

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B.

v.

Interpol

138th Session

Judgment No. 4842

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms I. B. against the International Criminal Police Organization (Interpol) on 31 August 2020 and corrected on 21 October 2020, Interpol's reply of 22 March 2021, the complainant's rejoinder of 23 April 2021 and Interpol's surrejoinder of 25 May 2021;

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 contests the application to her salary of the new salary scale for 2018.

On 26 March 2018 the complainant lodged an internal appeal to contest her pay slips of January and February 2018, which applied the new salary scale for 2018 and showed an increase in her salary of 1 per cent in comparison with her pay slip of December 2017. In her internal appeal, the complainant explained that, in her view, the new salary scale applicable for the year 2018 did "not comply with the requirement for transparency applicable to the determination of remuneration, in the

absence of any explanation of the adjustment made”^{*} and did not take into account “the need to offer remuneration consistent with the status of international civil servant and at a level comparable to that offered in other international organizations”^{*}. The complainant’s internal appeal was declared admissible and was forwarded to the Joint Appeals Committee on 18 April 2018. The complainant submitted a further brief to her internal appeal on 24 May 2018.

On 27 March 2018 the complainant handed in her resignation, having unsuccessfully submitted a request in November 2017 under a voluntary departure scheme set out in Staff Instruction 2015.26. She left the Organization on 27 May 2018.

In its report, issued on 14 February 2020, the Joint Appeals Committee recommended that the Secretary General dismiss the complainant’s internal appeal as unfounded. It noted, among other things, that the complainant had not suffered any prejudice as a result of the disputed salary adjustment.

On 2 June 2020 the complainant was notified of the Secretary General’s decision of 28 May 2020 to follow the recommendations of the Joint Appeals Committee and to dismiss her internal appeal. That is the impugned decision.

The complainant received the Joint Appeals Committee’s opinion by an email of 3 July 2020, which specified that the time frame within which she may contest the decision of 28 May 2020 before the Tribunal ran from 3 July 2020.

The complainant asks the Tribunal to set aside the impugned decision as well as her pay slips for January and February 2018. She calls for Interpol to establish a new salary scale “as soon as possible” and seeks to be paid the difference between the salary paid on the basis of the contested salary scale and that which “she should have been paid on the basis of a regular salary scale”^{*}, with interest at the rate of 5 per cent per annum. She seeks 30,000 euros in compensation for the moral

^{*} Registry’s translation.

injury she considers she has suffered. Lastly, she asks to be awarded 8,000 euros in costs.

Interpol asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. The complainant contests the Secretary General's decision of 28 May 2020 as well as the amount of the salaries that she received for January and February 2018, in that the increase applied to her salary as from 1 January 2018 on the basis of the new salary scale for 2018 was only 1 per cent. For this purpose, she alleges failure to comply with various deadlines during the internal appeals procedure, procedural and substantive flaws committed by the Joint Appeals Committee, various unlawful acts committed by the Secretary General in the impugned decision and, more fundamentally, she contends that the new salary scale applicable as from 1 January 2018 is unlawful.

The Tribunal finds it reasonable to examine these grievances in the order outlined above.

2. With regard, firstly, to the failure to comply with various time limits during the internal appeals procedure, this grievance concerns the time within which the case should have been referred to the Joint Appeals Committee (Staff Rule 13.3.1(1)), that within which the Organization's reply should have been sent to the Committee (Staff Rule 13.3.3(3) and (5)), the time within which the Committee's opinion was communicated to the Secretary General, which was unreasonable (Staff Rule 13.3.5(2)), as well as that in which the Secretary General's decision was communicated to the complainant (Staff Rules 13.3.5(3) and 10.3.6(3)).

However, the Tribunal, while regretting that the Organization does not adhere more closely to the time limits that it has itself established, notes that time limits of this kind are not intended to have the effect of nullifying a decision taken after their expiry. It follows that their non-observance does not therefore render such decisions unlawful and, where that non-observance is wrongful, it may only entitle the staff

member concerned to compensation if it causes actual injury to her or him, which it therefore falls to the staff member concerned to establish (see Judgment 4584, consideration 4). Moreover, the Tribunal has also stated that if the failure of appeal bodies to examine appeals within a reasonable time constitutes a failure to comply with the requirement that internal appeals be processed expeditiously and, consequently, a failing on the part of the organization concerned, nonetheless, the amount of compensation liable to be granted under this head ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4727, consideration 14, 4635, consideration 8, 4178, consideration 15, and 4100, consideration 7). In this case, particularly in view of the limited weight of the subject matter of the dispute and the fact that the complainant left the Organization voluntarily on 27 May 2018, there is nothing in the evidence to suggest that the delays observed caused the complainant any identifiable actual injury.

3. Secondly, the complainant considers that the Joint Appeals Committee breached, on the one hand, Staff Rule 13.3.4(3) in that it failed to check whether the proper procedure was followed in the adoption of the new salary scale applicable from 1 January 2018, and, on the other hand, Rule 13.3.4(2) in that it failed to carry out an effective examination of the allegations made in support of the internal appeal, as well as Staff Rule 10.3.4, which requires the Committee to make a detailed study of the case brought before it. According to the complainant, the Committee should have verified, and recorded with due precision, the fact that the new salary scale, or the 1 per cent salary adjustment, had in fact been proposed by the Secretary General and adopted by the Executive Committee, that the Staff Committee had been consulted, or that an ad hoc methodology had been defined for this purpose and, if so, correctly applied. Moreover, the Committee should have examined and adopted an explicit and duly detailed position on the various grievances raised by the complainant in her internal appeal, which it allegedly failed to do. In this respect, on the one hand, the mere assertion that the relevant rules have been complied with cannot be regarded as an effective examination of these grievances, and, on the

other hand, the assertion that the defendant is an independent institution that freely determines its rules and salary levels is not sufficient to reflect an effective examination of the grievances and provide an opinion that could guide the decision-making authority.

However, the Tribunal notes that the various grievances raised by the complainant have been summarized and duly examined in the Committee's opinion issued on 14 February 2020, as have the arguments put forward in respect thereof by the Organization.

Concerning the reasons set out by the Committee in its opinion, it appears that the latter did check whether the proper procedure was followed and did respond to all the grievances raised by the complainant, including by referring to the arguments advanced by the Organization. The Tribunal considers that the complainant's plea is in any event unfounded, in that it is based on the Committee's failure to state the reasons for its opinion. It is another matter to determine whether such reasoning is founded in law, which will be examined in the following considerations.

4. Thirdly, the complainant alleges a lack of impartiality on the part of the members of the Joint Appeals Committee. She relies on various elements (length of the proceedings; the Committee's failure to respect various time limits; its silence on the grievances raised by the complainant; ambiguous or misleading statements by the Committee concerning the dates of referral and of filing of the Administration's submissions; more transparent process for the Administration than for the complainant; absence of a dissenting opinion on the part of the member appointed by the staff representation, which also created a feeling of suspicion) which she considers "troubling"* and revealing of a context in which "criticism of the Administration's decisions is tantamount to disloyalty and betrayal"*, so that "the complainant can scarcely see how the members of the Committee, driven by this spirit of caution and fear that prohibits any formal disavowal of the

* Registry's translation.

Administration's actions, can deliver an opinion with the required impartiality and independence"*.

However, the Tribunal recalls that its settled case law has it that the complainant bears the burden of proving a lack of impartiality on the part of one or several members of an internal appeals body. In the present case, the complainant clearly does not adduce the requisite proof, given that mere suspicions and allegations unsupported by tangible evidence are insufficient to establish a lack of impartiality on the part of all or some members of the Joint Appeals Committee (see, for example, Judgments 4662, consideration 13, and 4553, consideration 7).

This plea is also unfounded.

5. Fourthly, the complainant alleges a violation of Staff Rule 10.3.5(3), in that she was not informed of the date on which the opinion of the Joint Appeals Committee was submitted to the Secretary General. According to the complainant, this resulted in a direct violation of her right to an effective legal remedy "since in the absence of a final decision within 60 days, an employee may have recourse to the Tribunal"*.

However, the Tribunal fails to see how a violation of this rule could have prejudiced the complainant's right to an effective legal remedy before the Tribunal. This argument is all the more unfounded since, following a request by the complainant to this effect, the Joint Appeals Committee's opinion was forwarded to her by email of 3 July 2020.

This plea is, therefore, clearly unfounded.

For the same reason, the same applies to the alleged violation of Staff Rule 10.3.6(3), in that the opinion of the Joint Appeals Committee was not attached to the first notification of the Secretary General's decision of 28 May 2020.

6. Fifthly, the complainant alleges a further violation of Staff Rule 10.3.6(3), in that the Secretary General did not provide sufficient reasons for his decision of 28 May 2020. A mere reference to an opinion

* Registry's translation.

that was itself insufficiently reasoned did not meet the requirement to state reasons.

However, as the Tribunal has consistently held, “when the executive head of an organisation adopts the recommendations of an internal appeal body, she or he is under no obligation to give any further reasons in his or her decision than those given by the appeal body itself” (see, for example, Judgments 4662, consideration 15, and 4307, consideration 15). Furthermore, as already stated in consideration 3 above, the opinion of the Joint Appeals Committee was itself adequately reasoned.

7. On the merits, the complainant contends that the Secretary General’s decision of 28 May 2020 is unlawful, since the new salary scale for 2018 is itself vitiated by various legal flaws.

The Tribunal recalls in this respect that, under its settled case law, a general decision intended to serve as a basis for individual decisions – as is the case of the salary adjustment at issue – cannot be impugned, save in highly specific cases, although its lawfulness may, on an exceptional basis, be contested in the context of a challenge to the individual decisions taken on the basis thereof (see, for example, Judgments 4795, consideration 3, 4734, consideration 4, 4572, consideration 3, 4278, consideration 2, 3736, consideration 3, and 3628, consideration 4). This is the case here.

8. On this issue, the complainant submits, firstly, a plea of incompetence on the basis that this general decision was not taken by the Executive Committee, which, pursuant to Staff Regulation 5.4, is the sole authority competent to decide, following a proposal from the Secretary General, on such a salary adjustment.

However, the evidence shows that, as the Organization contends, the salary adjustment for 2018 was drawn up on the basis of the budget proposal established by the Secretary General and was, in fact, first endorsed by the Executive Committee at its 195th Session in September 2017 before being finally approved by the General Assembly, subsequently, at its 86th Session, also held in September 2017.

Moreover, these various decisions were published on the Organization's website.

The complainant's plea is thus unfounded.

9. Secondly, the complainant considers that since all salary scales are an integral part of the Staff Regulations and Rules, the Staff Committee should have been consulted, as required by both Staff Regulation 9.1 and Staff Rule 9.2.8.

In this regard, Staff Rule 9.2.8(1) provides that "the Staff Committee shall be informed by the Secretary General of any proposed amendments to the Staff Regulations and to the present Rules, unless circumstances are such that, within a reasonable period of time, the Secretary General cannot consult the said Committee and the latter cannot give its opinion". Furthermore, Staff Regulation 9.1 provides that "[t]he Secretary General shall take the necessary steps to ensure that the officials of the Organization may participate in the discussion of matters concerning them".

As the Organization rightly contends in its written submissions, the sole purpose of the salary adjustment for 2018 was to reflect inflation. It was a simple matter of automatically indexing salary scales, with an automatic update of Appendix 1 to the Staff Manual detailing the salary scales, not a proposed amendment to the Staff Regulations or Staff Rules that would lead to the salary scales being reset. The Tribunal considers that, in view of their scope, only the latter would constitute an actual amendment to Interpol's Staff Regulations and Staff Rules that should be submitted in advance to the Staff Committee for its opinion. It is irrelevant in this respect that Interpol, probably for the sake of convenience, deemed it necessary to incorporate the automatic salary adjustments made every year directly into the salary scales set out in Appendix 1 to the Staff Manual.

It follows that the plea concerning the failure to consult the Staff Committee is unfounded.

10. Thirdly, the complainant objects to the fact that no clear and precise methodology was defined, published and applied with a view to carrying out the salary adjustment for 2018.

In this regard, the Tribunal recalls that the principles governing the limits on the discretion of international organizations to set adjustments in staff pay are clearly established in its case law. The following has been stated in Judgment 1821, consideration 7:

“Those principles may be concisely stated as follows:

(a) An international organisation is free to choose a methodology, system or standard of reference for determining salary adjustments for its staff provided that it meets all other principles of international civil service law: Judgment 1682 [...] in 6.

(b) The chosen methodology must ensure that the results are ‘stable, foreseeable and clearly understood’: Judgments 1265 [...] in 27 and 1419 [...] in 30.

(c) Where the methodology refers to an external standard but grants discretion to the governing body to depart from that standard, the organisation has a duty to state proper reasons for such departure: Judgment 1682, again in 6.

(d) While the necessity of saving money may be one valid factor to be considered in adjusting salaries provided the method adopted is objective, stable and foreseeable (Judgment 1329 [...] in 21), the mere desire to save money at the staff's expense is not by itself a valid reason for departing from an established standard of reference: Judgments 1682 in 7 and 990 [...] in 6.”

In Judgment 1821, cited above, on which the complainant relies, the organization concerned had adopted in its regulatory framework a procedure to be followed when adjusting its staff members' salaries, which it had not followed for a particular adjustment, which led the Tribunal to make the following clarifications:

“10. The [organization concerned] has failed not only to establish any methodology, let alone one which complies with the above-stated requirements of international civil service law, but also to show compliance with Article R IV 1.01 of its own Staff Regulations [...] That article requires the use of the Coordinated Organizations' index as an ‘orientation’. It is simply impossible to see any orientation towards that index in the impugned decisions. Likewise, though the article requires the Council to take account of ‘relevant criteria’, there is no evidence that it did so.

11. In these circumstances, and because of the [...] total failure [of the organization concerned] to establish any basis upon which it could do anything but follow the Coordinated Organizations' index, the Tribunal can only set aside the impugned decisions and return the matter to the [organization concerned] for recalculation of the salary adjustment for 1996."

Similarly, in Judgment 2095, on which the complainant also relies, the Tribunal notes that one provision in the Staff Regulations of the organization concerned made express provision that the salary scale had to be reviewed "every year" and that the decision-making authority had to pursue the objective of "maintaining competitive employment conditions". In that case, the organization had refrained from taking a decision on adjustment for 1999 and had failed to show that the adjustment decided with effect from 1 January 2020 was adequate, whereas the evidence showed that the purchasing power of staff had been seriously eroded and that the organization was facing recruitment difficulties.

11. In this regard, the Tribunal can only hold that the circumstances in the present case are entirely different from those in the aforementioned judgments.

Firstly, the Tribunal notes that the procedure for the adjustment at issue was applied, as is clear from considerations 8 and 9 above.

Secondly, the Tribunal considers that the Executive Committee, and subsequently the General Assembly, committed no unlawful act by deciding to take account of inflation in salary adjustments at 1 per cent for 2018. The decision in this respect to apply the inflation rate observed in France at the same time can, further, be viewed as enabling the achievement of stable, predictable and transparent results.

Thirdly, and although the complainant holds a different view, nothing in the evidence suggests that the choice of this method should be considered as leading to a serious erosion of the purchasing power of Interpol staff members, or to recruitment difficulties for the Organization.

It follows that this plea is also unfounded.

12. Lastly, the complainant, who appears this time more concerned with the setting of salary scales themselves than the method for their annual adjustment used by Interpol, considers that the Organization is also in breach of the Noblemaire principle, which, she argues, should also be applied to international organizations that are not part of the United Nations system. She contends that the salary scales applicable within Interpol do not offer sufficiently high remuneration to draw and retain staff members in its service.

13. The Tribunal recalls its Judgments 831, consideration 1, and 825, consideration 1, in which it held that the Noblemaire principle, when fully applicable, embodies two rules: “[o]ne is that, to keep the international civil service as one, its employees shall get equal pay for work of equal value, whatever their nationality or the salaries earned in their own country. The other rule is that in recruiting staff from their full membership international organisations shall offer pay that will draw and keep citizens of countries where salaries are highest.”

14. While considering that the Noblemaire principle is not applicable as such to an international organization that is not part of the United Nations common system (see, more recently, Judgment 3921, consideration 12), the Tribunal has recognized the existence of a principle of international civil service according to which the staff of international organizations have the right to receive, in the interest of the international civil service itself, a level of remuneration equal to that in countries where, for comparable qualifications, the salaries are the highest (see Judgments 1912, consideration 18, and 1913, consideration 14). However, it is only in the event of an impairment of this guarantee that a challenge could justifiably be made. The complainant has given the Tribunal no indication that the salary scale, as fixed for the year 2018, has had the effect of keeping salaries, without proper reasons, at a level that would be manifestly inadequate.

15. It follows that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER