

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 2)

v.

Interpol

134th Session

Judgment No. 4509

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms E. S. against the International Criminal Police Organization (Interpol) on 25 March 2019, Interpol's reply of 10 September, the complainant's rejoinder of 18 October 2019, Interpol's surrejoinder of 24 February 2020, the complainant's additional submissions of 20 April, Interpol's comments thereon of 21 July, the complainant's second additional submissions of 14 August and Interpol's final comments of 8 October 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

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

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

The complainant challenges the decision not to renegotiate the content of a settlement agreement or to explain its content.

The complainant joined Interpol in 2016 under a three-year fixed-term contract. On 24 April 2018 she was placed on certified sick leave and, on 24 May, Interpol's staff doctor certified that she was permanently unfit for work.

The complainant received a Separation Agreement on 31 August 2018, providing for her separation from service on 31 December 2018 and the payment of her gross salary up to that date, a termination indemnity, her accrued annual leave and retirement benefits.

On 11 September, the complainant requested modifications to the Separation Agreement. She claimed that the decision to set the separation date at 31 December 2018 was unlawful, as she had been declared unfit for work as from 24 May 2018. She also stated that all the payments offered pursuant to the Agreement would cover the material damages she suffered. She nevertheless requested additional compensation of 30,000 euros for health damages, 10,000 euros in moral damages and 10,000 euros in costs.

On 18 September 2018 the Director of Human Resources Management replied that the complainant had been informed of the terms of the Separation Agreement during a meeting held on 18 June and that the payments stipulated therein were not negotiable.

By an e-mail of 19 October the Office of Legal Affairs informed the complainant's legal counsel that the Separation Agreement was considered to be fair and that, should she not sign it, the Organization could seek termination of her appointment on medical grounds pursuant to Staff Rule 11.1.1(1) of the Staff Manual.

By a letter of 29 October 2018 addressed to the Secretary General, the complainant requested an internal appeal procedure in respect of the decision not to review the Separation Agreement.

On 28 November 2018 the complainant was informed of the decision of 27 November 2018 to terminate her employment on medical grounds with effect from 30 November 2018.

On 30 November, 14 December, and 16 December 2018, the complainant and her representative requested information regarding her appeal. On 8 January 2019 the Secretary General, in response to the complainant's letter of 14 December 2018, stated that there had been only one administrative decision in the complainant's case, namely the decision to terminate her appointment on medical grounds.

On 25 March 2019 the complainant filed with the Tribunal her second complaint challenging the implied rejection of her appeal of 29 October 2018.

The complainant asks the Tribunal to quash the implied rejection of her internal appeal and to order Interpol to follow its internal appeal procedure. She claims 4,000 euros in costs, as well as moral damages for the delay in the internal appeal proceedings and for ignoring her requests for information concerning the progress of those proceedings. In her rejoinder she seeks the disclosure of evidence including proof that her treating doctor was engaged in the decision to terminate her appointment on medical grounds and asks Interpol to produce the waiver of medical confidentiality. In her additional submissions she claims additional costs, as well as exemplary damages for the Organization's bad faith, and alleges that the medical certificate of 24 May 2018 provided by the Organization in its surrejoinder is a falsified piece of evidence.

Interpol asks the Tribunal to dismiss the complaint in its entirety. It submits that at the time of the submission of the complainant's internal appeal, there was no administrative decision to appeal. It denies that it unlawfully disclosed any medical information and asserts that the medical certificate of 24 May 2018 declaring her permanently unfit for work is authentic and was provided at that stage only because the complainant agreed to the disclosure of the report by asking for its disclosure. Lastly, it objects to her submission of illegally recorded conversations as evidence and requests the Tribunal to disregard both transcripts.

CONSIDERATIONS

1. In 2018, the complainant, who at the material time was employed with the Organization under a three-year fixed-term contract, was certified by the Organization's staff doctor as permanently unfit for work. She had been on sick leave since April 2018. The Organization and the complainant explored the possibility of a Separation Agreement, which, following a meeting and exchange of notes, was finalised by the Organization and sent to the complainant on 31 August 2018 for her

signature. The complainant requested modifications to the draft Separation Agreement, by letter dated 11 September 2018. The Human Resources Management Director responded on 18 September 2018, refusing to amend the terms of the Separation Agreement. Further negotiations followed between the Organization and the complainant, but to no avail. In the end, the parties did not sign a Separation Agreement, and the complainant's appointment was terminated on medical grounds with effect from 30 November 2018.

2. On 29 October 2018, the complainant addressed an appeal to the Secretary General against the decision not to amend the Separation Agreement. On 30 November, 14 December, and 16 December 2018, the complainant and her representative requested information regarding her appeal. On 8 January 2019, the Secretary General, in response to the complainant's letter of 14 December 2018, stated that there had been only one administrative decision in the complainant's case, namely the decision to terminate her appointment on medical grounds in November 2018. The complainant sent the Organization a fourth request for information on the status of her appeal on 21 January 2019. Finally, on 25 March 2019, the complainant filed with the Tribunal the present complaint against the implied decision to reject her appeal of 29 October 2018 challenging the decision not to amend the Separation Agreement.

3. The complaint is unfounded.

It is relevant to quote Regulation 13.5 of the Staff Manual of the Organization:

“Settlement by mutual agreement

In exceptional cases the Secretary General shall be empowered, in the interests of the Organization and, where applicable, within the limits of budgetary provisions, to conclude in writing any mutually agreed settlement designed to end a disagreement or dispute arising from application of the terms of an employment agreement or of any pertinent provision of the present Regulations, the Staff Rules or the Staff Instructions, provided that the official of the Organization concerned or, if applicable, any other person covered by Article II (6) of the Statute of the [Tribunal] agrees, on conclusion of the settlement, to renounce all right of appeal in respect of the said disagreement or dispute.”

According to this provision, a settlement agreement needs to be mutually agreed by both parties and neither of the parties is compelled to sign it. Interpol is not bound to sign the agreement, all the more so where it disagrees with the terms requested by the official.

4. In the present case, Interpol and the complainant did not reach a mutually agreed separation. As the parties were not able to reach an agreement, Interpol ended the negotiations and followed the ordinary procedures for the termination of her appointment. The Organization was under no obligation to reach an agreement. In addition, in the present case, there is no evidence that the refusal of the Organization to sign the Separation Agreement in the terms proposed by the complainant was done arbitrarily or was otherwise vitiated by abuse of the discretionary power.

5. As the complaint is unfounded, it is unnecessary to address the objections to the receivability of the complaint raised by Interpol, nor any other ancillary issues raised by the parties.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 18 May 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ