

H. (No. 4)
v.
Eurocontrol

141st Session

Judgment No. 5168

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr C. L. H. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 17 June 2022 and Eurocontrol's reply of 14 December 2022, no rejoinder having been submitted by the complainant;

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 stop reimbursing his travel expenses.

The complainant, an Australian national, was recruited by the Eurocontrol Agency, the Organisation's secretariat, on 1 July 2001 at the Maastricht Upper Area Control Centre (MUAC). Due to understaffing at the time, the usual nationality requirement was waived, allowing him to be recruited even though he did not hold the nationality of a Eurocontrol Member State. His conditions of employment included the reimbursement of annual travel expenses for himself and his family to his place of origin, Brisbane, Australia.

In 2016, Eurocontrol launched negotiations with staff unions on a major administrative reform. The aims were to rationalise expenses, increase transparency, simplify procedures, and modernise rules, largely mirroring the 2014 reform of the European Union (EU) Staff Regulations. Among other things, the EU reform had amended the entitlement to reimbursement of annual travel expenses, which had itself been challenged before the Civil Service Tribunal of the Court of Justice of the EU (CJEU). Pending the outcome of those proceedings, Eurocontrol postponed applying the new provisions to its staff. When the CJEU dismissed the relevant cases on 30 April 2019, the Agency moved forward with its reform.

In the meantime, on 10 December 2018, Eurocontrol had already announced the content of the reform through Office Notice No. 16/18. The contested changes concerning reimbursement of travel expenses were finally implemented by Office Notice No. 18/20, issued on 24 July 2020 and entering into force on 1 July 2020. Under Article 4.1 of the amended Rule of Application No. 8, flat-rate payments for annual travel expenses were now restricted to officials entitled to the expatriation or foreign residence allowance. However, according to the new Article 4.2 of Rule of Application No. 8, officials entitled to the expatriation or foreign residence allowance but without the nationality of a Member State would no longer be entitled to any reimbursement.

Prior to the reform, the complainant had received, for the year 2019, 12,623.10 euros for himself, his spouse, and his three children for his annual travel expenses to his place of origin. In 2020, as Office Notice No. 18/20 entered into force in the middle of the year, he was paid 50 per cent of his entitlement under the old rules and none under the new ones. Accordingly, for the year 2020, he received 6,437.80 euros. From 2021 onwards, as he did not hold the nationality of a Eurocontrol Member State, he no longer had any entitlement to the reimbursement of travel expenses.

On 25 August 2020, the complainant lodged an internal complaint against the decision implementing Office Notice No. 18/20, as he found it “discriminatory, disproportionate and outside of the scope [of] the General Court cases [decided by the CJEU on 30 April 2019]”, asking

for the reimbursement of his travel expenses as an expatriated staff member. On 11 September 2020, the Agency acknowledged receipt of this internal complaint and informed him that it had been transmitted to the Joint Committee for Disputes (JCD).

The complainant repeatedly sought updates. On 6 July 2021, he requested information from the Director General, and on 6 September 2021, he was informed that his case had been examined by the JCD on 12 February 2021. On 14 October 2021, he was told that a decision would be taken “shortly”. On 2 January 2022, he requested a further update.

While waiting for a final decision, the complainant filed a first complaint before the Tribunal on 9 January 2022 alleging unreasonable delay. On the same date, he filed a second complaint reiterating his arguments and challenging the absence of reimbursement for the year 2021. Eurocontrol contested the receivability of the second complaint, but asked that, if it were to be considered receivable, the two cases be joined.

On 24 January 2022, the JCD issued a divided opinion, two members considering the internal complaint was founded, and two considering it unfounded. The first member observed that Office Notice No. 18/20 unlawfully changed travel reimbursement rules, breaching the principle of maintaining contact with the place of origin, violating the Staff Regulations, bypassing consultation, and relying prematurely on a first-instance CJEU judgment. The second member found no breach of acquired rights since travel reimbursement was a mutable benefit, though he agreed “the retroactive application of the rules” was problematic. The third member stressed procedural flaws in the consultation process and, referring to the Tribunal’s case law (Judgments 832 and 61), found the allowance to amount to an acquired right for a recruit from Australia, with its abolition being disproportionate and unfair. The fourth member, noting alignment with the EU’s provisions and that staff benefited from the old rules until the CJEU rulings, judged the complaint unfounded though he acknowledged “bizarre applications” for non-Member State nationals and raised concerns on consultation and retroactivity.

On 5 May 2022, the Director General rejected the internal complaint as unfounded. He held that the reform was a lawful exercise of Eurocontrol's discretion, carried out after consultations with staff representatives, and not retroactive since staff had been duly informed. He stressed that no acquired rights exist in relation to travel reimbursements, which are discretionary benefits distinct from remuneration, and that limiting eligibility to officials with Member State nationality was reasonable and consistent with the aim of rationalising expenses and ensuring equal treatment among staff. This is the impugned decision.

Following this decision, the complainant withdrew his first complaint of 9 January 2022 before the Tribunal. By order dated 17 November 2022, the withdrawal of that case was duly recorded.

The complainant asks the Tribunal to set aside the final decision of 5 May 2022 and the implementation of Office Notice No. 18/20, to "continue to pay [him] the travel expenses to which he was entitled" before the reform, and to award him compensation of 3,000 euros in moral damages, 1,000 euros in additional moral damages for the Agency's failure to issue a final decision within the statutory four months, and 2,500 euros in costs.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant challenges the impugned decision of 5 May 2022 by which the Director General rejected his complaint of 25 August 2020 in which he centrally requested that the latter's decision of 24 July 2020 implementing Office Notice No. 18/20 be found discriminatory and disproportionate given that the sole fact that he did not hold a nationality of a Member State of the Agency had resulted in the complete deprivation of any reimbursement of his travel expenses as an expatriated staff member.

2. The general background is set out in the preceding account of the facts. It will suffice to recall that the complainant was recruited from Australia in 2001, that because of understaffing at the time, an exception to the requirement that all Eurocontrol's servants be nationals of a Member State was then authorized by the Director General, that Brisbane was determined as his official place of origin and that he received the annual reimbursement of his travel expenses to Brisbane from 2001 to 2019.

3. Article 28 of the Staff Regulations governing officials of the Eurocontrol Agency states in particular the following regarding the nationality requirement for officials of Eurocontrol:

"Article 28

A servant may be appointed only on condition that:

- a) he is a national of one of the signatory States of the EUROCONTROL Convention, unless an exception is authorised by the Director General [...]"

4. The other statutory provisions that remain central to the resolution of the instant case are found at paragraphs 1 and 2 of Article 4 of Rule of Application No. 8 concerning the reimbursement of expenses, which entered into force as from 1 July 2020 pursuant to Office Notice No. 18/20 of the Director General. The relevant paragraphs especially state:

"Article 4

1. Officials entitled to the expatriation or foreign residence allowance shall be entitled to be paid in each calendar year to 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.

[...]

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.

[...]"

5. As it appears from these paragraphs of Article 4 of Rule of Application No. 8, at Eurocontrol, since 1 July 2020, only officials in receipt of the expatriation allowance or foreign residence allowance are entitled to the reimbursement of annual travel expenses. However, despite satisfying this requirement, officials who are not nationals of one of the Member States are not entitled to the reimbursement of these annual travel expenses.

It is not disputed that the complainant receives an expatriation allowance. Yet, he is not a national of any Member State. This explains why his entitlement to these annual travel expenses was reduced by half in the year 2020 and ceased entirely beginning in the year 2021.

6. Amongst the pleas raised by the complainant in support of his claim, there is one that the Tribunal considers decisive under the circumstances.

The complainant argues that the new requirement that he be a national of a Member State to receive the reimbursement of his annual travel expenses disregards, through a decision of general application of the Director General (Office Notice No. 18/20), the specific individual authorization that he was granted upon his recruitment and which allowed him to become an official of Eurocontrol even though he was not satisfying at the time the express condition of nationality contained in the Staff Regulations. According to the complainant, this new requirement found in Article 4.2 thus stands in stark contradiction with his terms and conditions of employment and discriminates against him for the sole reason of his nationality when his situation is compared to that of all the other officials who are otherwise receiving this reimbursement given their entitlement to either an expatriation or a foreign residence allowance.

By this argument, the complainant essentially contends that, having waived the requirement that he be a national of a Member State at the time of his recruitment, the Organisation created a legitimate expectation that he would not, in the course of his career, be penalised by the application of criteria based on the fact that he was not a national of a Member State.

For the following reasons, the Tribunal agrees with this contention.

7. The Tribunal first observes that the complainant's circumstances differ substantially from those of the other officials who have challenged before the Tribunal, as complainants or interveners, the new conditions for the reimbursement of annual travel expenses at Eurocontrol and who are the subject of three separate judgments also delivered this day (Judgments 5164, 5165 and 5169). Of all these officials of Eurocontrol who challenged the new rules governing the entitlement to annual travel expenses, the complainant is the only expatriate who has been denied reimbursement for the sole reason of his nationality.

8. The Tribunal further observes that, as an Australian national, the complainant was recruited as Air Traffic Controller in 2001 in circumstances of severe understaffing that required the Director General to then formally authorize this exception to the requirements of the Staff Regulations. By waiving the requirement to hold the nationality of a Eurocontrol Member State, the Director General allowed him, a national of another country, to apply and be hired.

The specific conditions of the complainant's employment therefore indicate that upon his hiring in July 2001, the Agency waived this requirement of nationality. Given that this was not only an exception to the normal rules but that it also required beforehand a special authorization from the Director General, the Tribunal considers that the Organisation created a legitimate expectation that the complainant would not, in the course of his career, be penalised by the application of criteria based on the fact that he was not a national of a Member State.

Article 28 of the Staff Regulations foresees the possibility for the Director General to expressly derogate, on an individual basis, from the condition that staff recruited by Eurocontrol must be nationals of a Member State. Yet, notwithstanding this special authorization and waiver by the Director General in his specific situation, the sole fact that the complainant does not hold the nationality of a Member State of the Organisation now results in the legal consequence that he is fully deprived of any reimbursement of his annual travel expenses.

The Tribunal considers that, in these circumstances, Eurocontrol could not deny the complainant's reimbursement of his travel expenses, on the sole basis of the Member State nationality criterion introduced by Article 4 of Office Notice No. 18/20, without violating his aforementioned legitimate expectation.

9. It therefore follows from the above considerations that the impugned decision must be set aside without there being any need to rule on the complainant's other pleas.

The complainant shall be entitled to the flat-rate payment of his annual travel expenses as an expatriated staff member pursuant to the terms of Rule of Application No. 8 from 1 July 2020 onwards notwithstanding the fact that he is not a national of a Eurocontrol Member State. These annual travel expenses shall be adjusted in accordance with the terms of Rule of Application No. 8 if the complainant acquires the nationality of a Eurocontrol Member State or, of course, if his status changes in any other material respect.

10. The complainant sought moral damages of 3,000 euros by way of relief, but he advanced no evidence, or even argument, to support this claim. Established precedent of the Tribunal has it that moral damages must be proven, and that the complainant bears the burden of proof (see, for example, Judgment 4867, consideration 6). The case law has also often reiterated that the mere fact that a decision was flawed does not suffice to warrant awarding damages for moral injury. To be entitled to moral damages, an official must have suffered more severe injury than that which an improper decision ordinarily

causes (see, for example, Judgment 4156, considerations 5 and 6). This claim will be dismissed.

11. As regards the complainant's claim for a compensation of 1,000 euros for the delay in dealing with his internal complaint, the Tribunal notes that his argument in this connection is centrally based on an excessively long period of 21 months between the date on which he lodged his complaint and the impugned decision of the Director General. Although it is true that this long period exceeds the period provided for in Article 92(2) of the Staff Regulations, which constitutes a breach by Eurocontrol of its own rules, the Tribunal considers that the delay cannot be considered unreasonable in the circumstances of the present case. Moreover, the complainant has not adduced any specific evidence of injury arising from that delay. This claim will likewise be dismissed.

12. Regarding costs, the Tribunal finds that the entitlement of the complainant should be fixed at the amount claimed of 2,500 euros.

DECISION

For the above reasons,

1. The impugned decision of the Director General of 5 May 2022 is set aside.
2. Eurocontrol shall pay to the complainant his annual travel expenses as an expatriated staff member pursuant to the terms of Rule of Application No. 8 from 1 July 2020 onwards, in accordance with what is stated at consideration 9 of this judgment.
3. The Organisation shall pay the complainant costs in the amount of 2,500 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 12 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.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

RENÉ M. VARGAS M.