

The Administrative Tribunal,

Considering the complaint filed by Ms F. J. against the International Centre for the Registration of Serial Publications (hereinafter referred to by its French acronym "CIEPS") on 11 October 2005 and corrected on 20 December 2005, the Centre's reply of 7 February 2006, the complainant's rejoinder of 22 March and the surrejoinder of the CIEPS dated 2 May 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Chapter 5, section 3, of the Staff Regulations of the CIEPS concerning separation from service includes the following rules:

"Art. 1 The Director may terminate the appointment of a member of staff after consulting the Joint Committee [...].

[...]

Art. 6 Giving the reasons for the decision in writing, the Director may apply disciplinary measures to members of staff who fail to observe the provisions of the [...] Staff Regulations, of their employment contract, or of the Staff Rules.

Disciplinary measures include: written warning, suspended promotion, dismissal with or without indemnities.

Art. 7 Dismissals for disciplinary reasons are subject to one month's notice, after three successive written warnings [...]. In the case of very serious misconduct jeopardising the interests of the Centre, a staff member may be dismissed without notice and without prior written warning."

The complainant, a French national born in 1974, was recruited by the CIEPS as a "sales assistant" starting on 15 May 2004 for a two-year period.

The CIEPS was established with the aim of introducing and operating an automated system for the registration of serials covering all fields, known as the International Serials Data System. Approximately one third of its financial resources originates in database sales. The complainant's tasks consisted inter alia of organising and managing "contacts with customers and orders".

On 26 January 2005 the complainant was issued a warning for sending her supervisor – who had taken up her duties on 1 September 2004 – an e-mail which, according to the Director of the CIEPS, was "unacceptable both in its form and in its content".

At a meeting which took place on 27 January, the Director informed the complainant that several customers had complained about her. On 21 March the Director sent her another warning, criticising her "offhand and even rude attitude" towards customers, her "inadequate or incorrect ways of dealing with customers and files", which had adversely affected the relations of the CIEPS with its customers and caused problems for the latter, and accusing her of making a "series of serious mistakes creating risks for the CIEPS, especially financial risks", and of various other shortcomings, such as "failing to apply rules, procedures or instructions, with negative consequences for other CIEPS services", and adopting an "unacceptable attitude" towards her supervisor and an "unsatisfactory approach to [her] work". The Director added that the complainant's shortcomings and behaviour at work gave rise to "serious risks" for the Centre and were liable to have a "negative and virtually irreversible impact" on its

customers and its turnover.

On the morning of 4 April the complainant was required to hand back the keys of her office and her badge. That same day the Director invited her to attend an interview prior to possible dismissal for very serious misconduct jeopardising the interests of the CIEPS. The interview was to take place on 14 April.

The Joint Committee met on 15 June; three of its members were in favour of dismissal and the other three against. On the next day the Director sent the complainant a letter in which, in accordance with the provisions of Chapter 5, section 3, of the Staff Regulations, she was dismissed for very serious misconduct jeopardising the interests of the CIEPS, with no dismissal indemnity; the period of notice was to end on 31 August. The Director accused the complainant firstly of having, at a fair held in London in December 2004, “removed” three cheques – totalling 2,671 euros – sent by a subscription agency, and secondly of having without informing her supervisor terminated an agreement with a major customer and encouraged the latter to reduce its subscription, thereby causing the CIEPS a loss of 3,036 euros.

On 17 June the complainant wrote to the Director challenging her dismissal on the grounds that it was unjustified and unlawful. On 21 June the Director replied that the challenged decision was maintained “in full”.

The matter was referred to the Appeals Board, which met on 20 July. In its report the Board expressed the view that the charges against the complainant did not constitute very serious misconduct jeopardising the interests of the CIEPS and that a dismissal on that basis ought not to be envisaged. It recommended a “negotiated separation” and proposed as a basis for negotiation the payment of an indemnity equivalent to the salary the complainant would have received had her appointment not been terminated. In a letter of 21 July 2005, which constitutes the impugned decision, the Director confirmed the dismissal but decided to grant the complainant an indemnity equivalent to eight months and fourteen days’ salary, which she would have been paid had her contract not been terminated.

B. The complainant considers that she is the victim of an unjustified decision and unfair proceedings. She submits that the present dispute has arisen out of nothing more than a “run-of-the-mill personality clash” between her and her supervisor which originated in January 2005.

With respect to form, the complainant contends that the decision to dismiss her is tainted with serious procedural irregularities which were committed with an intent either to harm her or to restrict her defence rights. She asserts that her dismissal was accompanied by “inappropriate vexatious measures”, such as obliging her on 4 April to leave the CIEPS premises immediately, flanked by the Director and her supervisor, “in front of all [her] colleagues, as if [she] had been caught red-handed”. She adds that as a result of a deliberate omission on the part of the Director, two members of the Joint Committee were given only the brief presenting the case against her, yet when she asked to be allowed to read out her defence brief at the hearing, her request was denied. She also points out that the Appeals Board was convened only three months after the dismissal decision was taken, and she leaves it to the Tribunal to appreciate the “speed of the proceedings for so-called serious misconduct”. She also accuses the Director of having abused her authority by disqualifying one of the members of the Board – her former supervisor – on the grounds that his presence could detract from the smooth running of the proceedings and of having tried to make the Board members change their minds.

On the merits the complainant contends that her dismissal, which she considers to be a totally disproportionate sanction, is not properly substantiated in view of the small sums involved. With regard to the way she dealt with the three cheques sent by the above-mentioned subscription agency, she admits that she may have made a mistake by failing to take certain precautions, but she insists that no evidence has been produced to show that the charges against her constituted serious misconduct jeopardising the interests of the CIEPS. She explains that the cheques in question did not match the order forms and that her supervisor was present when she gave them back to the agency’s representative in London in December 2004. She deplors the fact that, when new cheques which tallied with the order forms were sent, she was not allowed to contact the agency in order to carry out the verifications which would have enabled her to prove that the matter was closed. In this respect she recalls that before the Appeals Board the defendant acknowledged that the orders concerned had eventually been paid.

The complainant asks the Tribunal to find that her dismissal for very serious misconduct is unjustified and that she cannot be reinstated. She also seeks “the annulment of the non-existent serious misconduct” and the payment of an additional indemnity, equivalent to 12 months’ net salary, for moral and material injury, and for the “systematic harassment inflicted on [her] during nine months of proceedings”.

C. After explaining in detail the charges held against the complainant, the CIEPS argues in its reply that they reflect a casual and negligent approach and a disregard for procedures, which could seriously harm its interests. It points out that the charges concerned, which in its view amount to very serious misconduct, have been established and that the complainant has never denied them. It therefore considers that the dismissal was both lawful and justified.

The CIEPS also asserts that instead of putting forward convincing arguments on the merits, the complainant prefers to indulge in a “quibbling scrutiny” of alleged formal irregularities, which have by no means been established. In response it sets out to demonstrate that the proceedings were conducted in strict compliance with the statutory rules and the rights of the defence, both before the Joint Committee and before the Appeals Board.

According to the defendant the complainant was not subjected to any vexatious measure and has not proved that she suffered any injury. Recalling that as a general rule the damages awarded in the event of a contract being terminated cannot exceed the amount required to restore the injured party to the situation he or she would have been in had the contract not been terminated, it considers that in this case the complainant received the compensation to which she was entitled.

Lastly, considering that the complaint is vexatious, the CIEPS claims one euro in damages for abuse of process and 5,000 euros for reimbursement of its legal costs. It also requests that the complainant be ordered to bear the costs of the proceedings.

D. In her rejoinder the complainant argues that the Director, being unwilling or unable to settle the problem of her “personality clash” with her supervisor, initiated a dismissal procedure against her for misconduct and “contrived to fabricate a case of very serious misconduct”. According to the complainant, some of the terms used in the reply are unjustified, inaccurate and even libellous. She vows that during her period of employment her sole concern was to defend the interests of the CIEPS.

The complainant asks the Tribunal to censure “the incomprehensible relentlessness reflected in [the] final decision”, the unacceptable attacks on her dignity and defence rights, the harm done to her reputation and career, and the “deep moral injury” caused to herself and to the whole of the Centre’s staff. She also claims 3,000 euros in costs and asks the Tribunal to dismiss the counterclaim filed by the CIEPS.

E. In its surrejoinder the defendant recalls that the charges against the complainant have been proved. It considers that the only point at issue is the seriousness to be attributed to them, and maintains that they must be considered to constitute very serious misconduct jeopardising its interests. It now claims 6,000 euros for reimbursement of its legal costs.

CONSIDERATIONS

1. The complainant had been working at the CIEPS since 15 May 2004 when, on 26 January 2005, she was given an initial warning for having sent her supervisor a message which was “unacceptable both in its form and in its content”.

On 21 March she was sent a second warning, in which she was accused essentially of professional shortcomings and of adopting an attitude which exposed the organisation to serious risks.

On 4 April 2005 the Director of the CIEPS sent her a letter worded as follows:

“Dear Madam,

Although I am not obliged to do so by the Staff Regulations and Staff Rules, and although our relations are not governed by French law, as I am considering terminating the contractual relationship between you and the CIEPS, you are invited to attend an interview prior to a possible measure of dismissal for very serious misconduct jeopardising the interests of the CIEPS.

This interview will take place on 14 April 2005 at 2.30 p.m. in my office.

You may call on any staff member of the CIEPS to assist you.

In view of the seriousness of the charges against you, your presence at the CIEPS is no longer required. You will continue, however, to receive your full salary.

[...]"

Following the preliminary interview of 14 April, the complainant was informed by letter of 18 April that "the procedure leading to possible dismissal for very serious misconduct jeopardising the interests of the CIEPS [would] be pursued".

After consulting the Joint Committee the Director informed the complainant in a letter of 16 June 2005 that she had decided to dismiss her for very serious misconduct jeopardising the interests of the Centre. When the complainant challenged that decision, the Director maintained it in full on 21 June 2005.

On 25 June 2005 the complainant filed an appeal with the Appeals Board. After considering the charges against the complainant, the Board at its meeting of 20 July 2005 drew attention to the following:

"Ms J. was recruited at a difficult time following the introduction of new computing and marketing systems, which necessarily gives rise to an overload of work for all the Centre's staff; [...] she was able to receive training from the previous incumbent for only two or three weeks before the latter retired; [and] her then supervisor had little time to spare to assist her. [...] It should also be noted that the new supervisor was recruited after Ms J., who was therefore also deprived of proper training."

The Board expressed the following unanimous opinion:

"The charges against Ms J. do not constitute very serious misconduct jeopardising the interests of the Centre. Consequently, dismissal ought not to be envisaged in these circumstances. However, since the organisation is not offering to reassign her to another post, we recommend a negotiated separation, which would imply that no mention should be made of serious misconduct jeopardising the interests of the Centre and that a financial settlement should be arrived at. A basis for negotiations could be a dismissal indemnity equivalent to her salary until the end of her contract."

By letter of 21 July 2005 the Director notified the complainant of the final decision impugned in this case. The letter relevantly stated that:

"Having duly taken into account the opinion of the Appeals Board, and although I do not share its view of the seriousness of the misconduct, I wish to inform you that my decision is as follows:

- your dismissal notified on 17 June for the reasons given in the letter of dismissal is maintained; the period of notice will end on 31 August 2005 but you are not required to report for duty during that period.
- You will receive a dismissal indemnity equivalent to your salary until the end of your contract, that is, an amount equivalent to eight months and fourteen days' salary, which you will be paid at the beginning of September."

2. The complainant contends that her dismissal for very serious misconduct jeopardising the interests of the Centre, as decided and confirmed by the Director "despite the reserved and unanimous opinions of the competent bodies to the contrary, has no real and serious justification". She considers that her dismissal is unlawful and tainted with serious irregularities, that it constitutes a totally disproportionate sanction and that it was imposed after excessively long proceedings accompanied by "inappropriate vexatious measures".

3. The defendant maintains that the complainant was guilty of very serious misconduct jeopardising its interests and that her dismissal was therefore justified.

It points out that, in order to take the Appeals Board's opinion into account, even though it did not agree with the Board's conclusions, it conceded compensation by offering the complainant the payment of her salary until the end of her contract. It believes therefore that the action initiated by the complainant is clearly improper and constitutes an abuse of process, which should be condemned as such by ordering her to pay one euro in damages and 5,000 euros for reimbursement of its legal costs.

4. The Tribunal notes that, while expressing its desire to take account of the Appeals Board's opinion, the defendant did not follow that opinion altogether. Indeed, it agreed to pay the complainant an indemnity equivalent to the salary she would have received until the end of her contract but maintained the dismissal notified on 16 June (and not 17 June, as indicated in the letter of 21 July 2005) for the reasons given in the dismissal letter, that is, for very serious misconduct jeopardising the Centre's interests, although the Appeals Board, after examining the charges against the complainant, had expressly stated that the charges did not constitute very serious misconduct jeopardising the interests of the CIEPS and that, consequently, dismissal ought not to be envisaged in the circumstances. This is why, since the complainant could not be offered reassignment to another post, the Appeals Board recommended "a negotiated separation, which would imply that no mention should be made of serious misconduct jeopardising the interests of the Centre".

5. The Tribunal has consistently held, as it did in Judgments 2339 and 2391, that where a final decision refuses, to a staff member's detriment, to follow a favourable recommendation of the internal appeal body, such decision must be fully and adequately substantiated.

In this case, whereas the Appeals Board's opinion is based on an objective examination of the charges against the complainant and on pertinent conclusions which the defendant has made no attempt to challenge, the Director maintained the dismissal for very serious misconduct jeopardising the interests of the CIEPS on the grounds simply that she did not share the Board's opinion regarding the seriousness of the misconduct.

Consequently, the impugned decision must be set aside and the Appeals Board's opinion must be deemed to have been accepted. It must therefore be concluded that the termination of the complainant's contract was not due to very serious misconduct jeopardising the interests of the CIEPS.

6. The complainant claims compensation for moral and material injury and for the "systematic harassment inflicted on [her] during nine months of proceedings".

The Tribunal considers that the complainant's material injury has been made good by the indemnity already paid by the defendant, which was equivalent to the remuneration she ought to have received until the end of her contract. On the other hand, the Tribunal considers that the complainant is entitled to the sum of 1,000 euros exclusively in compensation for the moral injury arising from the unlawfulness of the impugned decision, bearing in mind that no injury due to harassment of any kind has been proved. She is also entitled to 2,000 euros in costs.

7. In the light of the above, the defendant's claims for damages for vexatious proceedings, for the reimbursement of its legal costs and for payment of the costs of the proceedings must be rejected.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The CIEPS shall pay the complainant the sum of 1,000 euros in compensation for moral injury.
3. It shall also pay her 2,000 euros in costs.
4. All the complainant's other claims are dismissed, as are the defendant's counterclaims.

In witness of this judgment, adopted on 10 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.