

NINETY-THIRD SESSION

Judgment No. 2150

The Administrative Tribunal,

Considering the complaint filed by Mr R. A. M. against the International Criminal Police Organization (Interpol) on 29 October 2001, Interpol's reply of 14 January 2002, the complainant's rejoinder of 15 March and the Organization's surrejoinder of 22 April 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Article 36(3) of Interpol's Staff Regulations provides in pertinent part that:

"The Secretary General may ... decide to terminate the appointment of an official of the Organization:

...

d) if, following:

...

- suppression of the official's post,

...

there is no vacant post which is to be filled and for which the Secretary General considers that the official concerned has the requisite qualifications".

The complainant, a French national born in 1946, is an engineer by training. From 1971 to 1989 he worked for France Telecom. As from 15 March 1989, he was detached to Interpol to a post of technical adviser under a three-year fixed-term contract. His contract was extended in March 1992, January 1995 and then in June 1998. During this latter extension, the complainant held the post of Assistant Director of Systems Management in the Information Systems Directorate. His contract was due to expire on 15 March 2001.

By a letter of 24 July 2000 to the Secretary General, he requested the renewal of his detachment, and expressed the wish to be associated with the implementation of the ATLAS project relating to an intranet network. By an e-mail dated 28 November, the Assistant Director responsible for General and Social Affairs informed the complainant's direct supervisor that, in his view, any extension of his contract might create a "conflict of interest". The above-mentioned network had been subject to a call for tenders, in which a company belonging to the France Telecom group was participating.

On 6 December 2000 a draft of a letter was prepared requesting France Telecom to extend the complainant's detachment for two years. The Director of Administration and Finance forwarded it to the Secretary General for signature, along with a note drawing attention to the fact that when the complainant had been detached, France Telecom was a public company working in a non-competitive sector, but that it had since been largely privatised

and now operated in a very competitive sector. Interpol, which had already concluded important contracts with the company, might sign others, depending on the evolution of the ATLAS project. In his view, this raised issues of professional ethics and transparency. He accordingly wondered whether the extension of the complainant's detachment might not give rise to difficulties.

On 22 January 2001, during a meeting, the Assistant Director for General and Social Affairs informed the complainant that his appointment would not be renewed. By a decision of 9 February, the Secretary General informed him that, in the context of restructuring the Information Systems Directorate, he wished to reduce the number of managerial posts. In accordance with Article 36(3)(d), he had therefore decided not to renew his appointment. He also said that although the complainant's contract was to expire in March, he had requested an extension of his detachment until 30 June 2001 at the latest.

By a memorandum of 1 March to the Secretary General, the complainant requested a review of that decision. The matter was referred to the Joint Appeals Committee, which issued its opinion on 16 July 2001. It recommended dismissing the request for review. By a letter of 30 July 2001, which is the impugned decision, the Acting Executive Director, to whom authority had been delegated by the Secretary General, informed the complainant that his request for review had been dismissed. In the meantime, on 1 July 2001, the latter had returned to France Telecom.

B. Citing the Tribunal's case law, the complainant contends that the decision not to extend his appointment was taken under "unlawful" conditions. He emphasises that the impugned decision was signed by the Acting Executive Director, but the Organization has not produced any evidence of delegation of power to him. His right to be heard was breached, as he had no opportunity to put forward his views before the decision affecting him was taken. Furthermore, Article 39(1) of the Staff Rules, which provides that the official shall be informed of the decision to extend the appointment or not "at the latest two months before the expiry" of the period specified in the letter of appointment, was not respected. He adds that Interpol did not provide him with certain documents. By disregarding his fundamental rights, the Organization was also in breach of its duty to treat its officials with consideration.

He further submits that the Organization also committed errors of law. As his contract was expiring in accordance with Article 35(1) of the Staff Regulations, it was wrong to apply the provisions of Article 36(3)(d). Moreover, Interpol, in violation of the latter Article, did not endeavour to reassign him and did not act in conformity with Article 37(2) of the Staff Regulations as regards the period of notice.

The complainant also contends that Interpol misused its authority, since the impugned decision, for which the reason given was a reorganisation resulting in the abolition of his post, was in practice dictated by considerations other than the supposed reorganisation. In his view, the only reason that has been demonstrated for the termination of his appointment was the conflict of interest. Interpol thus clearly misappraised the facts. He says that the Organization also showed partiality and discriminated against him, as his professional links with France Telecom were a decisive element in the impugned decision. He explains that he was occupying a permanent post and exercised responsibility for implementing the ATLAS project. He therefore had a legitimate hope that his contract would be renewed, but this hope was disappointed.

He asserts that he was not able to pursue the implementation of the project to which he had devoted himself and that his career was brutally ended since, in view of his age, France Telecom only offered him pre-retirement leave. He suffered harm to his career. The doubts expressed as to his loyalty and professional integrity also constituted moral injury. Furthermore, the decision not to renew his contract caused him financial harm by resulting in a reduction in his income of around 40 per cent.

The complainant requests the Tribunal to set aside the decisions of 9 February and 30 July 2001 and to order Interpol to pay him, with interest of 4 per cent a year from the date on which the complaint was filed, a sum of 256,439.98 euros, equivalent to three years' gross salary, in professional, material and moral damages, and 42,739.99 euros as a termination indemnity. He claims 12,195.92 euros in costs.

C. As an annexe to its reply, Interpol produces a document which, in its view, proves that during his absence the Secretary General had indeed delegated authority to the Acting Executive Director, who carried out his duties in the interim in accordance with Article 45 of the General Regulations of the Organization.

Interpol explains that, from the beginning of 2001, a reorganisation of the permanent services of the Organization

was undertaken with the objective, inter alia, of reducing the number of hierarchical levels. Ranks considered not to be essential were therefore abolished. The new structure came into effect on 12 September 2001. As the complainant's contract expired in March 2001, the Secretary General anticipated the results that he wanted to achieve by abolishing his post forthwith. In doing so, there was no misappraisal of the facts. Interpol contends that the complainant's situation was exceptional, as no rule envisages the case of a post being abolished (Article 36(3)(d) of the Staff Regulations) at the same time as the expiry of the contract of the person holding the post (Article 35(1)). Insofar as the reason for the impugned decision was the abolition of the complainant's post, the reference to Article 36 was necessary. In accordance with this Article, the Organization sought a vacant post that would suit him, but did not find one. In these circumstances, it terminated his appointment without prior notice, under Article 35(1).

According to Interpol, the complainant's post was only abolished by reason of the reorganisation, and not due to any conflict of interest. He is not therefore justified in claiming that doubts were cast on his professional loyalty or integrity, nor can he allege that he suffered any professional or moral damage. Moreover, an organisation cannot be held responsible for the reduction in income suffered by detached officials on their return to their national administration. The Organization emphasises that the complainant agreed to take pre-retirement leave and that his present situation is not therefore attributable to Interpol. Lastly, Article 38(d) of the Staff Regulations provides that a detached official who is able to resume service with his country's administration within a reasonable period of time, as in the complainant's case, is not entitled to a termination indemnity.

With regard to the alleged violation of the right to be heard, Interpol points out that, on 22 January 2001, the complainant had a meeting with the Assistant Director for General and Social Affairs, during which he was able to put forward his views. It recognises that Article 39 of the Staff Rules was not respected, but holds that this prejudice was amply compensated by the extension of his detachment for a period of over three months. The fact that certain documents were not supplied to him could not have caused him prejudice, as they were without incidence on the impugned decision. Interpol believes that it did not fail in its duty to treat the complainant with consideration, and indeed says that it was concerned to ensure that the termination of his appointment occurred under the best possible conditions. The fact that he had worked on the design of the intranet network is not sufficient justification for maintaining his post.

D. In his rejoinder the complainant contends that he cannot be sure of the validity of the reply, as it is neither signed nor dated. He submits that Interpol has not been able to prove that the reorganisation really occurred. Nor has it proved that there was a reduction in managerial posts or that it actually took action with a view to his reassignment. In this respect, he says that one of the posts created in the division in which he worked corresponded very precisely to his qualifications, but was not offered to him. The haste in abolishing his post, which should have been submitted for approval to the Executive Committee, was unjustified as the reorganisation is still continuing.

The complainant also submits that Interpol's explanations concerning the delegation of authority do not hold water. The documents produced by the Organization do not prove that it complied with the provisions of Article 45 of the General Regulations.

In the complainant's view, as the impugned decision refers explicitly to Article 36 of the Staff Regulations, Interpol contradicts itself in contending that Article 35 had to be applied. He presses his plea that the only reason for the termination of his appointment was the conflict of interest. There were no grounds for such suspicion, as he had signed a statement of loyalty when taking up his appointment with Interpol. He adds that he was forced to accept the pre-retirement leave offered by France Telecom, otherwise he would not have been able to return to the company.

E. In its surrejoinder, Interpol argues that the complainant's pleas relating to the competence of the person who signed the impugned decision must fail. It says that if the reason for not renewing his appointment had been a conflict of interest, someone else would have been appointed in his place. But his post was abolished. Finally, it reaffirms that it sought a vacant post for the complainant, but could not find one.

CONSIDERATIONS

1. The complainant worked for France Telecom from 1971 to 1989. As from 15 March 1989, he was detached to

Interpol, where he was given a three-year fixed-term appointment, which was extended on several occasions. The last contract extension was due to expire on 15 March 2001.

2. By a letter of 24 July 2000 to the Secretary General, he requested the renewal of his detachment for a further three-year period from 15 March 2001. This request was supported by his direct supervisor.

On 28 November 2000 the Assistant Director responsible for General and Social Affairs informed the complainant's direct supervisor that, in his view, any extension to his contract ran the risk of creating a "conflict of interest" in view of his position with France Telecom.

On 6 December 2000, in a note attached to a draft letter to be sent to France Telecom requesting a two-year extension to the complainant's detachment, the Director of Administration and Finance drew the Secretary General's attention to the complainant's situation. He indicated that, in his view, it raised issues of professional ethics and transparency.

On 22 January 2001 the Assistant Director for General and Social Affairs held a meeting with the complainant, in which he informed him that his appointment would not be renewed.

By a letter of 9 February 2001, the Secretary General informed him of his decision not to renew his appointment under Article 36(3)(d) of the Staff Regulations on the grounds that, in the context of the restructuring of the Information Systems Directorate, he had decided to reduce the number of managerial posts with a view to reducing the Organization's staffing costs. He added that an extension of his detachment had been requested until 30 June 2001 at the latest.

In a memorandum dated 1 March 2001 to the Secretary General, the complainant requested a review of that decision. The matter was heard by the Joint Appeals Committee. By a letter of 30 July 2001, the Acting Executive Director, exercising the powers delegated to him by the Secretary General, informed the complainant that his request for review had been dismissed. That is the impugned decision.

In the meantime, on 1 July 2001, the complainant returned to France Telecom.

3. The complainant's claims are set out in B above.

4. In his rejoinder, the complainant challenges the validity of Interpol's reply on the grounds that the copy sent to him bears no signature.

The Tribunal finds that the letter transmitting the reply, which was filed with the Registry, certifies the authenticity of the Organization's written submissions.

5. Before enlarging on his pleas, the complainant recalls the Tribunal's case law respecting the non-renewal of fixed-term contracts and cites Judgment 1273, under 8, which reads as follows:

"A decision not to renew an appointment, though discretionary, must be taken for proper reasons that are notified to the staff member. It will be unlawful if it was not taken by the competent authority and in line with the set rules of procedure, if there was a mistake of law or of fact or abuse of authority, or if some clearly mistaken conclusion was drawn from the evidence."

The pleas will be examined in the light of these principles, which the Tribunal has consistently followed and continues to apply.

6. In the first place, the complainant challenges the competence of the person who signed the impugned decision. He contends that the Secretary General, who has the power of appointment, assignment and termination, may, under the terms of Article 4(2) of the Staff Regulations, delegate his powers to the officials designated by him. However, in the case at bar, the impugned decision was not signed by the Secretary General, but by the Acting Executive Director, who, in the complainant's opinion, was not competent to do so. He says that Interpol has not produced any document delegating authority and the power of signature to him.

This plea cannot succeed since, as indicated by Interpol, Article 45 of the Organization's General Regulations provides that, should the Secretary General be unable to carry out his duties, these shall be performed in the interim

by the highest-ranking official in the General Secretariat, subject to any decision by the Executive Committee. As proven by the memorandum annexed to the reply, it was in his capacity as the highest-ranking official, designated by the Secretary General to perform his duties in the interim during his absence, that the Acting Executive Director signed the impugned decision. He did not therefore require a specific delegation of authority.

7. The complainant alleges that the impugned decision was taken in breach of his right to defend himself. He says that Interpol did not comply with Article 2 of the Staff Rules, which provides that, before any "decision on an individual case is taken by the Secretary General", an official "who will be affected by that decision has the right to be heard". In the present case, he asserts that he was not able to put forward his views before the decision affecting him was taken and that the reasons for the non-renewal of his appointment were not indicated to him during the meeting he had on 22 January 2001 with the Assistant Director for General and Social Affairs.

Since that meeting was held before the challenged decision was taken the complainant could have availed himself on that occasion of his right to be heard by the Assistant Director, who was competent for that purpose, since, as rightly pointed out by Interpol, Article 2 of the Staff Rules cannot be interpreted as placing an obligation on the Secretary General himself to hear officials who may be affected by a decision he intends to take in their respect.

However, the right to be heard in relation to the non-renewal of an appointment presupposes that the person concerned has been informed of the reasons for the proposed decision. In the present case, it is not denied that the complainant was not informed of the reason for the non-renewal of his appointment during the meeting of 22 January 2001. He was not therefore in a position to avail himself properly of his right to be heard. The failure to respect this formality, which was prejudicial to the complainant, renders the impugned decision unlawful.

Consequently, the Tribunal finds that the decision must be set aside, there being no need to examine the other pleas which, even if they succeeded, would not affect the appraisal of the injury suffered.

8. The complainant does not seek reinstatement, but claims compensation for the injury he claims he has suffered.

In terms of harm to his career, he maintains that it was brutally interrupted. Indeed, in view of his age and the lateness of the decision taken in his case, France Telecom was only able to offer him leave until the completion of his career, involving an irreversible cessation of work as from September 2001 for a period of five years, that is up to the date on which he is entitled to a pension.

He also seeks compensation for the moral injury resulting from being suddenly placed in pre-retirement status and because doubts were cast upon his professional loyalty and integrity.

Lastly, he asserts that the impugned decision caused him financial harm equivalent to a reduction in income of around 40 per cent.

9. Interpol argues that the complainant has not proved that he suffered injury as a result of the decision under challenge. His current situation is the responsibility of France Telecom and, as it is a result of his personal choice, it cannot reasonably be attributed to the Organization.

Interpol also considers that, as the request for the extension of the complainant's detachment covered a period of two years, his claim for compensation equivalent to three years' gross salary is unjustified.

10. The Tribunal finds that if he suffered harm to his career, as the complainant contends, this cannot be attributed to Interpol. The Organization rightly points out in this respect that the reduction in income suffered by detached employees when returning to their administration cannot be deemed the responsibility of the organisation concerned. It adds that all employees who are detached should bear in mind that when, for one reason or another, they return to their administration, their salary is very likely to be lower.

Detachment offers particular advantages which encourage employees to apply for it, as well as disadvantages, including the precariousness arising out of the duration of the appointment offered. If an appointment is not renewed when it expires, this does not automatically result in an injury for which compensation may be claimed, whatever the nature of the injury.

11. Nevertheless, in the present case, the unlawful decision not to renew the complainant's appointment gave rise to moral and material damage, for which he is entitled to obtain compensation. The Tribunal sets this compensation at

30,000 euros, under all heads, interest being payable on this amount only from the date of the delivery of the present judgment.

12. The Tribunal finds no grounds in the present case for the payment of a termination indemnity.

13. The complainant is entitled to costs for the proceedings before the Tribunal, in the amount of 6,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.

2. Interpol shall pay the complainant 30,000 euros in damages under all heads. Interest shall be payable on this amount at a rate of 4 per cent a year from the date of delivery of the present judgment.

3. It shall pay the complainant the amount of 6,000 euros in costs.

4. All other claims are dismissed.

In witness of this judgment, adopted on 10 May 2002, Mr Jean-François Egli, Judge chairing the sitting, Mr Seydou Ba, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

(Signed)

Jean-François Egli

Seydou Ba

Hildegard Rondón de Sansó

Catherine Comtet