

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (Nos. 3 and 4)

v.

Interpol

134th Session

Judgment No. 4510

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms E. S. against the International Criminal Police Organization (Interpol) on 10 April 2019 and corrected on 29 May, Interpol's reply of 10 September, the complainant's rejoinder of 18 October 2019, Interpol's surrejoinder of 24 February 2020, corrected on 16 March, 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 the fourth complaint filed by Ms E. S. against Interpol on 10 April 2019 and corrected on 29 May, Interpol's reply of 10 September, the complainant's rejoinder of 18 October 2019, Interpol's surrejoinder of 24 February 2020, corrected on 16 March, 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 to put her on unpaid absence under contract.

The complainant joined Interpol in 2016 under a three-year fixed-term contract. On 24 April 2018 the complainant 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. She requested modifications to the Agreement seeking additional compensation. On 18 September, 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. The decision not to negotiate the content of this Separation Agreement is the subject of her second complaint before the Tribunal.

On 4 October 2018 the complainant's counsel requested that, by 21 October, the Organization provide her with either a formal notice of termination on medical grounds pursuant to Staff Rules 11.1.1 and 11.1.2 of the Staff Manual, or a mutually agreed settlement, or both.

On 19 November 2018, relying on her September and October payslips, which revealed that her salary had been reduced to zero, the complainant requested the Secretary General to review the decision to put her on "unpaid leave of absence" as from 1 September 2018. She asked him to set aside the decision and to reinstate her monthly salary payments as from 1 September 2018 until the process of termination of her appointment on medical grounds was complete.

On 28 November 2018 the complainant was informed of the 27 November 2018 decision to terminate her employment on medical grounds with effect from 30 November 2018. The decision provided for the payment of the complainant's salary from 1 September to 30 November 2018, as well as her indemnity, pension and two months' notice.

On 30 November the complainant, relying on her November payslip, requested the Secretary General to review the decision to put her on “unpaid leave of absence” in November 2018.

On 14 December 2018 the complainant requested the Secretary General to explain why the final settlement of account had not been paid and to be provided with information on her three internal appeals.

On 8 January 2019 the Secretary General informed the complainant that she had now been paid the final settlement of account, the transfer having been made on 3 January 2019. With respect to the internal appeal procedure, the Secretary General stated that there was only one administrative decision in her case, namely the decision to terminate her appointment on medical grounds. As stated in that decision, she had 60 calendar days from the date of its notification to file an appeal. The Secretary General would then forward that appeal within 10 days to the Joint Appeals Committee (JAC).

The complainant filed both her third and fourth complaints with the Tribunal on 10 April 2019, impugning the implied rejections of her requests of 19 and 30 November 2018.

In her third complaint 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 2,200 euros in costs. She also claims 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.

In her fourth complaint 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 2,000 euros in costs. She also claims 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 complainant's third and fourth complaints in their entirety. It submits that at the time of the submission of her internal appeals, 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 provided by the complainant.

CONSIDERATIONS

1. As the two complaints are based on the same material facts and raise the same issues of fact and law, they may be dealt with in one judgment and are therefore joined.

2. The complainant, who at the material time was employed with the Organization under a three-year fixed-term contract, was placed on sick leave as of 24 April 2018, at her request. Shortly thereafter, on 24 May 2018, Interpol's staff doctor certified that she was permanently unfit for work. The Organization and the employee 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 did not sign it and 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 by a decision taken on 27 November 2018, with effect from 30 November 2018. The Organization communicated the termination of the appointment to the complainant by an e-mail of 28 November 2018. While the negotiations for the Separation Agreement were still ongoing, the complainant received the payslips for the months of September, October, and November 2018, which showed that she had received no salary at all (net salary equal to zero euro), given that she had been placed on "unpaid absence under contract", as expressly written in the three payslips. On 19 November 2018 the complainant lodged an internal appeal by which she requested that the Secretary General review the decision to place her on "unpaid leave of absence" as from 1 September 2018, relying on her September and October payslips. In her internal appeal of 19 November 2018, the complainant asked that the Secretary General: "[...] set aside the decision to put [her] on unpaid leave of absence and to reinstate [her] monthly salary payments from 01 September 2018 until the [t]ermination on medical ground process is completed". On 30 November 2018 the complainant lodged an internal appeal by which she requested that the Secretary General review the decision to place her on "unpaid leave of absence" in November 2018. In her internal appeal of 30 November 2018 the complainant asked that the Secretary General: "[...] set aside the decision to put [her] on unpaid leave of absence and to reinstate [her] monthly salary payments from 01 November 2018 until the [t]ermination on medical ground process is completed".

3. By her two complaints, the complainant impugns the implied rejection of her internal appeals of 19 and 30 November 2018. She alleges that the Organization ignored her two internal appeals and asks the Tribunal:

(a) to quash the rejection of her internal appeals;

- (b) to oblige the Organization to follow its internal appeal procedure;
- (c) to award her 2,200 euros and 2,000 euros (respectively third and fourth complaint) for “legal and other costs”;
- (d) to compensate moral damages linked to the delay in the Organization’s internal proceedings and to the circumstance that the Organization ignored her requests for information on the progress of the internal appeals.

4. The Tribunal observes that the Organization never decided the two internal appeals. Instead, on the one hand, it issued a fresh decision to terminate the complainant’s employment on medical grounds with effect from 30 November 2018 and to provide for the retroactive payment of the complainant’s salary from 1 September to 30 November 2018. On the other hand, the Secretary General, by letter of 8 January 2019, issued in reply to the complainant’s letter of 14 December 2018, observed that “regarding the appeal procedure, under Rule 13.1(1) of the Staff Manual, an official may challenge an administrative decision of the Secretary General. There has only been one administrative decision in your case, the decision terminating your employment dated 27 November 2018.”

5. Under Regulation 13.1 of Interpol’s Staff Manual, in relevant part:

“Internal procedures for the settlement of disputes

- (1) Any official of the Organization [...] may:
 - (a) challenge an administrative decision, taken by the Secretary General, which he considers is prejudicial to his interests and conflicts with the terms of his employment agreement or with any pertinent provisions of the present Regulations, of the Staff Rules or of the Staff Instructions;
 - (b) lodge a claim in writing requesting the Secretary General to take a decision on his case, the grounds for which have not previously been the subject of any decision by the Secretary General. [...]
- (2) A decision may be challenged within the Organization either through the review procedure or directly through the internal appeal procedure. These two procedures cannot be initiated simultaneously with respect to the same decision.”

Under Rule 13.1.3 of Interpol’s Staff Manual:

“Admissibility of a request for review or of an internal appeal

- (1) Upon receipt of a request for review or of an internal appeal, the Secretary General shall first examine whether it is admissible. In particular, it may be declared not to be admissible when it:
 - (a) challenges an act which does not constitute an administrative decision which can be challenged;

[...]
- (3) When the Secretary General rejects a request for review or an internal appeal on grounds of admissibility, he shall give the reasons for his decision in writing. The challenged decision shall then become final.”

Under Regulation 13.3:

“Internal appeal procedure

An internal appeal shall be addressed in writing to the Secretary General who, if he deems it admissible, shall consult the Joint Appeals Committee prior to taking a decision on the merits of the appeal.”

6. In the present cases, the complainant lodged two internal appeals against the “implicit decisions” to place her on “unpaid absence under contract”, as evidenced by her payslips for September, October, and November 2018. These implied decisions were challengeable pursuant to Regulation 13.1, paragraph 1(b), which allows the staff members to “lodge a claim in writing requesting the Secretary General to take a decision on his case, the grounds for which have not previously been the subject of any decision by the Secretary General”. The Secretary General failed to recognize that the payslips for September, October, and November 2018 were three individual administrative decisions (see, for example, Judgments 1408, consideration 8, and 3833, consideration 2). The Secretary General’s letter dated 8 January 2019, in the part where it affirms “regarding the appeal procedure, under Rule 13.1(1) of the Staff Manual, an official may challenge an administrative decision of the Secretary General. There has only been one administrative decision in your case, the decision terminating your employment dated 27 November 2018”, is not a valid decision, for the purposes of Rule 13.1.3, paragraph 3, on the internal appeals of 19 and 30 November 2018. Indeed, the Secretary General violated the provisions of Rule 13.1.3 and of Regulation 13.3, which require him either to give written reasons

for a rejection based on inadmissibility, or to forward the appeal to the competent appeal body. Therefore, the two implied decisions to reject the complainant's internal appeals must be set aside.

7. The complainant's claims made in her internal appeals that she be paid her salary for September, October, and November 2018 have already been satisfied by the administrative decision of 27 November 2018. Therefore, the Tribunal considers it unnecessary to send the cases back to the Organization for the further course of the internal appeals, as they have become moot.

8. The complainant does not impugn the termination of her appointment on medical grounds in the present complaints. Therefore, all claims and pleas related to that termination, such as the requests regarding the medical certificates, are irrelevant and shall be dismissed.

9. Even though the Organization's failure to properly follow its procedure on internal appeals and to provide the complainant with the information which she was entitled to receive was a breach of the Organization's duty of care, the complainant, who bears the burden of proof, has not demonstrated that she suffered any moral injury as a result. Accordingly, she is not entitled to moral damages.

10. Since the complainant partially succeeds, the Tribunal shall award her costs for the present proceedings in the amount of 1,500 euros.

DECISION

For the above reasons,

1. The two implied decisions to reject the complainant's internal appeals of 19 and 30 November 2018 are set aside.
2. Interpol shall pay the complainant 1,500 euros in costs.
3. All other claims are 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