

SEVENTIETH SESSION

Judgment 1085

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. J.-F. P. S. against the International Criminal Police Organization (Interpol) on 2 January 1990 and corrected on 13 February, Interpol's reply of 11 May, the complainant's rejoinder of 17 July, the Organization's surrejoinder of 6 September, the complainant's further brief of 2 November and Interpol's final observations of 19 November 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 40, 41(1)(a) and (c) and 43(1)(a) of the Staff Regulations and Articles 6, 111, 127(5), 149(10) and 153(1) of the Staff Rules of Interpol;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

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

A. The complainant, a Frenchman born in 1949, joined Interpol at Saint-Cloud on 1 February 1984 as head of accounts. He left on 6 June 1989, on the Organization's move to Lyons, in circumstances that Judgment 1020 described under A.

By a letter of 29 August 1988 the Secretary General had informed him of the initiation of the "normal disciplinary procedure" against him, under Article 111 of the Staff Rules of the referral of his case to the Joint Disciplinary Committee. Appended was the text of charges of three "professional faults" within the meaning of Article 40 of the Staff Regulations. The first was failure to account for a "discrepancy" of just over 3,000 French francs between amounts of petty cash in the office safe and the book entries: the discrepancy had been discovered in January 1988 and referred to in a memorandum of 9 March 1988 from the complainant himself and had later recurred. The second fault was that he was to blame for his unit's asking outside bodies to settle bills already paid. And the third was insubordination, both in disobeying orders from his first-level supervisor, the head of the finance and accounts subdivision, and in going over his head.

In its opinion dated 31 October 1988 the Joint Disciplinary Committee unanimously found the complainant not guilty on the second charge and on the second head of the third one but guilty on the first head of the third charge of disobedience to orders on the grounds that he had not answered two memoranda from his supervisor telling him to report on the discrepancy. As for the first charge three of the five members of the Committee found him not guilty; in a dissenting opinion the other two held that as head of accounts he was liable for failure to account for the discrepancy.

By a decision of 3 November 1988 the Secretary General imposed on him under Article 41(1)(a) of the Staff Regulations a "written warning", without transfer, for failure to account for the "discrepancy" and under 41(1)(c) six months' "deferment of advancement" for disobeying orders. The Secretary General went on to observe that under Article 153(1) of the Staff Rules he was not bound by the Committee's opinion; that he disagreed with the majority and believed the complainant was liable for failure to account for the discrepancy, the most serious of the charges; but that mitigating circumstances warranted a mild sanction.

By a letter of 7 December 1988 the complainant submitted to the Secretary General under Article 43(1)(a) of the Staff Regulations a "request for review" of the decision of 3 November. In its report of 26 September 1989 the Joint Appeals Committee, to which his case had been referred, recommended reversing the decision of 3 November insofar as it imposed a warning for failure to account for the discrepancy but confirming it insofar as it deferred advancement for disobeying orders. By a letter of 6 October 1989 the Secretary General informed the complainant that he accepted the Committee's recommendations, and that is the decision he impugns.

B. The complainant contends that the impugned decision shows a procedural flaw. Although the Joint Disciplinary

Committee found him not guilty on the first and second charges and on the second head of the third, it had, without giving him due notice, taken up an argument Interpol had submitted on the first charge and applied it to the first head of the third charge: the argument was that he had failed to account for the discrepancy despite repeated calls from the head of the finance and accounts subdivision in memoranda of 28 April and 10 May 1988 and from the head of the Administrative Division in a letter of 8 July 1988. So the two sanctions - one imposed, against the Committee's recommendation, for failure to account for the discrepancy and the other for disobeying orders - were for one and the same fault. Moreover, the charge of disobedience, the only one to be upheld in the end, related not to several orders, but to only one, and that one was not listed among those that he had originally been charged with having disobeyed. Moreover, since he was not warned that the Committee would vote on the matter, he was unable to plead his case properly.

On obtaining the Joint Appeals Committee's report of 26 September 1989 he discovered that a registered letter from the chairman of the Committee dated 7 July 1989 had not reached him and so he had been unable to reply. The material on which the Committee based its opinion was therefore incomplete.

He contends that the decision of 6 October which followed on the opinion of 26 September 1989 and upholds only one of the charges implies that quite conceivably he was in no position even to account for the discrepancy. Indeed, had his supervisors considered his initial failure to reply to be so blameworthy, the head of the Administrative Division would no doubt have done more than send him a mere reminder. The complainant's letter of 18 July 1988, in which he set out such reasons and explanations as he could then supply, shows that he never intended to disobey orders.

That so much time was allowed to go by between the memorandum of 28 April 1988 from the head of the subdivision and his reminder of 10 May suggests that his supervisors were not very clear about what they wanted from him. The reasons they gave for asking him to write a report kept changing and the inference is that there can have been no real need for one. It was therefore impossible for him to give his supervisors full satisfaction. He was too busy to be able to reply promptly. He could not, all on his own, vouch for the trustworthiness of the accounting system and of those in charge of keeping the books. The sanction is quite unwarranted, and the harassment he was subjected to drove him to change his mind about moving to Lyons.

He seeks the quashing of the decision to defer his advancement by six months and an award of 100,000 French francs in damages for professional and moral injury and in costs.

C. In its reply Interpol denies the complainant's allegations of procedural flaws. In the course of penal and disciplinary proceedings allegations of fact are commonly removed from the legal context in which they were originally made and entertained under a quite different head. What matters is that the defendant should have the opportunity of answering the allegations of fact levelled against him: it is not for him to say what conclusions are to be drawn in law from proving those allegations. The complainant had been aware of the allegations of fact ever since the Organization had communicated the charges to the Joint Disciplinary Committee, and the Committee heard him answer those charges. Moreover, by the time he came to plead his case before the Joint Appeals Committee he was fully aware of the position. So there was no breach of his right to a hearing.

The letter of 7 July 1989, which he says he never got, was sent to the address he had given and the formal acknowledgement of receipt was signed "S.". The Organization cannot therefore be held liable for his not receiving an item which in any event had no determining effect either on the findings of the Joint Appeals Committee or on the impugned decision.

Turning to the merits, Interpol points out that by July 1988 the complainant had made no written report further to his memorandum of 9 March 1988. Not until 18 July 1988 did he at last write a letter, and all it said was that inquiries had not yet "led anywhere".

The Organization's answer to the complainant's attempts to explain his failure to report is that as an accountant he ought to have realised, without even being told, that the discrepancy must somehow be accounted for and that, if he could not account for it at once, he must report on how it had come to light, what investigation was being made, how far it had got and what the conclusions were. He adduces no evidence to support his allegations that his supervisors' position was unclear and that there was "no real need" for a report. What they changed their minds about was not the content of such a report, but the purposes it was to serve. As for his plea about being too busy, it is inconceivable that for months he could not find time to write a few lines.

It disputes his plea that his behaviour was not found reprehensible. What more could the head of the Administrative Division have done than repeat his instructions and then initiate disciplinary proceedings against him? The sanction was in proportion to the fault, considering how long he went on disobeying orders. Besides, the sanction no longer affects him since he has left the staff.

Lastly, it was not because of any harassment by Interpol that he changed his mind about going to Lyons. Since the impugned decision was wholly lawful, he sustained neither professional nor moral injury entitling him to any form of redress.

D. In his rejoinder the complainant seeks to refute the case Interpol makes out in its reply. He maintains that the Joint Disciplinary Committee's proceedings were flawed and it made no difference that he was later given his say by the Joint Appeals Committee. Nor was he allowed to comment on the letter of 7 July 1989: the acknowledgment of receipt was not, as the Organization alleges, signed "S".

He enlarges on his pleas so as to show that the charges against him did not amount to misconduct and to explain why he took so long to reply. He describes what happened from 29 August 1988 when the disciplinary proceedings began, as evidence of victimisation. He believes that the decision of 5 October 1988 offering him transfer to Lyons was prompted by an ulterior motive and he seeks a ruling on the correctness of the procedure for termination which that decision led to, and which he says was unlawful and in breach of good faith.

E. In its surrejoinder Interpol maintains that the fact that the complainant did not get the letter of 7 July 1989 in time had no effect on the outcome. It rebuts each of the pleas put forward by the complainant to justify his attitude and bear out his allegations of victimisation. It contends that the decision of 5 October 1988 was in line with the rules on the transfer of headquarters and that it had no "ulterior motive"; besides, the claim the complainant bases on that allegation is made for the first time in his rejoinder and is therefore irreceivable.

F. In the further observations the Tribunal gave him leave to enter the complainant develops his charges of bad faith and victimisation. In support of his allegations he cites many memoranda written by him and his first-level supervisor of which he submits the texts.

G. In its final brief the Organization addresses several issues raised in the complainant's further observations and submits that it is for the Tribunal to determine whether the memoranda he relies on amount to proof of the victimisation he accuses it of.

CONSIDERATIONS:

1. The complainant is objecting to the correctness of the disciplinary proceedings in his case and to the decision by the Secretary General of Interpol to defer his "advancement" by six months on the grounds of "professional fault" and disobedience. He had failed, it was said, to comply with an instruction to report on a discrepancy of 3,109.03 French francs discovered in January 1988 in the petty cash accounts. His explanation was found unsatisfactory and on 29 August 1988 the Secretary General told him of the "initiation" of disciplinary proceedings and the referral of his case to the Joint Disciplinary Committee.

The formal charges were:

- (1) that he had failed to account for the discrepancy found in January 1988, when he had been in charge of the books;
- (2) that the accounts unit had asked outside bodies to pay bills already settled months earlier; and
- (3) that he had often been insubordinate, both by disobeying orders and by by-passing his first-level supervisor.

In its "consultative opinion" of 31 October 1988 the Joint Disciplinary Committee found him guilty on the charge of insubordination in that he had failed to answer two memoranda from his supervisor instructing him to report on the discrepancy. But the Committee found him not guilty on the other charges. Though it exonerated him of "professional fault" in failing to account for the discrepancy, it found him guilty on the third charge by failing to discharge his duty to provide a written explanation. It recommended imposing on him on that count the sanction of postponing payment of salary by one week. One member of the Committee thought that several months' deferment of advancement would be a more fitting penalty.

By a decision of 3 November 1988 the Secretary General declared the complainant guilty of failure to account for the discrepancy and of disobeying orders and accordingly imposed on him a "written warning", without transfer, and six months' "deferment of advancement".

His request of 7 December 1988 for review of that decision was referred to the Joint Appeals Committee. In its report of 26 September 1989 the Committee recommended reversing the Secretary General's decision insofar as it punished him for failure to account for the discrepancy but confirming it insofar as it punished him for disobeying orders.

The Secretary General fully endorsed the Committee's recommendations in his decision of 6 October 1989, which the complainant is impugning insofar as it upheld the sanction imposed on him for disobeying orders.

2. His first objection is to the correctness of the disciplinary proceedings.

He points out that whereas the two Committees made findings of fact about his failure to account for the discrepancy, which was the first charge, the Secretary General took those findings as the basis for declaring him guilty of disobeying orders, which was the third charge. He submits that it was wrong to treat the facts which one charge rested on as warranting a sanction under another charge.

In the exercise of its advisory function a joint disciplinary committee has to identify the facts that in its view amount to "professional fault"; in other words, it will determine whether the facts constitute any offence and, where need be, it may alter the terms of the charge that rests on them or even discount them altogether.

But that is not the approach the Tribunal will take in this instance.

3. Article 111(1) of the Interpol Staff Rules says that "the initiation of the normal disciplinary procedure" includes notification to the official of "the allegations" against him and of "the evidence which led the Secretary General to initiate disciplinary proceedings". So the Committee will have before it a set of allegations of fact and items of evidence which it will consider for the purpose of determining whether the official is guilty and, if so, what the right sanction would be. Article 149(10) further requires the Committee to base its findings on the evidence the official has had an opportunity to address.

In this case the complainant was accused under the third charge of disobeying orders, whereas in finding him guilty on that charge the Joint Disciplinary Committee relied on facts alleged under the first charge. The Joint Appeals Committee took the view that that was tantamount to taking the facts out of context. But that view is mistaken. What the Joint Disciplinary Committee had really done was seek evidence of guilt from among all the items of evidence at its disposal. And there was nothing wrong with that since, as he does not deny, the complainant had had the opportunity of making submissions to the Committee on all the evidence before it. What is more, he put further submissions to the Joint Appeals Committee on the issue in his brief of 30 December 1988, by which date he knew just how things stood.

The conclusion is that the disciplinary proceedings were quite proper and his objections fail.

4. So does his allegation of breach of his right to a hearing. He makes out that the only offence the Joint Disciplinary Committee found him guilty of was his disobeying a single order that he never got.

That Committee gave the complainant every opportunity to address the allegations of fact that were before it and kept within the bounds of its discretion in upholding several of those allegations for the purpose of its finding of disobedience to orders.

It is immaterial that those allegations were originally made in support of a different charge provided that, as they plainly did in this instance, both sides were free to discuss them.

Lastly there is no requirement in the rules that the Committee warn the official that it may hold a vote on any of the issues before it.

5. Another objection is that the complainant did not get in time a letter of 7 July 1989 from the Joint Appeals Committee's chairman informing him of the Organization's final position and passing on several items of evidence

and that he was therefore given no opportunity to answer.

But the objection fails on the evidence. The letter was sent to the only address the complainant had given for the purpose of the proceedings and to which all earlier communications had been delivered. The Committee was free under Article 127(5) of the Staff Rules to "give a ruling on the basis of the elements at its disposal" for want of a reply from the complainant within the prescribed time limit. Besides, the papers he did not get in time related mainly to his failure to account for the discrepancy, and on that charge he was found not guilty.

His plea is rejected.

6. Turning to the merits, the complainant does not challenge the Joint Appeals Committee's findings as to the facts alleged to constitute disobedience to orders from his supervisors. So it is not in dispute that between 9 March 1988, when he reported the discrepancy, and 18 July 1988, when he first answered the memoranda of 28 April and 10 May 1988, the letter of 8 July 1988 and the oral orders from his supervisors, he failed utterly to obey their orders.

The thrust of his case is, however, that such facts do not amount to "disciplinary fault" warranting the Secretary General's decision to defer his advancement.

7. Article 40 of the Staff Regulations defines "disciplinary fault" to include "any failure by an official of the Organization to comply with a duty, obligation or rule of conduct laid down in the present Regulations, the Staff Rules or the Staff Instructions". Chapter II of the Rules, which sets out the duties and obligations of staff, stipulates in Article 6 that subordinates must "give [their] superiors all the information required for taking decisions and ... comply with all decisions taken and obey the instructions they receive".

The train of events was as follows. The complainant reported the discrepancy on 9 March 1988. The next day the head of the Administrative Division wrote a memorandum to the complainant's first-level supervisor, the head of the subdivision asking him to pass it on to the complainant and saying that the Secretary General ordered him to report his findings within ten days. The head of the Division expressed surprise at the delay in telling him of the matter, called for the strictest standards of book-keeping and said he would be holding a meeting the following week to take stock and see what had to be done. The head of the subdivision ordered the complainant to report his findings orally and the next day, 28 April, confirmed that order in writing. On 10 May the head of the subdivision wrote to the complainant pointing out that he had not yet had an answer. On 8 July the head of the Division himself reminded the complainant that he had not acted on the repeated instructions made to him in writing and orally and he again ordered him to submit a fully circumstantial report by 18 July. Not until that date did the complainant reply, though all he added then was that he had "already reported" on 9 March.

There is therefore ample evidence to show that for four months the complainant utterly failed to react to his supervisors' written and oral orders. Unlike them, he took the view that his original report was enough, and so he wilfully refrained from discharging his duty under the rules to give his supervisors "all the information required" by them for taking a decision.

The conclusion is that the complainant was in breach of a duty prescribed in the Staff Regulations and Staff Rules and was therefore guilty of "disciplinary fault".

8. His pleas in defence fail.

One is that he did not know what he was expected to report on. But the memorandum of 10 March 1988, which was passed on to him, told him to report on findings of his inquiries into the discrepancy. Even supposing his inquiries came to nothing, he was still required to report so that his supervisors could take the action they thought fit.

He further contends that the head of the Division was not clear in his own mind about what the report was supposed to say and in the internal proceedings gave different versions. But again the plea is mistaken. If the instructions were indeed unclear the complainant ought to have sought enlightenment instead of just lying low for four months. In any event, as Interpol observes, the differences he alleges were not over the contents of the report but over the purpose it was to be put to. Was it intended to inform the Secretary General, as the memorandum of 10 March 1988 said, or to complete the records, as the one of 28 June 1988 suggested, or else to give him his full say, as the one of 7 October 1988 stated? Actually those various purposes were not mutually exclusive.

His plea that he was too busy up to 18 July 1988 also fails. If, as he makes out in his letter of 18 July he had already reported on 9 March it would not have taken him long to comply. The plea holds no water.

His other points carry no greater weight.

One is that there was no real need for the report. That argument simply seeks to replace his supervisors' opinion with his own.

Another plea is that his behaviour was not considered reprehensible. That is belied by the decision to bring disciplinary proceedings against him.

9. All his other arguments are irreceivable. Some are irrelevant to the duty of obedience, for example his allegations about the reliability of the accounting system and of the accountants. Others relate to the first charge, the failure to account for the discrepancy, on which he was found not guilty. Others again are about the transfer of Interpol headquarters to Lyons, an issue disposed of in Judgment 1020.

He alleges victimisation by his supervisors. There is no worthwhile evidence to bear out that allegation and it does not square with the statement by the head of the Division in his memorandum of 7 October 1988 - after the start of the disciplinary proceedings - that his purpose in asking the complainant to report had been to give him his full say on the matter of the discrepancy. Once disciplinary proceedings had been brought the sanction was bound to be serious. The head of Division is not shown to have harboured any ill feeling against the complainant.

10. His application in his rejoinder for review of the correctness of the termination proceedings is irreceivable because it is outside the ambit of his claims as originally stated in his complaint.

11. Since his principal claims fail so do his claims to damages for moral and material injury and to costs. There is no need to make any connection with other complaints he has filed, in particular the second, third and fifth, which raise other issues that have no bearing on this one.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux
Mella Carroll
E. Razafindralambo
A.B. Gardner