

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

V. H.

v.

Interpol

136th Session

Judgment No. 4665

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. V. H. against the International Criminal Police Organization (Interpol) on 24 January 2019 and corrected on 20 February, Interpol's reply of 3 May 2019, the complainant's rejoinder of 25 September 2019 and Interpol's surrejoinder of 6 December 2019;

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, whose post was reclassified retrospectively, claims compensation for the injury he considers he has suffered and requests that his resignation be redefined as a dismissal.

The complainant joined Interpol in October 2013 as head of department in the General Services Sub-directorate, a post classified at grade 3, under the supervision of the Assistant Director for General Services, a post classified at grade 2.

In April 2014 the complainant was given the task of managing the General Services Sub-directorate. On 20 January 2016 he was informed that, following a restructuring, the Secretary General had decided to merge the General Services Sub-directorate and the Security Sub-

directorate and that he would henceforth work under the supervision of the official holding the post of Assistant Director for General Services and Security, a post classified at grade 2.

On 7 March 2016 the complainant, considering that he was eligible for promotion to grade 2, submitted a request for the reclassification of his post, which was rejected on 18 January 2017. On 22 February 2017 he requested that the decision be reviewed. That request was rejected on 29 March 2017.

On 29 May 2017 the complainant lodged an internal appeal against the decision of 29 March 2017, which was forwarded to the Joint Appeals Committee.

The complainant submitted his resignation on 4 August 2017 and left the Organization on 3 October 2017.

On 25 September 2017 he submitted a memorandum completing his internal appeal, in which he maintained that his resignation should be regarded as a wrongful dismissal.

The Organization and the complainant entered into negotiations with a view to concluding a settlement by mutual agreement and the internal appeal procedure was suspended. However, in an email of 29 June 2018 the complainant informed the Joint Appeals Committee that the negotiations had been suspended and requested that the internal appeals procedure be resumed.

On 21 September 2018 the Chairman of the Joint Appeals Committee sent the complainant a copy of Interpol's reply to his internal appeal and stated that he considered, pursuant to Staff Rule 13.3.3(4), that it did not contain any new elements.

On 8 October 2018 the Joint Appeals Committee delivered an opinion in which it recommended that the Secretary General reject the complainant's internal appeal. The Committee observed that the Organization had agreed during the negotiations to pay the complainant a sum corresponding to the difference in salary and pension contributions between a grade 3 post and a grade 2 post and recommended that he be paid the sum of 30,655.50 euros.

On 30 October 2018 the Secretary General informed the complainant that, after considering the opinion of the Joint Appeals Committee, he had decided to “grant him a reclassification from grade 3 to grade 2 for the period from 2 April 2014 to 3 October 2017”, to provide him with a certificate of service reflecting the duties performed, to pay him the sum of 30,655.50 euros corresponding to back payments of salary and additional pension contributions for that period, and to reject his other claims for compensation as well as his request that his resignation be redefined as a dismissal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision save in so far as it awards him grade 2 with retroactive effect, the sum of 30,655.50 euros resulting from that reclassification and a revised certificate of service. He submits that his post was reclassified belatedly and seeks full compensation for the material and moral injury he considers he has suffered on that account. He requests that interest of 5 per cent per annum be paid on back payments of salary from each monthly due date since April 2014. In his rejoinder, he observes that the Organization “has not paid particular financial benefits, such as the additional interest that would have been generated by the pension fund if the extra contributions had been paid into it and the additional supplementary retirement benefit”.

Furthermore, he wishes his resignation to be redefined as a dismissal and that he be paid all the sums due as a result, in particular compensation for involuntary loss of employment and emoluments for the notice period, plus interest at the rate of 5 per cent per annum from the date on which those sums became due.

Subsidiarily, he seeks compensation for the injury he considers he has suffered as a result of the termination of his appointment, which he assesses in his rejoinder as “the equivalent of the salaries and other financial benefits of all kinds that he would have received if his appointment had continued until its end date and if he had advanced in grade on the expected dates”. He quantifies his moral injury at 40,000 euros at least. Furthermore, he seeks 10,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal. Lastly, he requests the Tribunal to order the deduction from the “various

monetary awards made” to him of an amount corresponding to the fees and taxes which he has undertaken to pay to his legal representative, and to order that this amount be paid directly to the latter.

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

CONSIDERATIONS

1. The complainant seeks the partial setting aside of the Secretary General’s decision of 30 October 2018, the redefinition of his resignation as a dismissal, and compensation for the material and moral injury caused to him on that account.

2. Referring to various judgments of the Tribunal, the complainant firstly submits that the Organization’s refusal to pay him late payment interest on the sums, namely back payments of salary and contributions to the retirement pension scheme, which were made to him with retroactive effect from 2 April 2014 is unlawful, particularly in view of the principle of equal treatment. He therefore requests that interest at a rate of 5 per cent per annum be applied.

3. The Tribunal notes that in the impugned decision of 30 October 2018 the Secretary General agreed to reclassify the complainant’s post from grade 3 to grade 2 for the period from 2 April 2014 to 3 October 2017 and accordingly to pay him the undisputed sum of 30,655.50 euros, which corresponds to the difference in salary for the two grades for the period concerned, increased by the pension contributions for that period. In view of the retroactive effect of this decision as from 2 April 2014, the Tribunal considers that it is appropriate, in line with its case law, to apply the principle that interest is due *ipso jure* whenever a principal sum is payable, which is in particular the case where remuneration falling due on a fixed date was paid belatedly. In this scenario, the starting point for the interest to be paid is the due date for each payment, that due date being equivalent by

itself to service of notice (see, in particular, Judgments 3180, consideration 12, 2782, consideration 6, and 2076, consideration 10).

In light of the foregoing, the Tribunal considers that the complainant is indeed entitled to late payment interest at the rate of 5 per cent per annum on each of the monthly additions to net remuneration and each of the pension contributions that were owed by the Organization in comparison to those paid by it at the time. That interest is to accrue from the date on which each of the sums concerned fell due until their date of payment.

However, the Tribunal notes that the sum of 30,655.50 euros paid by the Organization to the complainant pursuant to the impugned decision was calculated on the basis of his gross remuneration. As the Organization rightly submits before the Tribunal, it was entitled to take into account only net remuneration when calculating this amount. Accordingly, where appropriate, it may deduct the difference between total gross remuneration and total net remuneration from the total late payment interest referred to above, by way of compensation.

4. Similarly, the complainant submits in his rejoinder that two components of the material injury suffered – namely, the interest that would have been “generated by the pension fund” and the “supplementary retirement benefit” – have not yet been compensated and therefore should be.

The Tribunal considers however that, as the Organization contends, the complainant raises new claims in his rejoinder which have not been made previously. According to the Tribunal’s case law, such claims are irreceivable (see, in particular, Judgments 4487, consideration 15, and 4396, consideration 7).

5. Referring to the terms on which he was unfairly employed for more than three years and the circumstances in which he felt compelled to resign, the complainant further maintains that his resignation should be regarded as a “constructive dismissal” by the Organization, which would give rise to material and moral damages in light of the Tribunal’s case law. He argues in this regard that, apart from the fact that a future

promotion to the position of Assistant Director for General Services, at grade 2, was promised to him when he was recruited, he had been entrusted with managing the General Services Sub-directorate from 2 April 2014 and it is unfair that his post was not raised to grade 2, particularly in view of the way in which the duties and responsibilities concerned had evolved. He also points to malice on the part of the Organization, which is apparent from the fact that his immediate superior gave him an appraisal in July 2014 that clearly contradicted the one performed a month earlier, with the aim of dissuading him from applying for promotion to grade 2, as well as from the fact that his terms of assignment, which were redrafted at his request in March 2016, wrongly lowered the level of his responsibilities in order to prevent his post from being classified at grade 2.

6. The Tribunal considers, however, that there is no evidence to suggest that a promise was duly and properly made to the complainant on his appointment that he would be promoted to a grade 2 post. On the contrary, the evidence in the file shows that each time the complainant raised such a promise, he was firmly told that the Organization disputed its existence and that any decision on promotion depended on an official's performance and the extent to which her or his responsibilities had increased. It also shows that, in each of his assessment reports, the complainant bore the title of Head of the General Services Department and that this was a grade 3 post. Furthermore, the individual decision of 20 January 2016, which followed the organisational restructuring that took place in late 2015, specified that the complainant would henceforth work under Ms V.B.'s supervision in the "General Services and Security Sub-directorate, Financial and Support Service Management Directorate" and that his titles, classification and grade remained unchanged. Moreover, the complainant did not refer to the existence of such a promise in the request for the reclassification of his post that he submitted on 7 March 2016.

No malice on the Organization's part can be considered to have been established, it being observed, incidentally, that the complainant's immediate superior had awarded the final rating "Meets and often exceeds requirements" in the appraisal for the period from 1 October

2014 to 30 September 2015. Moreover, although the complainant's request for post reclassification was refused, neither the initial decision of 18 January 2017, nor the amendment to his terms of assignment made on 18 July 2016, nor the decision taken on 29 March 2017 in response to his request for review can be construed as demonstrating malicious intent on the part of the Organization, which had merely taken the view, on the basis of the various reasons given in the aforementioned decisions, that, notwithstanding the complainant's arguments, "the duties and responsibilities that [he] exercise[d] and which are set out in [his] terms of assignment fall within the scope of a grade 3 classification".

It follows from the foregoing that the complainant's voluntary resignation cannot be redefined as having constituted a "constructive dismissal", which is a concept referred to in the Tribunal's case law to indicate that an employer has acted in a manner inconsistent with the maintenance of the employment relationship – which is not the case here – entitling the employee, if she or he elects, to treat the employer's action as terminating the employment (see, in particular, Judgments 4383, consideration 15, and 2435, consideration 17).

There is thus no reason to grant the complainant's claim for material and moral damages in this regard.

7. The complainant further alleges a breach of the adversarial principle in the procedure followed before the Joint Appeals Committee. He alleges that the Chairman of the Committee misled him by informing him, in an email dated 21 September 2018, that the Organization's reply to his internal appeal did not contain any new elements and that the Committee would therefore be meeting very shortly to issue an opinion. In response to this email, in which he had been informed of the Organization's reply, the complainant disputed that opinion of the Chairman of the Committee and, in response to the Organization's proposal that it forward the latest version of the draft settlement, requested that the Committee issue a request for the disclosure of all documents exchanged during the negotiation procedure. Since no action was taken by the Chairman of the Committee, as is

apparent from the list of annexes to the Committee's opinion, either in response to the Organization's offer or to the complainant's subsequent request, and since, judging from the Organization's reply, the complainant had had the opportunity to respond to that offer if he had deemed it necessary, the Tribunal does not see how the adversarial principle was breached in the procedure followed in this case. Furthermore, pursuant to Staff Rule 13.3.3(4), it is the responsibility of the Chairman of the Committee to decide whether or not a memorandum submitted by the Secretary General contains new elements that require the official concerned to give her or his opinion. In the present case, it is not apparent from the Secretary General's reply to the Joint Appeals Committee that the Chairman of the Committee infringed the adversarial nature of the procedure on this point by considering that the memorandum did not contain any new elements. Firstly, the Secretary General's statement that the Organization had acknowledged during a negotiation procedure that the complainant had performed tasks corresponding to a grade 2 post was clearly not new information in respect of the complainant; secondly, the complainant was able to contest the fact that he and his lawyer had behaved in a misleading fashion during those negotiations (see, in that regard, Judgment 3846, consideration 6).

It follows from the foregoing that the complainant has still failed to demonstrate that there was a breach of the adversarial principle during the procedure before the Joint Appeals Committee.

8. The complainant further seeks compensation for the moral injury he considers he has suffered in an amount that he assesses at 40,000 euros at least. He substantiates the existence of this injury with particular reference to the Organization's delay in recognising the validity of his request for the reclassification of his post, the Organization's refusal to pay him late payment interest and its bad faith during the negotiations seeking to find an amicable resolution to the dispute.

On this last point, the Tribunal considers that it is not required to take into consideration discussions of this kind (see, in this respect, Judgment 4457, consideration 2).

As regards the refusal to award late payment interest, the Tribunal finds that this decision did not cause any moral injury.

By contrast, the Tribunal considers that the Organization's prolonged refusal to recognise that the complainant had in fact performed duties of a grade 2 post caused him moral injury, which will be fairly redressed by awarding him compensation in the amount of 5,000 euros.

9. It follows from the foregoing that the impugned decision of 30 October 2018 must be set aside insofar as it did not award the complainant the late payment interest due to him, as stated in consideration 3, above, and that it rejected his claim for moral damages in its entirety.

10. The complainant claims 10,000 euros in costs for the internal appeal proceedings and the proceedings before the Tribunal.

There are no grounds for awarding costs in respect of the internal appeals lodged by the complainant. Such costs may only be awarded under exceptional circumstances (see, in particular, Judgment 4541, consideration 12), which are not present in the instant case.

Given that the complainant has succeeded in part, he will be awarded costs in the amount of 5,000 euros.

11. Lastly, the complainant requests the Tribunal to order the deduction from the various monetary awards made to him of an amount "corresponding to the fees and taxes" which he has undertaken to pay to his counsel, and to order that this amount be paid directly to the latter.

However, the Tribunal is not competent to make an order of this nature, which relates to the private contractual relationship between the complainant and his counsel (see, in particular, Judgments 4541, consideration 13, and 4072, consideration 21).

DECISION

For the above reasons,

1. The impugned decision is set aside to the extent indicated in consideration 9, above.
2. Interpol shall pay the complainant, if appropriate, late payment interest as indicated in consideration 3, above.
3. The Organization shall pay the complainant moral damages in the amount of 5,000 euros.
4. It shall also pay him costs in the amount of 5,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 28 April 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