

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T.

v.

Interpol

135th Session

Judgment No. 4618

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. T. against the International Criminal Police Organization (Interpol) on 28 February 2019 and corrected on 22 March, Interpol's reply of 9 May 2019, the complainant's rejoinder of 1 July 2019 and Interpol's surrejoinder of 14 August 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 outcome of two selection procedures in which she took part.

The complainant joined Interpol in October 2014 as an administrative agent in the Anti-doping Unit of the Criminal Organizations and Drugs Sub-directorate at grade 9. She was promoted to Principal Agent at grade 8 in the Anti-corruption and Financial Crimes Sub-directorate with effect from 1 December 2015. In July 2017 she applied for the grade 6 post of Assistant Analyst in the Chemical, Biological, Radiological, Nuclear and Explosive Materials Sub-directorate, for which a vacancy notice had been published. She was shortlisted, invited to sit a written test – which she passed – and then to attend an oral interview. At the

end of the selection procedure, she was informed that she had not been selected for the post but had been placed on a roster drawn up with a view to filling similar posts. In April 2018 her post was reclassified at grade 7 and she was given the title of Operational Assistant. However, as she considered that her duties were at grade 6 level, she challenged the reclassification in an internal appeal, the rejection of which forms the subject-matter of another complaint (her fifth) pending before the Tribunal.

On 13 December 2018 and 8 January 2019 the complainant was informed that her applications for two vacant posts of Assistant Criminal Intelligence Analyst at grade 6 in which she had expressed an interest had been unsuccessful. On 11 February 2019 she lodged an internal appeal with the Joint Appeals Committee against those decisions and asked that they be withdrawn, that she be provided with a copy of the selection panel reports and that new competitions be organised for both of these posts.

By a letter of 25 February 2019, which constitutes the impugned decision, the Secretary General declared her appeal inadmissible on the grounds that her non-appointment to the posts at issue did not constitute a decision with a legal effect on her situation and that he had wide discretion in the matter.

The complainant asks the Tribunal to set aside the impugned decision, to remit the case to the Organization for the internal appeal procedure to be resumed and to award her compensation for the injury she submits she has suffered and costs in the amount of at least 3,000 euros.

Interpol submits that the complaint is irreceivable as the complainant has no cause of action. It argues that the challenged decisions do not concern the complainant's terms of appointment or any provision of the Staff Manual. It asks the Tribunal to dismiss the complaint as irreceivable and unfounded.

In her rejoinder, the complainant reiterates her claims, assesses her injury at 1,000 euros per month from the date of the impugned decision plus 10,000 euros on account of, in particular, Interpol's allegedly unreasonable and harassing tone in its reply, and increases the amount of costs claimed to 5,000 euros.

Interpol argues that these new claims should be dismissed as irreceivable.

CONSIDERATIONS

1. The complainant submits that the impugned decision, in which the Secretary General rejected her internal appeal as inadmissible, was based on a blatant error of law in that he considered that the decisions not to select her for the posts at issue were not open to appeal.

The Organization contends that it is for the Secretary General to decide whether an internal appeal is admissible and that the aspects challenged by the complainant in her appeal did not concern a flaw in the selection procedures. Moreover, it maintains that the complaint filed with the Tribunal is also irreceivable since the complainant is not challenging administrative decisions. According to Interpol, the complainant does not allege a breach of the terms of her appointment or of provisions of the Staff Manual that are applicable to her.

2. Interpol's reasons for contesting the receivability of the complaint before the Tribunal are closely linked to the grounds on which the Secretary General, in the impugned decision, found the complainant's previous internal appeal to be inadmissible. The Organization's objection to receivability will therefore be considered at the same time as the complainant's pleas.

3. The reasons for the decision of 8 January 2019, which was the subject of the internal appeal lodged by the complainant on 11 February 2019, were stated in the following terms:

"Your application has been carefully assessed, but we regret to inform you that you have not been successful on this occasion."

In her internal appeal, the complainant asserted the following:

"I challenge the decisions not to appoint me but to appoint other persons at the end of selection procedures initiated by the vacancy notices [for the posts of assistant criminal intelligence analyst at grade 6]. I am appending the emails notifying me that my applications had been unsuccessful [namely the emails of 13 December 2018 and 8 January 2019]."

In an email dated the same day, produced by the complainant, she also stated the following:

“First, those decisions were not properly justified, that is to say in a precise and detailed manner. Unless that justification is sent to me soon in order to allow me to prepare the appeal brief, the decisions are unlawful on that account. Second, those refusals are retaliation for the internal appeal that I submitted concerning my post classification. I wish to be informed of the precise membership of the selection panel for both procedures and to receive copies of the panels’ reports, if necessary with the details that must remain confidential redacted, but only those details. I also wish to be informed of the successful candidates’ experience in view of the required experience criterion. Again, unless that information is sent to me soon in order to allow me to prepare the appeal brief, the failure to provide those documents will render the decisions unlawful. I request that the challenged decisions be withdrawn, that the selection procedures be re-opened, and that I receive full redress for the injury suffered and an award of costs.”

4. In a letter of 25 February 2019, which constitutes the impugned decision, the Secretary General found the internal appeal to be inadmissible on the basis of the following considerations:

“Your internal appeal has been reviewed, in accordance with the provisions of Staff Rule 13.1.3, to determine whether it is admissible. Pursuant to Staff Rule 13.1.3(1)(a), an internal appeal may be deemed inadmissible if it is lodged against an act which does not constitute an administrative decision. The [...] Tribunal [...] has defined a ‘decision’ as an act by an officer of an organisation, which has a legal effect. Furthermore, the Tribunal has also held that an organization has wide discretion in relation to the appointment and promotion of staff and these decisions are subject to limited review. The fact that you were not offered a position to which you have applied does not constitute a decision within the meaning of the Tribunal’s jurisprudence. Therefore, based on the provisions of the Staff Manual and the jurisprudence of the Tribunal, your appeal has been found inadmissible on the grounds that the appeal relates to an act, which does not constitute an administrative decision.”

5. In respect of the internal appeal procedure, the relevant provisions of the Staff Manual are as follows:

- Regulation 13.1: Internal procedures for the settlement of disputes
 - “(1) Any official of the Organization or, where applicable, any other person designated in Article II (6) of the Statute of the [...] Tribunal [...], may:

- (a) challenge an administrative decision, taken by the Secretary General, which he considers is prejudicial to his interests and conflicts with the terms of his employment agreement or with any pertinent provisions of the present Regulations, of the Staff Rules or of the Staff Instructions;

[...]

- (2) A decision may be challenged within the Organization either through the review procedure or directly through the internal appeal procedure. These two procedures cannot be initiated simultaneously with respect to the same decision.”

– **Rule 13.1.2: Content of the request for review and of the internal appeal**

“(1) The request for review and the internal appeal shall be addressed in writing to the Secretary General. They shall be signed and dated by the official and shall include the following documents:

- (a) [a] copy of the challenged decision or of the request for a decision by the official;
- (b) [a] written summary of the reasons.
- (2) If the request mentioned in (1) above is incomplete, the Secretary General shall inform the official of that fact immediately, and shall ask him to provide the missing elements within 5 working days of the notification of this information.
- (3) Expiry of the limitation period shall not prejudice the admissibility of the request if the latter was submitted before expiry of the said limitation period and supplemented in conformity with (2) above.

[...]”

– **Rule 13.1.3: Admissibility of a request for review or of an internal appeal**

“(1) Upon receipt of a request for review or of an internal appeal, the Secretary General shall first examine whether it is admissible. In particular, it may be declared not to be admissible when it:

- (a) challenges an act which does not constitute an administrative decision which can be challenged;
- (b) does not comply with formal requirements prescribed in Rule 13.1.2;

[...]

- (3) When the Secretary General rejects a request for review or an internal appeal on grounds of admissibility, he shall give the reasons for his decision in writing. The challenged decision shall then become final.

(4) When the Secretary General considers a request for review or an internal appeal admissible, the review procedure or internal appeal procedure shall continue.”

– **Regulation 13.3: Internal appeal procedure**

“An internal appeal shall be addressed in writing to the Secretary General who, if he deems it admissible, shall consult the Joint Appeals Committee prior to taking a decision on the merits of the appeal.”

– **Rule 13.3.4: Powers of the Joint Appeals Committee**

“(1) The Joint Appeals Committee shall give a consultative opinion only on the aspects of the decision raised and challenged by an official in his internal appeal. The Chairman may invite the official to clarify the substance of his appeal.

[...]

(7) The Joint Appeals Committee shall verify, within the limits of the aspects challenged by the official, whether the decision concerned conforms to the official’s employment agreement, to the Staff Regulations, to the present Rules and to any pertinent Staff Instructions.”

6. In the present case, the Secretary General rejected the complainant’s internal appeal as inadmissible on the basis of aforementioned Rule 13.1.3(1)(a) on the grounds that, in his view, the acts challenged by the complainant in that appeal were not administrative decisions.

Under the Tribunal’s settled case law in this area, a decision not to appoint an official of an international organisation to a post is in fact a decision that may be challenged in an internal appeal and ultimately before the Tribunal (see, for example, Judgments 4408, consideration 2, 4293, consideration 9, 4252, consideration 4, and 1204, consideration 6).

While the Secretary General also referred in his decision to the broad discretion enjoyed by an international organisation’s executive head in a selection procedure, that issue, which relates to the review of the merits of decisions taken in this area, has no bearing on the receivability of appeals directed against those decisions. The Tribunal also observes that, as might be expected, the consideration to which the Secretary General refers is not included in the grounds for inadmissibility listed in aforementioned Rule 13.1.3(1)(a).

It is clear from the foregoing that the Secretary General's decision to declare the complainant's internal appeal inadmissible rests on two obvious errors of law.

The Tribunal further considers the Secretary General's decision raises particular concern given that Staff Rule 13.1.3, which allows him to prevent appeals from being considered by the Joint Appeals Committee, involves the fundamental safeguard provided to staff members of exercising the right of appeal against decisions that affect them and that this rule must therefore be applied extremely cautiously.

7. As the challenged decisions not to appoint the complainant at the end of the competitions are, as has just been stated, administrative decisions open to appeal, it follows, contrary to what Interpol submits, not only that the complaint before the Tribunal is receivable, but also that the impugned decision of the Secretary General, in which he wrongly dismissed the complainant's appeal as inadmissible, must be set aside.

The case will be remitted to Interpol for the complainant's appeal to be considered by the Joint Appeals Committee in compliance with the procedure set out in the Staff Manual.

8. In view of the Organization's arguments in its submissions, the Tribunal considers it useful to reiterate that, under the terms of their appointment and the applicable staff rules within an international organisation, all staff members who apply for posts in competitive procedures are entitled to have their applications considered in good faith and in keeping with the basic rules of fair and open competition (see, for example, Judgment 4524, consideration 8, and the case law cited therein). The Organization is therefore wrong to contend that the complainant's challenge to the outcome of the competitions in question is not based on the terms of her appointment or the staff rules.

9. Whatever the eventual outcome of this dispute, the unlawful refusal to submit the complainant's appeal to the Joint Appeals Committee has had the effect of delaying its final settlement. That decision has, in

itself, caused the complainant injury that will be fairly redressed by ordering Interpol to pay her compensation in the amount of 10,000 euros.

10. By contrast, the Tribunal considers that it is unnecessary to pay the complainant, as she requests, further compensation on account of the Organization's allegedly unreasonable and harassing tone in the proceedings before the Tribunal.

11. As the complainant succeeds for the main part, she is entitled to the award of 5,000 euros which she claims in costs.

DECISION

For the above reasons,

1. The decision of Interpol's Secretary General of 25 February 2019 is set aside.
2. The case is remitted to Interpol in order that it may take action as indicated in consideration 7, above.
3. Interpol shall pay the complainant compensation in the amount of 10,000 euros.
4. It shall also pay her 5,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 10 November 2022, 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 1 February 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ