Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

P.-C. (No. 5) and others

v.

Eurocontrol

141st Session **Judgment No. 5171**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr D. P.-C. (his fifth), Mr M. M. (his third), Mr P. L. (his third), Mr A. P. (his second), Mr N. C. (his fourth), Mr J. S. (his fifth), Mr P. K. (his second), Mr A. A. G. (his fourth), Mr P. G. (his fourth) and Mr J. A. (his fifth) against the European Organisation for the Safety of Air Navigation (Eurocontrol) on 21 November 2022 and corrected on 23 January 2023, Eurocontrol's reply of 12 May 2023, the complainants' rejoinder of 12 July 2023 and Eurocontrol's surrejoinder of 13 October 2023;

Considering the application to intervene filed by Mr T. M. on 12 July 2023 and Eurocontrol's observations thereon of 2 August 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 none of the parties has applied;

Considering that the facts of the case may be summed up as follows:

The complainants request a compensatory allowance to reduce the financial losses resulting from a restructuring.

Until 30 November 2020 the integrated manual flight plan processing system – previously managed by the Central Flow Management Unit (CFMU) – was split between two Initial Flight Plan Processing Units (IFPU): IFPU1, located at the Organisation's Headquarters in Brussels (Belgium), and IFPU2, located in Brétigny-sur-Orge (France). The staff members of these two units were further divided into group E1 (comprising staff responsible for ensuring CFMU's continuous operation) which belonged to the FCO function group (for jobs involving traffic flow and capacity management operations), and group E2 (comprising operational support staff) in the same function group. The two units were merged as from 1 December 2020 owing to a restructuring and all initial flight plan processing operations were transferred to Brussels.

The complainants joined Eurocontrol at its Brétigny-sur-Orge site between May 1992 and February 2000 as staff members assigned to IFPU2. Until the restructuring came into effect, they received, in addition to their basic salary, an air traffic flow and capacity management (ATFCM) function allowance, as well as a shift work allowance.

On 14 November 2019, during a staff meeting, the Network Management Director (director of the Network Management Directorate, DNM, previously known as CFMU) and the Head of Human Resources and Services informed IFPU2 staff that the two IFPUs were to be merged and all flight processing operations transferred to Belgium. The staff members concerned were offered two options: they could relocate to Brussels and be assigned to IFPU1 or they could be redeployed in Brétigny-sur-Orge in the Operational Systems Digitalisation Unit, whose staff members were also FCO staff in group E2. The complainants chose the second option.

On 10 June 2020 the Director General took Decision No. I/31 (2020) concerning the transfer of manual flight plan processing operations from IFPU2 to IFPU1. Under Articles 2.2.1 and 2.2.2 of this decision – which specifically concerned staff wishing to remain in Brétigny-sur-Orge – the ATFCM allowance was reduced by 25 per cent, while the network function allowance (NFA) and the shift allowance were withdrawn. In the particular case of staff members receiving an

NFA, however, Article 2.2.3 provided for a "compensatory allowance" to offset the difference between their new net remuneration and the remuneration they received before the restructuring. None of the complainants received an NFA at the time when the restructuring took place.

From 1 December 2020, the complainants were all reassigned to new jobs as DNM operational staff in the E2 group. Their ATFCM allowance was therefore reduced by 25 per cent and their shift allowance was withdrawn.

Between 2 and 4 September 2020, the complainants each lodged an internal complaint under Article 92(2) of the Staff Regulations governing officials of the Eurocontrol Agency against Article 2.2.3 of Decision No. I/31 (2020). Alleging that the principle of equal treatment had been infringed, they requested that they too be awarded a compensatory allowance to cover the loss of salary resulting from the partial withdrawal of the ATFCM allowance and the complete withdrawal of the shift allowance. In early October 2020, the Head of Human Resources and Services acknowledged receipt of the internal complaints and informed the complainants that they had been forwarded to the Joint Committee for Disputes to be discussed during its next session. She added that, pursuant to Judgment 3889, the acknowledgements of receipt constituted decisions "upon [the] claim[s]" such as to interrupt the statutory time limit available to the complainants to refer their cases to the Tribunal and that they should await the Director General's final decision before filing complaints.

Between February and December 2021, the complainants' counsel enquired several times about the progress of the internal complaints. On 27 January 2022 the Human Resources replied that the Joint Committee for Disputes had dealt with the internal complaints at its meeting on 17 January and that an opinion was being drawn up, following which the Director General would make his final decisions. A new reminder was sent on 6 May 2022.

In its single opinion of 11 May 2022, the Joint Committee for Disputes unanimously recommended that the internal complaints be rejected as unfounded. By individual letters of 24 August 2022, the

complainants were informed of the Director General's decision to reject their internal complaints. Those are the impugned decisions.

The complainants ask the Tribunal to set aside the impugned decisions, to declare that Articles 2.2.2 and 2.2.3 of Decision No. I/31 of 10 June 2020 are unlawful, and to order Eurocontrol to pay each of them retrospectively a compensatory allowance equivalent to the loss of salary suffered since the restructuring. They also seek compensation of 2,000 euros each for the material and moral injury they allege to have suffered and payment of 8,000 euros in costs.

Eurocontrol asks the Tribunal to dismiss the complaints as unfounded.

CONSIDERATIONS

1. The complainants seek the setting aside of the decisions of the Head of Human Resources and Services of 24 August 2022, taken by delegation of authority from the Director General, which rejected the internal complaints they had lodged seeking the cancellation of Article 2.2.3 of the Director General's Decision No. I/31 of 10 June 2020 concerning the transfer of manual flight plan processing operations from IFPU2, located at Brétigny-sur-Orge, to IFPU1, located at Eurocontrol Headquarters in Brussels.

2. The ten complaints, which were examined jointly, raise similar issues of fact and law and seek the same redress. They will therefore be joined to form the subject of a single judgment.

3. A staff member who considers himself to be in a similar legal and factual situation to that of the complainants has filed an application to intervene.

4. In support of their complaints, the complainants put forward three pleas based on, firstly, the unfair and discriminatory treatment to which they were subjected, secondly, the Director General's alleged

bias and conflict of interest and, thirdly, the delay, which they describe as unreasonable, in dealing with their internal appeals.

5. As regards the first plea, alleging unfair and discriminatory treatment, the complainants submit that the Director General's Decision No. I/31 resulted in their losing 25 per cent of the ATFCM allowance and 100 per cent of the shift allowance. However, no salary protection measures were put in place for them, despite the fact that the Decision provides that two officials who previously received the NFA but no longer do so are to be granted a "compensatory allowance", as defined in Article 2.2.3, which is equivalent to the loss of the NFA allowance.

In this respect, the complainants seek to be paid compensation equivalent to the salary lost since the restructuring, to be applied proportionally to every staff member regardless of the type of allowance for which compensation is received, on terms similar to those described in Article 2.2.3 of Decision No. I/31, in order to restore equal treatment between their situation and that of their colleagues who previously received the NFA.

6. Articles 2.2.1, 2.2.2 and 2.2.3 of Decision No. I/31 provide as follows:

> "2.2.1 [Staff who, following the restructuring, wish to remain in Brétigny-sur-Orge] shall become FCO staff in group E2. They shall maintain 75 [per cent] of their ATFCM allowance.
>
> 2.2.2 The [NFA] [...] (Article 69a of the Staff Regulations), and shift allowance (Article 69b, paragraph 3, of the Staff Regulations), shall cease to be paid.
>
> 2.2.3 However, if the net remuneration of the concerned officials, as a consequence of the non-payment of the [NFA], is lower than the net remuneration they previously received, all other conditions being unchanged, in the last month before their assignment to an E2 post, they shall be entitled to a compensatory allowance equal to the difference until, as a result of their advancement to the next steps in their grade and/or grade promotion, and/or annual salary adjustment, their net monthly remuneration reaches the level of the net remuneration they received before their transfer."

7. The written submissions and evidence in the file show that, as senior network operational supervisors (SNOS), the two staff members to whom the complainants refer in support of their first plea received the NFA when they performed operational work in shifts, in accordance with Article 69a of the Staff Regulations. However, it appears that, following the restructuring, they were transferred to other positions for which this allowance was not granted.

8. The Tribunal has consistently held that the principle of equal treatment requires, on the one hand, that officials in identical or similar situations be subject to the same rules and, on the other hand, that officials in dissimilar situations be governed by different rules defined so as to take account of this dissimilarity (see, for example, Judgments 4995, consideration 16, 4681, consideration 9, 4277, consideration 21, or 3900, consideration 12).

9. In the present case, the Tribunal finds that, as Eurocontrol rightly submits, the complainants are mistaken in contending that they are in a situation similar to that of their colleagues appointed to SNOS posts. As stated in the impugned decisions of 24 August 2022 and in the unanimous opinion of the Joint Committee for Disputes of 11 May 2022, the complainants are not in the same category of officials as those who received a compensatory allowance for the loss of the NFA. The complainants were employed in different posts and did not have the same responsibilities as the two staff members appointed to SNOS posts, who performed specific tasks relating to network management, which explained why they received an NFA which the complainants had never received. It was therefore justified that the two groups of staff members be treated differently in terms of salary protection.

The Organisation does not commit discrimination by treating staff members who were in receipt of the NFA differently from those who were not entitled to it. The difference in treatment between the complainants, who essentially carried out operational support functions, and the two other staff members, who carried out SNOS functions at the time of the restructuring, arises directly from Article 69a of the Staff Regulations and Rule of Application No. 29a

concerning the function allowances payable to staff in the NM Operational Staff Service, which the complainants have not alleged are unlawful.

Unlike the complainants, those two staff members suffered a double loss of salary in that they no longer received the NFA or the shift allowance to which they were entitled before the restructuring. They therefore suffered a greater financial loss than the complainants. According to Eurocontrol, this justified the grant of a compensatory allowance in order to limit the harm caused to those two staff members, who were particularly affected by the restructuring.

10. Lastly, in Judgment 4767, consideration 5, the Tribunal, dealing with an issue similar to that raised by the complainants in their first plea, stated as follows:

> "[...] [T]he complainant alleges that the principle of equal treatment was breached in that two staff members who, like her, had chosen to remain in Brétigny-sur-Orge and thereby became FCO staff in group E2 received financial compensation to cover the difference in total remuneration paid before and after the abolition of IFPU2.
>
> However, it is clear from the file that the two staff members concerned were officially employed as Senior Network Operations Supervisors at the time IFPU2 in Brétigny-sur-Orge was abolished, and received the additional allowance provided for in Article 1 of Rule of Application No. 29a concerning functional allowances payable to DNM operational staff. But that was not the case of the complainant who was therefore not in an identical or similar situation to that of those two other staff members and so cannot legitimately rely on a breach of the principle of equal treatment (see, for example, Judgments 4712, consideration 5, 4681, consideration 9, and 4498, consideration 27). The plea fails."

As the facts are the same in the present case, there is no reason to reach a different conclusion.

The first plea is unfounded and the claim for a compensatory allowance equivalent to the salary loss suffered since the restructuring will therefore be rejected.

11. As regards the second plea, alleging bias and a conflict of interest on the part of the Director General, the complainants submit that Decision No. I/31, which they challenged in their internal appeals, was adopted by the same person who subsequently determined the receivability and merits of those appeals, namely the executive head, who was therefore in a position of conflict of interest, because "it [could] not be ruled out that he [had] examine[d] [the appeals] in a biased manner"[*].

However, this plea is based on mere conjecture and suspicion at best. As there is no evidence to support it, it is completely unfounded. In this respect, the Tribunal notes that, under Articles 92 and 93 of the Staff Regulations, the Director General has the power to take final decisions on internal appeals. The mere fact that the executive head of an organisation is the person who took an administrative decision contested by a staff member does not place her or him in a position of conflict of interest when determining an appeal against that decision (see in particular, to that effect, Judgment 5030, consideration 2).

12. In Judgment 5034, consideration 14, the Tribunal recalled that "according to settled case law, bias may not be presumed and [...] any allegation of bias must be supported by evidence of sufficient quality and weight to persuade the Tribunal that it is well-founded (see, for example, Judgments 4891, consideration 12, 4713, consideration 12, 4543, consideration 8, 4451, consideration 16, 4408, consideration 22, and 3380, consideration 9)".

In the present case, it must be found that the complainants have not adduced any tangible evidence to substantiate their allegations of bias or conflict of interest.

The second plea must therefore be rejected.

13. In their third plea, the complainants allege that Eurocontrol took an inordinately long time to deal with their internal appeals. They therefore claim compensation of 2,000 euros each for the moral injury

[*] Registry's translation.

they consider they have suffered as a result of the uncertainty associated with this delay and, as they put it in their respective complaints, "for the material injury resulting from the unequal treatment suffered"[*].

14. As regards material injury, since unequal treatment has not been established, there are no grounds for awarding any compensation under this head.

15. As regards moral injury, in Judgment 5034, consideration 19, the Tribunal recalled that an inordinate delay in dealing with internal appeals does not in itself mean that final decisions taken in the matter should be set aside. However, a failure by the competent bodies to examine appeals within a reasonable time breaches the requirement that internal appeals be dealt with expeditiously. Officials are entitled to have their appeals examined with the necessary speed, in particular in view of the nature of the decision which they wish to contest (see, for example, Judgments 4922, consideration 22, 4660, consideration 24, 4457, consideration 29, or 4063, consideration 14).

Moreover, under the Tribunal's settled case law, the amount of compensation that may be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4962, consideration 22, 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, and 4100, consideration 7).

16. In this case, the Tribunal notes that almost two years passed between the lodging of the internal complaints on 2, 3 and 4 September 2020 and the final decisions of the Director General of 24 August 2022. In addition, the complainants' counsel enquired no fewer than four times about the progress of the internal complaints, with no tangible impact on the speed of the proceedings.

[*] Registry's translation.

The Tribunal considers that such a delay is excessive. It finds that this delay was such as to cause the complainants moral injury, which will be fairly redressed, in the circumstances of the case, by awarding them compensation of 750 euros each.

17. As the complainants partly succeed, they will be awarded a total sum of 5,000 euros in costs for the proceedings before the Tribunal.

18. The staff member who filed an application to intervene considers himself to be in a legal and factual situation similar to that of the complainants, which the Organisation has acknowledged in its observations on the application. However, the intervener – who did not submit an internal appeal – merely requests that he should benefit from the setting aside of the impugned decision, without seeking moral damages. In these circumstances, the application to intervene should be dismissed.

DECISION

For the above reasons,

1. Eurocontrol shall pay the complainants moral damages of 750 euros each.
2. It shall also pay them a total sum of 5,000 euros in costs for the proceedings before the Tribunal.
3. All other claims and the application to intervene are dismissed.

In witness of this judgment, adopted on 28 October 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.