2022-2023

ANNUAL REPORT OF THE

NATO ADMINISTRATIVE TRIBUNAL

2022-2023 Annual Report of the NATO Administrative Tribunal

Introduction

This is the tenth Annual Report of the Administrative Tribunal (AT) of the North Atlantic Treaty Organization (NATO). It covers the period 1 January 2022–30 June 2023 and is issued on the initiative of the Administrative Tribunal, pursuant to Rule 4(h) of its Rules of Procedure (ROP).

Composition

In May 2022 Judge Vassilopoulos resigned from his post. The North Atlantic Council (NAC) appointed Mr Thomas Laker (Germany) for the remainder of Mr Vassilopoulos' term, i.e. until 30 June 2023.

From May 2022, the composition of the Tribunal has been as follows:

Mr Chris de Cooker (Netherlands), President;
Mr Laurent Touvet (France), Member and Vice-President,
Ms Seran Karatari Köstü (Turkey), Member;
Mr Thomas Laker (Germany), Member and
Ms Anne Trebilcock (United States), Member.

On 30 June 2023 the mandate of Chris de Cooker, President and Laurent Touvet, Vice-President will come to an end. The procedures for the appointment of the two new members started in August 2022. On 16 September 2022 the NAC appointed Ms Louise Otis (Canada) and Mr Fabien Raynaud (France) for five-year terms starting on 1 July 2023. It also confirmed the appointment of Mr Thomas Laker to serve on the AT for a five-year term as from 1 July 2023.

On 24 February 2023 the NAC further appointed Ms Louise Otis as President of the AT beginning on 1 July 2023.

From 1 July 2023, the new AT composition will be as follow:

Ms Louise Otis (Canada), President;
Ms Seran Karatari Köstü (Turkey), Member;
Mr Thomas Laker (Germany), Member;
Mr Fabien Raynaud (France), Member; and
Ms Anne Trebilcock (United States), Member.

The Vice-President will, in accordance with Article 6.1.2 (b) of the Civilian Personnel Regulations (CPR), be elected by majority vote of the President and other members of the Tribunal through a secret ballot procedure.

This reporting year, the Tribunal was able to continue to count on the outstanding assistance of the Registrar, Ms Laura Maglia.

Organizational and administrative matters

On 17 March 2023 the Tribunal held its first Town Hall meeting. The event, open to a NATO-wide audience, took place at NATO Headquarters with an online connection for both an in-presence and remote connection of interested stakeholders. The purpose of the meeting was to introduce the Tribunal's members and give an opportunity to the staff for an open exchange on the Tribunal's way of working and its procedures in a non-contentious setting.

On 29 June 2023, the Tribunal will hold its first conference, "10 years of the NATO Administrative Tribunal – sharing experiences," celebrating the 10th anniversary of the Tribunal's creation. The conference will address key themes of international civil service law that the Tribunal has encountered over the past years, comparing them with experiences from similar tribunals. Participants in the event are judges and registrars of international administrative tribunals, officials of various international organizations and lawyers dealing with international civil service employment disputes. On 28 June 2023 the Tribunal will also hold a closed session with judges-registrars. The aim of the meeting is to exchange and discuss best practices with other tribunal's peers in a confidential setting.

In January 2023, the administrative assistant supporting the Tribunal for one third of a full-time equivalent transferred to a full-time assignment of that shared position. In April 2023, the Tribunal welcomed a full-time temporary staff member, who will serve for a six-month period.

Tribunal proceedings in 2022 and the first six months of 2023

The Tribunal held the following sessions: 28-29 April 2022 (35th), 29-30 September 2022 (36th) and 16-17 March 2023 (37th).

The Tribunal rendered 17 judgments, six of which were delivered in 2023 and are also covered in this Report.

The Tribunal's President issued five orders in 2022 (two of which being rendered in 2023 and included in this Report) and the Tribunal five orders (two of which being rendered in 2023 and included in this Report).

The NATO International Staff (NATO IS) and the NATO Support and Procurement Agency (NSPA) were the respondents in five cases, the NATO AGS Management Agency (NAGSMA) in two cases, and the Centre for Maritime Research and Experimentation (CMRE), the International Military Staff (IMS), the NATO Helicopter D&D Production and Logistic Management Agency (NAHEMA), the NATO Communications and Information Agency (NCIA), and the Supreme Allied Command Transformation (SACT) in one case each.

The Tribunal continued to resolve cases as expeditiously as possible. The duration of the written procedure alone is around four months to which must be added two periods of judicial closure (15 December–15 January and 1–31 August).

With the exception of one case that was summarily dismissed, most judgments were rendered within seven to twelve months from the filing of the case.

In 2022, eleven new appeals were introduced. In 2023, twenty-five new appeals have been introduced up to the issuing of this Report.

Cases are assigned to Panels of three judges or to the full Panel, with due consideration of the principle of rotation and equitable distribution of workload. In each case, the President designates another member of the Panel or himself/herself to serve as judge-rapporteur, *inter alia*, to prepare a draft judgment for consideration and approval by the Panel.

The Tribunal's case law in 2022 and the first six months of 2023[1]

During the period covered by this Report, the Tribunal rendered the following judgments and orders, including judgments that were rendered in 2023 following the March 2023 session.

The AT President issued five orders in total:

- three withdrawal orders in **Case No. 2022/1340**, **Case No. 2023/1347** and **Case No. 2023/1355**; and
- two Rule 10 orders (suspension of procedures pending decision on summary dismissal) in **Case No. 2022/1339** and **Case No. 2022/1346**.

The Tribunal issued five orders:

- one order was issued following a request for clarification of judgment (Rule 30 of the Tribunal's Rules of Procedure (ROP));
- one order was issued following a request for a rectification of error (Rule 28 of the Tribunal's ROP); and
- three orders were issued following a request for a re-hearing (Rule 29 of the Tribunal's ROP).

In **Case No. 2021/1333** the respondent submitted a request to clarify the amounts she expected to receive upon the rendering of the judgment and following its execution by

[1] The following summaries of Tribunal judgments are for information purposes only and have no legal standing. The full texts of the judgments can be found on the Tribunal's website.

the respondent. The Tribunal considered that the payments the appellant had received were fully in line with the dispositions of the judgment rendered and dismissed the Rule 30 request.

In **Case No. 2021/1327** and **Case No. 2021/1329**, the appellants asserted that the Tribunal's judgment was tainted by an error of law as the respondent had not provided "its best information," i.e. that the DCPS[2] lump sum was not covered by the Ottawa Agreement (Paris Protocol), as the privileges and immunities of the Treaty are limited to active staff. They joined as new evidence some documentation that included documents and minutes of meetings between management and representatives of active and retired staff. The Tribunal considered that the appellants did not indicate when they became aware of the supposedly new facts, nor had they provided supporting evidence in this respect. The results of talks with experts after the hearing cannot be considered to be new facts, and it is the responsibility of the appellants to seek expert advice before lodging an appeal and during the proceedings. Further, the Tribunal noted that the overall outcome of the discussions reported in the said documentation was that the official position of the respondent is that the lump sums in question are not subject to national taxation. Hence, had the Tribunal been able to take into consideration the new elements that the appellants produced, it could not have arrived at a different conclusion. The Rule 29 requests were dismissed.

Following AT judgment in **Case No. 2022/1339**, the appellant submitted that the Tribunal had not ruled on or had taken into consideration an NSPA document (Office Notice - ON) that implemented the general rule of the document that was challenged in his appeal. The Tribunal underlined that its judgment was based on an analysis of the entire case file and the hearing of the parties, that no documents were ignored, including the ON referred to with the Rule 28 request, which was already in the file. It was in fact another general instruction to the staff and not an implementing decision directly and adversely affecting him. The request was dismissed.

The Rule 29 request in **Case No. 2017/1104** was the appellant's second request for a re-hearing of the case regarding which the Tribunal had delivered a judgment on 21 November 2017. The appellant challenged the legality of the disciplinary procedure,

[2] Defined Contribution Pension Scheme.

which resulted in the disciplinary sanction of 7 November 2016. The Tribunal noted that the appellant had ample opportunity to make this submission during the proceedings that led to the Tribunal's judgment in 2017. A new argument is not a new fact, and the new argument was nothing more than a re-opening of a debate on the Tribunal's conclusions. The appellant submitted that with the allegedly new fact he would not have been sentenced to a seven-year term of imprisonment by the German courts. The Tribunal noted that this was a matter for the German courts and the case file did not contain evidence that the appellant had taken the necessary steps with the German courts. In addition, the appellant challenged a national security classification, contending that it was falsified and confronted this Tribunal on its compliance with the security regulations. The appellant improperly sought *ex parte* access to the President and judges of the Tribunal and resorted to insulting language. The request was denied.

Three cases were heard by the Tribunal in a Full Panel composition and one Rule 10 summary dismissal was also deliberated by a Full Panel. Eight cases dealt with contract issues: four cases on indefinite duration contracts (one of which on performance assessment and another on the contract duration of Financial Controllers), one on termination following restructuring, one on recruitment, one on non-renewal of a definite duration contract, and one determining the proper compensation case of termination of a definite duration contract. Two cases dealt with harassment and discrimination, two with sick leave and invalidity matters, and one with discipline.

Cases heard by the Full Panel composition

Case No. 2021/1327 and **Case No. 2021/1329** are cases submitted by former staff members (NSPA and NAMEADSMA respectively) who during their employment were part of the Defined Contribution Pension Scheme (DCPS) and upon retirement withdrew their contributions as a lump sum. Both appellants retired in Germany and the German fiscal authorities taxed the lump sum, contrary to the relevant CPR dispositions stipulating that DCPS holdings are exempt from taxation. The appellants submitted their cases to the German courts, but also with the NATO IS, alleging liability of the Organization and requesting compensation for the material damage suffered. The Tribunal noted that it was not disputed by the parties that the lump sums paid out

under the DCPS are not subject to national income tax in the NATO Member States. The Tribunal also noted that it was not in dispute that the issue posed by the appeal was the tax levied by the Germany authorities, thus entailing a dispute between the Organization and one of its Member States. The Tribunal underlined that it is an international administrative tribunal which hears appeals on employment disputes between the Organization and its serving and retired staff; it does not hear disputes between the Organization and its Member States. The Tribunal did not dispute that the appellants were suffering harm, but the question before it was whether this was a consequence of an act or omission by the Organization, entailing its liability and entitling the appellants to compensation. The Tribunal held that the Organization provided the best information it had at the time and that it could not anticipate that some German tax offices would decide to tax the DCPS holdings; the respondent therefore did not breach the CPR or the Ottawa Agreement, and no irregularity had been committed by the Head of the NATO Body. The appeals were dismissed.

In **Case No. 2022/1339** the appellant challenged the legality of an NSPA Office Notice outlining the Agency's measures with regard to Covid-19; he requested its suspension and financial compensation for each month it was in force. The appellant contended that the ON affected his conditions of work or service and did not comply with the NATO principles and general principles of law (including human rights and data protection). He also claimed that he was discriminated against, arguing that his refusal to be vaccinated deprived him of his right to access the NSPA premises to exercise his right to work, to travel on duty, to apply to certain vacancies and to be promoted. The Tribunal considered firstly the admissibility of the appeal: although some of the provisions in the ON provided for direct consequences in possible situations, the appellant had explicitly challenged only the ON itself, which is a general instruction to the staff. The Tribunal confirmed its constant case-law that staff members or former staff members cannot challenge general rules or decisions but only implementing decisions directly and adversely affecting them. The appeal was dismissed.

Case No. 2022/1346, submitted by the same appellant as in Case No. 2022/1339, was summarily dismissed under Rule 10 of the Tribunal's ROP. With this appeal the appellant challenged the appointment of another NSPA staff member to a vacant post. He considered that the appointment of the other staff member was based on a

discriminatory procedure since one of the requirements was to be vaccinated and that such appointment affected him since that person was now his hierarchical superior. He further contended that he was not allowed to be promoted due to the fact that he was not prepared to be vaccinated and was not even allowed to apply because possessing honesty was one of the requirements of the post and, knowing that he would refuse to be vaccinated, applying would be dishonest. The Tribunal recalled the CPR dispositions limiting access to the pre-litigation and litigation procedures to staff members who consider that a decision affecting their conditions of work or of service does not comply with the terms and conditions of their employment. No such decision was taken concerning the appellant's case, since the decision to appoint a colleague to a post was not directed at him nor did it directly or adversely affect him. Staff members may challenge the appointment of another staff member to a vacant post only if they themselves had applied for the post in question and had received an individual decision that they were not selected. In the present case the appellant had decided not to apply for the vacant post, even after the decision was announced that the clause in question was no longer applicable.

Contract-related cases

Case No. 2021/1333 originated from the restructuring of the CMRE, the suppression of the appellant's post and the respondent's termination of her contract with immediate effect. Recognizing the Organization's broad discretionary power in the context of a restructuring, the Tribunal stressed that during a reorganization, a serious and coherent process must be followed and that the concerned authorities must take decisions in the exercise of their discretionary powers without any abuse of powers or indication of arbitrariness. The Tribunal also stressed that the staff member must be properly informed of the consequences, and of any related aspect of, the termination of his/her contract. Following its previous case-law, it held that the identification of the posts that are likely to be suppressed must be in the restructuring plan and that the person(s) concerned must be informed. In the present case, the Tribunal noted that none of these conditions were met. Further, the respondent terminated the appellant's contract under Article 10.5 of the CPR. The Tribunal did not dispute the possibility of resorting to this article, especially for security reasons, but in the present appeal, the termination with immediate effect due to the suppression of post was not in line with

the respondent's obligation under the principle of good administration. The Tribunal annulled the challenged decision and granted the appellant compensation for the damage suffered.

In **Case No. 2021/1335,** the appellant, holder of an indefinite duration contract, and former Financial Controller (FC) and Human Resources Manager at NAGSMA, who was on sick leave before the end of her contract, challenged a series of issues relating to her contractual relationship with the Organization: manifest error of assessment and breach of legitimate expectations by deciding not to further extend her appointment until the end of the Agency's activities; manifest error of assessment and breach of legitimate expectations by deciding *de facto* to withdraw her appointment at the NAGMO in Liquidation (NAGSMOiL); and violation of the duty of care and breach of her rights and entitlements deriving from the end of her employment contract. The Tribunal recalled its previous case-law and the dispositions of the NATO Financial Regulations concerning the duration of the appointment of FCs and dismissed the contentions relating to the contract extension as well as those relating to the appointment at the NAGSMOiL, as no contract was issued to the appellant regarding such employment. Concerning the respect of her rights under the indefinite duration contract, the Tribunal acknowledged the parties' agreement to finalise the payments due upon the separation from the Organization, i.e. at the end of the sick leave period. However, concerning the compensation for non-material damage suffered, the Tribunal found that the circumstances to which the appellant was subjected in her sensitive situation and the state of anxiety and uncertainty gave rise to 15,000 EUR in damages.

In **Case No. 2022/1337,** the appellant challenged the NCIA decision not to offer him an indefinite duration contract. He also challenged his last performance appraisal, whose "fair" rating constituted one of the main reasons for not offering him such a contract. The case file did not however indicate that the appellant had complied with the CPR dispositions requiring pursuit of the necessary pre-litigation to challenge the respondent's decision. The appellant also sought annulment of his performance appraisal. The Tribunal recalled that a staff member's performance report is not in itself a decision that constitutes grounds for grievance, but is rather a preparatory act and can only be challenged as being illegal in support of submissions directed against

a subsequent act causing the appellant harm. The Tribunal dismissed the appeal as inadmissible.

Case No. 2021/1330 was the follow-up case to Joined Cases Nos 2019/1289 and 2020/1301 submitted by the same appellant, a former NAGSMA staff member under secondment from his national administration. The Tribunal upheld the two previous appeals which respectively annulled the decision to suspend him from duties and the decision to terminate his contract. With the present appeal, the appellant sought determination of the right amount of compensation resulting from the illegal termination of contract. The Tribunal did so by determining the proper amounts to be paid.

Case No. 2022/1341 was a recruitment case. The appellant was a former IMS temporary staff member, temporarily occupying a post of assistant. In February 2022 the IMS Director appointed to the post someone chosen from a reserve list. The appellant started the pre-litigation procedure alleging that he had been affected by the decision to unlawfully and non-transparently appoint someone to the position from a reserve list rather than launch an open recruitment to which the appellant himself could have applied. He requested compensation deriving principally from an improper procedure with the Complaints Committee (CC) process, the loss of opportunity to apply for the post for which he was a very strong candidate, and non-material damages since the respondent had allegedly failed to meet its obligations arising from the principles of good administration, transparency and duty of care. The Tribunal considered that the CC process was not vitiated or biased, and that the appellant had not lost the opportunity to be appointed to the position, but that he had only lost the opportunity to be a candidate. The possibility of applying for a position cannot be regarded as a real or substantial opportunity for the appellant to be hired for the position and receive a salary. Finally, as to non-material damages, the Tribunal considered that the respondent did not commit any irregularity or illegal action for which it should be liable. The appeal was dismissed.

Case No. 2022/1342 submitted by a former IS staff member, dealt with the appellant's claims relating to her application for an indefinite duration contract. The appellant joined the IS under a three-year contract for a post at A4 level; she was further offered another definite duration contract for three years and during this period she was invited to apply for an indefinite duration contract (IDC) in the same post. She was

subsequently informed that she was not offered an IDC, but rather a final definite duration contract of three years. Instead of accepting this offer, she successfully applied for an A5 position, obtaining a three-year definite duration contract followed by a second one, each of a three-year duration. During this period the appellant started engaging with the IS to apply for an IDC in that post. She was, however, informed that in accordance with the dispositions of the most recent Contract Policy, she was not going to be invited to apply for an IDC a second time. The Tribunal found that the text of the dispositions of the Contract Policy applicable to the appellant did not clearly foreclose issuance of an invitation to her, therefore she was not afforded the chance to demonstrate whether she would, five years later, fully meet the standards for being offered an IDC or not. The Tribunal recalled its constant case-law that decisions concerning a renewal of contract are within the discretionary power of the Head of the NATO Body and that the appellant was not entitled to a contract extension or to a new contract. The Tribunal dismissed the appeal; however, it considered that the appellant's loss of opportunity as well as the lack of clarity in communicating with her gave rise to non-material damages (5,000 EUR).

In **Case No. 2022/1343,** the appellant requested the annulment of the SG decision not to offer him an IDC. The appellant joined the IS on a definite duration contract and during his first renewal, in accordance with the Contract Policy, was invited to apply for an IDC. He was further orally informed by his Head of the Division that he had not been successful, and he resigned the following day. The appellant, without seeking reinstatement or withdrawing his resignation, submitted his appeal condemning several practices and policies of the administration in the application procedure. Concerning the admissibility of the appeal, the Tribunal held that the decision of the Head of the NATO body not to offer an IDC was a decision "taken directly by him or her" within the meaning of art. 61.4 CPR. On its merits, it recalled that each appeal must be based on the alleged infraction of an individual right with respect to the terms and conditions of his/her employment. Without such a claim, an appellant lacks the essential standing before the Tribunal; it is not sufficient to raise general concerns about rules and/or regulations without a concrete impact on an appellant. The Tribunal noted that the appellant voluntarily cut all ties with the Organization, hence the contested decision had no impact on the appellant's individual conditions of work. The appeal was dismissed as inadmissible.

Case No. 2022/1344 dealt with a non-renewal of contract. In 2020 the appellant, an NSPA staff member working in procurement, was suspended immediately from duties, since he was suspected of disclosing information in a bidding process and of attempting to gain personal advantage. The suspension was the object of Case No. 2020/1317 before the AT. The Tribunal confirmed the decision to suspend the appellant but annulled it insofar as it suspended him without pay. With the present appeal, the appellant challenged the NSPA decision not to renew his contract on grounds that such renewal would not be in the Agency's interest. He contended, *inter alia*, that the suspension of two years earlier was not a valid argument to be used by NSPA as grounds for its decision (Article 5.2.3 of the CPR); that the Agency violated the presumption of innocence as charges against him were not proved and that it was up to the administration to prove misconduct on his part. The Tribunal held that prior to a renewal, the administration has broad discretion to determine whether it is in the interest of the Organization to continue with the working relationship or not, and therefore to renew the contract or not. In doing so, the respondent could lawfully use the facts, for which it had already taken a suspension decision, found to be legal by the AT judgment in 2021, and without violating the presumption of innocence. The appeal was dismissed.

Cases dealing with disciplinary proceedings

Case No. 2022/1345 concerned the appellant's request for reinstatement in her former position and for compensation for material damages. The appellant, a former SACT staff member, relocated from Europe to Norfolk, Virginia to take up her assignment. During the relocation, damage to her household goods was caused by the removal company, which had a contract with SACT. The appellant followed-up with extensive exchanges with the removal company and SACT, but in pursuing the reimbursement she presented manipulated documents to the Organization. Disciplinary proceedings were initiated, with dismissal as the proposed sanction. In consideration of the appellant's personal situation, a settlement agreement was ultimately reached, including disciplinary sanction in the form of postponement of salary increment, acceptance of the appellant's resignation with a nine-month notice period, and the appellant's reassignment to other individual projects during the notice period. A few months later, the appellant alleged that the disciplinary proceedings had been

irregular, that she had been forced to resign, and that SACT had breached the terms of the agreement when her national security services were informed, putting her security clearance at risk. She requested *inter alia*, reinstatement to her previous position, and financial compensation. The Tribunal recalled that an appeal must be submitted within 60 days of the date the appellant was notified by the Head of the NATO Body concerned that the relief sought will not be granted. In assessing the timeliness of the appeal, the Tribunal emphasized that pursuant to Article 1.2 of Annex IX to the CPR, respect of time limits is mandatory. Therefore, they have to be checked by the Tribunal *ex officio,* without a need for assertion to that effect by a party. Furthermore, the Tribunal considered that the appellant's efforts to withdraw from the agreement concluded in the fall of 2021 were legally unfounded and needed to be rejected. The appeal was dismissed.

Cases dealing with harassment and discrimination

Case No. 2022/1336 concerned the appellant's claim for compensation for the alleged illegality of the Organization's decision not to appoint him as a team leader and acknowledgment of harassment and discrimination. The appellant, a former IS staff member who left in 2021 with an invalidity pension, challenged a series of episodes from 2010 to 2019 which, in his view, constituted hostile actions against him giving rise to compensation. The Tribunal recalled that the principle of legal certainly precludes administrative decisions (and the financial consequences arising from such decisions) from being challenged indefinitely. Concerning harassment, however, it noted that it can be brought to light by an accumulation of incidents or the repetition of abusive behaviour, some of which may date back a long time. With regard to the present appeal, however, the Tribunal concluded that the incidents cited by the appellant proved neither discrimination nor harassment towards him, even if he might have felt that way. The appeal was therefore dismissed.

In **Joined Cases Nos 2021/1328 and 1334,** the appellant sought the acknowledgment that she had been subjected to poor management causing damage to her career and health, that one of her supervisors had acted inappropriately and that she was subjected to harassment and discrimination. The appellant's submissions were however based on the illegality of decisions which predated the request for compensation by several months; the Tribunal recalled the principle of legal certainty,

precluding administrative decisions from being challenged indefinitely, and rejected the allegations as time barred. Concerning the allegations of harassment, the Tribunal observed that no sound evidence was brought forward by the appellant. Moreover, it recalled that it is not in a position to cancel an investigation report, which does not constitute a decision that can be appealed. It can only assess such report when examining a decision based on its findings, which was the case in the present appeal. However, concerning the investigation itself, and in particular the appellant's request to hear certain witnesses, the Tribunal concluded that the failure to add those witnesses in the investigation had generated doubt. Such error of judgment in the way the investigation was handled caused the appellant non-material damages that must be compensated (10,000 EUR).

Case dealing with sick leave/invalidity

In **Case No. 2021/1332,** the appellant requested the annulment of the NSPA decision not to recognise him as suffering from permanent invalidity. The appellant, a staff member on an IDC, went on sick leave in August 2019, followed by extended sick leave. In March 2021 the Invalidity Board (IB) met and found that he was not suffering from permanent invalidity and was not totally prevented from performing the duties offered to him by the Organization. The NSPA consequently terminated the appellant's contract in accordance with Article 45.7.3 of the CPR. The Tribunal recalled that is has limited oversight of an Invalidity Board's findings and reports, that the appellant did not invoke any factual error that would affect the IB findings, and dismissed the appeal.

Case No. 2022/1338 dealt with a seconded staff member from NAHEMA who went on sick leave shortly before the end of his contract. The focus of the appeal was whether the respondent correctly terminated the appellant's secondment contract during the period of sick leave and whether the provision of Article 45 of the CPR were legally applied. In consideration of its previous case-law on secondment and the CPR dispositions of Article 5.2, the Tribunal considered that the General Manager was obliged to terminate the contract between the appellant and the Organization, upon receipt of the letter from the national authorities confirming that the appellant's secondment had been revoked with the end of active duty with his national service, without regard to the sick leave period. The decision was therefore not tainted by illegality and the Tribunal dismissed the appeal.