

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A. (No. 6)

v.

Eurocontrol

141st Session

Judgment No. 5167

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr I. A. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 5 August 2020 and corrected on 15 August 2020, Eurocontrol's reply of 13 November 2020, the complainant's rejoinder of 14 December 2020, Eurocontrol's surrejoinder of 25 January 2021, Eurocontrol's additional submissions of 14 July 2025, the complainant's comments of 25 July 2025 and Eurocontrol's final comments thereon of 30 July 2025;

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 new calculation of his pension entitlements following the implementation of reduction coefficients compensating for salary increases.

The complainant was a staff member at the Maastricht Upper Area Control Centre (MUAC) from 16 January 1998 to 1 June 2016, the date of his retirement. The initial monthly basic pension he started receiving from then was calculated as 36.66667 per cent of his final basic salary at grade 7, step 3, of his post in Function Group O (salary scale of July

2015). This calculation was based on his years of service, under Article 77 of the General Conditions of Employment (GCE). According to the method for adjusting and updating remunerations, as provided for in Articles 64, 65, 82 and Annex VII of the GCE, annual updates to his pension were to follow.

On 28 June 2019, the GCE were amended following Office Notice No. 10/19, putting in place a 7 per cent salary increase effective 1 July 2019 and a further 3.5 per cent from 1 July 2020, for active staff in Function Group O at the MUAC (due to an increase in working time for air traffic controllers). A new Annex XIII was also added to the GCE, applying a reduction coefficient to pensions for retirees prior to 1 July 2019, to compensate for this salary increase and bring pensions down to the right level. As a result, from 1 July 2019 to 30 June 2020, pensions based on updated salaries would be multiplied by 93.4582 per cent, and from 1 July 2020 onwards, they would be multiplied by 90.4980 per cent. According to the complainant, Office Notice No. 10/19 was not published on the extranet, and, as a result, he was not informed of these amendments.

On 29 January 2020, Office Notice No. 02/20 informed staff of the increase in their basic salary by 2 per cent as of 1 July 2019 in accordance with the method for updating remunerations and pensions adopted by the Permanent Commission. The calculation method combined increases in purchasing power of civil servants from Member States and inflation rates based on national weighted indexes, coupled in some cases with the local cost-of-living trends, to produce an increase or decrease in salaries and pensions.

On 27 February 2020, the complainant received his pension including back payments from 1 July 2019 to 31 January 2020, on which the new salary increases and pension coefficients of these two office notices were applied, slightly increasing the amount of his pension from June 2019 to February 2020, but less than the salary increase of active staff, as the 93.4582 per cent coefficient had been applied.

In parallel with several exchanges of emails with the Administration regarding this issue, the complainant submitted an internal complaint to the Director General on 5 March 2020, requesting reinstatement of his

pension based on the previous scale, determined at the end of his service.

On 18 May 2020, the Head of Human Resources and Agency Services (HRS) replied, asserting that his pension had not been negatively affected, and that the adjustments implemented by Office Notices Nos. 10/19 and 02/20 had been applied properly. This is the impugned decision.

The complainant asks the Tribunal to declare void Part 4 of Annex XIII of the GCE. He seeks a correction of his remuneration from 1 July 2019, to be paid in accordance with the scale comprised in Annex III.b to the GCE. Lastly, he requests to be awarded costs.

Eurocontrol asks the Tribunal to dismiss the complaint as irreceivable, or in any event, unfounded in its entirety.

On 22 September 2020, the matter was referred by Eurocontrol to the Joint Committee for Disputes after the filing of this complaint with the Tribunal.

On 6 December 2021, the Joint Committee for Disputes issued its report, in which it unanimously recommended to reject the appeal as unfounded, after finding the complaint receivable by a majority despite one member questioning the delay in filing. The dissenting member argued that the complaint should be irreceivable due to the complainant's delay in contesting the changes visible on his payslip, suggesting this undermined the timeliness requirement. Regarding the merits, according to the Joint Committee, the complainant misunderstood the pension calculations following salary changes, and, specifically, the application of a new coefficient that was not visible on his payslip. While the Joint Committee acknowledged that the changes were implemented transparently and in line with decisions by the Director General and Member States, three members emphasized the need for clearer rules and better communication regarding pension calculations.

By a decision of 16 June 2022, the Director General rejected the internal appeal as irreceivable and, alternatively, without merit. Regarding receivability, the Director General found the claims irreceivable, as pensioners are not entitled to salaries of active staff

under the applicable rules. The complainant's challenge to the July 2019 coefficient was also irreceivable, since it was intended to maintain pension parity and he showed no resulting financial loss. Regarding the merits, the pension adjustment applied to him was a neutral mathematical recalculation using a published coefficient to maintain his pension level, not a change in entitlements. He concluded that the complainant's arguments were either based on a misunderstanding or an unfounded attempt to benefit from updates not applicable to retired staff.

CONSIDERATIONS

1. In his letter of 5 March 2020, the complainant lodged an internal complaint with the Director General, challenging the amount of his pension entitlements, as reflected in his payslip for February 2020. He noted that his pension entitlements had been calculated on the basis of amendments to the calculation criteria for pensions introduced by Office Notice No. 10/19, dated 28 June 2019 and effective 1 July 2019. He contended that Part 4 of Annex XIII of Office Notice No. 10/19 was void, as Eurocontrol was not permitted to change the pension entitlements, and requested that Eurocontrol pay his "remuneration in accordance with the pension entitlement that was determined at the end of service and prescribed by the GCE".

He further added that pensioners had not been informed about the amendments to the GCE, neither by issuing a note to pensioners nor by publishing Office Notice No. 10/19 on the extranet for former officials.

His internal complaint of 5 March 2020 was rejected by a decision adopted on 18 May 2020 by the Head of HRS. This is the impugned decision.

2. In its reply, the Organisation characterizes the complainant's internal complaint of 5 March 2020 as a complaint filed pursuant to Article 91(2) of the General Conditions of Employment Governing Servants at the Eurocontrol Maastricht Centre.

Pursuant to Article 91(2) of the GCE:

- “2. Any person to whom these provisions apply may submit to the Director General a complaint against an act adversely affecting him, either where the Director General has taken a decision or where it has failed to adopt a measure prescribed by the General Conditions of Employment. The complaint must be lodged within three months. The period shall start to run:
- on the date of publication of the act if it is a measure of a general nature;
 - on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if however an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;
 - on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided in paragraph 1.

The Director General shall notify the person concerned of his reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 92.”

Pursuant to Article 92 of the GCE:

- “1. Any dispute between the Agency and one of the persons referred to in the present General Conditions of Employment involving the non-observance, in substance or in form, of the provisions of the present General Conditions of Employment shall be referred to the Administrative Tribunal of the International Labour Organisation, in the absence of a competent national jurisdiction.
2. An appeal to the Tribunal shall lie only if:
- the Director General has previously had a complaint submitted to him pursuant to Article 91(2) within the period prescribed therein, and
 - the complaint has been rejected by express decision or by implied decision.
3. Appeals under paragraph 2 shall be filed within three months. The period shall begin:

- on the date of notification of the decision taken in response to the complaint;
 - on the date of expiry of the period prescribed for the reply, where the appeal concerns an implied decision rejecting a complaint submitted pursuant to Article 91(2); nevertheless, where a complaint is rejected by express decision after being rejected by implied decision, but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh.
4. By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the Director General pursuant to Article 91(2), immediately file an appeal with the Tribunal, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interior measures. The proceedings in the principal action before the Tribunal shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.
 5. Appeals shall be investigated and heard as provided in the Rules of Procedure of the Tribunal.”

Pursuant to Office Notice No. 06/11, the Director General must seek the opinion of the Joint Committee for Disputes before taking a decision on an internal complaint made pursuant to Article 91(2) of the GCE.

Specifically, Articles 1 and 4 of the Notice, in relevant part, read as follows:

Article 1

“The Joint Committee for Disputes is tasked with giving advisory opinions on complaints made pursuant to [...] Article 91.2 of the General Conditions of Employment [...]”

Article 4

“The Director General must seek the opinion of the Joint Committee for Disputes before taking a decision to reject even a part of a complaint lodged under Article 1. The Joint Committee shall give an opinion, stating the grounds on which it is based, preferably no later than sixty days subsequent to receipt of the request for an opinion. [...]”

The Tribunal accepts that the complainant’s internal complaint of 5 March 2020 was lodged pursuant to Article 91(2) of the GCE. Accordingly, it must be characterized as an internal appeal to the

Director General filed against his payslip of February 2020 and the underlying general decision (Office Notice No. 10/19).

The complainant filed his complaint with the Tribunal on 5 August 2020.

In its reply of 13 November 2020 before the Tribunal, Eurocontrol asserts that “Following a review of [the complainant’s] internal complaint, of 05.03.2020, the Agency will transmit it to the Joint Committee for Disputes for advice. Given the pandemic situation caused by the COVID-19, the defendant was not able to do so within the prescribed time-limit of 60 days. The Director General is expected to take a final decision on the internal complaint in the first half of 2021.”

While it is noted that Eurocontrol does not raise any objection to the complaint’s receivability, the assertion of the Organisation, in its reply, that Eurocontrol was going to refer the matter to the Joint Committee for Disputes, appears to put in doubt that the 18 May 2020 decision was a final one on the complainant’s internal appeal, as, in the Organisation’s view, a final decision was, at the date of the filing of Eurocontrol’s reply, still anticipated by the first half of 2021.

The Tribunal does not accept this contention.

While it is acknowledged that the express decision of 18 May 2020 was adopted by the Head of HRS and not by the Director General, as it ought to have been in accordance with Article 91(2) of the GCE, the Tribunal holds that the complainant was entitled to identify the 18 May 2020 decision as the final one on his complaint, given that the Organisation failed to give him clear indications as to the nature of this decision, which therefore appeared to be a challengeable decision as it was a decision with legal effects on the complainant.

Additionally, and in any event, no express decision by the Director General was adopted on his 5 March 2020 internal complaint within the four-month time limit set forth in Article 91(2) of the GCE. This period had commenced on 5 March 2020 and it had expired on 5 July 2020, before the filing of the present complaint with the Tribunal, within the 90-day time limit. Accordingly, in keeping with Article 91(2), last

paragraph, of the GCE, the failure by the Director General to adopt an express decision within four months from 5 March 2020, constitutes “an implied decision rejecting” the complaint, which is amenable to challenge before the Tribunal (see Judgment 4769, consideration 2).

As such, the Tribunal will entertain the present complaint as a complaint filed against a final decision within the meaning of Article 92 of the GCE and of Article VII, paragraph 1, of the Tribunal’s Statute, irrespective of whether the final decision has to be identified as the 18 May 2020 decision or as the implied rejection by the Director General pursuant to the last paragraph of Article 91(2) of the GCE and to Article VII, paragraph 3, of the Tribunal’s Statute.

3. After the filing of the present complaint, on 16 June 2022, Eurocontrol adopted an express decision on the complainant’s internal complaint of 5 March 2020. In the 16 June 2022 decision, the Director General, endorsing the opinion expressed by the Joint Committee for Disputes at a meeting held on 19 November 2020 and signed on 6 December 2021, rejected the complaint as “inadmissible and subsidiarily unfounded”.

The complainant was permitted by the Tribunal to comment upon this new decision, and, on 25 July 2025, he submitted further written submissions whereby he contested the opinion of the Joint Committee for Disputes and reiterated, in essence, the pleas contained in his brief.

The Tribunal observes that the complainant’s claims to the Tribunal remained fundamentally unchanged after the new rejection decision. Since the parties had the opportunity to comment on the new decision, the Tribunal considers it appropriate to treat the complaint as if it were also directed against the new decision (see Judgments 4769, consideration 3, 4660, consideration 6, 4065, consideration 3, and 2786, consideration 3). Accordingly, this complaint, which was originally directed both against an express decision and against an implied decision by the Director General to dismiss the complainant’s internal appeal, must now be regarded as also impugning the new express decision subsequently adopted by the Director General (see, in

this vein, Judgments 4820, consideration 6, and 4082, consideration 2, and the case law quoted therein).

4. On the merits, the complainant contends that:

- (i) pension entitlements are fixed at the end of service as a percentage of the applicable basic salary of an active servant to ensure that the basic pension is in a constant relationship with this salary during retirement. Specifically, his monthly basic pension was determined as 36.66667 per cent of the applicable basic salary, i.e. his final basic salary at grade 7, step 3. This percentage was based on his years of pensionable service, the annual required pension rights of 2 per cent per year, and final grade and step;
- (ii) consequently, Eurocontrol cannot alter the pension entitlement once it has been determined;
- (iii) pursuant to Articles 65 and 82(2) of the GCE, “[t]he remuneration of servants shall be updated every year” and “[w]here the Commission, in accordance with Article 65, decides to update remunerations, the same update shall be applied to pensions”;
- (iv) Office Notice No. 10/19 infringed these rules insofar as it increased the salary for active staff in Function Group O at the MUAC and introduced a reduction coefficient to pensions; in so doing, Eurocontrol “seeks to avoid applying the same adaptation to pensions as to remunerations, which is in contravention of Article 82 [paragraph] 2 of the GCE”.

5. These arguments are unfounded.

It is appropriate to recall the statutory framework, in relevant part.

Article 65 of the GCE read:

- “1. The remuneration of servants shall be updated every year.
Particular account shall be taken of any civil service salary increases in the Member States and the recruitment needs of the Agency.
The remuneration update shall be implemented by the Director General in accordance with Annex VII.

EUROCONTROL services shall carry out the annual updating of remuneration and pension components at the end of the third month following publication in the Official Journal of the European Union of the remuneration and pension update at the European Union.

These updates shall be made by modifying the basic salaries as defined in Annex III.a and III.b or elements of the salaries and allowances as defined in Article 62.

2. In the event of any substantial change in the cost of living, the amounts referred to in paragraph 1 and the weightings referred to in Article 64 shall be updated in accordance with Article 4 of Annex VII.
- 2a. The amounts referred to in paragraphs 1 and 2 shall be understood to be amounts and the weightings, the actual value of which at any given point in time shall be subject to update without the intervention of any other legal act.”

Article 82 read:

“1. The pension [...] shall be calculated by reference to salary scales in force on the first day of the month in which entitlement commences.

No correction coefficient shall be applicable to pensions.

[...]

2. Where the Commission, in accordance with Article 65, decides to update remunerations, the same update shall be applied to pensions.

[...]”

It can be inferred from the combined provisions contained in Articles 82 and 65 that pensions are updated whenever remunerations are updated in accordance with Article 65.

Article 65, in turn, does not encompass every possible salary adjustment, but only salary updates on a yearly basis, grounded on changes which occur in the cost of living and/or in the average income growth of salaries of staff in the Member States of the European Union. Article 65, indeed, refers to “civil service salary increases in the Member States” and to the “publication in the Official Journal of the European Union of the remuneration and pension update at the European Union”. In turn, remuneration and pension updates at the European Union are governed by Articles 64 and 65 of the Staff Regulations of Officials of the European Union and Annexes XI and XIII, which provide for a mixed adjustment mechanism on a yearly

basis, grounded on a combination of inflation and wage dynamics indexes.

Specifically, Article 65 of the Staff Regulations of Officials of the European Union, in relevant part, read:

“1. The remuneration of the officials and other servants of the European Union shall be updated every year, taking into account the economic and social policy of the Union. Particular account shall be taken of any salary increases in the civil service of the Member States and of recruitment needs. The update of the remuneration shall be implemented in accordance with Annex XI. That update shall take place before the end of each year in the light of a report by the Commission based on statistical data prepared by the Statistical Office of the European Union in agreement with the national statistical offices of the Member States; the statistical data shall reflect the situation as at 1 July in each of the Member States. That report shall contain data pertaining to the budgetary impact of remuneration and pensions of Union officials. It shall be transmitted to the European Parliament and to the Council.

[...]

2. In the event of a substantial change in the cost of living, the amounts referred to in paragraph 1 and the weightings referred to in Article 64 shall be updated in accordance with Annex XI. The Commission shall publish the updated amounts and weightings within two weeks after the update in the C series of the Official Journal of the European Union for information purposes.

[...]”

In compliance with these provisions, Office Notice No. 02/20 updated salaries (and pensions), using a “formula for calculating the method [which] incorporates the increase in the purchasing power of national civil servants of 11 Member States taken as a reference (+0.5%) and the common Belgian and Luxembourg weighted inflation index taken as a reference in the method (+1.5%)”.

Crucially, the scope of Article 65 is the “annual updating” of remunerations based on changes which are general in nature and as such concern the whole staff, such as changes in the cost of living and in purchasing power, which are measurable on the basis of specific financial indexes. The update encompassed by Article 65 consists, in essence, in an indexation of the remunerations.

Consequently, salary adjustments which are not connected to changes of a general nature and measurable through financial indexes, but are rather linked to changes to the structure or kind of work performance or risks, fall outside the scope of Article 65. These adjustments do not occur every year, are made on a case-by-case basis, do not necessarily concern the whole staff as they are not based on general situations such as cost of living and average economic growth, and they are not index-linked.

Given that they fall outside the scope of Article 65, these adjustments are not applicable to pensioners.

Pursuant to Article 82, paragraphs 1 and 2, pensioners are entitled to have their pensions calculated on the basis of the salaries they received as active staff members, and to have their pensions yearly updated pursuant to Article 65, based on general changes in the cost of living or in the salary dynamics. They are not entitled to have their pensions increased on the basis of increases to salaries for active staff members due to changes in their specific performance or risks. Pensioners cannot benefit from financial earnings linked with tasks and risks which were not included in their performance as active staff.

In the present case, in keeping with Articles 82(2) and 65, the amount of the complainant's pension was duly updated in 2020, based on the salary adjustment provided by Office Notice No. 02/20 "Updating of remuneration and pensions and cost-of-living weightings with effect as from 1 July 2019", which resulted in an increase in his basic pension by 2 per cent.

Instead, Office Notice No. 10/19 provided for "Amendments to the [GCE] to increase capacity at MUAC and reinforce sustainable working conditions for staff in Function Group O". The salary increase introduced by Office Notice No. 10/19 was not an update pursuant to Article 65. It was established due to an increase in working time for air traffic controllers, within "a comprehensive package of measures, the purpose of which [was] to increase air traffic controller [...] availability while avoiding jeopardising flight safety and reinforcing the well-being and working conditions of staff".

In order to avoid that this increase could also benefit pensioners who were not entitled to it, a reduction coefficient for pensions was established: from 1 July 2019 to 30 June 2020, pensions based on updated salary would be multiplied by 93.4582 per cent, and from 1 July 2020 onwards, they would be multiplied by 90.4980 per cent. This was lawful and did not result in a reduction of the complainant's pension entitlement.

The Tribunal reiterates that the complainant was entitled to maintain his pension in the amount determined at the date of his retirement, augmented by the "annual updating" to the cost of living and purchasing power, but had no right to have his pension increased on the basis of a salary increase introduced in connection with structural changes to work performance of active staff, structural changes which occurred well after he had retired from service.

6. In light of the foregoing, the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.