Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P.

v.

Eurocontrol

141st Session **Judgment No. 5169**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. P. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 8 September 2022, Eurocontrol's reply of 20 December 2022, the complainant's rejoinder of 21 March 2023, Eurocontrol's surrejoinder of 16 June 2023, the complainant's further submissions of 21 October 2024 and Eurocontrol's final comments of 27 January 2025;

Considering the application to intervene filed by Mr P. R. on 8 June 2023 and Eurocontrol's comments thereon of 22 September 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 reduce her "travelling expenses"[*] pursuant to Office Notice No. 18/20 of 24 July 2020.

The complainant, a Belgian national, has been a staff member of the Eurocontrol Agency, the Organisation's secretariat, since 1 September 1999, and is employed in Brétigny-sur-Orge (France). She was recruited

[*] Registry's translation.

from New York (United States). Her place of origin was determined as New York at the time of her recruitment, which entitled her 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 New York. 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In Office Notice No. 18/20 of 24 July 2020 amending Rule of Application No. 8 (Articles 3 and 4), travel expenses were withdrawn for officials without expatriate status.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 an expatriation or foreign residence allowance retained entitlement to an annual flat-rate payment for travel expenses. For expatriates, under new Article 4(2), if the official's place of origin was outside the territory of the Member States, the annual flat-rate payment for travel expenses was, from that time on, calculated based on the distance between the place of employment and the capital city of the Member State whose nationality she or he holds.

The recalculation of the complainant's travel expense reimbursements took effect from 1 July 2020, which reduced the amount reimbursed from the year 2020. 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, requesting the setting aside of Rule of Application No. 8, as amended, insofar as it applied to her, the continued reimbursement in full of her travel expenses to New York for 2020 and for the future, the payment of her lawyers' fees and damages for the moral injury that she considered to have suffered. On 25 November 2020 the Head of Human Resources and Services acknowledged receipt

of the internal complaint on behalf of the Director General and informed the complainant that it had been forwarded to the Joint Committee for Disputes.

Pending action on her internal complaint, the complainant sought information from the Chairman of the Joint Committee for Disputes on 27 January 2022. On 11 May 2022 she wrote to the Director General to ask him to take a decision, drawing his attention to the fact that other similar internal complaints had now been processed and that the four-month period for taking a decision had already passed. She received no formal response. She filed her complaint with the Tribunal on 8 September 2022.

In the meantime, her internal complaint had been discussed by the Joint Committee for Disputes on 12 February 2021, which issued its opinion on 22 July 2022 but did not forward it to the complainant. The findings in this opinion were divided, with two members considering that the internal complaint was well-founded and two members taking the view that it was unfounded. One member found that the publication of the Office Notice had not followed the correct procedure, that the calculation method of the allowance was not based on reasonable grounds, and that the internal complaint was therefore well-founded. A second member considered that there had been no breach of an acquired right but noted that the retroactive application was not warranted, so the internal complaint was unfounded, except on that point. A third member considered that changing the calculation method without calling into question the place of origin constituted an infringement of statutory and international principles, reinforced by the lack of consultation and the fact that a final ruling from the CJEU was pending, and concluded that the complaint was well-founded. Lastly, a fourth member considered that the change had not altered the complainant's place of origin but only the calculation method, in line with a similar reform to the European civil service, and that the complaint was unfounded, while raising questions with regard to consultation and the date of application of the new rules.

On 14 December 2022 the complainant's internal complaint was rejected as unfounded by the Head of Human Resources and Services, acting on behalf of the Director General and by delegation of authority. In the decision, she indicated that two members of the Joint Committee for Disputes had considered the complaint well-founded, "the two others not"[*], and that she shared the view of the two members who had concluded that the complaint was unfounded. She emphasised the broad discretion accorded to international organisations to carry out administrative reforms, while respecting the general principles of law, and noted that Eurocontrol had acted without procedural flaw or abuse of power, nor any breach of the principle of non-retroactivity, since Office Notice No. 18/20 had informed staff in advance of the new provisions. She also specified that the reimbursement of travel expenses constituted neither an acquired right nor a component of remuneration guaranteed by the Staff Regulations, but a measure falling within the scope of the Director General's regulatory authority that was liable to change. She added that the complainant's place of origin had not been changed but only the method for calculating the allowance, in keeping with new Article 4 of Rule of Application No. 8, which provides that, for staff members whose place of origin is outside the territory of the Member States, a calculation is made based on the distance between the place of employment and the capital city of the Member State whose nationality they hold. Lastly, she indicated that the changes made to the criteria for the reimbursement of travel expenses and their calculation had been introduced to bring them into alignment with the European Union, simplify procedures and ensure equal treatment between categories of staff.

The original English version of the opinion of the Joint Committee for Disputes was attached to this final decision, the French translation having been forwarded to the complainant on 17 January 2023, at her request.

[*] Registry's translation.

The complainant asks the Tribunal to order Eurocontrol to compensate her for the "effective reduction in her travelling expenses" from 1 July 2020 and to pay her the corresponding sums, together with interest at the rate of 5 per cent per annum for late payment. She also claims compensation of 40,000 euros for her "emotional" injury and 50,000 euros in moral damages. Lastly, she claims an award of 10,000 euros to compensate her for the delayed and inadequate handling of her complaint, as well as costs, which she quantifies at 7,000 euros.

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

CONSIDERATIONS

1. In her complaint filed on 8 September 2022, the complainant requests that Eurocontrol be ordered to restore her entitlement to "travelling expenses as before 1 July 2020"[*] and to compensate her for the "effective reduction in these travelling expenses"[*] since that date, for the "emotional" and moral harm suffered and for the blockage and handling of her internal complaint of 20 October 2020.

In her complaint form and accompanying brief, the complainant does not seek the setting aside of an express final decision of the Eurocontrol Agency, nor an implied decision to reject her internal complaint. Although, at the time of filing her rejoinder, Eurocontrol had notified the complainant of the express decision to reject her internal complaint, taken by the Head of Human Resources and Services, acting by delegation of authority of the Director General, on 14 December 2022, the complainant has not requested the setting aside of this final decision in her written submissions.

2. Eurocontrol requests the joinder of the present complaint with those of two other complainants, which are the subject of Judgments 5164 and 5165, also delivered this day, on the grounds that these three cases

[*] Registry's translation.

concern travel expenses and that it would therefore be appropriate for them to be the subject of a single judgment.

However, the Tribunal considers that it is not appropriate to join this complaint with those relating to the abovementioned cases, since the factual situation in this case presents significant differences that affect the Tribunal's analysis. In particular, unlike the staff members in the other two cases, the complainant receives an expatriation allowance. Furthermore, some of the issues that characterise the complainant's case are distinct, while some of the pleas put forward in it require different treatment than those in the other two cases. In addition, the written submissions indicate that the present complaint concerns a separate opinion from the Joint Committee for Disputes and a distinct decision rejecting the internal complaint, with a completely different time limit for its handling. The Tribunal finds it appropriate, therefore, to consider the complainant's case separately and to issue a distinct judgment for her – it being observed that, as indicated in Judgments 5164 and 5165, the two other cases do not warrant being joined either.

The request for joinder must therefore be dismissed.

The Tribunal observes, however, that several pleas put forward in the three cases are common and often expressed in identical terms, since the same counsel is acting for all complainants concerned. In addition, these complaints, which relate to travel expenses, follow on from an initial complaint by another complainant, Mr R., which concerned travelling time. In their written submissions, all the complainants repeatedly refer 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 very similar. The first complaint by Mr R. was decided by the Tribunal in Judgment 4593, delivered on 1 February 2023, which dismissed it. On certain points, the Tribunal will refer to the aforementioned Judgments 5164 and 5165 in order to avoid unnecessary repetition.

3. Eurocontrol maintains that the complaint is irreceivable on the grounds that the complainant, when she filed her complaint, had not exhausted the internal remedies available to her as a staff member of

the Organisation, contrary to the requirements set out in Article VII, paragraph 1, of the Statute of the Tribunal. The Agency adds in its surrejoinder that, although an explicit decision to reject the internal complaint had been made in the course of proceedings, the complainant chose not to extend her complaint to include that decision.

4. As the Tribunal has already concluded in a similar case relating to Eurocontrol (see Judgment 4820, consideration 6), pursuant to Article 92(2) of the Staff Regulations, the complainant should ordinarily have introduced a complaint before the Tribunal within 90 days of the expiry of the four-month period that the Administration had to respond to her complaint, even though the matter had been referred to the Joint Committee for Disputes. The present complaint must therefore, in principle, be declared irreceivable as time-barred, pursuant to Article VII, paragraph 2, of the Statute of the Tribunal, together with Article 92(2) of the Staff Regulations.

In the present case, however, as has already been stated with regard to the similar conduct of Eurocontrol in comparable situations, the Tribunal considers that the complainant was misled by the Organisation when it indicated to her that, since her internal complaint had been forwarded to the Joint Committee for Disputes, she had, in accordance with the Tribunal's case law on the application of Article VII, paragraph 3, of its Statute, to await the final decision of the Director General before being able to file a complaint with the Tribunal. By so doing, the Organisation overlooked the fact that, pursuant to Article 92(2) of the Staff Regulations, failure by the Director General to respond to an internal complaint within four months from the date on which it was lodged shall be deemed to constitute an implied decision rejecting it, which may be impugned before the Tribunal (see on this matter, for example, Judgments 4820, consideration 6, and 4819, consideration 3).

There is, therefore, no need to declare the complaint irreceivable as time-barred insofar as it was filed when it could only be directed against an implicit decision to reject the complainant's internal complaint. To rule otherwise would amount to unduly depriving the

complainant of her right to refer the matter to the Tribunal solely due to the conduct of the Organisation.

Furthermore, taking into account that almost two years have passed between the lodging by the complainant of her internal complaint, on 20 October 2020, and the filing of the present complaint, on 8 September 2022, and the fact that she followed up, to no avail, with the Director General and the Chairman of the Joint Committee for Disputes, the Tribunal considers that the complainant was faced by a paralysis of the internal appeal process that allowed her to bring the matter directly to the Tribunal (see in particular, for similar cases involving Eurocontrol, Judgments 5034, considerations 3 and 4, 4820, consideration 3, and 4819, consideration 3).

The Tribunal observes that the Organisation can hardly criticize the complainant for not having exhausted the internal means of redress, since it breached the provisions of its own Staff Regulations by not handling the complainant's appeal diligently and within the prescribed period.

5. In addition, the Tribunal notes that a final decision was eventually made by the Head of Human Resources and Services on 14 December 2022 and that this decision was produced during the proceedings, as well as the related opinion of the Joint Committee for Disputes. Since the Tribunal has a complete case file and the parties have had an opportunity to fully express themselves in their written submissions on this explicit decision to reject the complainant's internal complaint of 20 October 2020, it considers that, in keeping with its case law, the complaint should be considered as being directed against the decision of 14 December 2022 (see in particular, for similar cases involving Eurocontrol, Judgments 4820, consideration 6, 4819, consideration 3, 4769, consideration 3, and 4768, consideration 3).

In this respect, it is certainly regrettable that the complainant did not indicate in her written submissions that she initially intended to file her complaint against the implicit decision to reject her internal complaint or, subsequently, against the express rejection decision of 14 December 2022. But this finding has no bearing on the present case

since the written submissions confirm, on the one hand, that Eurocontrol fully understood that an implicit rejection decision was being impugned when the complaint was filed and, on the other hand, that the issues raised in the subsequent explicit rejection decision were addressed in detail by the parties.

The plea of irreceivability raised by Eurocontrol must, therefore, be dismissed.

6. The Tribunal recalls that the complainant, a Belgian national who has been a Eurocontrol official since 1 September 1999, was assigned to the Brétigny-sur-Orge site (France) when she was recruited. At that time, her place of origin was determined as New York (United States), where she was living and where she had been recruited. She receives an expatriation allowance at the Agency since, in her case, the condition of holding a nationality other than that of the State of her place of employment is met.

7. 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 [...]
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> [...]
>
> 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; [...]"

8. 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.

[...]"

9. 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, recognising the right to a flat-rate payment for travel expenses for officials entitled to an expatriation or foreign residence allowance, while providing for a specific calculation method for these travel expenses if the place of origin of an official was outside the territorial limits of the Member States:

"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.

[...]"

10. With effect from 1 July 2020, the allowance for travel expenses allocated to the complainant, whose place of origin, New York, was approximately 5,844 kilometres from her place of employment, Brétigny-sur-Orge (France), and who had received, up to that point, the reimbursement of those expenses (established, for example, at 4,463.24 euros for 2019), was reduced to 2,316.06 euros for 2020 (due to the recalculation effective 1 July 2020) and, subsequently, established an even lower sum from 2021, based on the geographical distance of 289 kilometres between Brussels (Belgium) and Brétigny-sur-Orge. Indeed, pursuant to the aforementioned new provisions of Article 4(2) of Rule of Application No. 8 and with regard to the fact that, on the one hand, the United States is not a Eurocontrol Member State and, on the other hand, that the complainant is a Belgian national, it was thereafter the distance between the latter two cities that was to be taken into consideration when calculating this allowance.

11. In her complaint, the complainant puts forward numerous pleas, which the Tribunal considers appropriate to group together in the following order, alleging, firstly, a breach of the complainant's right to be heard, an inadequate statement of reasoning for the reduction in her travel expenses and an erroneous opinion by the Joint Committee for Disputes; secondly, a failure to comply with the procedure regarding consultation of authorised and representative trade unions; thirdly, an unlawful retroactive application of the amendments; fourthly, a breach of the complainant's acquired rights; fifthly, discrimination against her; and sixthly and lastly, an unreasonably long delay in handling her internal complaint.

12. As regards the complainant's first plea, alleging that she was not heard before the decision to reduce her travel expenses was taken to her detriment, and that the statement of reasoning for that decision was inadequate and the opinion of the Joint Committee for Disputes erroneous, the Tribunal has already held, as recalled in Judgments 5164, consideration 10, 5165, consideration 9, and 4593, consideration 7, that the general principle protecting an official's right to be heard cannot be applied to a general decision (see, for example, Judgment 4283,

consideration 6). That same case law applies to the situation where, as in the present case, the contested decision is purely and simply the consequence of a general decision of that kind (see, for example, Judgment 4593, consideration 7).

Next, according to the Tribunal's settled case law, the reasons for an administrative decision must be sufficiently explicit to enable the person concerned to take an informed decision as to the exercise of her or his right of appeal; they must also enable the competent review bodies to determine whether the decision is lawful and, in particular, the Tribunal to exercise its power of review (see, for example, Judgments 4923, consideration 10, 4593, consideration 6, 4081, consideration 5, 3617, consideration 5, or 1817, consideration 6). In the present case, the Tribunal finds that the reasoning for the impugned decision was both detailed and substantiated, and indeed enabled the complainant to understand and challenge the reasons for which it had been taken, as is eloquently demonstrated by the content of her written submissions in the internal appeal proceedings and before the Tribunal.

Lastly, on the erroneous nature of the opinion of the Joint Committee for Disputes, the complainant maintains that the wording of this opinion was "misleading"[*] on the basis that, in reality, three of the four members considered the complaint to be well-founded, while the fourth member had expressed a position that was, to say the least, ambiguous. She concluded that the Committee's summary at the end of its opinion, indicating that two members were in favour and two were against, unduly opened the door for the Head of Human Resources and Services to "share" the position of the two members who were against. The opinion thus rendered unlawful would similarly invalidate the rejection decision. The Tribunal considers, however, that there are no grounds to set aside the decision of 14 December 2022 on this basis alone. While the wording of the opinion may appear ambiguous in places, the impugned decision clearly sets out the reasons behind it without necessarily being limited to the contents of the opinion, which

[*] Registry's translation.

meets the requirements applicable in this area (see, for example, Judgments 4368, consideration 15, and 4164, consideration 11).

This first plea is entirely unfounded.

13. Concerning the second and third pleas, alleging a failure to comply with the procedure as regards consultation with the authorised and representative trade unions and breach of the principle of non-retroactivity, the complainant's arguments are essentially identical to those made to the same effect and on which the Tribunal has ruled in considerations 11 and 12 of Judgment 5164 and consideration 9 of Judgment 5165, also delivered today. This second plea is therefore equally unfounded in the present case, for the same reasons as already set out in the other judgments. With regard to the third plea, however, it is well-founded on the grounds set out in consideration 12 of Judgment 5164 and consideration 9 of Judgment 5165. As a result, the Tribunal considers it appropriate to order Eurocontrol to reimburse the complainant, within 30 days of the public delivery of the present judgment, 23/183 of the amount of the reimbursement of such expenses which she received for the first half of 2020 (which, being a leap year, had 366 days), less the compensation that she has already received for this period of 23 days. This sum shall be paid together with interest for late payment at the rate of 5 per cent per annum from 1 September 2020.

14. The fourth and fifth pleas are the complainant's main pleas on the merits.

As regards the complainant's fifth plea, alleging a breach of what she considers to be her acquired right to reimbursement of her travel expenses without any reduction, she 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 of origin to maintain the family ties and heritable interests which had led to its determination.

15. 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 the 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). The Tribunal adds that, in Judgment 2972, consideration 8, it was also stated that, "[...] an official 'has no acquired right to the actual amount of the allowance or to continuance of any particular method of reckoning it. Indeed, he must expect these to change as circumstances change'" (see also, on this matter, Judgments 666, consideration 5, and 391, consideration 6).

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, if that term of appointment had not existed or had been withdrawn.

16. The Tribunal considers, firstly, that a financial benefit consisting merely of an incidental allowance, the reduction of which is likely 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 the impact of the reduction of these travel expenses in the complainant's situation is of the same order as the minimal impact of the withdrawal in full of these expenses or the reduction of travelling time, in the case of complainant Mr R., that was taken into account by the Tribunal as one of the considerations that led to the dismissal of the pleas relating to acquired rights in Judgments 5164, 5165 and 4593, cited above.

The Tribunal adds that the regulatory amendments at issue did not provide for the withdrawal of the travel expenses but only their reduction based on a new calculation method, even though, in the specific case of the complainant, this reduction was substantial.

17. 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 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.

18. Lastly, although the complainant contends in her written submissions that the benefit in question represented a fundamental and essential term of appointment when she was recruited, the Tribunal notes that this allegation is not corroborated by the evidence.

In the context specific to this case and based on the foregoing considerations, the Tribunal finds that it would be erroneous to conclude, as it is invited by the complainant, 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 fourth plea must therefore be dismissed.

19. With regard to the fifth plea, concerning the unlawfulness of the impugned decisions on the ground that the reduction in the complainant's travel expenses amounted to discrimination against her, the Tribunal observes, first of all, that the argument of discrimination invoked by the complainant is based in particular on the difference in treatment she alleges to have suffered due to the length of her internal appeal, which proved to be considerably longer than that of the other officials who had filed an internal complaint at the same time as her. This aspect of her complaint is relevant to the analysis of her sixth plea and is therefore addressed as part of this analysis. The complainant cannot rely on it twice in the context of the alleged discrimination and transform its content to invoke here unequal treatment within the meaning of the Tribunal's case law.

20. The Tribunal then notes that the allegation of "patent"* discrimination presented as relating to her nationality is, in reality, directed against what the complainant describes as the nonsense, absurdity and arbitrariness of the calculation method used by the Organisation when an expatriate official's place of origin is outside the territories of the Member States.

On the one hand, what the complainant invokes in this regard seems to relate much more to a review of the choice of calculation method used by the Administration, which falls within its prerogatives, including the parameters that it considers useful to impose in order to limit, for example, the mileage recognised for this calculation, and not to a review of the lawfulness of the measure. On the other hand, as Eurocontrol points out, the criterion chosen remains objective and links

* Registry's translation.

the reimbursement of travel expenses to the official's country of nationality when this is not the country of employment, in a context in which, according to the Staff Regulations, unless expressly waived by the Director General, a Eurocontrol official must hold the nationality of a Member State. In this context, the right to reimbursement of travel expenses is thereby aligned with the expatriation allowance and the Organisation's own statutory requirements.

The Tribunal considers that it is not its role to substitute itself for an international organisation in such a case in the absence of proof of a breach of acquired rights, which has not been established in the complainant's case. The Tribunal notes in this regard that the complainant has not provided any evidence allowing it to conclude that the change of the calculation method for her travel expenses amounted to discrimination or inequality between her and the other Eurocontrol officials who are in a similar situation (see, for example, Judgments 4073, consideration 11, 4067, consideration 10, and 3868, consideration 6). There are no specific and proven facts that establish the reality of the alleged discrimination.

21. In her further submissions, the complainant raises another argument in support of her plea alleging a breach of the principle of non-discrimination. Since the Agency stated, inter alia, in Office Notice No. 18/20 of 24 July 2020, that it undertook to apply the contested statutory amendments 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 rejected 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 different from that in the CJEU judgment she refers to, whose case law is not, moreover, unanimous on the question, since the wording of the provision at issue differed from the second subparagraph of Article 4(2) of Rule of Application No. 8.

This fifth plea is therefore also unfounded.

22. As regards the complainant's sixth and last plea, which seeks compensation for the delay in handling her internal complaint, the Tribunal notes that her argument in this connection is based mainly on the extremely long period of 26 months between the lodging of her internal complaint on 20 October 2020 and the express decision to reject it, which was eventually adopted on 14 December 2022.

The Tribunal considers this plea well-founded. Such a delay is excessive and inexcusable in the circumstances of the case (see in particular, on delays of this length by the Agency censured by the Tribunal, Judgments 5034, consideration 19, and 4963, consideration 22), and was such as to cause the complainant moral injury, which may be fairly redressed by awarding her an indemnity of 2,500 euros.

The Organisation's argument for this "unfortunate delay"[*], that it was faced with a very large number of appeals in a context in which it had to deal with the sanitary crisis, remains unconvincing given that the delay exceeds by more than 10 months the delay that affected the other officials who lodged their complaints on the same day as the complainant, without any explanation other than the Covid-19 pandemic having been given by the Agency. Furthermore, the evidence in file show that the staff, including the complainant, and the members of the Joint Committee for Disputes never stopped working during the sanitary crisis. The Tribunal recalls that the volume of the work to be carried out by the internal appeals bodies or the lack of resources due to organisational problems can never justify depriving employees of their right to a speedy and just resolution of their grievances (see, on this point, Judgment 2196, consideration 9).

[*] Registry's translation.

23. It follows from the foregoing that only the third plea, relating to the limited unlawful retroactive effect of the reduction in the reimbursement of the complainant's travel expenses, and the sixth plea, relating to the delay in handling her internal complaint, are well-founded.

As already stated in consideration 13 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.

With regard to the delay in handling her internal complaint, as stated in consideration 22 above, only a moral injury amounting to 2,500 euros has been established.

Since the Tribunal considers that all the complainant's other pleas are unfounded, her other claims for compensation for the material, "emotional" or moral injury resulting from the reduction in her travel expenses must be dismissed.

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

25. The staff member who filed an application to intervene is in a similar legal and factual situation to that of the complainant, which the Organisation recognised in its comments thereon. It is therefore appropriate for the Tribunal to allow this application to intervene. As a result, material damages for the unlawful retroactive effect of the reduction in the reimbursement of travel expenses, as explained in consideration 13 above, as well as compensation of 2,500 euros for the breach of his right of appeal and for the delay in handling his internal complaint, will also be awarded to the intervener (see, by way of example to the same effect, Judgment 4700, consideration 8).

DECISION

For the above reasons,

1. The impugned decision of 14 December 2022 is set aside insofar as it concerned the period from 1 to 23 July 2020.

2. Eurocontrol shall pay the complainant and the intervener material damages, together with interest, as set out in consideration 13, above.

3. The Organisation shall also pay the complainant and the intervener moral damages of 2,500 euros each.

4. It shall also pay the complainant 5,000 euros in costs.

5. All other claims in the complaint and the application to intervene 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.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.