\*. With regard to the merits of the internal complaint, she noted that the Director General had decided, "in the legitimate exercise of his discretionary power"\* to cancel a promotion exercise, as recognised by the Tribunal in Judgments 3279 and 3280, which concerned a similar issue, to cancel the promotion exercise for 2020 "due to the serious financial constraints resulting from [Covid]-19"\*. She also stated that there was no automatic entitlement to promotion, which "[was] contingent, inter alia, on budgetary constraints, which was indisputably the case for the year in question"\*. Consequently, the complainant's internal complaint was also rejected as unfounded. That is the impugned decision.

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\* Registry's translation.

In the present complaint, the complainant asks the Tribunal to set aside the decision of 20 June 2022. He claims compensation of 30,000 euros for the loss of opportunity to obtain a promotion, compensation of 7,000 euros for “the delay in and obstruction of his internal complaint”\*, as well as compensation of 30,000 euros for the moral injury he considers he has suffered, and punitive and exemplary damages, which he quantifies at 5,000 euros. Lastly, he seeks costs in the amount of 7,000 euros.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded.

#### CONSIDERATIONS

1. Besides claiming compensation, the complainant seeks the setting aside of the decision of 20 June 2022 of the Head of Human Resources and Services, acting by delegation of authority from the Director General, to reject his internal complaint against the Director General’s decision of 28 July 2020 to cancel the annual promotion exercise for 2020.

2. First of all, the Tribunal observes that the complainant challenges the lawfulness of the procedure followed before the Joint Committee for Disputes. Among the various pleas he puts forward in this regard, there is one that is decisive in deciding whether to set aside the decision of 20 June 2022 rejecting his internal complaint.

3. The plea alleges that the adversarial principle was not observed during the internal appeal procedure, as the Agency had provided the Joint Committee for Disputes with documents intended to demonstrate the Organisation’s budgetary difficulties but which were not provided to him.

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\* Registry’s translation.

4. In this regard, the Tribunal recalls its established case law that failure to disclose to staff members the documents produced by an organisation before the internal appeal body constitutes a breach of the adversarial principle. 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 this effect, Judgments 5034, considerations 17 and 18, and 4961, consideration 13).

5. The Tribunal notes that, in its written submissions, the Organisation does not dispute that it failed to provide the complainant with the documents in question during the internal procedure. It merely submits that the complainant could consult these documents on the Organisation's intranet site, where they appeared, and that in any case they were communicated to him during the present proceedings.

However, the Tribunal considers that this last circumstance is not sufficient to remedy the failure to communicate the documents in question during the internal procedure. While it can be accepted in some cases that the non-disclosure of evidence can be subsequently remedied, including in proceedings before the Tribunal (see, for example, Judgments 4313, consideration 5, 4217, consideration 4, and 3117, consideration 11), that is not the case where the document in question is of vital importance having regard to the subject-matter of the dispute, as is the case here (see Judgments 4961, consideration 10, 4820, consideration 11, 4217, consideration 4, 3995, consideration 5, 3831, considerations 16, 17 and 29, and 3490, consideration 33).

Similarly, the fact that the complainant could have consulted these documents on the Organisation's intranet site does not make up for the fact that they were not communicated during the internal appeal proceedings.

6. As the impugned decision of 20 June 2022 was thus taken in the light of an opinion that was not delivered by the Joint Committee for Disputes in compliance with the applicable rules, it is likewise unlawful. It follows that the decision must be set aside, without there

being any need to rule on the complainant's other pleas criticising the opinion of the Joint Committee for Disputes.

7. In the circumstances of the case, the Tribunal considers that, in view of the time that has elapsed since the events in question and the fact that it has before it all the evidence enabling it to examine the lawfulness of the decision to cancel the promotion exercise for 2020, it is unnecessary to refer the case back to the Joint Committee for Disputes for a fresh examination of the complainant's internal complaint.

8. However, the procedural flaw identified above entitles the complainant to compensation for the moral injury caused to him by the breach of his right of appeal. The Tribunal considers that this injury will be fairly redressed by awarding him moral damages of 2,000 euros.

9. As regards the complainant's pleas against the decision to cancel the promotion exercise for 2020, he firstly submits that a right to an annual promotion exercise is derived from Article 45 of the Staff Regulations, in the version applicable in 2020, Rule of Application No. 4 concerning the procedure for grade promotion of officials provided for in Article 45 of the Staff Regulations, also in the version applicable in 2020, and the general principle of the right to a career enjoyed by all international civil servants. In his view, it follows that the annual promotion exercise for 2020 could not be cancelled by means of a mere office notice of the Director General, namely Office Notice No. 19/20 of 28 July 2020.

10. The Tribunal notes that the following provisions of the Staff Regulations and the Rules of Application must be taken into consideration in the circumstances of this case.

Under the first paragraph of Article 45 of the Staff Regulations, "[p]romotion shall be by decision of the Director General subject to availability of budgetary funds", while the seventh paragraph of the same Article provides that "[a] Rule of Application of the Director General shall lay down the criteria and processes applicable for promotion".

The Agency's Director General adopted abovementioned Rule of Application No. 4 pursuant to that seventh paragraph. Article 2 of the Rule confirms that the power to award promotions is vested in the Director General, while the first subparagraph of Article 4(1) requires the Director General to provide Directors and Heads of Service with guidelines regarding the portion of budgetary appropriations allocated to promotions each year.

It should also be recalled that, under the first paragraph of Article 100 of the Staff Regulations, "[t]he general provisions for giving effect to these Staff Regulations shall be determined by Rules of Application, implementing rules and office notices of the Director General, who, in the case of Rules of Application, shall notify the Provisional Council".

Lastly, account must be taken of the Agency's Financial Regulations, in the version applicable since February 2015, which afford the Director General some discretion when implementing a budget that has been approved beforehand by the Organisation's decision-making bodies.

11. In Judgments 3280 and 3279, the Tribunal has already ruled on the cancellation of a promotion exercise within Eurocontrol.

In Judgment 3280, consideration 7, it held as follows:

"7. The Tribunal must allow the Director General a wide margin of discretion not only when determining the merits of an official eligible for promotion to a higher grade in the function group to which he or she belongs, but also when assessing whether available budgetary resources permit such promotion. The question in the instant case is, however, whether in view of the financial situation of Eurocontrol, which had been worsened by a pay rise granted after the adoption of the budget, the Director General, with the Board's support, could simply cancel a duly approved budget appropriation and, in consequence thereof, do away with the promotion round for 2010.

The sweeping nature of such a measure is debatable. It was unprecedented at Eurocontrol and no provision is made for it in the abovementioned Staff Regulations, which require the holding of an annual promotion round and do not contemplate the possibility of deferring that round for one or more years. The purpose of those provisions is to ensure that each official has some prospect of advancement, in other words he or

she may legitimately hope to move up to a higher position one day; to that end it is necessary to examine his or her situation at regular intervals.

However, although it is debatable in principle, the general postponement of a promotion round cannot be ruled out completely when Eurocontrol's financial situation requires it in exceptional circumstances. The explanations furnished by Eurocontrol, the verisimilitude of which the Tribunal does not doubt, show that such circumstances existed in the instant case. Eurocontrol decided to postpone the promotion round for 2010 only after objectively analysing those circumstances and informing the staff, shortly after the adoption of the budget, that such a postponement might occur. It was restricted to one year and the announcement thereof was accompanied by the assurance that a compensatory round comprising promotions, early step advancement and financial bonuses would be held the following year, the year when the complainant obtained the desired promotion. [...]

In view of the foregoing, it must be found that the impugned decision does not breach the principle of *patere legem quam ipse fecisti* or the complainant's acquired rights which comprise the right to have her merits examined regularly with a view to promotion, but not the right to promotion at a given date irrespective of all the circumstances."

The Tribunal also held as follows in Judgment 3279, consideration 8:

"There was no violation of Rule of Application No. 4 in this case as that Rule is secondary to Article 45 which governs whether or not a promotion round will be held. The Director General decided in a proper execution of his discretionary power, that due to budgetary constraints, there would be no promotion round for 2010. As such, there was no need for Rule of Application No. 4 to be activated as there was no promotion process to regulate."

12. The Tribunal sees no reason to depart in the present case from the principles it adopted in aforementioned Judgments 3280 and 3279.

It should also be emphasised that the lawfulness of a decision must be assessed on the basis of the legal and factual circumstances that existed when the decision was made. The lawfulness of a decision to cancel an annual promotion exercise must therefore be assessed solely on the basis of the grounds on which it was justified, and not the grounds that may have been used to support a subsequent decision to cancel a later promotion exercise. Consequently, no consideration will be given to the arguments put forward by the complainant in support of

this plea and that refer to subsequent decisions to cancel the promotion exercises for 2021 and 2022.

13. In view of the foregoing considerations, the Tribunal observes that neither Article 45 of the Staff Regulations, nor Rule of Application No. 4, nor the fact that an appropriation for promotions had been made in the approved budget for 2020 preclude the Director General from deciding to cancel the usual promotion exercise on account of Eurocontrol's financial difficulties during the financial year in question, as part of his responsibility for implementing the budget and ensuring the smooth running of the Organisation.

It follows that the complainant's plea must be dismissed insofar as it is based both on a breach of Rule of Application No. 4 and the Director General's failure to comply with the budget approved beforehand for 2020.

14. The only question which therefore arises is whether, in the legitimate exercise of his discretionary power and in the light of both Article 45 of the Staff Regulations and the general principle of the right to a career, the Director General could decide that, due to unexpected budgetary constraints, there would be no promotion exercise in 2020.

In this regard, the Tribunal notes in the first place that, in the guideline published on 2 February 2020, the Director General had planned to award promotions in 2020 in accordance with the budgetary credits approved beforehand for that purpose. However, as a result of the Covid-19 pandemic and the worldwide travel ban, Eurocontrol's accounts showed a temporary budget deficit due to Member States' failure to pay their contributions on time, as well as to severe flight restrictions introduced to deal with the pandemic, which also led to a reduction in route charges invoiced to airlines on Member States' behalf. The evidence filed by the Organisation clearly shows that this situation caused significant financial difficulties for the Member States, the airlines and the Agency's own budget, which also led to discussions with the Member States. In the circumstances, it is quite understandable that the Director General, who was responsible for the proper

implementation of the budget in the difficult financial situation described above and for the sound management of the Organisation's resources, proposed various types of cost containment measures in 2020. In that regard, the Tribunal cannot agree with the complainant's assertion that the Director General prioritised the interests of States and airlines over those of Eurocontrol staff. On the contrary, the Director General aimed to spread budgetary efforts among all stakeholders in the airline industry in the aftermath of the Covid-19 pandemic. It should also be noted that, at its meeting of 18 June 2020, the Organisation's Provisional Council expressly acknowledged the urgent need to limit the cost base in the 2020 financial year, in order to take account of the economic situation.

In view of the aforementioned case law, the considerations set out above, the arguments exchanged by the parties and the evidence they have filed, the Tribunal finds that the Director General did not exceed the limits of his discretion in deciding to cancel the promotion exercise for 2020 for purely financial reasons, namely Eurocontrol's budgetary situation resulting from the exceptional circumstances associated with the Covid-19 pandemic. There was therefore no breach of either Article 45 of the Staff Regulations or the general principle of the right to a career of all international civil servants.

Moreover, the Director General was legally entitled to take this decision by means of an office notice as provided for in Article 100 of the Staff Regulations, provided that he did not deviate from the Staff Regulations or aforementioned Rule of Application No. 4 when so doing.

15. It follows from the foregoing considerations that the plea is unfounded.

16. Next, the complainant submits that the contested decision was unlawful because the representative trade unions had not been consulted prior to its adoption, as required by the Memorandum of Understanding of 16 July 2003.

The Tribunal notes that, pursuant to paragraph 2 of the Memorandum of Understanding of 16 July 2003 governing relations between Eurocontrol and three representative trade unions, “[t]he 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”. It should also be recalled that the Tribunal has stated that signing an agreement similar in nature to the Memorandum of Understanding of 16 July 2003 – specifically, the Agreement on consultation, conciliation and arbitration between Eurocontrol and the trade unions of 9 January 1992 – “[put Eurocontrol] under obligations in law”, that “a member of its staff may plead such obligations in a complaint to the Tribunal”, and that “the Tribunal will review compliance with the letter and spirit of [such an] agreement” (see Judgments 1369, consideration 16, and 1712, consideration 17).

17. In this case, however, it appears that the trade unions representing staff were consulted before Office Notice No. 19/20 of 28 July 2020 was adopted. The evidence filed by the Organisation shows that these trade unions were informed of the Director General’s intention to adopt cost containment measures in response to the Covid-19 pandemic, in particular at consultation meetings held on 28 and 29 May 2020 and on 8 and 10 June 2020. Similarly, after the meeting of the Organisation’s Provisional Council of 18 June 2020, at which it was reported that negotiations with trade unions had failed, the Director General informed staff his decision that, following further consultation with the trade unions, he would proceed with the cancellation of the promotion exercise for 2020, which was thus formalised by Office Notice No. 19/20 of 28 July 2020.

In his rejoinder, the complainant no longer disputes the fact that the representative trade unions were consulted on the planned decision to cancel the annual promotion exercise for 2020, but instead alleges that this consultation was not carried out properly. He submits that the Director General was present only at the consultation meeting of

28 May 2020; that a single consultation meeting was organised, which was entirely devoted to a presentation on the proposed cancellation of the annual promotion exercise, although there should have been three meetings according to normal practice; that the second and third meetings referred to by the Organisation were not announced as such; and that genuine consultation, as required by the Memorandum of 16 July 2003, did not therefore take place.

But the Tribunal notes, firstly, that nothing in the Memorandum of 16 July 2003 prohibits the Director General from appointing a representative to attend a consultation meeting with the representative trade unions, provided that it is he who adopts the general decisions submitted to trade union consultation. That was what happened in this case.

Secondly, although the Memorandum of Understanding of 16 July 2003 lays down a general duty to consult the representative trade unions, it does not state specifically how this consultation should be carried out in practice. In the present case, the Tribunal considers that the cost containment measure of cancelling an annual promotion exercise was in fact submitted to the representative trade unions and that the consultation process was lawfully conducted, even if no agreement was ultimately reached between the Director General and these organisations.

Thirdly, the complainant's assertion that the Director General was expressly asked by the Provisional Council to restart the normal trade union consultation process in respect of the cancellation of the promotion exercise for 2020 is not borne out by the evidence in the file. On the contrary, the evidence shows that the Provisional Council's recommendation did not relate to the decision to cancel the annual promotion exercise, but to all the cost containment measures which the Director General had presented to the Provisional Council and which had a direct impact on staff remuneration. The Tribunal notes that most of these measures, which did not concern the decision to cancel the annual promotion exercise for 2020, were either simply abandoned or at least postponed.

18. It follows from considerations 16 and 17 above that this plea is also unfounded.

19. The complainant submits that the Director General's Office Notice No. 19/20 of 28 July 2020 is unlawful because, in breach of the first paragraph of Article 100 of the Staff Regulations, the Provisional Council was not informed of its adoption.

But the paragraph in question only lays down this duty to provide information with regard to rules of application, and not office notices.

The plea must therefore be dismissed.

20. In the complainant's view, the cancellation of the promotion exercise for 2020 breaches an acquired right derived from Article 45 of the Staff Regulations "and/or"\* from the general principle of every international civil servant's right to a career.

However, as recalled in consideration 11 above, this question has already been examined by the Tribunal concerning Eurocontrol, and the Tribunal has expressly considered, in particular with regard to Article 45 of the Staff Regulations, that the decision to postpone an annual promotion exercise, taken in exceptional circumstances, could not be regarded as a breach of the acquired rights of officials, which concern their "right to have [their] merits examined regularly with a view to promotion, but not the right to promotion at a given date irrespective of all the circumstances [at the time]" (see Judgment 3280, consideration 7).

The Tribunal sees no reason to depart from this case law in the present case and the plea will accordingly be dismissed.

21. It follows from the foregoing considerations that the claim seeking to have Office Notice No. 19/20 of 28 July 2020 set aside, as well as the claims for damages for material and moral injury based on the alleged unlawfulness of the Office Notice, must be dismissed.

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\* Registry's translation.

22. Lastly, the complainant criticises the length of time taken to examine his internal appeal.

In this regard, he considers firstly that the 21 months taken to reach a decision on his internal complaint was tantamount to a refusal to address it, which justifies setting aside the decision of 20 June 2022.

The Tribunal notes, first of all, that the decision of 20 June 2022 is set aside for the reasons stated above. In any event, according to the Tribunal's settled case law, an unreasonable delay in reaching a decision on an internal appeal does not in itself render the contested decision unlawful, but is at most liable to give rise to compensation for the injury suffered by the staff member concerned (see, in particular, Judgments 5056, consideration 5, 4947, consideration 17, 4904, consideration 13, and 4818, consideration 26).

This plea must therefore also be dismissed.

23. The complainant also claims compensation of 7,000 euros for the moral injury suffered as a result of the allegedly unreasonable amount of time taken to deal with his internal complaint.

However, the Tribunal recalls that an unreasonable delay in examining an internal appeal is not sufficient, in any event, to justify an award of moral damages, since the complainant must also articulate the adverse effects which the delay has caused (see Judgments 4988, consideration 14, and 4563, consideration 14), it being understood that the burden of proof in that regard lies with her or him (see Judgments 4891, consideration 17, 4556, consideration 12, and 4158, consideration 4).

In the present case, the complainant has not provided any tangible evidence of the moral injury caused to him by the delay in reaching a decision on his internal complaint.

This claim will therefore be dismissed.

24. The complainant also asks that the Organisation be ordered to pay 5,000 euros in punitive damages. However, the Tribunal recalls that, according to consistent precedent, an award of punitive damages

is only warranted in exceptional circumstances (see, in particular, Judgments 4820, consideration 22, 4659, consideration 14, 4658, consideration 10, 4506, consideration 10, and 4391, consideration 14), and considers that such circumstances are not evident in this case.

This claim will therefore also be dismissed.

25. As the complainant succeeds to the extent set out in considerations 2 to 8 above, he is entitled to costs, which the Tribunal sets at 5,000 euros.

26. The official who has filed an application to intervene also lodged an internal complaint which was examined together with that of the complainant by the Joint Committee for Disputes. In the circumstances, the Tribunal considers that the order made in consideration 8 above should be extended to her. However, the remainder of the application to intervene must be dismissed, including the claim for costs, as the intervener is not a party to the proceedings.

#### DECISION

For the above reasons,

1. The impugned decision of 20 June 2022 is set aside.
2. Eurocontrol shall pay the complainant and the intervener moral damages of 2,000 euros each.
3. The Organisation shall pay the complainant 5,000 euros in costs.
4. All other claims in the complaint and the application to intervene 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.