

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**A. (No. 5)**

**v.**

**Interpol**

**136th Session**

**Judgment No. 4659**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr H. A. against the International Criminal Police Organization (Interpol) on 11 May 2020 and corrected on 11 and 13 June, Interpol's reply of 29 October 2020, the complainant's rejoinder of 3 February 2021 and Interpol's surrejoinder of 12 March 2021;

Considering the further submissions ordered by the Tribunal on 26 January 2023, Interpol's reply of 2 February 2023 and the complainant's comments of 14 April 2023;

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 dismiss him for serious misconduct.

The complainant joined Interpol in 2005. At the material time, he held an indeterminate appointment. On 21 August 2017 he was informed that he was the subject of a preliminary inquiry carried out further to an internal complaint according to which "he [had] pressured [a colleague] to cancel a training in Lyon so that he could attend the training in Tunisia, as well as having threats made against the colleague in order

to intimidate him”. The complainant was heard by the investigators on 19 December 2017. In their report delivered on 6 March 2018, the investigators concluded that the allegations against the complainant were supported by sufficient evidence and recommended that disciplinary proceedings be initiated. The report also referred to other potential issues involving the complainant that had been raised during the inquiry.

On 12 April 2018 the complainant was notified of the Secretary General’s decision to suspend him from duty with pay and of his intention to institute formal disciplinary proceedings. The complainant was informed – by a confidential memorandum dated 26 March 2018 – of the “charges that may eventually be brought against [him] within the framework of [that] disciplinary procedure” on the basis of the facts established by the preliminary inquiry. He was offered the opportunity to respond to the memorandum and to supply explanations and justifications. On 17 April 2018 the complainant requested a copy of the inquiry report. Interpol replied the same day that the report could not be sent to him as it was a confidential document for the Secretary General’s exclusive use, since it contained the names and statements of those who had been interviewed by the investigators. Nevertheless, the Organization provided a “summary of the findings of the report”. On 4 May 2018 the complainant submitted his comments on the memorandum of 26 March 2018 and supporting documents. He provided further information on 9 May and 16 October 2018.

In the meantime, on 25 May 2018 the Secretary General informed the complainant that the case had been referred to the Joint Disciplinary Committee for a consultative opinion. The same day the complainant was informed of the composition of the Committee and of the fact that he was entitled to present his defence orally or in writing. On 14 August 2018 he stated that he wished to submit written comments and requested a copy of “the entire file”. On 6 December 2018 he repeated his request to be provided with “all the documents in the file” and informed of “what [he was] accused” so he could submit his written comments, to which the Committee replied that this information was contained in the confidential memorandum of 26 March 2018.

During its examination, the Joint Disciplinary Committee held interviews with 11 staff members, searched the complainant's office and seized his computer and work phones. It also examined the telephone recording that had given rise to the initial internal complaint. It heard the complainant on 12 December 2018. The Committee issued an opinion containing nine annexes, including witness statements. It recommended that the Secretary General dismiss the complainant for serious misconduct but grant him six months' salary.

By a letter of 24 December 2018, the Secretary General informed the complainant that, having reviewed the opinion of the Joint Disciplinary Committee, he had decided to impose on him – with effect from the date of that decision – the disciplinary measure of dismissal for serious misconduct with forfeiture of the termination indemnity and that, pursuant to Staff Rule 11.1.2, he would receive three months' notice but would not be required to perform his duties during that period. The Secretary General added that the sanction was explained, in particular, by “the seriousness of withholding lists of foreign terrorist fighters which could have created a grave risk for member countries and brought the Organization into serious disrepute”. The opinion of the Joint Disciplinary Committee was sent to the complainant without the corresponding annexes on the grounds that he was already familiar with six out of nine of them and that the disclosure of the remaining ones would represent a potential risk to the safety of other officials.

On 15 February 2019, after lodging three internal appeals against his suspension and the decisions to extend it, the complainant lodged a fourth internal appeal against his dismissal. The four appeals were joined by the Joint Appeals Committee.

On 10 December 2019 the Joint Appeals Committee recommended that the Secretary General reject the complainant's internal appeals. On 6 February 2020 the Secretary General informed the complainant that, having reviewed the Committee's opinion, he had decided to reject his appeals insofar as they concerned his dismissal. That is the impugned decision, insofar as it relates to the complainant's dismissal.

In his fifth complaint, the complainant asks the Tribunal to set aside the impugned decision to the extent that it confirms his dismissal as well as the decision of 24 December 2018 to dismiss him, and to order his reinstatement. Failing reinstatement, he seeks payment of a sum equivalent to all the salaries and monetary benefits he would have received had his employment continued for five years and also the contributions that would have been paid into the pension scheme during that period, as well as payment of “compensation for loss of employment”. The complainant seeks compensation for the moral injury he considers he has suffered, which he assesses at 50,000 euros at least, as well as exemplary or punitive damages in the amount of at least 30,000 euros. Lastly, he seeks a fair award of costs. In his rejoinder the complainant further claims payment of a “termination indemnity” in the event that the Tribunal does not order his reinstatement.

Interpol requests the Tribunal to dismiss the complaint as unfounded in its entirety.

#### CONSIDERATIONS

1. The complainant asks the Tribunal to set aside the decision of 6 February 2020 by which the Secretary General of Interpol, in accordance with the opinion of the Joint Appeals Committee, confirmed his dismissal for serious misconduct, ordered by a decision of 24 December 2018.

2. The complainant submits that the procedures followed to reach these decisions were tainted by several flaws that arose at almost every stage of these procedures: during the preliminary inquiry; during the disciplinary procedure (including his hearing by the Joint Disciplinary Committee); at the time of the adoption of the disciplinary measure decided by the Secretary General on 24 December 2018; during the examination of his internal appeal by the Joint Appeals Committee; and finally at the time of the adoption of the impugned decision of 6 February 2020.

3. Among the many pleas entered by the complainant, there are three that are decisive for the outcome of this dispute.

4. Firstly, the complainant takes issue with the fact that, despite his repeated requests, he was never given access to the report drawn up at the end of the preliminary inquiry.

The Tribunal notes that it is undisputed that the preliminary inquiry report was never sent to the complainant in its entirety, even in a version redacted to the extent necessary to maintain the confidentiality of some aspects of the investigation, linked in particular to protecting the interests of third parties. It is true that, as the Organization argues, the actual disciplinary proceedings were only initiated by the notification of the Secretary General's confidential memorandum of 26 March 2018. However, the fact remains that the preliminary inquiry report also constitutes obviously an important element of the proceedings in the present case, since the charges initially brought against the complainant were based on that report and it had been forwarded to both the Joint Disciplinary Committee and the Joint Appeals Committee, which took it into consideration in their respective opinions.

It follows that Staff Rule 10.3.2(5), under which the official concerned "[shall] have access to all documents and forms of evidence submitted to the Joint Committees" was not complied with and there was a breach of due process as established in the Tribunal's case law (see Judgments 4412, consideration 14, 4310, consideration 11, and 3295, consideration 13).

5. Secondly, the complainant alleges that there was a breach of Staff Rule 12.3.1(2), under which the Secretary General, if she or he intends to institute disciplinary proceedings against an official, must address to the official a confidential memorandum describing the unsatisfactory conduct or misconduct and informing the official of the charges against her or him. The complainant points out that the disciplinary measure imposed on him was largely based on conduct that had not been brought to his attention, either in the Secretary General's confidential memorandum or at the appropriate stage in the proceedings.

He infers that there has been a clear breach of the aforementioned provision and, more generally, of due process.

The Tribunal observes that the Secretary General's confidential memorandum of 26 March 2018 brought to the complainant's attention the following conduct as constituting breaches of various provisions of the Staff Regulations or Rules and the Organization's Code of Ethics: threats and pressure towards a colleague and subordinates; deliberate interference in projects run by colleagues with a view to hindering their smooth running; inappropriate manner of addressing a colleague; violation of internal procedures concerning the approval of mission requests; extension of missions for personal purposes; insubordination towards his superiors and the Secretary General.

The Tribunal notes that the decision to dismiss the complainant for serious misconduct, taken by the Secretary General on 24 December 2018 and confirmed by the impugned decision, states that the disciplinary measure imposed was based on several acts of misconduct, one of which was expressly presented as particularly serious, that is the complainant's withholding of lists of foreign terrorists.

However, the Tribunal observes that, as the complainant submits, the latter act of misconduct was not included in the confidential memorandum of 26 March 2018 notifying the complainant of the charges against him, even though it had a clear impact in the assessment of the seriousness of the disciplinary penalty to be ordered. In fact, it is apparent from the evidence that the complainant was only officially informed of this new charge on the actual day of his hearing before the Joint Disciplinary Committee, at which he was directly invited to present his comments on the matter.

More generally, the Tribunal finds that, as the complainant contends, due process was clearly breached by the fact that he was unable to prepare his defence before the Joint Disciplinary Committee effectively, if necessary with the assistance of his counsel, and that, contrary to what had been promised to him on various occasions during the proceedings by the Chairman of the Committee, he was unable to participate actively in the processing of the evidence by criticising the evidence gathered by the Organization and putting forward his own

(see, in that regard, Judgments 4011, consideration 9, 3295, consideration 11, and 1661, consideration 3).

The second plea is therefore well founded.

6. Thirdly, the complainant argues that, in breach of Staff Rule 10.3.5(2), the opinion of the Joint Disciplinary Committee was not signed by its members.

The Tribunal observes that the consultative opinion of the Joint Disciplinary Committee officially filed by the Organization has not been signed, nor does it indicate the date on which it was delivered. When questioned on this point, Interpol acknowledged that the consultative opinion had not been signed but confirmed that the opinion “was sent by email [...] by one of the members of the Committee with a copy to the Chairman and the other members of the Committee”, and it produced a copy of the email to which the opinion had been attached.

The Tribunal points out that Staff Rule 10.3.5(2) provides expressly that “[t]he Chairman of the relevant Joint Committee shall sign the consultative opinion”. It is plain that this formality was not observed, and Interpol’s explanations clearly do not change that fact. Moreover, the Tribunal considers that the failure to comply with this requirement, the purpose of which is to guarantee the authenticity of the Committee’s opinion, constitutes a substantial flaw. That finding particularly applies to disciplinary proceedings.

The third plea is therefore also well founded.

7. It follows from the above, without there being any need to rule on the complainant’s other pleas, that the disciplinary procedure followed in this case was tainted by multiple blatant flaws.

Therefore, both the Secretary General’s decision of 24 December 2018 and the impugned decision of 6 February 2020 that confirmed it will be set aside.

8. The complainant seeks reinstatement in the Organization.

Ordinarily, an official dismissed for disciplinary reasons whose dismissal is set aside is entitled to reinstatement if she or he holds an indeterminate appointment, which the complainant did. However, the Tribunal may decide not to make such an order if reinstatement is no longer possible or if it is inappropriate. According to the Tribunal's case law, reinstatement may be inappropriate if the official concerned would not be able to establish a satisfactory working relationship with her or his colleagues and supervisors (see Judgments 4622, consideration 15, and 4540, consideration 13).

So it is in this case. The evidence on the file shows that the complainant had a conflictual relationship with many of his colleagues, as well as with his supervisors. His reinstatement in the Organization would therefore raise obvious difficulties and will not be ordered.

9. However, the complainant is entitled to compensation for the material and moral injury caused to him by his unlawful dismissal.

10. In respect of material injury, the complainant firstly seeks payment of a sum equivalent to all the salaries and monetary benefits he would have received had his employment continued for five years, and also the contributions that would have been paid into the pension scheme during that period.

However, in the circumstances of the case, the Tribunal considers that this injury may be fairly redressed by awarding the complainant a sum equivalent to two years' remuneration, which will be calculated on the basis of the net salary and allowances of any kind which the complainant was receiving at the time of his departure from the Organization, without deducting from this sum any professional earnings which he may have received since then.

As this lump sum must be regarded as compensating the entire injury suffered by the complainant in this respect, there is no need to add to it the amount of the pension contributions relating to the remuneration in question.

11. Secondly, the complainant requests payment of “compensation for loss of employment”, that is to say the compensation provided for in the Internal Scheme for the Compensation of Involuntary Loss of Employment (ISCILE) governed by Appendix 3 of the Staff Manual. In view of the setting aside of the disputed dismissal and the fact that the complainant has not been reinstated, it should be considered, in the light of the applicable rules, that the complainant, who must be regarded as having involuntarily lost his job, is entitled to receive this compensation. The Tribunal will therefore order the Organization to pay him this compensation, unless it was already received by the complainant upon his dismissal or thereafter.

12. Thirdly, the complainant seeks payment of the “termination indemnity”, that is to say the indemnity on termination of appointment provided for in Staff Rule 11.3.1. However, as the Organization correctly states, this claim was raised for the first time in the rejoinder and is thus irreceivable (see Judgments 4487, consideration 15, 4396, consideration 7, 4221, consideration 7, and 4092, consideration 10).

13. As regards moral injury, the Tribunal considers that the unlawfully imposed sanction of dismissal caused the complainant obvious moral injury, notably because it was, as he states, liable to plunge him into deep distress. In the circumstances of the case, the Tribunal considers that this injury will be fairly redressed by ordering the Organization to pay the complainant damages of 25,000 euros on this account.

14. By contrast, despite the conspicuous nature of some of the defects identified, there are no grounds to accept the complainant’s claim for exemplary or punitive damages. An award of such damages is only warranted in exceptional circumstances, which are not evident in this case.

15. As the complainant succeeds, he is entitled to costs, which the Tribunal sets at 8,000 euros.

DECISION

For the above reasons,

1. The decision of the Secretary General of Interpol of 24 December 2018 and the decision of 6 February 2020, insofar as it concerned the complainant's dismissal, are set aside.
2. Interpol shall pay the complainant material damages as stated in considerations 10 and 11, above.
3. The Organization shall pay the complainant moral damages in the amount of 25,000 euros.
4. It shall also pay him costs in the amount of 8,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 11 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ