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

SEVENTIETH SESSION

Judgment 1080

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. O. B. against the International Criminal Police Organization (Interpol) on 30 September 1989, Interpol's reply of 13 December, the complainant's rejoinder received on 15 March 1990 and the Organization's surrejoinder of 5 June 1990;

Considering the complaint filed by Miss J. B. against Interpol on 8 October 1989, the Organization's reply of 20 December, the complainant's rejoinder of 10 March 1990 and the Organization's surrejoinder of 5 June 1990;

Considering the complaint filed against Interpol by Miss A. E. on 2 October 1989, Interpol's reply of 18 December, the complainant's rejoinder of 10 March 1990 and the Organization's surrejoinder of 5 June 1990;

Considering the second complaint filed against Interpol by Mrs. H. M. on 9 November 1989, the Organization's reply of 15 January 1990, the complainant's rejoinder of 10 March and Interpol's surrejoinder of 5 June 1990;

Considering the complaint filed against Interpol by Mr. S. O'S. on 12 October 1989, Interpol's reply of 3 January 1990, the complainant's rejoinder of 10 March and the Organization's surrejoinder of 5 June 1990;

Considering the third complaint filed against Interpol by Miss M. F. R. G. on 3 October 1989, the Organization's reply of 15 December, the complainant's rejoinder received on 21 March 1990 and Interpol's surrejoinder of 11 June 1990;

Considering the complaint filed against Interpol by Mr. J.-F. P. S. on 21 October 1989, Interpol's reply of 8 January 1990, the complainant's rejoinder of 16 March and the Organization's surrejoinder of 11 June 1990;

Considering the complaint filed against Interpol by Mr. F. V.-S. on 2 October 1989, the Organization's reply of 21 December, the complainant's rejoinder of 14 March 1990 and Interpol's surrejoinder of 11 June 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 38, 50 and 52(3) of the Staff Regulations and Article 61 and Article 2 of Section 2 of Appendix VII of the Staff Rules of Interpol;

Having examined the written evidence and decided not to order oral proceedings, which none of the parties has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Because Interpol headquarters were to move from Saint-Cloud to Lyons the complainants were informed of individual decisions dated from 5 to 12 October 1988 offering them transfer under Article 2(3) of Section 2 of Appendix VII to the Staff Rules. The decisions were that if they did not want transfer they might have an indemnity on termination of appointment under Article 38 of the Staff Regulations and Article 61 of the Staff Rules. Having asserted several times their acquired right to their duty station, the complainants made their own estimates of the amounts they believed themselves entitled to.

In pursuance of Article 2 of Section 2 of Appendix VII Mr. B., Miss B., Miss E. and Mr. V.-

S. sent the Secretary General letters dated from 13 April to 16 May 1989 applying for larger indemnities under Article 61(5) of the Staff Rules. The amounts they were to get on termination were set by decisions of 31 May 1989 according to the scale in 61(1). Their applications for larger amounts were rejected by decisions of 13 June 1989. Regarding the sums offered as "paltry", they applied to the Secretary General between 17 and 29 June 1989 for review of the decisions of 31 May and sought leave to appeal directly to the Tribunal. They were given such leave in decisions dated from 29 June to 12 July, which are the ones impugned.

The Organization's Executive Committee having adopted an amendment to the Staff Rules, the Secretary General notified to the complainants individual decisions of 24 July 1989 raising by half the amounts of their indemnities, but by letters of 17 to 23 August they answered that they were not yet satisfied.

Under the terms of Article 2 of Section 2 of Appendix VII to the Staff Rules Mrs. M. likewise asked the Secretary General by a letter of 19 April 1989 to raise her indemnity by virtue of Article 61(5). The amount of her indemnity as reckoned under 61(1) was notified to her by a decision of 31 May 1989. The same day she applied to the Secretary General, also saying she wanted to go straight to the Tribunal.

By a decision of 6 September the Secretary General corrected his decision of 31 May by stating, among other things, that part of the indemnity was the supplement provided for in 61(5). He granted her another 50 per cent because of the amendment to the Rules. By letter of 27 September she informed the Secretary General that the indemnity was still not enough and she again sought his consent to direct appeal to the Tribunal. He gave that consent in a decision of 9 October 1989, the one impugned.

The amount of the indemnity granted to Miss R. G., which was taken from the scale in 61(1), was notified to her by the Secretary General's decision of 31 May 1989. By letter of 27 June 1989 she asked for review, for the grant of a much bigger sum under 61(5) and for leave to appeal directly to the Tribunal. The Secretary General gave her such leave in a decision of 3 July 1989, the one impugned. By a decision of 24 July 1989 in keeping with the amendment to the Staff Rules she had her indemnity increased by 50 per cent.

In pursuance of Article 2 of Section 2 of Appendix VII Mr. O'S. asked the Secretary General by letter of 6 June 1989 to exercise his discretion under 61(5). His indemnity having been reckoned according to the scale in 61(1), he was informed in a decision of 13 June 1989 of the amount and of the Secretary General's refusal to award him a supplementary indemnity under 61(5). He made a request for review on 8 July 1989, further seeking consent to direct appeal to the Tribunal.

The Secretary General consented in the challenged decision of 18 July. By a decision of 24 July Mr. O'S.'s indemnity, like the others, was put up by half, but he told the Secretary General by letter of 10 September of his intention to go to the Tribunal because the offer still fell short. On 18 September the Secretary General answered that if the complainant's letter of 10 September was supposed to be a request for review of the decision of 24 July it was out of time since appeals had to be brought within 30 days. By letter of 22 September 1989 the complainant informed the Secretary General that he had not wished to lodge an appeal against that decision.

In a letter of 14 April 1989 Mr. S. asked to have his indemnity reckoned under 61(5) at the rate of one month's salary for every year of service. A decision of 31 May set his indemnity in accordance with the scale in 61(1) and a decision of 14 June of the Secretary General's was that he would get no supplementary indemnity. He asked for review of those decisions in a letter of 30 June 1989 in which he further sought the Secretary General's waiver of internal appeal. Waiver was granted in a decision of 7 July. By a decision of 14 August the Secretary General raised the amount of the indemnity by half. The complainant wished to appeal directly to the Tribunal against that decision as well, as he informed the Secretary General by letter of 7 September 1989. In a decision of 15 September 1989, the one impugned, the Secretary General broadened his consent to direct appeal to the Tribunal to cover the decision of 14 August.

B. The complainants are challenging on several grounds the lawfulness of the decisions setting the amount of their terminal entitlements.

The Staff Rules and appendices thereto that afforded the basis for the decisions were adopted unilaterally. The decisions are in breach of acquired rights expressly safeguarded in Article 52(3) of the Staff Regulations. The customary law of the host country - collective agreements - applied before the Staff Rules were adopted, and the impugned decisions are also in breach of the principle of equity. They further clash with the duty which the case law lays on any international organisation to "accept restraint in its dealings with staff".

The complainants name four former Interpol officials who got much larger terminal entitlements than those provided for by Article 61(1) of the Staff Rules. Unlike the complainants, however, they were not affected by the headquarters transfer since the Organization did not want to keep them on. At the time of the transfer it reached individual agreements with other staff members under which they too received big sums. The compensation the complainants got fell short of the average awarded to management in the private sector in France and in other

international organisations.

The complainants invite the Tribunal to award each of them an indemnity on termination of appointment equivalent to one-and-a-half times the relevant figure of gross monthly salary for each year of service. They each claim lump-sum costs which they put at 20,000 French francs.

C. In its reply to Mr. O'S.'s complaint Interpol pleads that it is irreceivable. Although he said he would not appeal against the decision of 24 July 1989 raising the amount of his indemnity such an appeal would in any case have been time-barred.

D. In its replies on the merits of all the complaints the Organization observes that the Secretary General may only supplement an official's indemnity on termination of appointment by virtue of Article 61(5) as warranted by "the particular circumstances relating to the personal situation of the official concerned". Only Mrs. Michel qualified for a supplement under the provision and she had already received one, though she omits to say so.

Besides, Mr. B., Miss B., Miss E. and Mr. V.-S. never requested review of the decisions of 13 June 1989 denying them a supplementary indemnity and they may no longer claim it, the decisions having become final.

The award of supplements to staff in circumstances unlike the complainants' was no breach of equal treatment since exceptional decisions of that kind are at the Secretary General's discretion. That others may have got more by mistake lends no weight to the complainants' case. A settlement had to be reached with four other staff members for lack of formal provisions at the material time on termination.

By granting termination indemnities which were reckoned on the basis of the material provisions of the Staff Rules the Organization did comply with its duty of restraint in dealings with its employees. Different organisations deal with such matters in different ways, and some offer less favourable conditions. The compensation provided by Interpol is fair because it includes both an indemnity paid to the official at the time of separation and unemployment benefits to give him a reasonably good income while he is looking for a new job.

Since neither the complainants' terms of appointment nor any staff instruction said how to reckon the indemnity there are no grounds for their claiming application of laws in force before the adoption of the Staff Rules. In any event they have no acquired right to a specific amount or to any one method of calculating the indemnity.

They are mistaken in alleging that the adoption of the Staff Regulations and Staff Rules was flawed: staff representatives had been consulted through the Joint Advisory Committee.

E. In his rejoinder Mr. O'S. submits that the decision he impugns is not that of 24 July, but one of 13 June 1989 of which he had requested review and which was confirmed on 18 July 1989. His complaint is therefore receivable.

F. In their rejoinders the complainants maintain that their terminal entitlements fall far short of fair compensation. Interpol could have raised the amounts under Article 61(5) of the Staff Rules, since the transfer of headquarters to Lyons created a set of "particular circumstances", or under Article 50 of the Staff Regulations, which provides for "settlement by mutual agreement".

The Organization acted in bad faith in adopting a blatantly inadequate scale after including an acceptable one in the draft version of the Regulations that was communicated to the Tribunal at the time when Interpol declared recognition of its jurisdiction. The Organization was in breach of the complainants' acquired right to payment of an indemnity calculated in accordance with the customary law of the headquarters country and the national collective agreement, which was binding on the Organization. Even if their contracts are silent on that score, the agreement is cited on the forms they signed on joining the retirement pension fund.

Membership of an unemployment benefit scheme being compulsory in France Interpol had no choice but to provide coverage. The material issue is whether, with due regard to seniority, age and the conditions of separation, the complainants' indemnities were fair redress for the injury that termination and loss of employment caused them. The Secretary General did not keep his promise to deal with each case on its own merits in the interests of fair settlement. Out of prejudice against some groups of staff the Administration misused its authority.

G. In its surrejoinders Interpol enlarges on its replies and addresses several issues raised in the rejoinders.

It maintains that it did not act in bad faith. Though a scale which would have provided more substantial indemnities had been under study it formed part of a working document intended merely as a guide for the later drafting of the Rules.

There are, in Interpol's view, no grounds for charging it with failing to conclude a settlement under Article 50 of the Staff Regulations since the Secretary General does not have to bargain with staff over matters he believes can be settled under the Rules. Interpol dwells further on the cases of individuals who benefited from decisions under Article 61(5) of the Staff Rules and denies breach of equal treatment. The terms of employment of officials at Interpol were never subject to the French Labour Code and the Organization was not privy to any national collective agreement. Yet it still subscribes to the French unemployment benefit scheme, which is decidedly more generous than other compensation schemes. Its wish to be fair is beyond doubt and its pledge to look at each case on its merits if people did not want to go to Lyons was not a promise to increase indemnities above the sums set by the material rules.

As for the plea of misuse of authority, which is irreceivable anyway, what purpose can the Secretary General have had in mind in taking the impugned decisions but to grant the complainants their indemnities? There is no evidence of bias against any group of staff: Interpol plainly applied the same material rules to everyone who refused transfer.

CONSIDERATIONS:

1. Interpol, an organisation that has its headquarters in France, moved from Saint-Cloud to Lyons in 1989. It invited its staff to agree to the transfer on terms that were set out in its Staff Regulations and Staff Rules.

The Tribunal delivered six judgments on 26 June 1990 on complaints from the present eight complainants, who had turned down the offer of transfer and were all claiming compensation in lieu of notice of termination. It allowed in whole or in part the complaints by Miss B., Mrs. M., Mr. O'S. and Mr. V.-S. - and ruled that they were entitled to compensation; it dismissed the other four, by Mr. B., Miss E., Miss R. G. and Mr. S.

2. The present complaints, filed by the same eight staff members, are about the amount of the termination indemnity which, having turned down the offer of employment in Lyons, each of them was entitled to under Article 38 of the Staff Regulations and the implementing provision, Article 61 of the Staff Rules.

Article 61 reckons the indemnity according to a scale that takes account of seniority and final salary. Someone with two to five years' service gets an amount equivalent to 20 per cent of the amount of final salary for each year of service. The percentage goes up with seniority: someone with six to ten years' service gets 25 per cent of salary for each year, an official with 11 to 15 years' service, 30 per cent and anyone with 16 years' service or over, 40 per cent.

The final salary is the "arithmetic mean" of the salary the staff member was entitled to in "the last three calendar months of his service in the Organization".

3. By decisions of 31 May 1989 the Secretary General granted each of the complainants a sum reckoned under Article 61 but explained that he had it in mind to submit to the Executive Committee, the body that amends the Rules, an additional clause increasing the amount for those who had declined to go to Lyons.

He duly submitted such a text to the Committee, and on 20 June 1989 it approved an article, numbered 4, to be added to Section 2 of Appendix VII ("Transitional measures") to the Staff Rules. Article 4 prescribes a 50 per cent increase in the Article 61 indemnity due to those who refuse transfer.

The complainants were told the new amounts in the summer of 1989.

Mr. B.'s period of service came to 5 years and 5 months. He was paid a total of 28,701 French francs: 19,134 plus 9.567. He wants payment of 141,296 francs.

Miss B., who had served for 19 years and 5 months, was paid 119,701 francs and later 59,850.50 francs, a total of 179,551.50 francs. The sum she is claiming is 781,128 francs.

Miss E., who had 7 years' seniority, received 19,419 and then 9,949.50 francs, making a total of 29,368.50. She is claiming 135,946.

Mr. O'S.'s service ran to 9 years and 5 months and he was paid 41,134 and 20,567 francs, or 61,701 francs in all. The amount he claims is 276,129.65.

Miss R. G., who had served for 5 years and 11 months, got 21,710 and 10,855 francs, or a total of 32,565. She claims 156,753.

Mr. S. also served for 5 years and 5 months. He was paid 19,208 francs and, after correction of a material error, 10,045 francs, to make a total of 29,253. The amount he asks for is 143,503.75.

Having served for 7 years and 10 months, Mr. V.-S. got a corrected amount of 34,619 francs and then 16,886.50, a total of 51,505.50. The award he seeks is 189,141.37.

The case of Mrs. M., who had been on the staff for 13 years and 8 months, has special features which are taken up in 8 below. She was paid 62,991.50 francs - 44,655 plus 18,336.50 - and the total she claims is 239,870.50.

The complainants reckon the amounts they claim at the rate of one-and-a-half months' final gross salary for each year of service. They are also claiming interest on the sums as from the date of termination.

4. Since their claims and pleas are similar the complaints are joined to form the subject of a single ruling.

5. The complainants allege procedural flaws.

One of them - the point arose in some of the judgments of 26 June 1990 - is that the Staff Rules and the appendices thereto were adopted unilaterally notwithstanding the staff representatives' rejection of the draft and when there had been no proper consultation.

The Regulations say that the Secretary General shall submit the Rules for approval to the Executive Committee. That procedure was duly followed, and there is no other formal requirement.

The staff representatives were informed of the draft Regulations and Rules and put in detailed comments. The time they were given for looking at the drafts was, though short, long enough, and affords no reason for believing that Interpol wanted to shirk consultation. Consultation does not require negotiation, let alone approval: the staff representatives merely state their opinion, and it is not binding on the Administration.

Nor was there any procedural flaw in adopting the new Article 4 on 20 June 1989 so as to increase the indemnity by half. The Secretary General told the staff that he was going to put the matter to the competent body, the Executive Committee; the staff and their representatives had a chance to comment; and the alleged miserliness of the original scale is irrelevant in determining whether there was proper consultation.

The complainants object to the Executive Committee's approving an article that covered only the contingency of transfer instead of following Article 61(5) of the Staff Rules, which they say would have been fully applicable and would have made for genuine dialogue with the Organization.

That plea also fails. It is up to the competent authority to decide how best to proceed to determine staff rights, provided of course that there is no inherent flaw. The Staff Regulations prescribe the procedure that Interpol actually followed for the purpose of settling all the problems that transfer might give rise to.

Another argument is that the draft scale that Interpol communicated to the Registrar on recognising the Tribunal's jurisdiction was misleading: the scale never went through, the amounts it proposed were drastically cut, and Interpol was therefore in bad faith.

For an organisation to supply papers on its recognising the Tribunal's jurisdiction plainly constitutes in itself no binding commitment, and in the present case the Tribunal finds no evidence of bad faith such as would taint with abuse of authority the scale that was eventually adopted.

6. The complainants find the amount of their indemnities paltry.

An international organisation like Interpol is answerable neither to any other body nor to any of its member States. It has texts of its own - the Staff Regulations and Staff Rules - on the status and duties of its staff and, as was said

in 5 above, the competent authority duly adopted them.

It is ordinarily for the administration to make rules and regulations that take full account of the organisation's own circumstances and character. To be sure, even if there are rules the Tribunal may still check that the organisation has kept to the general principles that govern the international civil service, one of them being its duty to treat its staff considerately. As has been said before, an organisation must act from reasonable motives and not cause its staff unnecessary or undue prejudice.

But the scope of such review is limited. The Tribunal will not replace the competent authority's views on policy with its own, and, apart from formal and procedural flaws, the only defects that will prove fatal are mistakes of fact and of law and abuse of authority.

Those are the criteria to be applied in ruling on the complainants' objections to the position taken up by Interpol.

7. They allege breach of their acquired rights and of Article 52(3) of the Staff Regulations, which states that the rights acquired by officials before the Regulations came into force "shall remain valid".

Before the Staff Regulations came into force there were no rules on the payment of indemnity on termination. Although, as was said above, the complainants believe that a draft text that Interpol sent to the International Labour Office would have been to their advantage, the assertion, even if true, is immaterial. Being merely a part of the preparatory work, the draft did not engage Interpol's liability and in any event the Tribunal may not review what goes on between that Organization and the ILO.

Nor is there any clause on the reckoning of termination indemnity in the contracts of appointment the complainants have filed.

What the complainants are relying on in this context is not a written text but the practice Interpol followed before the Staff Regulations came into force. They cite the case of four officials who were dismissed in 1986 and 1987 and got much bigger indemnities. They believe that that constitutes a staff policy that is binding on the Organization under Article 52(3) and under general principles of law.

Their plea fails. The cases they rely on do not amount to any custom that is binding on Interpol: whatever arrangements may have been made before the Regulations came into force, they were neither so constant nor even so consistent as to afford evidence of the existence of any general rule.

8. The complainants plead breach of their rights in several respects in applying the Staff Rules.

One provision they cite is Article 61(5). It says that if the reasons for termination are not attributable to the official the Secretary General, "exercising his discretionary power", may decide in exceptional circumstances to grant the official a supplementary indemnity on termination, taking into account particular circumstances such as his "family commitments" or "the fact that, although relatively advanced in years, he cannot yet claim his retirement entitlements".

The text confers no right to a supplementary indemnity, which is granted only because of the particular circumstances of individual cases.

One such case was that of Mrs. M., who was granted an additional 3,680 francs in recognition of her satisfactory performance when replacing her supervisor, and another was that of someone who was paid the small sum of 816 francs. There is no reason to grant the benefit as a matter of principle to all the complainants. They put forward detailed arguments about the number of their children, family commitments, age and so on, but the long and the short of it is that there was no reason to grant the benefit of 61(5) to any of them.

A more serious objection might be that a mistake was made in favour of one staff member who was paid too much. Interpol actually acknowledges the mistake. But it is immaterial: the unlawful handling of one case does not entitle the complainants to the same unlawful treatment.

For the same reason their reliance on other much less serious errors is also misconceived.

9. The parties discuss the case of Miss d. B. d. K., who has herself filed a complaint about the amount of the

indemnity she got on leaving Interpol. Since her case is still pending the Tribunal may not yet rule on the merits.

10. Though not claiming the benefit of unlawful action, the complainants express surprise at the number of mistakes Interpol admits to and submit that, having admitted to them, the Organization should in equity agree to increase the amounts of the indemnities prescribed by the rules.

The plea fails because no right may arise in law from any breach of the law.

11. Lastly, the complainants cite the case of seven officials who, though over the age of 55, were not yet entitled to a pension but whom the Secretary General thought fit to grant a supplementary indemnity in anticipation of retirement.

That contingency is covered by Article 61(5) of the Staff Rules and the payment was warranted by the special position the seven officials were in because of their age and the employment situation in France. The plea fails because the case of the complainants may be distinguished: at the time of termination they were between 33 and 44 years old and so were not in the same position as the officials granted the supplement on grounds of age.

12. The complainants contend that someone in their position would fare better under the rules of other international organisations, including some that have their headquarters in France.

Although structural differences make comparison difficult, some Interpol officials do seem to fare worse than staff in other organisations. But the Tribunal will not entertain the plea. Interpol is an independent international organisation; the parties cite no agreement and do not even mention the existence of any co-ordinating body that would warrant comparison; and even if the plea succeeded it would not mean quashing the impugned decisions anyway.

13. Another issue is the relevance of social legislation in France.

The principles set out in 12 above again apply. It is true that things are more complex in that for some years there were no Staff Regulations and the status of Interpol staff under French law was unclear. The complainants see breach of their acquired rights in the failure to reckon their termination indemnities according to French practice and the requirements of the collective agreement applicable to them by virtue of their status in law at the date of recruitment.

Their plea might succeed if Interpol had agreed to apply French law and subscribed to the collective agreement they rely on. But they do not cite any text that would bear out their thesis, whether it be their contracts of appointment, or any provision of Interpol's rules, or any individual decision taken under the French legislation they want the Organization to apply.

The conclusion of the passage in their submissions about the collective agreement is not that Interpol should apply it to them but that it shows up the amounts of their indemnities as too low. Whether they are pleading breach of the law or of their acquired rights their reasoning fails because it is at odds with the already cited principle that international organisations are independent.

14. It is, however, beyond dispute - whether affiliation was optional or compulsory - that Interpol staff come under the unemployment insurance scheme in France known as ASSEDIC. Interpol pays the employer's contributions to the scheme and the official pays the employee's. So any complainant who failed at once to find other employment on leaving Interpol got unemployment benefit under French legislation and, even though not everyone who left got it, the entitlement is beyond doubt.

In any event there is no point in ruling on the issue. All that need be said is that the unemployment benefit was a socially satisfactory solution of the hardest cases but, not coming from Interpol, has no bearing on the complaints.

15. The complainants' last plea is abuse of authority. They accuse Interpol of acting from prejudice against some groups of staff and they see evidence of that in the filing of so many complaints, in their being given too short deadlines to make up their mind and in the "thicket" of rules that laymen had to find their way about in the Staff Regulations and Staff Rules.

The plea again fails. Though the transfer to Lyons was no easy exercise there is no evidence of any prejudice on

Interpol's part.

16. Some of the complainants put forward a plea which, if allowed, would be fatal only to the decisions which those complainants impugn. It consists in saying that they never got the decision on termination which the rules prescribe and which entitled them to the indemnity and that only when they left did they find out the amount.

The plea is rejected. Although the decisions to terminate their appointments were taken in October 1988 the amounts of their indemnities could not be determined until they left, depending as they did on their final salary figures. In any event they were, like everyone else, free to look up the text of the rules for themselves and get a fairly accurate idea therefrom of the amounts they would be paid on termination.

17. Interpol objects to the receivability, in whole or in part, of some of the complaints. There is no need to rule on its objections since the complainants have failed to show that their indemnities were insufficient.

DECISION:

For the above reasons,

The complaints are dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

Updated by SD. Approved by CC. Last update: 10 March 2008.