

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

Interpol

131st Session

Judgment No. 4334

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. S. against the International Criminal Police Organization (Interpol) on 7 February 2019 and corrected on 9 March, Interpol's reply of 18 April, the complainant's rejoinder of 8 June, corrected on 19 June, and Interpol's surrejoinder of 30 September 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 challenges the implicit decision rejecting her appeal against the decision to modify her terms of assignment.

The complainant joined Interpol in January 2016 as a Missions and Travel Specialist in the Missions and Travel Branch, at grade 6. She held a three-year fixed-term contract. By a letter of 13 April 2018, which she received on 17 April, the Director of Human Resources Management informed her that her terms of assignment were modified as from 17 April in order to reflect the new duties that were defined based on the needs of the new structure. Her post was renamed Operations and Administrative Officer – Missions and was confirmed at grade 6. Her job title was therefore changed to match the name of the new post. Her category (Administrative and Operational Support staff), grade and step remained unchanged.

On 24 April the complainant was placed on certified sick leave, and on 24 May Interpol's staff physician certified that she was permanently unfit for work.

On 16 May, she wrote to the Secretary General asking him to review the decision of 13 April. Having received no reply to her request for review of 16 May, she initiated the internal appeal procedure on 11 September 2018 indicating that she was challenging the implicit decision rejecting her request. On 27 November the complainant's employment was terminated on medical grounds effective 30 November 2018. On that latter day, she wrote to the Administration asking in particular about the status of her internal appeal of 11 September 2018. She reiterated her request on 14 December 2018. On 8 January 2019 the Secretary General replied to her letter of 14 December 2018. He indicated with respect to the appeal procedure that, in his view, there was only one administrative decision in her case, the decision of 27 November 2018 to terminate her employment. He added that he would forward her appeal in that respect to the Joint Appeals Committee, which would inform her of its composition and provide her with an opportunity to complete her appeal.

On 7 February 2019 she filed a complaint with the Tribunal against the implicit decision rejecting her appeal of 11 September 2018.

The complainant asks the Tribunal to quash the implicit decision rejecting "the internal appeal request" of 11 September 2018 and to order Interpol to follow its internal appeal procedures. She also seeks an award of moral damages and costs.

Interpol asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. This complaint concerns the 13 April 2018 decision to modify the complainant's terms of assignment notified to her on 17 April. In her complaint, the complainant impugns the implicit decision rejecting the internal appeal she lodged on 11 September 2018 in which she challenged the implicit decision rejecting her request for review of the 13 April 2018 decision. In summary, the complainant submits that the Organization's implicit decision rejecting her internal appeal and the implicit rejection of her request for review violated the regulations and rules governing the internal procedures for the settlement of disputes in

Chapter 13 of the Staff Manual. The complainant also submits that the Organization violated the applicable rules when it modified her terms of assignment.

2. The following are the relevant background facts in relation to the complainant's first submission. On 16 May 2018, the complainant submitted a request for review of the 13 April decision to the Secretary General. In the absence of any decision within 60 days of her request for review, on 11 September the complainant lodged an internal appeal against the implicit rejection of her request for review. In a 27 November decision, the Organization terminated the complainant's contract effective 30 November. The complainant also lodged two internal appeals on 29 October concerning the separation agreement procedure and another internal appeal on 19 November against the implicit decision to place her on unpaid leave of absence.

3. Subsequently, on 30 November the complainant sent a request for information regarding the status of her internal appeal to the Office of Legal Affairs. In the context of a 14 December letter to the Secretary General seeking clarification about the terms of the termination of her appointment, the complainant requested information about whether a chairperson and members had been nominated for the Joint Appeals Committee and if dates had been fixed for Committee meetings in relation to her internal appeal. In a 16 December email to the Office of Legal Affairs, the complainant's lawyer reiterated the complainant's request for information about the status of her internal appeal.

4. The Secretary General, in his 8 January 2019 response, observed that: "regarding the appeal procedure, under Rule 13.1(1) of the Staff Manual, an official may challenge an administrative decision of the Secretary General. There has only been one administrative decision in your case, the decision terminating your employment dated 27 November 2018." In her 21 January 2019 response to the Secretary General, the complainant noted that in his 8 January letter there was no reply as to whether her internal appeal was accepted and processed or rejected. The complainant added that she would appreciate receiving any information about official steps the Organization had taken regarding her internal appeals. On 21 January 2019, the complainant also wrote to the Chairperson of the Joint Appeals Committee requesting the same information.

The complainant did not receive any responses to the requests for information regarding the status of her internal appeal and on 7 February she filed the present complaint with the Tribunal.

5. Although the Organization did not address the receivability of the complaint in its pleadings, the Tribunal must consider whether the complaint is receivable in accordance with Article VII of the Tribunal's Statute. The complainant's request for review was filed on 16 May 2018. The Organization took no action on her request. By operation of Rule 13.4.1(3) of the Staff Manual, in the event that the Secretary General does not take action within 60 calendar days when a request for a review is referred to him, there is an implicit final decision, which may be directly challenged before the Tribunal. This provision aligns with Article VII, paragraph 3, of the Tribunal's Statute, which is a rule governing the receivability of such complaints before the Tribunal (see Judgment 3889, under 3).

6. Rule 13.4.1(3) of the Staff Manual does not contemplate an internal appeal against such an implicit final decision rejecting a request for review. An aggrieved staff member has one option only, namely the commencement of proceedings in the Tribunal but within appropriate time limits. The complainant had ninety days from the expiration of the sixty days allowed by the rules for the Secretary General to address her request for review, which is in this case, to be considered the "claim" referred to in Article VII, paragraph 3, to file her complaint with the Tribunal. She did not do so. Consequently, her complaint is time-barred and hence irreceivable.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 21 October 2020, Ms Dolores M. Hansen, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 December 2020 by video recording posted on the Tribunal's Internet page.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ