

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

H. (No. 4)

v.

Interpol

138th Session

Judgment No. 4845

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr R. H. against the International Criminal Police Organization (Interpol) on 29 November 2021 and corrected on 19 December, Interpol's reply of 27 April 2022, the complainant's rejoinder of 2 August 2022 and Interpol's surrejoinder of 28 October 2022;

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 to terminate his appointment following the suppression of his post.

Facts relevant to this case are set out in Judgment 4844, also delivered in public this day, concerning the complainant's third complaint. Suffice it to recall that in June 2019 the complainant was appointed by Interpol as a marketing and video production editor, at grade 5, in the Communications Office on a fixed-term contract which, following several extensions, was due to expire on 31 January 2020.

On 11 June 2019 the Secretary General approved a new strategy for the management of Interpol's resources, which involved, in particular, a restructuring of the Communications Office and specifically

underlined the need to outsource certain activities. Staff meetings were then held, invitations to tender drawn up and an internal audit of the Communications Office carried out in September 2019. Out of around twenty posts in the Office, five were eventually suppressed as a result of this outsourcing strategy, including the complainant's post.

By letter of 28 November 2019, the complainant was informed that his post was suppressed with immediate effect following the reorganisation of the Communications Office which had led to the outsourcing of some of his duties. The letter also stated that, in accordance with Staff Regulation 11.1(4), the Administration would undertake efforts to reassign him to a vacant post consistent with his qualifications and experience within three months from the date of notification of the post suppression, that he would be entitled to priority consideration of his application and that, if he could not be reassigned within that period, his appointment would be terminated on two months' notice.

On 27 January 2020 the complainant lodged an internal appeal against the decision to suppress his post. On 31 January he was informed that his contract of appointment would be extended until 29 February to comply with the three-month reassignment period referred to in the letter of 28 November 2019.

By letter of 2 March 2020, the complainant was notified of the decision to terminate his contract of appointment on the grounds that it had not been possible to identify a suitable vacant post by the end of the reassignment process. The letter stated that he was entitled to two months' notice, together with an indemnity on termination of appointment, and that he was exempted from performing his duties with effect from 4 March 2020 and throughout the notice period. On 7 April 2020, having discovered that one of his colleagues had been transferred to the Communications Office to a post of planning officer at grade 5, he lodged an internal appeal against the transfer decision, claiming that he should have been given priority in being reassigned to that post. The outcome of that internal appeal gave rise to his second complaint before the Tribunal, which is the subject of Judgment 4843, also delivered in public this day.

On 30 April 2020 the complainant lodged a new internal appeal against the decision of 2 March 2020 terminating his appointment. He asked for the decision to be withdrawn and requested a reassignment to the aforementioned post of planning officer at grade 5, together with compensation for the material and moral injury he considered he had suffered. In addition, he requested the communication of the list of vacancies for which he had been considered for reassignment and of the assessment that had been made of his candidacy for those posts. His internal appeal was referred to the Joint Appeals Committee on 18 May 2020. On 22 June the Committee informed him of its composition and of his right to object to two members, and invited him to supplement his internal appeal. It also notified him that it had decided to join that appeal with the appeal of 27 January 2020 in order for the two cases to be examined together in accordance with Staff Rule 10.3.4. On 24 June the complainant requested compensation for what he regarded as the unreasonable delay in handling his case and objected to the joinder of his internal appeals. The Committee confirmed its composition on 26 June and explained its decision to join the appeals. On 30 June the complainant raised new procedural objections, in particular to the composition of the Committee. Clarifications were provided to him on 7 July.

In its single opinion of 29 December 2020 – communicated to the complainant on 4 January 2021 – the Joint Appeals Committee, having extended the deadline several times to allow the parties to make their submissions, recommended that the appeals be dismissed and, therefore, that the decisions to suppress the complainant’s post and terminate his appointment be upheld. However, the Committee considered that the complainant should be compensated for the multiple procedural errors committed by the Organization during the appeal procedure, for its failure to respond to the Committee’s request for documents and for the lack of sufficient evidence of its attempts to reassign the complainant within the prescribed three-month period. Between January and June 2021, the complainant enquired about the progress of the procedure. He was told that the final decision would be communicated to him within a reasonable period. On 28 July 2021, having gathered further information on the efforts made by the

Organization to reassign the complainant, the Secretary General gave the latter the opportunity to submit his observations thereon, which, however, he failed to do. On 1 September 2021 the complainant was notified of the Secretary General's decision, dated 31 August 2021, to follow the Joint Appeals Committee's recommendation to dismiss his appeals. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, together with the decision of 2 March 2020 terminating his contract of appointment, to order redress for the material and moral injury he considers he has suffered, which he assesses as at least 120,000 euros and 46,000 euros respectively, and to award him costs of 7,000 euros.

Interpol asks that the complaint be dismissed in its entirety as unfounded.

CONSIDERATIONS

1. In the present complaint, the complainant seeks the setting aside of the impugned decision of 31 August 2021, notified on 1 September 2021, and of the initial decision of 2 March 2020, both concerning the termination of his fixed-term appointment.

2. It should be recalled that, on the same day, the complainant also filed a third complaint against the decision that confirmed the suppression of his post following the outsourcing of some of his duties.

In its reply, the Organization asks the Tribunal to order the joinder of these two complaints on the grounds that the two internal appeals lodged by the complainant against the initial decisions of 28 November 2019 and 2 March 2020 were already joined by order of the Joint Appeals Committee, that the two complaints are "inseparably" linked and that joining them would allow savings to be made on the management costs that would be incurred if the Tribunal were to deal with the cases separately.

However, that request for joinder has already been dismissed by the Tribunal in consideration 2 of Judgment 4844, also delivered in public this day. It is, therefore, no longer necessary for the Tribunal to rule on this point.

3. Part of the complainant's line of argument in the present complaint relates to the lawfulness of the decision, taken on 3 February 2020 by the Director of Human Resources Management, to transfer one of the complainant's colleagues to a post of planning officer at grade 5 in the Communications Office. That decision is also the subject of the complainant's second complaint, on which the Tribunal has ruled in Judgment 4843, also delivered in public this day. The Tribunal will not address that line of argument in the present judgment as it has been dealt with in Judgment 4843.

4. In the aforementioned Judgment 4844, the Tribunal set aside the decision of the Director of Human Resources Management of 28 November 2019 suppressing the complainant's post and the decision of the Secretary General of 31 August 2021 confirming that earlier decision at the end of the internal appeal procedure. As a consequence of that setting aside, the decision of 2 March 2020 terminating the complainant's appointment on the grounds that it had not been possible to reassign him and the Secretary General's decision of 31 August 2021, both taken on the basis of the decision to suppress his post, were also rendered unlawful.

For this reason alone, the impugned decision of 31 August 2021 and the decision of 2 March 2020 must also be set aside.

5. In addition, the Tribunal notes that the impugned decision is tainted with a flaw affecting the lawfulness of the internal appeal procedure.

6. The complainant alleges that there was a breach of Staff Rule 10.3.2(3), and of his right to an effective internal appeal, insofar that the Secretary General failed to respond to the repeated requests

from the Joint Appeals Committee for information about the efforts actually made by the Organization to reassign him.

The Organization does not dispute its lack of response but justifies it by the fact that it was not in a position to supply the missing information requested by the Committee within the timeframe set by the latter owing to the Covid-19 pandemic and the impact thereof on its services. It goes on to point out that Staff Rule 10.3.6(1) and (2) expressly provides for a procedure to “remedy any gaps identified during the internal appeal procedure”, the Secretary General having made use of this procedure by carrying out additional checks and allowing the complainant one month to express his view on any new elements communicated to him following those checks. In that regard, it draws the Tribunal’s attention to the fact that the additional information requested by the Secretary General was exactly the same as that requested by the Committee, from which it concludes that the Secretary General was in possession of all the elements necessary to take a fully informed decision. Observing that the complainant did not respond to the additional information sent to him, it asserts that he did not suffer any injury as a result of the approach taken. Everything was therefore done to “remedy the procedural shortcomings arising from circumstances beyond the Organization’s control and to safeguard the complainant’s right to an effective means of redress”.

7. The Tribunal notes in this regard that, under Staff Rule 10.3.2(2), the Chairman of the Joint Appeals Committee may, except where otherwise specified, either on his own initiative or at the request of the official concerned or of the Secretary General, “order any investigative measures that he or the Committee deems necessary to settle the case brought before it”. Similarly, pursuant to Staff Rule 10.3.2(3), the Chairman may ask the Secretary General, in writing, “to furnish any document and any information which he or the Committee deems necessary for examination of a case brought before it”.

In the present case, it is clear that the Secretary General breached the aforementioned Staff Rule 10.3.2(3) by failing to respond to the request from the Alternate President of the Committee to provide

information by the deadline given to him, even after that deadline was extended. Aside from the fact that it is doubtful that, at the time when the information was requested by the Committee, on 30 September and 13 October 2022, and whereas it is apparent from the written submissions that the Organization was able to send other emails to the Committee during the same period, the Covid-19 pandemic and its impact on Interpol's functioning could, alone, have amounted to "circumstances beyond the Organization's control", preventing it from responding to the two requests for information made by the Chairperson of the Committee and thereby constituting a case of *force majeure* within the meaning of the case law, the Tribunal notes that, in any event, the Secretary General never responded to the Alternate President of the Committee, if only to allege such a case of *force majeure*.

8. It follows that, as a result of the Organization's conduct in this case, the Joint Appeals Committee was not in a position to give its opinion in full knowledge of the facts. The fact that the Secretary General subsequently attempted to mitigate the lack of response by making his own request, pursuant to Staff Rule 10.3.6(1), for the information which the Committee had asked for clearly does not remedy the irregularity in the procedure followed. It does not change the fact that the Committee was deprived of certain important information which it would have needed in order to provide its opinion in full knowledge of the facts.

It follows that, besides the unlawfulness already identified in consideration 4 above, the impugned decision was taken at the end of a procedure in which the complainant's right to an effective internal appeal was breached.

9. Accordingly, the complainant is entitled to redress for the injury, both material and moral, which he has suffered as a result of that decision.

10. As regards material injury, the complainant merely states, without offering further explanation, that the injury is undeniable, and assesses it at 120,000 euros at least.

However, the Tribunal notes that the complainant had been appointed under a fixed-term contract which was due to expire on 31 January 2020 and was not necessarily renewable, but was subject to two months' notice and the payment of an indemnity on termination of appointment. The complainant ultimately benefited from that notice and from that payment, in fact for a longer period than that to which he would normally have been entitled, since there was a three-month period in place for completion of the reassignment process, during which time he continued to receive his full pay.

It is uncontested that the complainant's duties were, at least in part, outsourced. Therefore, it is clear that the complainant's post would, in any event, have been inevitably suppressed in the short term. A new reassignment process should thus have been commenced, in the course of which the complainant's situation should have been examined in the light of any vacancies arising during a new three-month period.

The complainant therefore lost an opportunity to be reassigned within the Organization following a new reassignment process. However, pending the outcome of the process which is to be carried out as a result of Judgment 4843, rendered on the complainant's second complaint, the Tribunal considers that the loss of opportunity was minimal.

Having regard to those factors, the Tribunal considers that the material injury suffered by the complainant will be fairly redressed by awarding him material damages in the sum of 10,000 euros.

11. With regard to moral injury, the complainant considers that the impugned decision and the decision of 2 March 2020 also caused him "serious moral harm" as "they [were] completely unjustified in both content and form, were an affront to his dignity, disrupted his normal life and provoked nagging feelings of anxiety and a decreased sense of his own worth as the reassignment process had been unsuccessful and he did not know for how long he would be unemployed". He assesses this injury at 40,000 euros at least.

The Tribunal considers, in that respect, that the unlawful termination of the complainant's appointment, which itself was based on a decision to suppress his post found to be unlawful in Judgment 4844, rendered

on the third complaint, did cause moral injury to the complainant, exacerbated by the breach of his right to an effective internal appeal.

In the circumstances of the case, the Tribunal considers that the moral injury suffered by the complainant will be fairly redressed by ordering the Organization to pay him the sum of 10,000 euros.

12. Lastly, the complainant complains that the internal appeal procedure lasted sixteen months, which was “totally excessive” in view of the circumstances of the case. He assesses the resulting moral injury suffered at 6,000 euros.

It is true that, in view of the nature of the impugned decision, which was liable to compromise the further maintenance of the employment relationship between the complainant and the Organization, such a delay must be considered, in absolute terms, as excessive. However, for the same reasons as those set out in Judgment 4844, rendered on the complainant’s third complaint, the Tribunal considers that, in the particular circumstances of the case, the time taken to issue the impugned decision of 31 August 2021 is not such as to warrant the award of compensation under this head.

13. As the complainant succeeds, he is entitled to the sum of 7,000 euros which he claims in costs.

DECISION

For the above reasons,

1. The decision of the Secretary General of 31 August 2021 as well as the decision of 2 March 2020 are set aside.
2. Interpol shall pay the complainant 10,000 euros in material damages.
3. The Organization shall also pay him 10,000 euros in moral damages.
4. It shall pay him 7,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 23 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