

## SEVENTY-FIRST SESSION

### Judgment 1106

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. J.-F. S. on 6 June 1990 against the International Criminal Police Organization (Interpol), the complainant's letter of 16 June to the Registrar of the Tribunal, Interpol's reply of 4 September, the complainant's rejoinder of 3 December 1990 and the Organization's surrejoinder of 12 February 1991;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal, Article 6(3) of the Rules of Court, Article 42(2) of the Staff Regulations and Article 112(1) of the Staff Rules of Interpol;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a Frenchman, worked at Interpol as chief accountant from 1 February 1984 until 6 June 1989, when he was dismissed on the Organization's transfer to Lyons.

In August 1988 Interpol brought disciplinary proceedings against him for the first time and imposed a sanction on him. He appealed against that sanction in his fourth complaint, which Judgment 1085 dismissed on 29 January 1991.

Meanwhile there were further disciplinary proceedings. By a decision of 22 December 1988 the Secretary General suspended him from duty on full pay under Article 42(2) of the Staff Regulations and Article 112(1) of the Staff Rules on charges of serious misconduct that were set out under the heading "Grounds". In a minute of 6 January 1989 the Secretary General told him of the referral of his case to the Joint Disciplinary Committee. In its report of 17 May 1989 the Committee recommended either imposing no further sanction or else giving him a written warning. By a decision of 24 May 1989 the Secretary General suspended him without pay from 29 May to 6 June 1989 on the grounds of failure to keep working hours, failure to account for two absences, and insubordination. By a letter of 30 May 1989 he appealed. On the Joint Appeals Committee's recommendation the Secretary General upheld his decision of 24 May 1989 by one of 3 March 1990 which was notified to the complainant on 7 March and is the one impugned in this complaint, filed on 6 June 1990.

On 16 June 1990 the complainant wrote to the Registrar acknowledging that he had sent his complaint one day late and explaining that he had miscalculated the deadline for filing. By way of excuse he said that he had been awaiting Interpol's reply to his fourth complaint and that someone close to him had had to go into hospital.

B. The complainant contends that the charges against him are either unfounded or based on exceptional circumstances.

He explains why he failed to keep working hours and says he ought to have been allowed a time-table of his own. One of his absences was authorised leave and the other was for only two hours, the purpose of it being to buy Christmas presents for fellow staff. The third charge arises from a dispute with his supervisor in which, "unfortunately and quite out of character, he lost his temper".

He claims repayment of the nine days' pay subtracted from his final entitlements and awards of 100,000 French francs in material and moral damages and in costs.

C. Interpol replies that the complaint is irreceivable. As the complainant admits, he filed it one day after expiry of the ninety-day limit in Article VII(2) of the Tribunal's Statute and his explanations will not do.

The Organization's pleas on the merits are subsidiary. It contends that the charges against him are founded. His

explanations for being late are either irrelevant or by implication recognise the truth of the charge. It is not true that on one occasion he was on authorised leave. His other absence is typical of the liberty he used to take with rules that everyone at Interpol is supposed to abide by. His very comments show his recalcitrant bent. The sanction was well-founded and fair.

D. The complainant rejoins that Interpol's reply offers not a shred of evidence to warrant the sanction. He enlarges on some of his earlier pleas.

E. In its surrejoinder Interpol maintains that the complaint is irreceivable. In its submission the case law makes it plain that time limits are a matter of objective fact and start at the date of notification of the impugned decision. An exception may be allowed only if an organisation is in bad faith. Interpol is clearly not to blame for the complainant's missing the deadline. Since this is his fifth complaint he must have known he had to file in time.

The Organization presses its pleas on the merits.

#### CONSIDERATIONS:

1. This complaint is about the second disciplinary proceedings which the Secretary General of Interpol instigated against the complainant on 22 December 1988 on charges of serious misconduct. The Joint Disciplinary Committee reported on 17 May 1989. By a decision of 24 May the Secretary General upheld the charges of three disciplinary offences and suspended the complainant without pay from 29 May to 6 June 1989.

The complainant appealed and the Secretary General referred his appeal to the Joint Appeals Committee. In its report of 2 February 1990 the Committee recommended confirming the decision of 24 May 1989 and the Secretary General did so by a decision of 3 March 1990, the one now impugned.

2. According to Article VII(2) of the Tribunal's Statute a complaint will not be receivable unless filed within ninety days of the date of notification of the impugned decision, and Article 6(3) of the Rules of Court says that the "date of despatch" of the complaint shall alone be taken into account.

On the complainant's own admission he received notice of the impugned decision on 7 March 1990. The ninety-day time limit therefore ran out on 5 June 1990. The Registrar of the Tribunal has recorded that according to the postmark the complaint was despatched on 6 June, and the complainant cannot deny that.

The complaint is irreceivable because it was filed out of time.

3. The complainant's answer is that he miscalculated the deadline and that the reason why he waited until the last minute to send off his complaint was that he wanted first to get Interpol's reply to his fourth complaint, which he regarded as closely connected. He also seems to be pleading the illness of a visitor, the father of the woman he lives with, who had had a heart attack.

Such matters are irrelevant to observance of the time limit, which is a matter of objective fact. If that were not so - whatever considerations of equity there might be - there could be no certainty in legal relations between the parties, and such certainty is the whole point and purpose of the time bar. An exception might be allowed only if the Organization had acted in bad faith and misled the official. But in this case the Organization did not.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
E. Razafindralambo  
A.B. Gardner

Updated by SD. Approved by CC. Last update: 10 March 2008.