

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**Q. (No. 5)**

**v.**

**Eurocontrol**

**141st Session**

**Judgment No. 5170**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr P. Q. against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 8 March 2023, Eurocontrol's reply of 9 June 2023, the complainant's rejoinder of 16 August 2023, Eurocontrol's surrejoinder of 22 November 2023, the complainant's further submissions of 8 December 2023 and Eurocontrol's final comments of 16 January 2024;

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 Eurocontrol's refusal to grant him, for the year 2021, the two days' compensatory special leave to which he considers he is entitled as an emergency response officer (volunteer firefighter).

The complainant joined the Eurocontrol Agency, the secretariat of the Organisation, on 1 October 1994. He retired on 1 January 2023. For several years, the complainant performed the role of emergency response officer (volunteer firefighter as a member of a primary intervention team) at Eurocontrol Headquarters in Haren (Brussels, Belgium).

After noticing that he had not received, for the year 2021, the compensatory special leave provided for in Article 37 of Rule of Application No. 6 concerning the terms and conditions governing leave, the complainant sent the Administration a request for information on this matter by an email of 16 November 2022. The Administration replied the same day, explaining that only staff members who had worked “on site (including missions and training)”\* for more than 60 per cent of their working time were eligible for the two days’ compensatory special leave granted to emergency response officers. It added that, “[i]n 2021, [the Agency’s staff members] [were] still subject to lockdown [in accordance with public health measures relating to the Covid-19 pandemic] for part of the year, meaning that [the complainant] [had been] absent for around 190 days, including teleworking days, special leave, [and] sick leave”\*. The complainant responded by requesting the document setting out the conditions for granting compensatory special leave. The Administration stated that it was Office Notice No. 14/18 of 10 December 2018 and sent to him an extract of it.

On 9 December 2022 the complainant filed an internal complaint with the Director General, under Article 92(2) of the Staff Regulations governing officials of the Agency, to challenge the “cancellation of [his] two days of special leave as an [e]mergency response officer”. He requested that he be granted the two days of special leave since the condition of working “on site”\*, stated in the Administration’s email of 16 November 2020, was not specified either in Article 37 of aforementioned Rule of Application No. 6 or in Office Notice No. 14/18; that this leave be counted as “normal leave”\* already taken; and that “[he] be reimbursed these two days as days not taken due to [his] forthcoming retirement on 1 January 2023”\*. He also claimed compensation of 15,000 euros for moral injury and 3,000 euros in “[l]egal fees”\*.

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\* Registry’s translation.

By an internal memorandum of 18 January 2023, sent to the complainant's work email address – deactivated since his retirement on 1 January 2023 – the Head of Human Resources and Services acknowledged receipt of the internal complaint and informed the complainant that it would be forwarded to the Joint Committee for Disputes. She also stated, firstly, that forwarding the internal complaint constituted a “decision on [the] claim” within the meaning of Judgment 3889 and interrupted the 60-day period during which the complainant could file a complaint with the Tribunal impugning an implied rejection and, secondly, that he should therefore await the Director General's final decision on his internal complaint before filing such a complaint pursuant to Article VII of the Statute of the Tribunal.

The complainant filed the present complaint on 8 March 2023, alleging that there had been no reply to his internal complaint within the time limit prescribed in Article VII, paragraph 3, of the Statute.

On 20 October 2023 the Joint Committee for Disputes issued a divided opinion on the internal complaint. One member considered that the complainant's request to be granted the two days of compensatory special leave was well-founded insofar as, in accordance with the applicable rules, work “on site”<sup>\*</sup> and work “from home”<sup>\*</sup> had been “[placed] on an equal footing”<sup>\*</sup> and that, consequently, “it [was] difficult to understand why the Agency [had] refused to grant the [complainant] the days of special leave on the grounds that he worked from home”<sup>\*</sup>. Another member considered, in particular, that in view of the “special circumstances surrounding the [Covid]-19 period”<sup>\*</sup>, the Organisation should grant the complainant the two days of special leave “even though they [were] not in keeping with the strict application of the rules, since teleworking was compulsory for the vast majority of staff [...]”<sup>\*</sup>. The last two members of the Committee considered that the complainant's request was unfounded because he did not meet the conditions set out in Article 37 of Rule of Application No. 6. They argued that this provision implied a “physical”<sup>\*</sup> presence in the Agency's offices and that the work “from home”<sup>\*</sup> performed by the

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<sup>\*</sup> Registry's translation.

complainant was incompatible with the duties of emergency response officers. The Committee unanimously recommended that the complainant's claims relating to moral injury and reimbursement of "legal fees"\* be rejected.

By a letter of 17 November 2023 – which was sent after the rejoinder had been filed but before the Organisation had submitted its surrejoinder – the complainant was informed of the Director General's decision to reject his internal complaint, partly endorsing the divided opinion of the Joint Committee for Disputes. The letter began by stating that the complainant did not meet the condition of being present at work in Haren for at least 60 per cent of the time expected for a full-time staff member. It added that the complainant did not meet the second condition set out in Article 37 of aforementioned Rule of Application No. 6, since in 2021 there had been no "annual refresher exercise organised by the [Service of Prevention and Protection at work]".

The complainant asks the Tribunal to set aside "the decision to refuse to grant [him] the two days of special leave"\*. He seeks material damages of 987.50 euros, plus interest at the rate of 8 per cent per annum for late payment. For moral damages, the complainant claims compensation of 15,000 euros for "the deprivation"\* of his rights and "the lack of opportunity to enjoy his days of leave"\*, as well as additional compensation of 5,000 euros on account of the "obstruction"\* of his internal complaint, the failure to refer the matter to the Joint Committee for Disputes and the lack of a final decision. Lastly, he seeks an award of 3,000 euros for expenses incurred "for the purposes of the internal complaint"\* and of 6,000 euros in costs for the present proceedings. In his rejoinder, the complainant asks the Tribunal to order the Organisation to pay exemplary and punitive damages.

Eurocontrol asks the Tribunal to dismiss the complaint as unfounded.

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\* Registry's translation.

## CONSIDERATIONS

1. In addition to making various monetary claims, the complainant asks the Tribunal to set aside Eurocontrol's decision to refuse him, for 2021, two days' compensatory special leave as an emergency response officer (volunteer firefighter) at Eurocontrol's Haren site.

2. The complaint refers to an implied decision of rejection which the complainant challenges on the basis of Article VII, paragraph 3, of the Statute of the Tribunal.

The Tribunal notes that the opinion of the Joint Committee for Disputes on the complainant's internal complaint of 9 December 2022 was eventually delivered on 20 October 2023, which led to a decision explicitly rejecting that internal complaint, taken by the Director General on 17 November 2023. These documents were submitted at the surrejoinder stage, after which the parties were given the opportunity to comment on them in further submissions. Since, as the Organisation acknowledges, the complainant was entitled to challenge the implied decision that he initially impugned, it is appropriate in accordance with the Tribunal's case law, to treat the present complaint as directed against the final decision taken by the Director General during the proceedings (see in particular, for similar cases, Judgments 5030, consideration 3, 4963, consideration 3, 4962, consideration 3, 4961, consideration 3, 4820, consideration 6, and 4769, consideration 3).

3. Article 37 of Rule of Application No. 6, concerning the terms and conditions governing leave, provides as follows:

"Emergency response officers

Officials appointed as emergency response officers shall be entitled to 2 working days' compensatory special leave.

The leave shall be granted annually to officials who are appointed as emergency response officers and who justify a minimal presence at work of at least 60% of a full-time [staff member] and who participate in the annual refresher exercises organised by the Service of Prevention and Protection at work (SPP).

The role as an emergency response officer can contain one of the two, or both of the following roles: first aiders and/or fire intervention members (primary intervention team members).

The leave shall be granted annually to officials appointed to take this role on the premises of EUROCONTROL and who actually take part in the exercises and prevention courses for which they have volunteered and to which they are regularly invited. The leave shall be credited to the official in the year following his participation in the exercises and courses.

It may be combined with annual leave.” (Emphasis added.)

4. It should be recalled that, according to the Tribunal’s case law on the interpretation of staff rules and regulations, words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgments 5018, consideration 7, 4796, consideration 3, 4639, consideration 3, or 4506, consideration 5).

5. It is clear from the aforementioned provisions of Article 37 of Rule of Application No. 6 that the special leave in question is only granted if two cumulative conditions are met: firstly, the member of staff concerned must be able to demonstrate “a minimal presence at work of at least 60% of a full-time [staff member]” during the year in question and, secondly, he or she must have participated “in the annual refresher exercises organised by the [SPP]” also for the year in question.

6. In his aforementioned decision of 17 November 2023, the Director General, relying in part on the opinion of two members of the Joint Committee for Disputes, considered that neither of these two conditions was met in the circumstances of the case.

7. The evidence in the file shows that no annual refresher exercise was organised by the SPP during the year 2021. The complainant contends that the Agency could not lawfully refuse to grant him compensatory special leave on the grounds that he had not taken part in such an exercise, since it was because of the Agency that no such exercise was organised in 2021.

However, the Tribunal cannot accept the complainant's line of argument. Both the wording of the fourth paragraph of aforementioned Article 37 and the purpose of the leave in question, which is to compensate for the inconvenience of taking part in refresher exercises, make it clear that only actual participation in such exercises entitles a staff member to this leave.

8. It follows from the foregoing that one of the two cumulative conditions to which the aforementioned provisions subject the grant of special leave was not met in the present case. There is therefore no need to decide whether the other condition was satisfied.

It follows that the decision of the Director General of Eurocontrol of 17 November 2023 is not unlawful under the applicable rules.

9. In his further submissions, the complainant also submits that the opinion of the Joint Committee for Disputes to which the Director General refers in his final decision is itself unlawful because the Committee did not adhere to the adversarial principle and was unable to reach a fully independent decision.

However, based on the evidence, the Tribunal considers these two objections to be clearly unfounded.

This argument will therefore be rejected.

10. The complainant seeks compensation of 5,000 euros for the specific moral injury allegedly caused to him by the "obstruction"\* of his internal complaint, the failure to refer the matter to the Joint Committee for Disputes and the lack of a decision by the Director General of Eurocontrol.

However, it is clear from the summary of the facts and the foregoing considerations that, although an administrative error by the Agency caused a delay in its examination, the complainant's internal complaint was not obstructed. It is also clear, firstly, that the internal complaint was referred to and examined by the Joint Committee for

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\* Registry's translation.

Disputes and, secondly, that a final decision was taken by the Director General.

There are therefore no grounds for granting this claim.

11. As the impugned decision is not vitiated by any defect, the claims for material and moral damages based on its alleged unlawfulness must be rejected.

12. In his rejoinder, the complainant also requests that the Agency be ordered to pay him exemplary and punitive damages. However, the dismissal of the claims for ordinary damages necessarily means that such damages cannot be awarded. Moreover, it should be recalled that a complainant is not permitted to enter new claims in her or his rejoinder (see, for example, Judgments 5050, consideration 15, 4761, consideration 10, or 4396, consideration 7).

13. Accordingly, the complaint must be dismissed in its entirety, including the claims for the costs incurred “for the purposes of the internal complaint”<sup>\*</sup> and the costs relating to the present proceedings.

#### DECISION

For the above reasons,

The complaint is 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.

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<sup>\*</sup> Registry’s translation.

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.