

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

H. (No. 2)

v.

Interpol

138th Session

Judgment No. 4843

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr R. H. against the International Criminal Police Organization (Interpol) on 1 July 2020, Interpol's reply of 29 October 2020, the complainant's rejoinder of 20 November 2020 and Interpol's surrejoinder of 22 January 2021;

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 suppressed – challenges the decision to transfer another official to a post to which he believes he should have been reassigned as a priority.

Facts relevant to this case are set out in Judgments 4844 and 4845, also delivered in public this day, concerning the complainant's third and fourth complaints. Suffice it to recall that, on 28 November 2019, the complainant – who, since 1 October 2012, had held the post of marketing and video production editor at grade 5 in the Communications Office on a fixed-term contract – was informed that his post was suppressed with immediate effect following a reorganisation which had led to the outsourcing of some of his duties. On 2 March 2020 he was notified of the decision to terminate his contract of appointment on the grounds

that it had not been possible to reassign him to another post within the Organization. Those two decisions formed the subject of the aforementioned complaints.

While the reassignment process affecting him was in progress, the complainant discovered, around mid-February 2020, that one of his colleagues, Ms M., had been officially transferred to the Communications Office, to a post of planning officer at grade 5, by a decision of 3 February 2020, notified to Ms M. on 6 February 2020. On 7 April 2020 he lodged an internal appeal against the transfer decision, claiming that he should have been given priority in being reassigned to that post. He asked for the contested decision to be withdrawn and sought his own reintegration to the post in question, together with damages for the moral injury he alleged to have suffered. On 29 April 2020 he was invited to supplement his internal appeal by supplying a copy of the contested decision within five business days. According to the evidence, the complainant, who was not in possession of this decision, did not respond to that request.

On 20 May 2020 he was informed that, having regard to the conditions set out in Staff Rule 13.1.3, his internal appeal of 7 April had been declared inadmissible but that, given that the question of his colleague's transfer had also been raised in a subsequent internal appeal of 30 April 2020 challenging the decision to terminate his contract of appointment, it would be examined in the context of that later internal appeal. That is the impugned decision in the present complaint.

The complainant asks the Tribunal to set aside the impugned decision and to send the case back to the Organization in order for the internal appeal procedure to be resumed within a reasonable period not exceeding six months. He also seeks redress for the injury which he considers he has suffered and which he assesses as at least 10,000 euros, and an award of costs of 4,000 euros.

Interpol maintains that the complaint is irreceivable as the complainant has no cause of action, his internal appeal failing to meet the prescribed formal requirements, and, in addition, that he is precluded by the principle that the same matter cannot be litigated in more than

one procedure. It therefore asks the Tribunal to dismiss the complaint as irreceivable and unfounded.

CONSIDERATIONS

1. In his claims for relief, the complainant requests, in particular, that the Tribunal set aside the decision of the Secretary General of Interpol of 20 May 2020 dismissing his internal appeal of 7 April 2020 as inadmissible and that the case be sent back to the Organization so that the internal appeal procedure can be resumed within a reasonable period not exceeding six months.

2. In the aforementioned decision of 20 May 2020, the internal appeal lodged by the complainant against the decision to appoint an official, Ms M., to a post of planning officer at grade 5 in the Communications Office was declared inadmissible simply by reference to the conditions set out in Staff Rule 13.1.3(1) (a), (b) and (c).

According to the complainant, this does not constitute sufficient reasoning as it does not expressly set out the grounds on which his internal appeal was supposedly inadmissible. Furthermore, in the light of those provisions, he does not see any valid reason why it would be inadmissible. He asserts that:

- the contested decision to transfer Ms M. to a post to which he should have been assigned as a priority adversely affects him and is therefore a “challengeable decisional act”;
- his internal appeal meets the necessary formal requirements;
- the appeal was lodged within 60 days of the date on which he became aware of that appointment.

3. According to Staff Rule 13.1.3(1) (a), (b) and (c):

“(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;
 - (c) is lodged outside the relevant limitation period prescribed in Rule 13.1.1 [that is, a period of 60 calendar days of notification of the challenged decision];
- [...]"

4. The Tribunal considers that simply referring to three grounds on which an internal appeal may be inadmissible, without indicating either which one or more of those grounds apply to the present case, or the factual circumstances which might justify invoking those legal grounds, cannot, in any event, constitute sufficient reasoning within the meaning of its case law. The reasons are not sufficiently explicit to enable the person concerned to take an informed decision accordingly. Neither does it allow the Tribunal to exercise its power of review (see, for a recent example, Judgment 4467, consideration 7).

5. The Tribunal also notes that the various reasons put forward by the Organization in its submissions in order to justify the merits of the impugned decision clearly cannot be upheld.

6. First of all, and contrary to what the Organization submits, it is clear that the complainant had a cause of action in challenging the lawfulness of Ms M.'s appointment through an internal appeal, given that he himself was eligible to be appointed to that post. The question whether the complainant is correct in claiming that he should have been given priority over Ms M., or at least that his profile better suited the post in question, is a separate issue from his cause of action and has to be explored later, when the complaint is examined on the merits.

It also goes without saying that the decision to appoint Ms M. to a post for which the complainant was eligible constitutes an administrative decision that can be challenged by means of an internal appeal procedure and, subsequently, by a complaint before the Tribunal (see, for example, Judgments 4087, consideration 7, 3642, consideration 7, and 3450, consideration 7).

7. Similarly, contrary to what the Organization submits, in asserting in his internal appeal that efforts were supposed to be undertaken to reassign him within Interpol following the suppression of his post, the complainant was, implicitly but unquestionably, alleging a breach of the provisions of the Staff Manual relating to the reassignment process following the suppression of a post. The Secretary General himself had clearly acknowledged this given that, in the impugned decision, he had stated that the objection made by the complainant in support of his internal appeal formed part of the objections set out in an earlier internal appeal against the decision to terminate his appointment and that earlier appeal had been declared admissible. The argument put forward by the Organization in this regard is therefore irrelevant.

8. Lastly, the complainant can clearly not be criticised for failing to respond to the Organization's request for him to supplement his internal appeal by supplying it with a copy of the contested decision, since he was not the addressee of that decision and therefore did not possess it. The fact that the complainant annexed to his internal appeal the organisational chart of February 2020 reflecting the appointment in question was sufficient in that regard. While it is regrettable that the complainant did not respond to the request made by the Organization on 29 April 2020, his silence is of no consequence in this case since it clearly did not mislead the Organization as to the actual scope of the internal appeal he had lodged.

9. In the light of the various foregoing considerations, the Tribunal finds that the decision declaring the complainant's internal appeal inadmissible in the context of the present case is unlawful and must, therefore, be set aside.

10. The Tribunal considers that, the specific circumstances of this case justify that the matter be sent back to the Organization, as the complainant expressly requests, for the Secretary General to take a new decision on the complainant's internal appeal, following examination thereof by the Joint Appeals Committee, within six months of the date of the public delivery of this judgment.

11. The complainant asserts that he is entitled to claim redress for the moral injury caused by the impugned decision, which he found “shocking in both form and content [and] causing considerable delay to the examination of the substance of the case”. He assesses his injury at 10,000 euros at least.

The Tribunal considers that this injury will be fairly redressed by awarding the complainant moral damages in the amount of 5,000 euros.

12. The complainant also seeks the award of costs in the amount of 4,000 euros. The Tribunal considers it appropriate to grant this request.

DECISION

For the above reasons,

1. The decision of the Secretary General of Interpol of 20 May 2020 is set aside.
2. The case is sent back to Interpol in order for the examination procedure of the internal appeal lodged by the complainant to be resumed in accordance with consideration 10, above.
3. Interpol shall pay the complainant 5,000 euros in moral damages.
4. It shall also pay him 4,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 23 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER