



JUDGMENTS and ORDERS

OF THE NATO ADMINISTRATIVE TRIBUNAL

2025

(first semester)

North Atlantic Treaty Organization
B-1110 Brussels - Belgium

Judgments of the NATO Administrative Tribunal

2025

43rd session (11 April 2025)

AT-J(2025)0001 Case No. 2024/1394	R	v.	NCIA
AT-J(2025)0002 Case No. 2024/1395	D	v.	NAPMA

44th session (25-26 June 2025)

AT-J(2025)0003 Case No. 2024/1398	L	v.	NAPMA
AT-J(2025)0004 Case No. 2024/1397	K	v.	NAPMA
AT-J(2025)0005 Case No. 2024/1399	T	v.	NCISG

Orders of the NATO Administrative Tribunal

2025

AT(PRE-O)(2025)0001 Case No. 2024/1396	C	v.	CMRE
AT(PRE-O)(2025)0002 Case No. 2025/1406-1411	G	v.	NSPA



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

16 May 2025

AT-J(2025)0001

Judgment

Case No. 2024/1394

**IR
Appellant**

v.

**NATO Communications and Information Agency
Respondent**

Brussels, 8 May 2025

Original: English

Keywords: termination after probation; discretionary decision; procedural flaw; pre-contractual obligations.

(This page is left blank intentionally)

This judgment is rendered by a Panel of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO), composed of Ms Louse Otis, President, Ms Seran Karatari Köstü and Mr Thomas Laker, judges, having regard to the written procedure and further to the hearing on 11 April 2025.

A. Proceedings

1. The NATO Administrative Tribunal (hereinafter the “Tribunal”) has been seized of an appeal, dated 19 July 2024 and registered on 25 July 2024 as Case No. 2024/1394, by Mr IR, against the NATO Communications and Information Agency (NCIA). The appellant contests the termination of his assignment at the end of an extended probationary period and requests, *inter alia*, compensation equivalent to 23 months of salary, repatriation costs as well as compensation for moral damages.
2. In its answer, dated 24 October 2024 and registered on 4 November 2024, the respondent invites the Tribunal to reject the appeal as devoid of legal merit.
3. The appellant’s reply, dated 30 November 2024, was registered on 6 December 2024. The respondent’s rejoinder, dated 4 February 2025, was registered on 7 February 2025.
4. An oral hearing was held on 11 April 2024 at NATO Headquarters and by videoconference in part. The Tribunal heard the appellant’s statement and arguments by his representative and by representatives of the respondent, in the presence of Ms Laura Maglia, Registrar.

B. Factual background of the case

5. The background and relevant material facts of the case may be summarized as follows.
6. On 8 December 2022, the appellant received a tentative job offer for a position he had applied to at NCIA. This position required fitness for military deployment.
7. On 9 January 2023, the appellant underwent the mandatory pre-employment medical examination. In an email of 19 January 2023 to NCIA, the competent medical advisor from [external medical provider] assessed the appellant, who is a corpulent person, to be “fit for his job not for military deployment”. The appellant was not informed about these limitations of his suitability.
8. Also on 19 January 2023, NCIA Contract Management was informed that the appellant had to undergo a “further stress test, as required when someone’s BMI is outside of the requirements set for NATO recruitment/deployability”.
9. On 24 March 2023, a reminder was sent to NCIA stating, *inter alia*, that there had been no reply “regarding [the appellant’s] requirement to re-sit the stress test as instructed by our medical provider. Are you content to make the offer of employment on

the caveat that [the appellant] should undertake another stress test within 3 months of joining?”

10. On 4 April 2023, the appellant was offered a definite duration contract effective 1 June 2023 to 31 May 2026, including a probationary period until 30 November 2023. The appellant accepted this offer which did not include any caveat or any reference to any other medical matters.

11. Having successfully started his assignment on 1 June 2023, the appellant was informed of the necessity of the said stress test on 11 August 2023.

12. On 17 October 2023, the appellant tried to pass the test, including an electrocardiogram. However, the test needed to be stopped and was not successfully completed.

13. In light of this failure, on 29 November 2023 the appellant's probationary period was extended for a further 6-month period, based on the expectation that such a measure “will give [the Appellant] the time to work on improving [his] level of physical fitness in order to reach the level required to pass the medical test as defined in [his] job description.”

14. On 9 January 2024, during his regular annual medical examination, the appellant referred to allergic reactions after his first test on 17 October 2023 and was advised to seek an alternative test from a private cardiologist.

15. On 3 April 2024, the appellant again took but did not pass the stress test.

16. On 23 May 2024, the appellant was informed of the NCIA's General Manager's decision of 9 May 2024 to terminate his employment, effective 30 June 2024, on grounds of his continued inability to reach the minimum required medical standard for his position to warrant confirmation of his contract of employment.

17. On 19 July 2024, the present appeal was submitted.

C. Summary of parties' contentions, legal arguments and relief sought

(i) The appellant's main contentions

18. In the appellant's view, based on the legal doctrine of estoppel NCIA was estopped from terminating the contract on grounds that the appellant was unable to fulfil the medical requirements for his position.

19. Further, the appellant alleges that NCIA failed to adhere to its own internal laws.

20. In addition, the appellant complains that NCIA failed to exercise its duty of care, to act in good faith, and to respect his dignity.

21. Finally, in the appellant's view NCIA did not apply the principle of good administration when not helping him to secure the correct medical assistance.

22. As remedies, the appellant requests 23 months' salary (about EUR 150,000), compensation for unused leave, repatriation costs, reasonable legal fees, and compensation for the pain and suffering caused to him by the unlawful decision making.

(ii) *The respondent's main contentions*

23. The respondent believes that NCIA conducted the assessment of the appellant's unfitness in line with NATO's requirements.

24. In the respondent's view, NCIA exercised reasonable discretion and met all procedural requirements when deciding that the appellant was unsuitable for the position at stake.

25. Regarding remedies, the respondent does not see a causal link between the termination decision and any harm or detriment. In the respondent's view, the non-confirmation gives no entitlement to damages, as the purpose of the probationary period is to evaluate the staff member's suitability. Finally, the respondent clarifies that NCIA does not grant "buy-out" of untaken leave to its staff.

26. The respondent requests dismissal of the appeal.

D. Considerations and conclusions

(i) *Admissibility*

27. Pursuant to Art. 1.4 of Annex IX to the Civilian Personnel Regulations (CPR), a party may lodge an appeal directly with the Tribunal where the contested issue is the result of a decision taken directly by the Head of a NATO body. This is the case here, as the General Manager who signed the contested decision is the Head of NCIA.

28. Also, the appeal was filed within the 60-day timeframe of Art. 6.3.1 of Annex IX to the CPR between notification of the contested decision (23 May 2024) and submission of the appeal (19 July 2024).

29. Therefore, the appeal is admissible.

(ii) Merits

30. At the outset, the Tribunal reiterates and confirms its established jurisprudence regarding the scope of judicial review of contract termination at the end of a probationary period, pursuant to which:

The probationary period allows the Organization to decide whether the staff member indeed has the professional qualifications and capabilities, but also whether the person fits in his or her job in the Organization. Therefore, decisions concerning appointments, and *a fortiori* decisions concerning the confirmation of the appointment at the end of the probationary period, are within the discretionary power of the Head of the Organization [...].

[D]ecisions in the exercise of the discretionary powers are subject to only limited review by the Tribunal. The Tribunal can only interfere if the decision was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority. (Case No. 2023/1379, Judgment of 16 July 2024, paragraphs 20 and 21)

Based on these principles, the Tribunal finds the decision to terminate the appellant's assignment at the end of the extended probationary period to be legally justified. However, the Organization's pre-contractual approach towards the appellant did not meet the necessary standards of fairness and transparency. The Tribunal will address these issues in turn.

Termination decision

31. The Tribunal recalls that the position at stake required its incumbent to be deployable within the meaning of NATO rules. ACO Directive 083-003 of 26 July 2021, in its Annex A at paragraph 1 e), provides that a Body Mass Index (BMI) of greater than 31 may disqualify a staff member in this respect, *inter alia*, if it is combined with an insufficient cardio-respiratory capability, which obviously can only be excluded by taking a stress test electrocardiogram.

32. As a matter of fact, the appellant's BMI exceeded 31 at the first medical examination on 9 January 2023 and afterwards. Also, it is noted that the appellant at no time before or during his assignment passed the indispensable stress test. Thus, the Tribunal cannot but observe that the appellant failed to meet the medical requirements for confirming deployability.

33. The appellant's efforts to shift the responsibility for his failure to the Organization are without merit. ACO Directive 083-003 paragraph 2-6 unmistakably clarifies that it is civilian staff who are responsible, *inter alia*, for "[t]aking all possible measures to maintain their medical fitness and suitability for deployment," and "...complying with request of their respective HONB Medical Consultant or CHRM when a follow-up medical examination is required".

34. Having been informed accordingly on 11 August 2023, the appellant was or must have been aware of the necessity to pass the stress test for the future of his assignment. Having failed to do so on 17 October 2023, he was even granted an extension of his probationary period for the only purpose of giving him another chance to fulfil the medical requirements. Unfortunately, this aim was not achieved on 9 January 2024, nor on 3 April 2024. Factually, the appellant had more than 8 months to pass the test or reduce his BMI. Regardless of the grounds for his aversion to many types of medical examinations, under these circumstances, the appellant's personal frustration of being left alone for an electrocardiogram does not override his personal responsibility to follow [external medical provider]'s advice to find a private cardiologist and to take the test elsewhere.

35. Given the clear wording of the quoted rules, there is no room for resorting to alleged violations of general principles like the duty of care, the obligation to act in good faith, or the principle of good administration. These principles are mainly supposed to fill *lacunae* within the written law, or to help with interpretation of unclear rules. This is not the case here. Also, there are no indications that NCIA did not respect the appellant's dignity while insisting on the fulfilment of the requirements of his position. That said, the Tribunal recalls that NCIA took remarkable measures to keep the applicant on board, like the extension of the probationary period and the offer to take the stress test at a private cardiologist's office.

36. The legal doctrine of estoppel does not support the appellant's claim. As the appellant was under probation anyway, there is no reason to believe that he relied to his detriment on the firm offer which, unfortunately, did not indicate the additional medical requirements at stake. Rather, during this period he was employed and decently paid.

37. Finally, the contested decision is in line with the internal law of the Organization. Pursuant to the applicable rules, it lies within the discretion of NCIA to confirm or to terminate the contractual relation at or before the end of the probationary period (see NCI Agency Directive 2.1 on Contract Policy, effective 1 January 2013, paragraph 4.4¹). Considering the lack of a basic requirement for the position at stake, NCIA had little other choice than to terminate the assignment, since an extension of the probationary period had already been granted to no avail. The necessary 30 calendar days' notice (see Article 10.1 of the CPR) was respected. The Tribunal does not see any other error of fact or law in this respect.

Pre-contractual approach

38. The Tribunal recalls that the firm offer for the position at stake which the appellant accepted on 4 April 2023 after having taken a pre-employment medical examination on 9 January 2023 did not refer to any further medical requirements regarding deployability. Further, it needs to be noted that NCIA declined to include a caveat on this, despite having been reminded accordingly by a competent HR officer. It follows that NCIA, regardless of its motives, knowingly sent an incomplete job offer to the appellant.

¹ "The first six months of a definite duration contract of more than one years' duration are considered a probationary period. For contracts of definite duration with a duration of one year or less the first three months are considered a probationary period. At or before the end of the probationary period, the staff will be notified in writing that the contract is confirmed; or that it is terminated in accordance with the provisions therein; or in exceptional cases, that one further probationary period not exceeding six months is necessary".

39. The Tribunal does not speculate whether or not the appellant would have accepted the offer had he been explicitly informed about the necessity of additional medical examinations. However, by knowingly excluding this crucial element from the offer, NCIA factually deprived the appellant in part of the ability to make a well-informed decision. Such an approach includes a procedural flaw and negligence for which the respondent bears responsibility.

40. Pursuant to the Tribunal's jurisprudence, procedural flaws may justify compensation for non-material damage even where the underlying contested decisions are not illegal (see Judgment of 23 February 2024, Joined Cases Nos. 2023/1354 -1376). In the present case, the appellant's decision to accept the (incomplete) offer had serious consequences for him and his family, considering, e.g., that they had to move from a foreign continent to a country with a different culture and language only to return after a single year. After the unsuccessful end of the probationary period, problems of finding appropriate work arose, leaving the appellant in an overall instable situation. Therefore, the Tribunal finds it appropriate to award compensation in this respect.

E. Costs

41. Article 6.8.2 of Annex IX provides as follows:

In cases where it is admitted that there were good grounds for the appeal, the Tribunal shall order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant [...].

42. The Tribunal finds that there were sufficiently good grounds for the appeal. The appeal being successful in part, respective reimbursement of legal fees is justified.

F. Decision

FOR THESE REASONS

The Tribunal decides that:

- The respondent is ordered to pay the appellant EUR 12,000.
- The respondent is ordered to reimburse legal costs up to the amount of EUR 3,000 to the appellant.
- All other pleas are rejected.

Done in Brussels, on 8 May 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

3 June 2025

AT-J(2025)0002

Judgment

Case No. 2024/1395

**SD
Appellant**

v.

**NATO Airborne Early Warning & Control Programme Management Agency
Respondent**

Brussels, 23 May 2025

Original: English

Keywords: twin-graded post; transition to Single Spine Salary (SSS) system.

(This page is left blank intentionally)

This judgment is rendered by a Panel of the North Atlantic Treaty Organization (NATO) Administrative Tribunal, composed of Ms Louise Otis, President, Ms Seran Karatari Köstü and Mr Thomas Laker, judges, having regard to the written procedure and further to the hearing on 11 April 2025.

A. Proceedings

1. The NATO Administrative Tribunal (hereinafter “the Tribunal”) has been seized of an appeal by Ms SD (hereinafter “the appellant”), against the NATO Airborne Early Warning & Control Programme Management Agency (hereinafter “NAPMA”) dated 30 September 2024 and registered on 15 October 2024 as Case No. 2024/1395, seeking a revision of her post description, associated pay grade and current step, taking into account the performance of G12/B5 duties despite being at the G10/B4 grade since 2013, along with material compensation for the loss of income between the G12/B5 and G10/B4 grades from January 2013 to December 2023.
2. The respondent’s answer, dated 11 December 2024, was registered on 19 December 2024. The appellant’s reply, dated 10 February 2025, was registered on 11 February 2025. The respondent’s rejoinder, dated 13 March 2025, was registered on the same day.
3. An oral hearing was held on 11 April 2025 at NATO Headquarters and by videoconference in part. The Tribunal heard the appellant’s statements and arguments by her representative, Mr D, and by representatives of the respondent, in the presence of Ms Laura Maglia, Registrar.

B. Factual background of the case

4. The appellant joined NAPMA on 15 April 1991 as a B3 secretary. After 21 years of service, in 2012, the appellant was selected for a newly created post at B4 level (Senior Administrative and Contracting Assistant).
5. In January 2013, the appellant obtained a Level-A warrant allowing her to purchase goods and services up to 10,000 EUR. Further, in 2018, she was issued a Level-B warrant increasing such purchases to 20,000 EUR.
6. From 2013 until 2021, the appellant performed duties within the scope of the additional financial responsibility she had acquired, without her job description being updated.
7. Following the appellant’s first initiative for evaluation of her post description in 2021, on 9 September 2021 a new post description, reflecting the actual duties carried out, was created and internally approved. However the title and grade remained unchanged.

8. On 13 April 2023, the appellant submitted a request to re-evaluate her post description along with the associated pay grade.

9. As a change applied to NAPMA's Peacetime Establishment (PE), following NAPMA management's recommendations, on 20 November 2023, the NAPMO Board of Directors (BoD) approved all proposed changes, including the re-grading of the appellant's post as G10/12-B4/B5 effective 1 January 2024. On 29 February 2024, the appellant was notified of the revised post description and the twin-grading of her post as G10/12-B4/B5 (with the next step increment date set at 1 January 2025). The appellant's step increment was also transitioned from the ABCL system to the new Single Spine Salary (SSS) system.

10. The appellant agreed with the promotion and the new post description; nevertheless, she requested "Step 29" as her step assignment; however, the respondent followed relevant policy and the rule of a minimum 4% increase, and her step was assigned as "Step 23".

11. On 21 March 2024, the appellant submitted a request for administrative review of the decision to re-grade the post to a twin-graded post and her step assignment, and claimed damages for loss of income since 2013.

12. On 22 April and 20 June 2024, two mediation sessions were conducted, without a successful outcome. On 1 July 2024, the appellant's request for administrative review was rejected.

13. On 24 July 2024, the appellant submitted a complaint, which was dismissed on 21 August 2024 by the NAPMA General Manager (GM).

14. On 30 September 2024, the appellant submitted the present appeal.

C. Parties' principal contentions, legal arguments, and relief sought

(i) The appellant's main contentions

15. The appellant claims that, since 2013, she has consistently performed duties beyond her official post description – particularly in independently contracting through warrants – and that her post should have been classified at the B5 grade. She maintains that the BoD did not approve her post description as she had requested. She argues that the twin-grade adjustment did not constitute formal recognition of the higher-level duties she had carried out. Although she was promoted to the B5 grade within the contested twin-graded post, this promotion was based on her experience and performance, rather than an acknowledgment of the B5-level tasks she had been performing while officially graded at B4.

16. The appellant states that, given her individual circumstances, she requested an exception to the NATO-wide policy for a higher step assignment, and referred to the CPR rule which allows for discretionary application. She claims that it is unclear why such an exemption was not granted in her case.

17. The appellant seeks compensation for loss of income, claiming that she had undertaken B5-level duties from January 2013 to December 2023, despite being at B4 grade. The appellant claims that until 2021, there was no official system for performance reviews through which she could voice her concerns. She also claims that she was unable to submit a request and/or complaint because of alleged bullying and abuse of power by her supervisor, fear of losing her job, and the idea that additional tasks were covered under the post description's "performing other related duties assigned" clause.

18. The appellant, inter alia, requests the Tribunal to issue directions to the respondent regarding the above-mentioned requests.

(ii) *The respondent's main contentions*

19. The respondent contests the admissibility of the appeal insofar as it is addressed against the BoD decision that created the twin-graded post. It also asserts inadmissibility by claiming that the appeal is not directed against an act or omission adversely affecting the appellant's working conditions, but only favourably.

20. The respondent states that post descriptions and gradings are based on position needs, not individual qualifications. It also maintains that the re-grading process complied with established rules. The final decision on twin grading rests solely with the BoD, and the respondent cannot unilaterally alter the grading.

21. The respondent maintains that, when determining the appellant's step, it followed NATO-wide policy, mandating a minimum 4% salary increase, to ensure common practices and fairness between similar positions throughout the Agency.

22. The respondent also asserts that twin grading or upgrading a post does not entitle the personnel filling that particular position to retrospective compensation of any kind. It denies that the appellant had performed B5-level duties since 2013, and also notes that the appellant's promotion to B5 in the twin-graded post was based on her experience and performance, but does not imply that the post was previously B5.

23. The respondent also notes that the appellant did not raise any claims until 2021. Regarding the appellant's allegations against her supervisor, it emphasizes that although NATO's harassment policy ON(2020)0057 was not yet in force at the time, any allegations of misconduct or bullying would still have been taken seriously. It further points out that alternative avenues – such as escalation to higher management, or submitting requests under Article 24.1(f) of the CPR for a relative allowance or compensation – were available.

24. The respondent requests the Tribunal to declare the appeal inadmissible and dismiss the case, or alternatively, to reject the appellant's claims in their entirety as unsubstantiated.

D. Considerations and conclusions

(i) Admissibility

25. The respondent first contends that the appeal is inadmissible insofar as it is addressed against the decision of the BoD – a body of national representatives that is not represented in these proceedings – determining the post as twin-graded under an organizational change applied to NAPMA's Peacetime Establishment. This raises significant issues bearing on the Tribunal's capacity or authority to adjudicate the claims raised. For clarity and convenience, these will be addressed in connection with the Tribunal's consideration of the merits.

26. The respondent secondly argues that there has been no decision adversely affecting the appellant, as the contested decision was, in its view, entirely favourable. However, the appellant contends that she has been individually and adversely affected due to the incorrect classification of her post's grade. Among other points, she challenges the step assigned to her upon transferring to the new pension system and seeks material compensation for the resulting loss of income. As such, her claims are admissible.

(ii) Merits

27. In her requests for relief, the appellant asks the Tribunal to issue directions to the respondent to revise her post description, reclassify her twin-graded post to a B5 grade, adjust her current step, and calculate and compensate the loss of income resulting from her post remaining at B4, despite her having performed B5-level duties since 2013.

28. In this regard, it derives from Articles 6.2.1 to 6.2.3 of Annex IX to the CPR that the Tribunal is not entitled to issue directions requiring the respondent to do or to refrain from doing something. It is instead for the respondent to draw the appropriate conclusions from the operative part of the Tribunal's judgment regarding the legality or illegality of a contested decision and from the grounds on which it is based (cf. Case No. 2016/1079).

29. However, with her appeal to the Tribunal, the appellant introduces a set of arguments that in fact amount to a call for annulment of the respondent's decision on the evaluation of her post, the denial of material compensation for alleged loss of income, and the refusal to grant a higher step.

30. The appellant, firstly, contends that, since 2013, she has consistently performed duties that exceeded the scope of her post description and the B4 pay grade. She argues that, in light of the level of responsibility she assumed – including independently executing contractual actions under the authority of warrants issued to her – her position should have been graded as B5. She further states that her request in 2021 regarding re-evaluation of her post description was not for a twin-grade designation. According to her, the BoD's decision to approve a newly established twin-graded post (B4/B5) was made without her knowledge or consent. She maintains that her subsequent promotion from B4 to B5 within this twin-graded post did not constitute formal recognition of the higher-level duties she had already been performing; as such, it did not meet her request.

31. Based on the submitted documents – including the reports of the personnel board, the Terms of Reference (TOR) of the Policy and Finance Committee (PFC) and the BoD and approved decision sheets for the B4/B5 post description – it is noted that, in response to the appellant's 2023 request to re-evaluate her 2021 post description and associated pay grade, the Personnel Board met on 7 September 2023 and assessed the post's responsibilities within NAPMA's Peacetime Establishment. It is observed that with the justification of the appellant's supervisor and the Chief Programme Support Division, the General Manager approved the request to upgrade the post from G10 (B4) to G10/12 (B4/B5). As NAPMA Manpower Management only provides recommendations based on its Terms of Reference and PE changes further require the PFC's endorsement and the BoD's approval, the PFC, in its 24–25 October 2023 session, endorsed the recommendation to re-grade the post as a twin-graded post, and the approval was granted by the BoD during its 24–25 October 2023 session, accordingly.

32. The Tribunal recalls that the authorities involved in the evaluation of the proposed job descriptions and grading of the posts enjoy broad discretion (cf. Case No. 2016/1078); however, it points out that the above-mentioned procedure is not under the sole control of NAPMA Manpower Management. The Head of NATO body has neither the authority to determine, following negotiations with the staff member concerned, what grade would be most suitable for the post in question, nor the authority to change or rescind decisions taken by the NAPMO BoD. The NAPMA GM- acted appropriately based on the BoD's decision and, therefore, the Tribunal considers that it is not the GM's decision but the BoD's decision that constitutes the core of the appeal.

33. In Case No. 2020/1305, the Tribunal held that the BoD – a body composed of national representatives – is not represented in these proceedings and is not a NATO body within the scope of Article A(v)(a) of the Preamble to the CPR. However, despite not being competent to annul a decision of the BoD, the Tribunal may rule on such a decision's legality, as on that of all regulatory decisions by Heads of NATO bodies or by any other administrative authority, when a Head of a NATO body takes an individual decision implementing the BoD decision (cf. Case No. 2021/1335).

34. In this regard, it has been consistently concurred that a decision in the exercise of an organization's discretion is subject to only limited review by the Tribunal (cf. Case No. 885, paragraphs 33–37). The Tribunal can only interfere with the impugned decision if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts, or if there was an abuse of authority or manifest abuse of discretion. In view of this, the Tribunal has also consistently held that it will not substitute its own view for the organizations' assessments in such cases (cf. Cases Nos 2016/1090 and 2016/1095, Case No. 2021/1335).

35. The Tribunal observes that during the evaluation of the proposed job description and the grading of the post, a serious and coherent process was followed. It finds that the grading decision was properly made, that there was no abuse of power, and that there is no indication of arbitrariness. Moreover, the appellant's interests were also taken into account by the fact that she was promoted to B5 grade in the twin-graded post, considering her experience and prior service. It is established international civil service jurisprudence that, when allegations are made, it is the duty of those who make the

allegations, in this case, the appellant, to provide convincing proof. The appellant has failed to do so. Accordingly, the appellant's argument in this respect fails.

36. The appellant, secondly, disagrees with the step (Step 23) assigned to her despite her request for a higher step (Step 29), as a result of the transition of her step increment from the ABCL system to the new Single Spine Salary (SSS) system, following the BoD decision on twin-grading and her promotion to B5 as of 1 January 2024. Her request for a higher step is based on her assumption that if her post had been re-graded as B5, she would have progressed further along the pay scale. Instead, she reached the highest step in B4 grade under the ABCL system in 2017, and as a result, missed out on potential step increases that would have had a significant impact on her retirement pension. The appellant, therefore, maintains that, in light of the financial loss incurred, the higher step should have been granted as an exception to her case.

37. The respondent submits that the procedure for determining the step within the new grade is a process developed by NATO IS and is followed NATO-wide. The respondent maintained that AP-WP(93)7 (NATO-wide policy guiding step determination, particularly in cases of transfers) was slightly amended with the introduction of the Single Salary Spine. Based on AP-WP(2016)0010-REV2 (draft) dated 27 April 2021, in case of a transfer to a higher grade, the appointment at the SSS point shall be a minimum of 4% increments above the former point.

38. The appellant challenges the respondent's approach on two grounds. First, she refers to the phrase "minimum 4% increments", arguing that the use of the word "minimum" – rather than "maximum" – implies the possibility of higher increments. Second, she cites Chapter II, Article 4.2 of the CPR, which grants the Head of NATO Body (HoNB) the discretion to appoint at a higher step, and asserts that such an exception should have been applied in her case.

39. In response, the respondent explains that the 4% threshold is a strict guideline for determining salary step upon transfer, requiring that the new step be the closest equivalent that provides an increase of at least 4% over the previous salary. If the initial calculation results in an increase of less than 4%, the incumbent is granted the next higher step to meet the minimum threshold.

40. The Tribunal notes that Article 4.2 of the CPR, invoked by the appellant, stipulates that members of the staff shall normally be appointed at the lowest step of their grade; however, the HoNB "may" recognize exceptional qualifications and skills and appoint at a higher step if the candidate in question can demonstrate possession of high level training and proficiency or specific experience which is directly relevant to the duties attached to the post in question, also taking into account the previous remuneration package. It follows that the HoNB has broad discretion whether to recognize exceptional qualifications and skills and appoint at a higher step, or not.

41. The respondent states that the appellant's post was one of five posts re-graded at the same time and that NATO HQ IS Executive Management HR was consulted to ensure consistency in applying the transfer procedures from the ABCL scales to the SSS. Although Article 4(2) of the CPR allows the HoNB to appoint at a higher step in recognition of exceptional qualifications, he chose to follow the recommendation to apply

the same rationale to all cases. This was done to ensure fairness between comparable positions and maintain a uniform approach across the Agency.

42. Consequently, as to the appellant's step increment, it is clear from the records that it was determined under the applicable NATO-wide policy and guidance. Although the policy was still a draft document, its application was justified by the need to ensure consistency and uniform treatment across the Agency when transferring staff from the ABCL salary scales to the SSS. The Tribunal points to the fundamental principle of international administrative law that similarly situated staff members must be treated consistently and notes that, as confirmed by the respondent during the hearing, the same approach was applied in multiple cases similar to the appellant's. The Tribunal considers that the respondent's decision falls within its discretionary authority, was made in accordance with applicable rules and policies, and does not reflect any abuse of authority. The appellant's submission in this regard must be rejected.

43. The appellant, thirdly, seeks material compensation for alleged loss of income, asserting that she consistently performed duties commensurate with the B5 grade from January 2013 to December 2023, while being formally classified and remunerated at the B4 level. Accordingly, she claims entitlement to compensation representing the difference between the remuneration – including salary, allowances, and step increments – actually received since 2013 and the remuneration she contends would have been payable had her post been formally graded as B5 to reflect the functions she performed.

44. The respondent contests this assertion, maintaining that the appellant did not perform B5-level duties throughout the referenced period. It further argues that neither the twin-grading nor upgrading of a post retroactively reclassifies the position, nor does it give rise to any right to retrospective compensation. The designation of a post twin-graded as B4/B5 indicates that while the duties outlined in the post description align with B4-level responsibilities, the B5 classification merely reflects a potential career advancement contingent upon the incumbent's experience and demonstrated performance. In the present case, the appellant's professional experience and performance were duly recognized through her promotion to the B5 grade.

45. The Tribunal recalls Article 4.6 of the CPR, which provides that "the appointment of a member of the staff is effected by the signature of a contract specifying the date from which it takes effect". In accordance with this provision, the Tribunal considers that financial adjustments take effect from the date on which the new duties are formally assumed – in this case, on 1 January 2024. Accordingly, the reclassification of the appellant's post as twin-graded does not give rise to any retroactive financial entitlement. Furthermore, the appellant's promotion to grade B5 was granted in recognition of her experience and performance as of that time, and does not constitute a retroactive regrading of her prior position. In light of the foregoing, the appellant's claim for compensation is deemed to lack a sufficient legal basis.

46. It follows from the foregoing considerations that the present appeal must be dismissed in its entirety.

E. Costs

47. Article 6.8.2 of Annex IX to the CPR provides as follows:

In cases where it is admitted that there were good grounds for the appeal, the Tribunal shall order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant [...].

48. The appeal being dismissed, no reimbursement of costs is due.

F. Decision

FOR THESE REASONS,

The Tribunal decides that:

- The appeal is dismissed.

Done in Brussels, on 23 May 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

4 August 2025

AT-J(2025)0003

Judgment

Case No. 2024/1398

TL
Appellant

v.

NATO Airborne Early Warning & Control Programme Management Agency
Respondent

Brussels, 8 July 2025

Original: English

Keywords: definite duration contract; non-renewal; harassment; disciplinary proceedings.

(This page is left blank intentionally)

This judgment is rendered by a Panel of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO), composed of Ms Louise Otis, President, Mr Thomas Laker and Mr Fabien Raynaud, judges, having regard to the written procedure and further to the hearing on 26 June 2025.

A. Proceedings

1. The NATO Administrative Tribunal (hereinafter the “Tribunal”) has been seized of an appeal, dated 29 November 2024 and registered on 3 December 2024 as Case No. 2024/1398, by Mr TL (the appellant), against the NATO Airborne Early Warning & Control Programme Management Agency (NAPMA, the respondent). The appellant challenges the disciplinary decision of 1 October 2024 in which the General Manager (GM) of NAPMA sanctioned him for alleged acts of sexual harassment, as well as the decisions of 30 September 2024 and 31 October 2024 pertaining to the non-renewal of his contract and the dismissal of the Administrative Review/mediation request.

2. In its answer, dated 5 March 2025 and registered on 11 March 2025, the respondent invites the Tribunal to reject the appeal as inadmissible and without merit.

3. The appellant’s reply, dated 9 April 2025, was registered on 17 April 2025. The respondent’s rejoinder was dated 22 May 2025 and was registered on that same day.

4. An oral hearing was held on 26 June 2025, at NATO Headquarters. The Tribunal heard the appellant’s statement and arguments by his representative and by representatives of the respondent, in the presence of Ms Laura Maglia, Registrar.

B. Factual background of the case

5. The background and relevant material facts of the case may be summarized as follows.

6. The appellant was a high ranking official of the Agency. He had been working for NAPMA on a three-year definite duration contract. Although his contract was supposed to end on 31 October 2024, the appellant explains that discussions had taken place to extend it for three additional years. However, despite the appellant’s expectations, the decision to offer an extension was never adopted by the Personnel Board.

7. On 2 November 2023, the appellant and other NAPMA colleagues had dinner at a restaurant in Italy with a contractor’s staff members. The appellant was seated next to the alleged victim, Ms K, a junior employee of the contracting company. The appellant and other NAPMA colleagues met their contractor colleagues, including Ms K, again on 3 November 2023.

8. Between 6 and 10 November 2023, exchanges took place between NAPMA colleagues and the GM as well as the GM and the contractor about the appellant’s behaviour towards Ms K.

9. The behaviour at issue included the appellant's invitation to Ms K for drinks when she would be on her own or when they both would be alone. He also leaned in to converse with her and made physical contact by placing his hand on her back between her shoulder blades.

10. On 15 November 2023, the GM discussed the event with the appellant in his office.

11. On 29 November 2023, Ms K's legal firm submitted a complaint on her behalf denouncing the appellant's conduct.

12. On 5 December 2023, a meeting took place between the GM and Ms K's superior and a memorandum about the meeting was issued on 6 December 2023 in which Ms K describes the behaviour of the appellant during the dinner that was the object of the disciplinary proceedings. Interviews with NAPMA colleagues who were present at the dinner took place on 7 December 2023.

13. On 8 December 2023, the GM informed the appellant about the complaint and the initiation of an investigation against him. The object of the investigation was to consider whether the appellant's conduct breached the NATO Policy on the Prevention, Management and Combating of Harassment, Bullying and Discrimination in the Workplace and/or the NATO Code of Conduct. That same day, the appellant was suspended from his duties for the duration of the investigation.

14. The appellant sent an email and a letter of apology to Ms K's superior on 11 December 2023.

15. HR appointed an independent external investigator on 14 December 2023, and informed the appellant of such appointment on 20 December 2023. The appellant sent his observations to the investigator on 6 January 2024.

16. The appellant was interviewed by the investigator on 21 March 2024 and other witnesses were heard between January and March 2024.

17. On 16 April 2024, the appellant was informed that his contract would end on 31 October 2024. In this regard, the GM wrote to the appellant that "[a]s no final decision has been made on your contract extension [...] your present contract will end on 31 October 2024".

18. On 25 April 2024, the investigator delivered its report to NAPMA. On 1 May 2024, the appellant was suspended with emoluments by the GM. He was also informed that he would be subject to a Disciplinary Procedure in accordance with Article 60.2 of the NATO Civilian Personnel Regulations (CPR). The appellant had been informed of this on 2 May 2024 during a meeting in person.

19. On 7 May 2024, NAPMA referred the establishment of the Disciplinary Board (DB) to NATO HQ. According to the respondent, the Board was chaired by a representative from NATO HQ in order to fulfil the requirement of impartiality and to avoid any conflict of interest.

20. On 10 May 2024, the GM issued a disciplinary report pursuant to Article 5.2 of Annex X to the CPR describing some allegations as probable and proposing a disciplinary sanction of suspension in accordance with Article 59.3(d) of the CPR.

21. The Disciplinary Report of 10 May 2024 highlights, in addition to the appellant's behaviour towards Ms K, that he contacted one of the witnesses on 20 December 2023 using the following terms: "I was thinking about you and the girls, you must be unlocked at home with the girls". He also sent a LinkedIn connection request to another witness, despite knowing him since 2017, after having been advised of the formal investigation. The Report qualifies these two actions taken by the appellant as in breach of the NATO Code of Conduct.

22. The appellant submitted his response to the Disciplinary Report on 3 June 2024 and, on 2 August 2024, requested an Administrative Review (AR) to challenge the suspension decision of 1 May 2024.

23. On 13 August 2024, the appellant was notified that he should initiate out-processing and separation formalities, in line with the previous notification of 16 April 2024.

24. On 26 August 2024, the appellant filed an email request for an AR of the suspension decision of 1 May.

25. On 28 August 2024, the appellant received a negative response to his request for an AR because the suspension decision had not been challenged within the prescribed deadline of 30 days after the decision was notified.

26. On 1 September 2024, the appellant requested a three-month extension of his contract (until 31 January 2025) to provide enough time for him to search for a job and a home in the event that it was decided not to extend his original contract for an additional three years.

27. The DB convened on 17 September 2024. After the appellant was heard by the DB, on 17 September 2024, the latter made its recommendations on 26 September 2024.

28. On 30 September 2024, NAPMA denied the appellant's request for a three-month extension of his contract and further reiterated that the appellant was to initiate out-processing formalities as requested by the out-processing notification.

29. On 1 October 2024, the GM sanctioned the appellant on the basis of a violation of Article 12.1.4 of the CPR and the NATO Code of Conduct. In this regard, the appellant was suspended temporarily (from 1 October until 31 October 2024) and 10% of his emoluments were withheld in accordance with Article 59.3(d) of the CPR.

30. On 14 October 2024 the appellant submitted a complaint against the decision of 30 September 2024 denying his request for a three-month extension of his contract and requested mediation in relation to the end of his contract and the lack of proper notification. On 30 October 2024, the appellant also asked the GM for access to several documents and for clarification about the findings of the DB and the GM justifying the disciplinary decisions.

31. On 31 October 2024, NAPMA rejected the appellant's complaint dated 14 October 2024 and denied his request for mediation in relation to the notification of the end of his contract on the grounds that the appellant did not contest a formal decision (Articles 2.2 and 4.1. of Annex IX to the CPR), his request to appoint a third party to make a decision regarding his proposal fell outside the scope of mediation, and the proposed mediation was not a work-related dispute.

32. On the same day, the out-processing of the appellant was completed in accordance with previous notifications.

33. On 11 November 2024, NAPMA acknowledged receipt of the appellant's email of 30 October 2024 and, on 18 November 2024, it denied the request for clarification and access to documents.

34. On 29 November 2024, the present appeal was submitted, challenging the decisions of 1 October 2024, 30 September 2024 and 31 October 2024.

C. Summary of parties' contentions, legal arguments and relief sought

(i) *The appellant's main contentions*

35. On the admissibility of the appeal, the appellant explains that the three disputed decisions, i.e. of 1 October 2024 concerning the disciplinary sanctions and of 30 September and 31 October 2024 concerning the end of his contract, undoubtedly adversely affect his situation and that they are admissible *ratione temporis*. The appellant also observes that he exhausted all internal remedies before lodging this appeal.

36. Furthermore, the appellant explains in his reply that the fact that in his previous legal actions he did not explicitly seek the annulment of the disputed decisions does not constitute a bar to the admissibility of the present appeal.

37. Finally, the appellant emphasises that the challenged decisions directly and immediately adversely affected his working conditions by suspending him, withholding 10% of his emoluments, not renewing his contract and not giving him the opportunity to adequately prepare for other pursuits.

38. On the merits, the appellant first explains that with respect to the decision of 1 October 2024 related to the disciplinary procedure, a breach of his right to a defence occurred. In particular, the appellant alleges that he did not have the opportunity to submit his observations before the GM adopted the disputed decision of 1 October 2024, in breach of Article 60.4 of the CPR.

39. The respondent further prevented the appellant from fully exercising his right to a defence by not giving him access to the DB's recommendations, thus contradicting a well-established practice within NATO to share DB recommendations with the accused person. Nor did the appellant have access to the report of the investigation or the statements of the witnesses.

40. In addition, the appellant explains that the process has not been impartial as the GM was both a direct witness in the disciplinary proceedings and the one that adopted the disputed decision.

41. Secondly, the appellant observes that NAPMA breached the principle of sound administration by failing to provide reasons for its decision as mandated by Articles 6.3 and 7.1 of Annex X of the CPR. In particular, the GM did not explain the content of the DB's recommendations on the basis of which the decision was made. Similarly, insufficient reasons were provided to justify the GM's decision to suspend the appellant.

42. The appellant further explains that the GM acted in breach of its duty of care *inter alia* by failing to take into account the personal interests of the appellant in making the decision, by failing to check on the well-being of the appellant during the 10 months of suspension, by failing to provide details about allegations made against the appellant and by failing to respect the appropriate procedure for the suspension that was ordered against the appellant.

43. The appellant also argues that NAPMA acted in violation of his right to have his affairs handled within a reasonable period of time in light of the lack of complexity of the case and of the fact that the entire procedure took 11 months to be completed.

44. Thirdly, the appellant argues that the disciplinary decision taken against him is based on a manifest error of assessment of the disputed facts. In particular, he explains that the alleged actions do not constitute acts of sexual harassment in terms of NATO policy.

45. Furthermore, the appellant explains that the approach taken by NAPMA, the "balance of probabilities" methodology, was insufficient to substantiate any allegations.

46. Finally, the appellant argues that, in the alternative, the disciplinary sanctions adopted against him are disproportionate.

47. Regarding the decisions to terminate and to not renew the appellant's contract, the appellant explains that NAPMA acted in breach of Articles 5.5.1, 9.1. and 10.5 of the CPR and that it committed a manifest error of assessment.

48. The appellant also argues that NAPMA breached the principle of sound administration and did not abide by its duty to provide reasons or its duty of care, and that it violated the appellant's right to be heard in the adoption of these decisions.

(ii) The respondent's main contentions

49. On the admissibility of the appeal, NAPMA explains that the appellant did not contest the disciplinary decision made on 1 October 2024 in his request of 14 October 2024. Instead, the appellant requested a financial settlement and mediation in the event that no satisfactory solution could be found. The decision of 31 October was thus based on the ground that no formal decision had been contested by the appellant as required under Articles 2.2 and 4.1. of Annex IX to the CPR. As to the appellant's mediation request, the desired outcome would have been impossible to implement under the applicable provisions of the CPR.

50. In addition, the appeal is not directed against acts or omissions adversely affecting the appellant's working condition as provided under Article 2.1. of Annex IX of the CPR, but rather against the decision to suspend him and not to extend his contract.

51. For the above-mentioned reasons, the appeal should be considered inadmissible.

52. On the merits, NAPMA first explains, with respect to the disciplinary decision of 1 October 2024, that its obligations under the CPR as well as principles of due diligence and fair process in the disciplinary proceedings were fulfilled and that the appellant's right to be heard in a fair process was respected.

53. NAPMA further observes that the appellant's claims for the annulment of the decision of 1 October 2024 are unfounded and that the disciplinary decision complies with the CPR and meets the requirements of zero tolerance for sexual harassment as set out in the NATO policy.

54. Similarly, NAPMA explains that it did not act in breach of its obligations when terminating the appellant's contract and refusing to extend it.

D. Considerations and conclusions

(i) Admissibility

55. Regarding admissibility, the Tribunal first finds that the fact that the appellant did not explicitly seek the annulment of the disputed decisions in his previous legal actions cannot act as a bar to the admissibility of the present claim. In addition to the fact that it is clear to the Tribunal that this is what the appellant is seeking, this conclusion is further supported by the fact that Article 6.9 of the CPR provides for annulment as one of the possible remedies that could be sought by an appellant.

56. The Tribunal also notes that the appellant did exhaust internal remedies before lodging the present appeal when required, and that the 60-day deadline imposed by Article 6.3.1. of Annex IX of the CPR was respected.

57. Finally, the Tribunal is of the opinion that the disciplinary decision of 1 October 2024 as well as the decisions of 30 September 2024 and 31 October 2024 directly affect the appellant's working conditions in an adverse manner, as required under Article 2.1. of Annex IX of the CPR.

58. The appeal is therefore admissible.

(ii) Merits

59. By way of preliminary remarks, the Tribunal recalls that Article 3.2 of Annex X of the CPR provides that “[t]he grounds on which disciplinary action is taken must be specified and the staff members concerned informed of the grievances against them”. Article 5.3 of the same Annex provides that the staff member “shall have 15 working days in which to submit written or verbal comments to the authority initiating the proceedings”.

60. Article 5.4 of Annex X provides for a DB to be convened in the case of an action provided for in Article 59.3(d) of the CPR, as was the case in the present instance.

61. Furthermore, pursuant to Article 3.3 of Annex X to the CPR, sanctions that may be imposed under Article 59.3 “must take account of the scope and gravity of the fault (e.g. voluntary omission, serious negligence, whether or not premediated, deliberate harmful intention, etc.)”.

62. In the context of the above-mentioned procedure, Articles 12.1.4. and 13.2 of the CPR provide for the standard against which the appellant’s conduct must be measured for the purposes of a possible disciplinary action.

63. Article 12.1.4 provides that:

Members of the staff shall treat their colleagues and others, with whom they come into contact in the course of their duties, with respect and courtesy at all times.

(a) They shall not discriminate against them on the grounds of gender, race or ethnic origin, religion or belief, age or sexual orientation.

(b) They shall not harass, bully or otherwise abuse another staff member.

Article 13.2 provides that:

Members of the staff shall conduct themselves at all times in a manner compatible with their status as representatives of the Organization. They shall avoid any action or activity which may reflect adversely on their position or on the good repute of the Organization.

64. In addition, the behaviour of the appellant was assessed considering the NATO Policy on the Prevention, Management and Combating of Harassment, Bullying and Discrimination in the Workplace. In this regard, the Tribunal finds it important to recall that this policy, which complements, among others, the NATO Code of Conduct, clearly provides that it intends “to promote and foster a workplace that values fair treatment, trust and respect for others, with zero tolerance or condoning of inappropriate behaviour, including any form of harassment, bullying or discrimination, all of which are wholly unacceptable”.

65. Turning to the allegations of the appellant, the Tribunal first finds that there is no evidence that the procedure that was followed and that led to the disciplinary proceedings and, ultimately, the non-renewal of the appellant’s contract, did not take place according to the applicable rules.

66. The Tribunal observes in this regard that the investigation that was agreed upon on 15 December 2023 took place in accordance with the guidance contained in "Conducting workplace investigations" by ACAS. Similarly, nothing indicates that the disciplinary proceedings which were initiated in accordance with the decision of 1 May 2024 and which ended with the Disciplinary Report of 10 May 2024 were not undertaken in accordance with the applicable rules.

67. The Tribunal also finds the conclusions reached in Case No. 2021/1323 instructive:

60. The appellant requests production of the DB report dated 8 October 2020, which he considers essential for the defense of his rights. The respondent submits that the appellant's right of defense does not entitle him to access to the full text of the DB's report. The respondent refers to Annex X to the CPR, which outlines the disciplinary procedure and does not require the NATO body to disclose the DB report to a staff member.

61. The Tribunal indeed held in Case No. 2019/1286 that such communication is not foreseen in the CPR, but it also noted that the report was in that case communicated during the proceedings. The Tribunal further notes that DB reports frequently are provided to an affected staff member and play an important role in the Tribunal's understanding of a situation involving contested disciplinary actions. In the more recent Cases Nos. 2020/1289 and 2020/1301, the DB report was communicated to the appellant for his comments before the HONB took a disciplinary decision. In case No. 2017/1104 the DB report was provided to appellant once the appeal was lodged. In Case No. 2017/1105 the appellant had received the DB report and attached it to his appeal.

62. In case No. 2017/1104 the Tribunal held: International administrative law requires that an international organization provide reasons for actions adverse to a staff member sufficient to allow the staff member to understand the rationale or justification for the adverse action and, as appropriate, to contest it.

68. Furthermore, the Tribunal notes that the appellant had the opportunity to send his observations and express his position in the context of the disciplinary proceedings, as demonstrated by the evidence submitted to the Tribunal. Thus, the appellant submitted comments in writing on 3 June 2024, and he was heard by the DB on 17 September 2024. In addition, as mentioned by the appellant himself and reiterated by NAPMA, Article 6.3 of Annex X to the CPR does not impose an obligation on the respondent to share the recommendations of the DB with the appellant. Therefore, under the circumstances of the present case, the Tribunal finds that the requirements of Article 60.4 of the CPR are fulfilled.

69. The disciplinary decision of 1 October 2024 was based on the recommendations of the DB and was also adopted in accordance with the applicable rules, as provided in the CPR, and in light of the principles of good governance and the policy of zero tolerance for sexual harassment adhered to by NATO. No breach of mandatory procedural rules has been established by the appellant in this regard.

70. The DB is a mixed board that, pursuant to Article 6.1. of Annex X of the CPR, is composed of three members:

the official responsible for personnel management or such other official as the Head of the NATO body may appoint (Chair), the Head of Division or independent service to whom the staff member is responsible⁽¹⁾, and a staff member nominated by the Staff Committee holding in so far as possible a grade not lower than the staff member who is the subject of disciplinary procedures.

71. The Tribunal observes that this is also true in terms of impartiality. The Tribunal finds that contrary to the appellant's arguments, no breach of such principle occurred in the present case. In fact, the respondent's recusal from the DB, enhanced the impartiality of the procedure rather than negatively affecting it. Such a recusal did not breach Article 6.1. of Annex X of the CPR. The Tribunal notes in this regard that the provision provides that the DB shall be composed of "the official responsible for personnel management or such other official as the Head of the NATO body may appoint (Chair)" (emphasis added).

72. Given the lack of apparent breach of applicable procedural rules and in the light of the weight that this Tribunal must grant to discretionary decisions, this Tribunal is not able to reach the conclusion that the decision of 1 October 2024 must be annulled. The Tribunal recalls in this regard, in line with its well-established case law that the appellant has not demonstrated that the decision was "taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was abuse of authority".¹

73. The Tribunal also finds no indication of a breach by the respondent of the duty of care it owed to the appellant. On the contrary, the respondent acted with diligence in conducting the disciplinary proceedings. The appellant contests that his actions amounted to sexual harassment, thus alleging a "mistake of law". The Tribunal remarks that his undisputed actions were not only unwelcome and intrusive. In the circumstances of the situation, and given the appellant's position and seniority, they can be considered as harassment within the meaning of the NATO policy. Also, the appellant finds the sanction disproportional. In this respect, the Tribunal emphasizes that the 10% salary cut for one month is at a very low level within the scale of disciplinary measures.

74. Finally, the disciplinary proceedings, albeit lasting for a couple of months, did not exceed an appropriate time frame. Given the seriousness of the allegations and the appellant's seniority within NAPMA, an extremely thorough investigation was deemed necessary. Noting that the formal disciplinary proceedings lasted from 1 May 2024 to 1 October 2024, the Tribunal does not see a reason to award moral damages to the appellant, who received full pay during the whole process.

75. Regarding the decisions of 30 September 2024 and 31 October 2024 on the ending and non-renewal of the appellant's contract, the Tribunal similarly recalls its well-established case law, according to which:

decisions concerning renewal or non-renewal of contracts are within the discretionary power of the Head of the Organization. It is only when a non-extension of contract

¹ NATO Administrative Tribunal, judgment of 5 November 2024, AT-J(2024)0022, paragraph 37.

decision was taken without authority, if a rule of form or procedure was breached, if the decision was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority that the Tribunal will annul such a decision.²

76. The Tribunal also relies on the findings in Case No. 2019/1278:

46. This Tribunal has consistently held that decisions concerning renewal or non-renewal of contracts are within the discretionary power of the Head of the Organization. There is consensus among international administrative tribunals that a decision in the exercise of discretion is subject to only limited review by a tribunal. A tribunal would interfere with a non-extension of contract decision only if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority. Tribunals have also consistently held that they will not substitute their own view for the organizations' assessments in such cases (*cf.* Judgment in Case No. 885).

77. Similarly to its previous findings, the Tribunal finds that it has not been demonstrated that any applicable procedural rule, in particular in the light of Article 5.5.1 of the CPR, has been breached. On the contrary, it has clearly been established that the respondent has complied with its obligations under Article 5.5.1 of the CPR.

78. The Tribunal also observes that the appellant failed to substantiate his claim according to which it was promised to him of whether the respondent committed to the extension of his contract.

79. Furthermore, the Tribunal has been presented with ample evidence of the fact that the respondent, through repeated indications of such to the appellant himself, considered that the appellant's employment with NATO ended at the expiration of the appellant's contract (pursuant to Article 7(i) of the CPR), on 31 October 2024.

80. In this regard, the Tribunal notes that it is clear that definite-duration appointments do not imply a right to renewal or conversion and nor shall they thus carry any such expectation.

81. The case law of the Administrative Tribunal of the International Labour Organization is instructive in this regard. It is indeed well settled in the latter Tribunal's case law that an organization such as the respondent:

enjoys wide discretion in deciding whether or not to renew a fixed-term appointment. The exercise of such discretion is subject to only limited review as the Tribunal respects the organization's freedom to determine its own requirements and the career prospects of staff.³

² NATO Administrative Tribunal, judgement of 19 April 2023, AT-J(2023)0002, paragraph 36. See also NATO Administrative Tribunal, judgement of 25 July 2019, AT-J(2019)0010, paragraph 46.

³ ILO Administrative Tribunal, Judgement of 6 July 2022, No. 4503, paragraph 7. See also Judgments of 24 January 2018, No. 3948, paragraph 2 and Judgement of 6 February 2019, No. 4062, paragraph 6.

82. Such discretionary power is not without limits and a given decision can be set aside if:

it was taken without authority or in breach of a rule of form or of procedure, or if it rested on an error of fact or of law, or if some essential fact was overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence.⁴

83. In addition, the ILO AT has also consistently found that an “an employee who is in the service of an international organization on a fixed-term contract does not have a right to renewal of the contract when it expires”.⁵

84. The case law of the ILO AT has been echoed in the case law of this Tribunal which has also consistently held that:

a staff member on a fixed term contract does not have a right to a further contract, and that the decision whether or not to offer one lies within the discretion of the HONB, subject only to certain conditions limiting abuses of discretion (...).⁶

85. In the present case, the respondent did not act in such a way that the decision not to extend the appellant’s contract must be set aside by the Tribunal.

E. Costs

86. In relation to costs, the Tribunal recalls that the basis for an award of costs is Article 6.8.2 of Annex IX to the CPR, which empowers the Tribunal to order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant, “where it is admitted that there were good grounds for the appeal”.

87. The present judgment has concluded that this was not the case and the appellant is therefore not entitled to be granted reimbursement of the costs of retaining counsel in this appeal.

⁴ Ibid.

⁵ ILO Administrative Tribunal, judgement 3444, paragraph 3.

⁶ NATO Administrative Tribunal, judgment of 19 January 2021, AT-J(2021)0001, para. 40. See also the findings of the Tribunal in Judgment of 4 February 2020, Case No. 2019/1284; Judgment of 16 June 2019, Case No. 2019/1278; and, Judgment of 6 June 2018, Case No. 2017/1125.

F. Decision

FOR THESE REASONS

The Tribunal decides that:

- The appeal is admissible.
- The appeal is rejected in its entirety.

Done in Brussels, on 8 July 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

4 August 2025

AT-J(2025)0004

Judgment

Case No. 2024/1397

SK
Appellant

v.

NATO Airborne Early Warning & Control Programme Management Agency
Respondent

Brussels, 17 July 2025

Original: English

Keywords: admissibility/inadmissibility; LOJI; contract of definite duration.

(This page is left blank intentionally)

This judgment is rendered by a Panel of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO), composed of Ms Louise Otis (President), Ms Seran Karatari Köstü and Ms Anne Trebilcock, judges, having regard to the written procedure and further to the hearing on 26 June 2025.

A. Proceedings

1. The NATO Administrative Tribunal (the “Tribunal”) has been seized of an appeal, dated 28 November 2024 and registered on 3 December 2024, by Ms SK (the “appellant”) against the NATO Airborne Early Warning & Control Programme Management Agency (“NAPMA,” the respondent). The appellant seeks annulment of two decisions: (a) the decision of the NAPMA General Manager (“GM”) of 23 August 2024 informing the appellant that she would not be eligible for Loss of Job Indemnity (LOJI) upon expiry of her contract on 31 December 2024 and (b) the GM’s decision of 17 October 2024 rejecting her complaint of 19 September 2024 on this question. She has in addition requested financial reparation for moral prejudice, in the amount of €5,000 (*ex aequo et bono*) and reimbursement of legal costs and legal fees.
2. The respondent, in its answer dated 4 March 2025 and registered on 11 March 2024, invites the Tribunal to rule the appellant’s appeal inadmissible and to reject her claims as unsubstantiated. The appellant’s reply, dated 10 April 2025, was registered on 17 April 2025; the rejoinder, dated 22 May 2025, was registered on the same date.
3. On 14 June 2025, at the appellant’s request, the Tribunal permitted inclusion in the case file of a one-page statement signed by the Chair of the NAPMA Staff Association, dated 12 June 2025. At the same time, the Tribunal afforded the respondent the opportunity to make observations by 19 June 2025, which it did on that date.
4. An oral hearing took place on 26 June 2025 at NATO Headquarters. The Tribunal heard the arguments by the appellant’s legal representatives and the representatives of the respondent, in the presence of Ms Laura Maglia, Registrar. The appellant was present but did not make a statement.

B. Factual background of the case

5. From 1 January 2010 to 31 December 2024, the appellant worked for NAPMA under successive definite duration contracts. Her length of service was 15 years (plus 1 year and 5 months on earlier temporary contracts). The last contract, concluded for five years, ran from 1 January 2019 to 31 December 2024.
6. On 17 June 2024, NAPMA’s Chief of Human Resources (CHR) informed the appellant in writing that, with reference to Article 5.5.1 of the Civilian Personnel Regulations (“CPR”) and in accordance with the terms of her employment with NAPMA, her present contract was to end on 31 December 2024. This communication did not refer to the LOJI issue. The appellant was orally informed by the CHR that she would not be awarded LOJI. The appellant questioned who had made the decision as regards entitlement to LOJI.

7. To clarify this, the appellant inquired about payment of LOJI in a written query of 1 August 2024 addressed to the GM. Her query also mentioned that she had been informed that her definite duration contract would not be renewed. She referred to advice received from the Confederation of NATO Civilian Staff Committees. It had indicated that Article 10 of Annex V to the CPR applied to her case, thus entitling her to payment of LOJI. The advice had also referenced use of the term “termination of services” in the CPR to underpin her claim.

8. A reply signed by the CHR, dated 23 August 2024, indicated that the appellant would not receive LOJI, based on NAMPA’s understanding of the relevant CPR provisions and a distinction between “termination of services” and “termination of contract” in this framework. In support of these conclusions, the reply referred to Articles 5.5.1 and 7 along with Annex V, paragraphs 1 and 10, of the CPR. It noted that expiration of a contract and its termination are separate and mutually exclusive grounds for separation. This decision confirmed that the appellant’s contract would expire on 31 December 2024 and that she would not be eligible for LOJI.

9. The appellant then asked the GM on 9 September 2024, in the presence of the author of an affidavit later submitted by the appellant with the appeal, whether this decision was his. The GM confirmed that it was his decision. The appellant then on 19 September 2024 lodged a complaint against the 23 August 2024 decision not to pay LOJI. The GM rejected the complaint on 17 October 2024, stating reasons and citing various provisions of the CPR.

10. This appeal, dated 28 November 2024, followed. At the time of the appeal, the appellant was 62 years of age.

11. In support of the appeal, an affidavit was submitted in which its author, based on his direct observations and access to the administrative budget, stated that, in contrast to earlier years, the 2025 budget still listed on the establishment the post that the appellant had held, but did not show funding for it. The respondent did not refute this assertion, arguing only that it was irrelevant whether a post was suppressed, frozen or kept vacant. The affidavit also recounted a conversation with a third party, which the respondent denied; it urged exclusion of the affidavit from the file.

C. Summary of the parties’ contentions, legal arguments and relief sought

(i) The appellant’s contentions

12. According to the appellant, her complaint was filed in a timely manner and she is appealing decisions that adversely affected her interests. The appeal is therefore in her view admissible.

13. In support of this position, the statement of the staff representative raised two points in relation to the question of timeliness, which he speculated that the Tribunal might raise *ex officio*. First, he stated that in his and (named) others’ presence, the CHR had promised to answer the appellant’s letter of 1 August 2024 “after a final decision had

been taken,” following consultation with a legal officer. He concluded, “Thus, any final decision by NAPMA could not have been taken before NAMPA’s letter dated 23 August 2024.” Second, he identified himself as the witness mentioned in the appeal, since he had accompanied the appellant to the meeting with the GM on 9 September 2024 in which the latter had confirmed that denial of LOJI was the GM’s decision, communicated by the CHR.

14. The appellant alleges improper denial of LOJI, through a breach of paragraph 10 of Annex V to the CPR regarding application of the criteria for awarding LOJI, and a lack of transparency. She states that the NAPMA budget for 2025 still included the post she had held, but that a document showing the anticipated cost per post did not include it (as supported by statements in an affidavit authored by a financial analysis specialist at NAPMA). The appellant argues that the term “termination of service” is used throughout the CPR and is not limited to instances where action by the GM is needed to end the contract, and that under a proper interpretation of the CPR, she is entitled to LOJI. The appellant provided several examples of the use of various terms in the CPR.

15. As a subsidiary claim, the appellant states that as from her second contract extension, she has de facto been employed under an indefinite duration contract; otherwise, Article 5.5.2 of the CPR, read in combination with Article 5.1.2, would be breached.

16. In her third claim, the appellant alleges a breach of the duty of care, causing stress and uncertainty with an impact on her health, since questions of interpretation should be resolved in favour of the weaker party to the contract.

17. The appellant alleges that she was assured in 2023 that if her contract could not be extended at the end of 2024, she would receive LOJI and that NAPMA HR had budgeted for this. She contends that her post was suppressed, thus fulfilling one of the conditions required for granting LOJI. In support she offers an affidavit from a financial analysis specialist who is also chair of the local Civilian Staff Committee. The above-mentioned affidavit referred to a conversation in October 2024 in which the GM allegedly said that the appellant’s position had not been suppressed, but only frozen, and that it would be kept unfilled for an unspecified period of time. The GM allegedly stated that otherwise, the organization would have to have given the appellant an indefinite duration contract.

18. The appellant requests annulment of the contested decisions, and in addition financial compensation evaluated *ex aequo et bono* at €5,000 in reparation for moral prejudice, plus costs and fees.

19. At the hearing, the appellant’s legal representative reiterated the claims, stressing the need to interpret the provisions of the CPR in a manner that would result in admissibility of the appeal and granting of LOJI. This representative maintained that others in similar situations had been awarded LOJI. The appellant argued that the decision not to renew the contract had been lacking in transparency, and that it had failed to acknowledge that this decision and the entitlement to LOJI had been intertwined. The appellant disagreed that she did not meet the conditions for entitlement to LOJI, her interests had been adversely affected and she had experienced considerable stress

occasioned by the respondent's lack of transparency and actions, thus underpinning her claim for damages *ex aequo et bono*.

(ii) The respondent's contentions

20. The respondent contests the admissibility of the appeal, as it is not directed against an act or omission adversely affecting the appellant's working conditions.

21. The respondent answers that, as properly notified to the appellant, she was not eligible for payment of LOJI under the applicable provisions of the CPR (citing Annex V, Paragraph 1). The respondent denies that she had been told that she had been eligible for a budgeted LOJI. It argues that LOJI is payable only when a contract ends prematurely, not when it ends in accordance with its terms; the basis for entitlement distinguishes *expiration* of a contract under its terms from *termination* of contract through action by the GM.

22. The respondent argues that suppression of a post can occur only for posts which are actually filled, which was not the case here since the suppression had occurred after expiration of the contract. The respondent urges the Tribunal to exclude the statements in the affidavit supporting the appeal as inadmissible hearsay. It considers the examples from the CPR cited by the appellant as exceptions to the main rule (as stated in Article 9 and Article 1 of Annex V to the CPR), and that they are not pertinent, as they solely concern pension issues.

23. The respondent notes that the appellant should have been offered an indefinite duration contract rather than her last five-year contract, but it was only in a position to offer her a five-year definite duration contract in 2019 due to the budgetary constraints of the particular programme. She had accepted that contract, and had no right to a further contract or an indefinite duration contract.

24. Since the criteria of suppression of post was not met, the respondent had no legal grounds for awarding LOJI. In relation to that, the respondent adds that whether the former post was frozen or suppressed was not relevant, since in any event it involved an occurrence subsequent to the termination of the appellant's contract. The respondent also points out that documents from 1986 that were attached to the appeal had been superseded by the latest amendment to the CPR regarding the granting of LOJI.

25. As for the statement of the staff representative dated 14 June 2024, the respondent maintains that the cited remarks were taken out of context. It adds that the decision not to grant LOJI was communicated to the appellant on 17 June 2024, and that the appellant's own letter of 1 August 2024 had stated that the decision on ineligibility for LOJI had been communicated to her before 1 June of that year. The respondent did not see the relevance of the second point raised by the staff representative.

26. At the hearing, the respondent reiterated the arguments in its pleadings. It evoked the special nature of NAMPA, a project-based organization involving 16 Nations rather than the full NATO membership for decisions on funding. It said this explained why it was only possible to offer fixed duration contracts to the appellant or anyone else. The respondent indicated that a post could be suppressed (meaning it was no longer on the

establishment list), frozen (on that list but not being filled for the moment) or vacant (not occupied but for which flexible budgetary planning permitted its filling). It was clarified that the post previously held by the appellant was vacant rather than suppressed. The respondent reiterated that the appeal should be dismissed as inadmissible and unfounded.

D. Considerations and conclusions

(i) Admissibility

Timeliness

27. The respondent did not contest the timeliness of the appeal in its pleadings. However, in its response to the Staff Association Chair's statement, it implicitly raised a doubt about whether the initial complaint was filed within 30 days of the contested decision. The Tribunal notes that a decision on entitlement to LOJI was not a matter requiring immediate action, such as an on-the-spot decision to suspend a staff member with immediate effect, for which initial oral communication of the decision might have sufficed depending on the circumstances. The respondent provided written notification regarding the GM's denial of LOJI on 24 August 2024; this triggered the 30-day period for filing a complaint against a final decision pursuant to Article 4.1 of Annex IX to the CPR. The appellant's complaint was made within less than 30 days. Her appeal was also filed within 60 days of the notification that the relief she had requested would not be granted (see Article 6.3.1(a) of Annex IX to the CPR).

28. Based on these findings, the Tribunal concludes that the appeal is not time-barred.

Subject matter jurisdiction

29. The respondent argues that the appeal is not receivable, whereas the appellant maintains that it is. In the view of the respondent, the appeal "is not directed against an act or omission adversely affecting the Appellant's conditions of work," since LOJI becomes payable only after separation from the organization. The respondent maintains that the denial could not affect the appellant's "working conditions" because LOJI is payable only once an official has left the organization. The GM did not, in its opinion, have the power to grant LOJI because the appellant did not meet the required conditions for it.

30. The appellant reiterates that the decision did indeed adversely affect her status and her interests, citing jurisprudence (NATO Administrative Tribunal, JM v NCIA, No. 2018/1276 of 21 June 2019; ILOAT, Judgment 1674, under consideration 6(a)). She notes that the term "staff member status" is much broader than the term "working conditions," and includes the right to certain allowances such as LOJI.

31. In the event of a dispute as to whether a matter falls within the competence of the Tribunal, the Tribunal itself shall decide (Article 6.2.2 of Annex IX to the CPR). The Tribunal is competent to decide any individual dispute brought by a staff member "concerning the legality of a decision taken by the Head of a NATO Body...." (Article

6.2.1 of Annex IX to the CPR). The decision communicated by that Head to the appellant denied her entitlement to LOJI, no matter what the reasons given by the NATO Body.

32. Article 2.1 of Annex IX to the CPR enables staff members to seek administrative review of “a decision affecting their conditions of work or of service [which they consider] does not comply with their terms and conditions of employment, including their contracts, applicable regulations governing personnel and other terms of appointment...”. It refers to more than the “conditions of work” emphasized by the respondent. A decision can have an immediate effect or an effect that is triggered only upon the expiration of an official’s contract. In either case, the status and/or interest of an official may be affected, and the term “conditions of work or of service” extends to both situations.

33. The Tribunal concludes that it has subject-matter jurisdiction in this case. To rule otherwise would risk barring other appeals challenging a range of decisions which have effect only upon termination of employment. The appeal is receivable.

(ii) *The merits*

34. The appellant has the burden of proof in an appeal. The appellant’s assertions about having been assured earlier that she would receive LOJI, and the reported conversation reflected in the affidavit in support of the appeal, have been denied by the respondent and are thus not proven. Similarly, the assertions that NAPMA had granted LOJI to other staff in similar circumstances was not supported by evidence of such instances.

35. Under the terms of her contract, the appellant fell within the definition of international civilian personnel, staff, or members of the staff, assigned to international posts appearing on the approved establishment of the NATO body concerned (CPR, Preamble, B.(v)(c)). The extension of her contract in 2019 referenced Article 5.5.1 of the CPR. This provision requires informing the official at least six months before the “expiry of the contract” whether or not conclusion of a further contract is intended. The respondent did this in its communication of 17 June 2024, and her services then ended upon expiry of the contract a little over six months later.

36. NAPMA acknowledges that in 2019, the appellant should have been offered an indefinite duration contract after having successfully completed more than 10 consecutive years, but that budgetary restrictions had prevented this. The Tribunal recalls that the CPR are applicable across NATO “and shall govern personnel administration in each NATO body” for international civilian personnel (CPR, Preamble, Paragraph A.(i)).

The claim for LOJI

37. In his decision of 17 October 2024, the GM pointed to a distinction in the CPR between a contract expiring under its agreed terms on a specified date and a contract being terminated by executive action, “even if the terminology used by NCPR is not identical/fully aligned with regards to termination of contract or termination of services...”. The CPR do indeed distinguish between the two circumstances. However, the reasons given to the appellant in the GM’s decision of 17 October 2024 were somewhat confusing. That decision correctly referred to Article 7.1 of the CPR, which provides that

“a staff member may be separated from the Organization” (Article 7.1) either for “expiration of a contract,” with a cross-reference to Article 5.5 on contracts, or due to “termination by the Head of NATO body”, with a cross-reference to Article 9 on termination. The decision also referred to Annex V to the CPR, and the conditions set out for empowering the GM to award LOJI. The GM stated that the wording cited (from Articles 7 and 9 of the CPR, and Paragraphs 1 and 10 of its Annex V) is “explicit and unambiguous.” If that were the case, this appeal would not be before the Tribunal.

38. If the contested decision had referred to Articles 10.8 and 10.9 of the CPR, confusion could have been avoided for the appellant. Article 10.8 enables termination of a definite duration contract “by mutual agreement.” Article 10.9 speaks, in relation to the granting of an indemnity under Annex V, of the Head of the NATO Body having to “break the contract,” which unambiguously means ending the contract before its agreed date of expiration. Since the appellant’s contract ended by mutual agreement on the date agreed, she was not entitled to receive LOJI under the legal framework of the CPR.

39. It is true, as the appellant points out, that Annex V to the CPR grants the Secretaries-General of the Coordinated Organizations the power to award an “indemnity for loss of employment” to both staff holding a “firm contract” (as defined in its Paragraph 1(1)) and to staff having “served not less than 10 consecutive years with one or more Coordinated Organizations” as specified in that Annex, “*whatever the nature of the contract held by him at the time when his appointment is terminated.*” (Annex V, Paragraph 10, emphasis added). In both cases, however, awarding LOJI depends on the condition of actively terminating the contract, as set out in Article 10.9 of the CPR, and on meeting certain conditions.

40. In relation to the conditions set out in Annex V to the CPR, it was uncontested that the appellant worked for NAPMA for 15 years without a break, and that she was not offered a post in the same organization or in another coordinated organization (as required for LOJI under Annex V, Paragraph 1(1) and (3)). The parties differed over whether the third criteria for entitlement to LOJI, which relates to services having been terminated for one of the listed specified reasons, was met (see Paragraph 1(2) of Annex V to the CPR).

41. The parties disagreed as to whether or not there had been “suppression of the budget post occupied by the staff member” (see Annex V, Paragraph 1(2)(a)). While the finding in paragraph 38 renders it unnecessary to decide this question, the Tribunal makes several observations.

42. First, the portions of the affidavit that relied on its author’s direct observations, based on his access to the administrative budget, showed that in contrast to earlier years, the 2025 budget listed the relevant post on the establishment but did not show funding for it as of 1 January of that year. The respondent did not refute this assertion, while arguing that it was irrelevant whether a post was suppressed, frozen or kept vacant because the appellant’s contract had expired on 31 December 2024, the day before 1 January 2025.

43. At the hearing, the respondent clarified that the post was being kept vacant rather than being “suppressed.” Whatever term is used, the practical effect is the same: beginning on 1 January 2025, when the new budgetary period began, the post was not

available to be filled immediately by the appellant or by anyone else. By definition, a suppressed post cannot be occupied because it lacks funding. In connection with the respondent's interpretation of the provision in question, the Tribunal finds a lack of consistency and of transparency.

44. For the reasons stated, the claim to annul the decisions of 23 August 2024 and 17 October 2024 in relation to LOJI is rejected.

The claim of a de jure indefinite duration contract

45. The appellant has claimed that "on a subsidiary basis," she held a de jure indefinite duration contract, thus entitling her to LOJI under Paragraph 1(1) of Annex V to the CPR. Under this theory, as long as she met the conditions set out for receiving LOJI as discussed above, she would have been entitled to LOJI calculated in accordance with Paragraph B. 6 of Annex V for staff with indefinite term appointments. However, the Tribunal does not rule on this question, since the logical result of finding that she had a de jure indefinite duration contract would be to order reinstatement of the appellant in her post, which is relief that she has not requested. Moreover, while it was improper for NAPMA not to have offered her an indefinite duration contract at the appropriate time, it is too late for the appellant to challenge that decision in this appeal.

46. For these reasons, the subsidiary claim is also rejected.

Duty of care

47. The appeal alleges a breach of the duty of care based on the principle that if a provision raises problems of interpretation, it should be interpreted in favour of the weaker party to the contract (the appellant). While the Tribunal, along with other international administrative tribunals (see e.g. Grassi v EBRD; EBRD Administrative Tribunal, 18 January 2016, paragraph 33), follows this principle, it does not find that the respondent misinterpreted the relevant provisions of the CPR in informing the appellant that she was not entitled to LOJI.

48. At the hearing, counsel for the appellant stressed a lack of transparency in relation to whether her former post had been suppressed or not, leading to stress. Although the allegations of the impact of the respondent's decisions on the appellant could have been better documented, it was evident that after 15 years of service, she was, at age 62 at the time of the appeal, understandably disappointed with the denial of LOJI. The Tribunal recalls that the decision to award damages is independent of a decision to annul an administrative decision or not (see e.g. AT judgment in Case No. 2024/1387 SV v. NSPA, paragraph 49). In this instance, the respondent's action lacked transparency in relation to its application of the criteria of suppression of a post; moreover, a simpler explanation about the basis for the decision to deny LOJI could have been communicated to the appellant. The Tribunal finds that under these circumstances, a modest award of moral damages, in the amount of €2,000, should be awarded *ex aequo et bono*.

E. Costs

49. Article 6.8.2 of Annex IX to the CPR provides as follows:

“In cases where it is admitted that there were good grounds for the appeal, the Tribunal shall order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant....”

50. The appeal having succeeded in part, the Tribunal awards costs of retaining counsel up to a maximum of €3,000.

F. Decision

FOR THESE REASONS,

The Tribunal decides that:

- The claims seeking annulment of the decisions of 23 August 2024 and 17 October 2024 are rejected.
- The claim seeking financial reparation in relation to moral damages is granted in the amount of €2,000 (two thousand euros).
- The claim to reimburse the appellant for the costs of retaining counsel is granted, up to a maximum of €3,000 (three thousand euros).

Done in Brussels, 17 July 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

4 August 2025

AT-J(2025)0005

Judgment

Case No. 2025/1399

AT
Appellant

v.

NATO Communications and Information Systems Group
Respondent

Brussels, 18 July 2025

Original: French

Keywords: non-renewal of contract; unsatisfactory performance.

(This page is left blank intentionally)

This judgment is rendered by a Panel of the Administrative Tribunal of the North Atlantic Treaty Organization (NATO), composed of Ms Louise Otis, President, Ms Anne Trebilcock and Mr Fabien Raynaud, judges, having regard to the written procedure and further to the hearing on 25 June 2025.

A. Proceedings

1. The NATO Administrative Tribunal (hereinafter "the Tribunal") has been seized of an appeal by Mr AT (hereinafter "the appellant") against the NATO Communications and Information Systems Group (NCISG, hereinafter "the respondent"). The appeal, dated 31 January 2025, was registered on 5 February 2025 (Case No. 2025/1399). The appellant is requesting that the Tribunal annul the decision of 3 December 2024 and, if needs be, that of 24 May 2024, whereby the NCISG rejected his request for compensation for the damage he claims to have suffered owing to failings of the service. He is seeking EUR 50,000 in non-material damage as well as compensation for material damage caused, in his opinion, by the absence of progression in his career during his sick leave and by the loss of opportunity to have his contract renewed (unquantified amount). Lastly, he is seeking reimbursement of his legal costs (unquantified amount).
2. The NCISG's answer, seeking dismissal of the appeal, was submitted on 6 April 2025 and registered on 8 April 2025.
3. The appellant's reply, seeking the same relief as in the appeal, was submitted on 7 May 2025 and registered on 13 May 2025.
4. The respondent's rejoinder, seeking dismissal of the appeal, was submitted on 9 June 2025 and registered in 10 June 2025.
5. An oral hearing was held on 25 June 2025 at NATO Headquarters. The Tribunal heard arguments by the parties, in the presence of Ms Laura Maglia, Registrar.

B. Factual background of the case

6. The appellant, a former [*nationality*] serviceman, was recruited by the NCISG to serve in [*location*], Germany as a Services Management Technician (grade B4) on a 3-year contract starting on 1 November 2021. He passed his probationary period on 13 April 2022. The respondent acknowledges that the appellant's professional performance is not in question in the present case.
7. In June 2022, the appellant's behaviour caused several incidents. On Friday 3 June, at an informal national celebration dinner involving many colleagues, the appellant was highly intoxicated and caused several instances of property damage, including breaking glasses, in the restaurant where the dinner was being held. He was asked to leave the restaurant before the end of the dinner; however, nobody was injured and no complaint was made against him.

8. On Sunday 5 June 2022, on returning to his barracks, the appellant, who was intoxicated, was unable to locate his key and had an altercation with the on-duty security guard who was asking him for proof of his identity, which made him angry; the civil police was called to restrain him but no charges were filed. In the week of 6 June, several incidents occurred due to the appellant's apparent intoxication, including three failures to report for duty.
9. On Wednesday 22 June 2022, the appellant was suspended with pay on behavioural grounds. The suspension decision noted that the appellant was required to notify his chain of command if he travelled more than a 45-minute drive away from his duty station during working hours.
10. On 23 June 2022, disciplinary proceedings were initiated against the appellant, and on 25 July, a Disciplinary Board was convened.
11. On 19 July 2022, the appellant put in a request for annual leave, which was approved. He left Germany for the [*country of origin*], where he was placed on sick leave as from 1 August. He remained on sick leave until the end of his contract.
12. On 28 October 2022, the Disciplinary Board delivered its report in which it concluded that the events of June should in principle lead to dismissal of the appellant. However, it raised questions about the impact the appellant's health might have had on his behaviour, as he claimed to have been suffering from depression caused by events in his private life. As a consequence, the Disciplinary Board recommended that the disciplinary proceedings be paused to allow the appellant to appear before an Invalidity Board.
13. In a decision dated 18 November, the hierarchical authority issued an order suspending the disciplinary proceedings until an assessment of the appellant's state of health at the time of the events in question could be conducted.
14. On 1 November 2022, the appellant was placed on extended sick leave, on the basis of Article 45.7 of the NATO Civilian Personnel Regulations (CPR).
15. On 17 March 2023, the NCISG proposed that the appellant undergo a medical assessment with a specially appointed psychiatrist but on 20 April, the appellant turned down that proposal on the grounds that his doctor had advised him not to have any contact with the Administration or its representatives.
16. On 15 November 2023, the appellant asked the respondent for more information about the conditions of a future medical assessment, but the exchanges on this between the respondent and the appellant at the end of 2023 and the beginning of 2024 were unfruitful.
17. On 21 February 2024, in the run-up to the end of the appellant's contract, an independent medical assessment procedure to determine the appellant's fitness for work was initiated by a medical adviser from the NCISG's insurer (Allianz).

18. On 27 March 2024, the appellant was informed that his contract, which was set to expire six months later, on 31 October 2024, would not be renewed.

19. On 15 April 2024, the appellant sent a letter requesting compensation for the damage he claimed to have suffered owing to the disciplinary proceedings and alleged flaws. That request was denied on 24 May.

20. On 23 June 2024, the appellant filed a formal request for compensation under the CPR. A Complaint Committee was convened on 12 July. In its report dated 9 October, the Committee reviewed the appellant's grievances, deemed them to be unfounded and concluded that the request for compensation should be dismissed.

21. On 1 August 2024, the appellant reached the maximum 21 months of extended sick leave. However, it was decided to prolong that period until the opinion of the medical adviser of the NCISG's insurer on the appellant's fitness for work had been issued.

22. On 1 November 2024, the three-year contract between the appellant and the NCISG expired, but was extended pending the medical assessment. The appellant continued to receive his salary.

23. On 3 December 2024, the NCISG chief decided to 1) end the disciplinary proceedings because of the inability to obtain a medical assessment of the appellant's health during the incidents of June 2022, 2) approve the findings in the Complaint Committee's report and dismiss the request for compensation and 3) confirm both the non-renewal of the contract and its extension pending the medical assessment by the NCISG's insurer on the appellant's fitness for work. The assessment was delivered a few days later with a finding of no permanent invalidity.

24. On 10 December 2024, the appellant was informed that his contract would be terminated on 31 December 2024.

C. Summary of the parties' contentions

(i) The appellant's contentions

25. The appellant claims that from April 2022, and especially during the period in which the events that led to the disciplinary proceedings took place, he was in a situation of "extreme stress" following a combination of traumatic incidents in his private life (suicide of a close friend, relationship breakdown). In his view, this situation is what caused the incidents of June 2022 which led to the disciplinary proceedings against him. The Disciplinary Board took account of this and recommended that the disciplinary proceedings be held in abeyance until such time as an assessment of the impact of these events on the appellant's health had been made.

26. Furthermore, the appellant asserts that at the time of the events in question, he sought out both an English-speaking psychiatrist close to his place of work in Germany

to get the medical support and treatment he needed, and help from his chain of command, to no avail.

27. The appellant is seeking compensation for the damage he considers he suffered owing to the unjustified extension of the disciplinary proceedings and the flaws that occurred during those proceedings, the disregard of the duty of assistance from his chain of command and, lastly, the absence of career progression during the period in question.

28. The appellant claims first of all that he was not told why his request for compensation had been rejected. He states that several of the grievances he laid out were dismissed without having been looked into, or at the very least without a detailed explanation being provided, in violation of the duty to state reasons.

29. Regarding the merits, the appellant claims that the disciplinary proceedings against him were flawed: first because the procedure followed by Major A. to establish his report was improper since an Administrative Board of Inquiry should have been convened pursuant to ACO Directive 010-019, and second because his rights of defence were not respected insofar as he was not able to hear and cross-examine the witnesses and he himself was not heard in conditions allowing him to defend himself.

30. The appellant further claims that the respondent failed in its duty of assistance, despite having been made aware of the appellant's health problems by the appellant himself. He claims that the respondent curtailed his freedom of movement by not allowing him to travel over 45 km away from his duty station during the period he was suspended, even though he was looking for an English-speaking medical specialist and was having trouble finding one within those 45 km.

31. Furthermore, the appellant claims that the respondent did not act in good faith after the 18 November 2022 decision to pause the disciplinary proceedings pending a medical assessment, insofar as it never wished to commission a collegial assessment of the appellant's health as required by the Disciplinary Board.

32. Lastly, the appellant contends that having his security clearance suspended by the [nationality] military authorities was an extra factor of stress. He claims that the suspension was only made possible by the respondent's having sent those authorities information about his health, in breach of its duty of assistance and of medical confidentiality.

(ii) The respondent's contentions

33. The respondent recalls that the grievances brought forward by the appellant were examined in detail by the Complaint Committee, which, in a detailed report dated 9 October 2024, dismissed them all as unfounded. In the impugned decision, the competent NCISG authority took into account the information in the report, allowing the appellant to be fully informed of the reasons why his request for compensation had been rejected.

34. On the merits, the respondent contends that there were no flaws in the disciplinary proceedings and that the Administration did not fail in its duty of assistance or with respect to any other right or principle that would require compensation for any kind of damage.

35. Regarding the disciplinary proceedings, the respondent underscores that it is specifically stated in Directive ACO 010-019, which provides for the possibility of establishing an Administrative Board of Inquiry, that resorting to such a board is without prejudice to the basic disciplinary proceedings laid out in the CPR (Annex X, para. 5), which merely provides for the establishment of a report setting out the facts complained of. These were the proceedings that were followed in the present case, as Major A., in addition to being himself a witness to some of the events complained of, did establish a list of witnesses.

36. The respondent underscores that the appellant had access to witness testimony and had every opportunity to respond to it. However, there is no CPR provision for cross-examining witnesses before the Disciplinary Board, which heard the appellant and his arguments.

37. In any event, the Head of the NCISG ultimately decided to discontinue the disciplinary proceedings. As a consequence, no disciplinary action was taken against the appellant, who therefore did not suffer any damage as a result of alleged flaws in the disciplinary proceedings.

38. Regarding the alleged failure to provide duty of assistance, the respondent underscores that the appellant was continuously on sick leave from 1 August 2022 until the expiry of his contract. Therefore, it is unclear what more the appellant's chain of command and the Administration in general could have done. The respondent also highlights that the appellant had expressly stated that for medical reasons, he did not want any contact with the Administration during the whole of his sick leave period.

39. Furthermore, the respondent states that the requirement for the appellant to notify his chain of command if he travelled to an area more than a 45-minute drive away from his duty station during working hours while he was suspended was reasonable and proportionate. All he had to do was to inform his chain of command if he intended to travel beyond the defined limit. In any event, that requirement ceased to apply *de facto* as from 19 July 2022, when the appellant started his annual leave, and *de jure*, when he went off on sick leave on 1 August 2022.

40. Regarding the allegation that the respondent breached good faith with regard to the medical assessment, the respondent notes that given the specificity of the health condition in question (mental health), the assessment could not be tasked to the Invalidity Board, since that board's role is to assess whether staff members are fit for work. The Administration faithfully tried to implement the Disciplinary Board's recommendation that there should be an assessment of the appellant's mental health in the light of the events that triggered the disciplinary proceedings. This required an examination by a medical specialist. The appellant refused to be examined by a specialist chosen by the Organi-

zation on the grounds that his doctor had recommended avoiding contact, even for medical matters, with the Administration. In practice, the appellant never agreed to the proposals to be assessed by a medical specialist as recommended by the Disciplinary Board.

41. Regarding the notification to the [nationality] military authorities of confidential information from the appellant's medical file, the respondent argues that the NCISG, in line with the applicable texts (Directive ACO 70-1) and as was its duty, sent to the authorities the information that led to the appellant's suspension and the disciplinary proceedings against him; in this context, the respondent did not breach the duty of medical confidentiality with respect to the appellant. It was on the basis of this information only that the relevant [nationality] authorities in charge of issuing the appellant's security clearance conducted their own investigation, under their sole responsibility and not NATO's. The decision to suspend the appellant's security clearance was their responsibility alone.

42. In conclusion, it is noted that there was no error that caused damage requiring compensation by the respondent.

D. Ruling of the Tribunal

(i) Admissibility

43. The appellant is not contesting before the Tribunal the disciplinary proceedings that were initiated against him, the ensuing decision to suspend him or the decision to not renew his contract. He is only seeking compensation for the damage he claims to have suffered owing to several flaws and breaches in the disciplinary proceedings, which ultimately ended without any disciplinary action being taken against him.

44. In this framework and within these boundaries that were set clearly by the appellant, there is no issue with the admissibility of the appeal, which is not being challenged by the respondent.

45. The appeal is thus admissible.

(ii) Merits

46. On the merits, the Tribunal underscores that despite the apparent complexity of the case owing to the lengthiness of the proceedings that gave rise to the request for compensation, there is but one simple question: did the Administration, in the framework of those proceedings, commit an error that caused the appellant damage requiring compensation?

47. A number of facts must be recalled which are undisputed by the parties. First, the appellant was recruited on 1 November 2021 on a three-year contract, which was thus due to expire on 31 October 2024 but was extended by two months, until 31 December 2024, owing to the delay in assessing the appellant's health and thus fitness for work.

The appellant went off on paid sick leave as from 1 August 2022 on health grounds linked to events in his private life. The sick leave continued until the end of his contract. Lastly, the materiality of the appellant's actions in June 2022 which triggered the disciplinary proceedings is not in dispute.

48. The claims by the appellant are unfounded.

49. The alleged flaws in the disciplinary proceedings against the appellant have not been established, whether regarding Major A.'s report on the events at issue, the materiality of which is not in dispute, the procedure before the Disciplinary Board (given that the appellant was made aware of the testimonies and was duly heard), or the reasons for the final decision to dismiss his request for compensation.

50. In any event, the Tribunal does not see how the appellant could have suffered damage owing to alleged procedural flaws since the disciplinary proceedings were ultimately dropped by the Administration itself and the Disciplinary Board did hear the appellant, who was thus able to present his arguments. It should be recalled that the subject of the dispute was not the materiality of the events but rather essentially whether or not there were "mitigating factors" that could be attributed to the appellant's depressive state.

51. Regarding the 22 June 2022 decision to suspend the appellant as part of the disciplinary proceedings against him, the appellant reproaches the Administration for curtailing his freedom of movement by obliging him to stay within 45 km of his duty station during working hours which, in his view, kept him from finding an English-speaking medical specialist.

52. The case file shows that that obligation was simply for the appellant to inform his chain of command if he intended to travel to an area more than a 45-minute drive away. Whatever the reasons for such an obligation, the appellant brings forward no evidence that such a restriction caused him damage requiring compensation. The appellant was simply required to notify his chain of command if he travelled to an area over a 45-minute drive away during working hours. It should be noted that that restriction was lifted as from 19 July 2022, when the appellant left to go to the [country of origin].

53. Furthermore, nothing in the case file suggests that the NCISG improperly disclosed confidential information about the appellant's health to the [nationality] military authorities. As affirmed by the respondent, the NCISG had to inform the [nationality] military authorities about the appellant's suspension and the disciplinary proceedings against him, as he was a [nationality] national and his clearance had been issued by the [nationality] authorities. The fact that those authorities decided to suspend the appellant's security clearance based on the information provided by the NCISG is not within the purview of the Tribunal; neither is the additional stress that the decision caused for the appellant. In any event, the Tribunal is of the view that the respondent did not commit any error that makes it liable in this respect.

54. Regarding the allegation that the NCISG disregarded its duty of assistance towards the appellant, it should be noted that the latter went off on paid sick leave from 1

August 2022 until the end of his contract (which, as was highlighted, was extended by two months after the date of expiry).

55. Furthermore, during his period of sick leave, the appellant had informed the NCISG that, for medical reasons, he wanted no form of contact with the Administration. That request was heeded to the best extent possible and the Administration communicated with the appellant only when it was legally required to do so, to inform him that his contract would not be renewed for instance.

56. As for the requests for assistance sent to the appellant's chain of command, including a series of text messages sent over the course of one night (which the recipient answered despite it being late), it does not appear from the evidence provided by the parties that the Administration, in light of the information available to it and in particular the requests from the appellant, failed in its duty of assistance and thus committed an error that caused damage requiring compensation.

57. It is established that in October 2022, the Disciplinary Board called for the ongoing disciplinary proceedings to be suspended to allow for an assessment of the appellant's state of health and suggested that an Invalidity Board be convened for the purpose of that assessment. It is not disputed that the disciplinary proceedings were indeed suspended, and that decision had no tangible effect on the situation of the appellant, who was on sick leave at that time and continuing to receive his salary. As affirmed by the appellant, the Administration did not refer the matter to an Invalidity Board, but rather sought out a competent medical specialist who could assess the appellant's mental health and its impact in terms of liability and the kind of disciplinary action to be taken.

58. The Tribunal is of the view that the Administration did not wish to unduly extend the suspension of the disciplinary proceedings but rather tried to find a solution to follow the Disciplinary Board's suggestion by seeking out a medical specialist who could give a competent opinion on the matter. The case file shows that the appellant opted not to take up the offer. Given the facts of the case, the respondent should have suggested that the appellant contribute to choosing the medical specialist instead of acting unilaterally. However, this has no bearing on the damage invoked.

59. The supposed damage caused by the extension of the suspension of the disciplinary proceedings has not been proven. The Disciplinary Board had proposed dismissal owing to the seriousness of the events in question, and the expected medical opinion could have led to either mitigating factors being taken into account to lessen the disciplinary action or no such factors being taken into account at all, which would have resulted in the contract being terminated early. While the suspension did prolong the period of uncertainty for the appellant, it also temporarily prevented the appellant's contract from being terminated, at a time when the appellant was in any event on paid sick leave. In these circumstances, by prolonging the suspension of the disciplinary proceedings while awaiting a medical opinion, the Administration did not commit any errors that caused damage requiring compensation.

60 In light of the above, the respondent did not commit any errors that caused damage requiring compensation. Consequently, the appeal must be rejected.

E. Costs

61. Article 6.8.2 of the Rules of Procedure of the Tribunal (Annex IX to the CPR) provides as follows:

In cases where it is admitted that there were good grounds for the appeal, the Tribunal shall order the NATO body to reimburse, within reasonable limits, justified expenses incurred by the appellant.

62. In accordance with these provisions, the appellant's claims for reimbursement of costs must be rejected.

F. Decision

FOR THESE REASONS,

the Tribunal decides:

- The appeal is dismissed.

Done in Brussels on 18 July 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

AT(PRE-O)(2025)0001

Order

Case No. 2024/1396

SC
Appellant

v.

**NATO Science and Technology Organization Centre for Maritime Research and
Experimentation**

Respondent

Brussels, 12 March 2025

Original: English

Keywords: withdrawal.

(This page is left blank intentionally)

The President of the NATO Administrative Tribunal,

- Considering that Mr SC submitted an appeal with the NATO Administrative Tribunal (“AT”) on 28 November 2024, registered under Case No. 2024/1396, against the NATO Science and Technology Organization Centre for Maritime Research and Experimentation (“CMRE”);
- Considering that the AT Registrar received, on 10 March 2025, communication from the appellant that the appeal can be withdrawn;
- Having regard to Rule 17 of the AT Rules of Procedures whereby the President:
[...] may accept the withdrawal without convening the Tribunal or a Panel for this purpose, provided the withdrawal is unconditional.
- Observing that the withdrawal is indeed unconditional and that nothing stands against it being accepted;

DECIDES

- The request for withdrawal is granted and the appeal is dismissed.

Done in Brussels, on 12 March 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia



ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

AT(PRE-O)(2025)0002

Order

Case No. 2025/1406 and Case No. 2025/1411

DG
Appellant

v.

NATO Support and Procurement Agency
Respondent

Brussels, 11 August 2025

Original: English

Keywords: joining cases.

(This page is left blank intentionally)

The President of the NATO Administrative Tribunal,

- Considering that Mr DG submitted a first appeal with the NATO Administrative Tribunal (AT) against the NATO Support and Procurement Agency ("NSPA"), on 30 April 2025 and registered under Case No. 2025/1406;
- Considering that Mr G submitted a second appeal, on 4 July 2025, and registered under Case No. 2025/1411;
- Having regard to Rule 13 of the AT Rules of Procedure, which provides:

The Tribunal or, when the Tribunal is not in session, the President may decide to join cases.

DECIDES

- Case No. 2025/1406 and Case No. 2025/1411 are joined.
- Both Cases shall be heard once the written procedure in Case No. 2025/1411 is completed.

Done in Brussels, on 11 August 2025.

(signed) Louise Otis, President
(signed) Laura Maglia, Registrar

Certified by
the Registrar
(signed) Laura Maglia