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

SEVENTY-SEVENTH SESSION

In re DEMONET

Judgment 1346

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Jacques Denis Demonet against the International Criminal Police Organization (Interpol) on 9 April 1993 and corrected on 12 May, Interpol's reply of 9 August, the complainant's rejoinder of 29 October 1993 and the Organization's surrejoinder of 24 January 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 6, 73(4), 74, 76, 112, 116(1) and 117(4) of the Staff Rules and Article 40(b) of the Staff Regulations of Interpol;

Having examined the written submissions and decided not to order hearings, 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 French citizen who was born in 1955, joined Interpol in November 1989 as a "system programmer" at grade C6 in the Electronic Data Processing (EDP) Section of the Support Division (Division IV). One of his duties was to set up and operate IBM, Digital and Wang systems. He had special working hours, from 11 a.m. to 7.15 p.m.

In March 1992 he was given a new task: he was to transfer data on a magnetic tape from an IBM to a Wang system which was being installed. He refused, and a senior colleague so informed the head of the EDP Section in a memorandum of 12 March 1992.

On 17 March the head of the EDP Section sent a memorandum to the head of Division IV and to all his section staff explaining the allotment of work and stating that the complainant was responsible for the transfer of data. The complainant told the head of section that he disagreed and on 19 March, at a meeting with the head of Division IV and the head of section, again refused to do the work.

Since the complainant held to his refusal, the head of Division IV recommended in a memorandum of 20 March 1992 that the Secretary General suspend him from duty and start disciplinary proceedings against him. On the same day the Secretary General conveyed to the complainant a decision to suspend him from duty with pay and put his case to the Joint Disciplinary Committee.

The Committee was informed of the matter by a "statement of charges" that its chairman forwarded to the complainant in a letter of 2 April 1992. The charges were, first, that he had committed a "professional fault" by leaving work at 8 p.m. on 25 October 1991 without warning his supervisors and before completing a "back-up operation" that went wrong after he had gone; secondly, that his act of gross insubordination on 19 March 1992 had amounted to "disciplinary fault" within the meaning of Article 40(b) of the Staff Regulations.

In its report of 24 June 1992 the Committee recommended that the Secretary General drop the charge of professional fault on 25 October 1991 but punish his repeated insubordination by dismissing him, albeit with notice and payment of termination indemnity. The Secretary General endorsed the recommendation and so informed the complainant in a decision of 2 July 1992 that also relieved him of working during the three months' period of notice and granted him salary until termination took effect, on 5 October 1992. On that date he received his terminal entitlements. By a letter of 24 July he applied for review.

In its report of 28 December 1992 the Joint Appeals Committee held unanimously that his wilful and repeated refusal to perform a task that fell within his duties had been in breach of Article 6(1) of the Staff Rules: "officials in command of departments shall maintain discipline within those departments" and "their subordinates shall respect that discipline". The majority further held that he had committed serious misconduct and that the sanction

was in proportion.

On the strength of that opinion the Secretary General rejected the complainant's application by a decision of 12 January 1993, and that is the decision under challenge.

B. The complainant first submits that the disciplinary procedure was flawed on the grounds that the Organization denied him the right to a hearing: only on 2 April did he learn of the head of Division's memorandum of 20 March 1992 to the Secretary General, and so he was unable to challenge it. Since it was on that memorandum that the Secretary General based his decision, there was breach of Article 6(2) of the Staff Rules.

Secondly, he denies any fault within the meaning of Article 6 and sees evidence of the Administration's bias in its rejection, in January 1992, of his application for a post as operations analyst at grade 5. He submits that the selection process was not impartial and asks for the curricula vitae of the other applicants to be produced together with his individual file and other missing evidence. He contends that the Organization brought up the incident of 25 October 1991 just to "inflate" the one of March 1992, which on its own did not warrant suspension and came about because the head of section had changed his work so radically that it was more like the lower job of an operations technician than a programmer's. As the descriptions show, the two jobs greatly differ. Though appointed as a programmer, over the months he was steadily downgraded. In fact his post disappeared, as is plain from there being no longer any programmers at Interpol.

Thirdly, he submits that the sanction was disproportionate to the offence. Refusal to carry out an additional task is not serious misconduct and the punishment goes beyond what Articles 116(1) and 117(4) of the Staff Rules prescribe.

Lastly, he provides a statement of the total overtime he worked and submits that the Organization did not fully compensate him for it or apply the rate in Article 73(4) of the Rules.

He asks the Tribunal to quash the decision of 20 March 1992; order the Organization to pay him in full the salary he would have received had he not been suspended, plus pay for overtime but less the termination indemnity and his 23 days' paid leave, and to pay its contribution as employer to the social security funds; award him damages for the moral and professional injury caused by his dismissal and costs.

C. The Organization replies that the complaint is devoid of merit. First, it submits that he may not rely on Article 6 of the Rules, the very rule he infringed, which says that though subordinates may comment on instructions they must nonetheless comply.

The Organization did respect his right to a hearing, both before and after the disciplinary proceedings began. That is plain from the interviews he had with his supervisors in March 1992; from the letter the chairman of the Joint Disciplinary Committee wrote to him on 2 April asking for comments on the "statement of charges"; from his own memoranda to the Joint Disciplinary and Appeals Committees; and from the records of the hearings.

What he says about the job descriptions is irrelevant. He may not rely on the description of the post of operations technician since it was written after the material time. In any case it would not have altered his situation since he would have kept his job as programmer had he stayed on in the Organization. Besides, the two jobs do not differ in essence: only the title and the organisation of work were changed, and the purpose was indeed to overcome the difficulties he was making. He is evading the real issue which is his own refusal to perform a task covered by his job description.

He is wrong to make out that the real reason for dismissal was not his serious misconduct but the abolition of his post. His application for the post of operations analyst was treated impartially. Other applicants were better than he and the Organization would be willing to produce the evidence he wants, though it fails to see the point. Quite apart from the issue of qualifications, it would have been ill-advised to promote someone who bore a grudge against the Organization and intended to leave. The Tribunal has in several cases upheld such grounds.

The complainant's insubordination was quite unwarranted and amounted to serious misconduct punishable with dismissal. So held the Joint Disciplinary and Appeals Committees. The Organization gave him three months' notice, and went on paying him in that period even though he had stopped work, and granted him the termination indemnity. So he is mistaken in seeing the sanction as disproportionate.

As to his contention that he was not fully compensated for overtime, he could have challenged the decision of 5 October 1992 settling his entitlements or his last pay slip which stated the amount of overtime compensated. Having challenged neither, he has failed to exhaust the internal means of redress and on that score his complaint is irreceivable. Subsidiarily, it pleads the difficulty of reckoning the exact amount of his overtime two years afterwards. Anyway he has made several mistakes in his calculations.

To pay him the whole of his salary from the date of suspension would be unfair since he was paid throughout the three months of suspension and until 5 October 1992. He also received a termination indemnity and unemployment benefit from French social security and must give credit for them.

D. In his rejoinder the complainant concedes that the task he was asked to perform was part of his job but still contends that his supervisors showed bias and his work was downgraded. He also maintains that the real reason for dismissal was reform of the EDP Section.

He disagrees with the Organization's calculation of his overtime and says that in his letter of 24 July 1992 he could not have challenged the decision settling his entitlements, which he did not get until 5 October. In any case the settlement derived from the decision of 2 July 1992, which was not a final one. He again distinguishes between special and personal working hours and points out that only the latter were mentioned in his letter of acceptance.

The challenged decision is the one of 20 March 1992, of which the other two were mere corollaries.

Lastly, he alleges abuse of authority on the part of the Organization: his personal records - of which he again seeks production - had until then been favourable, and other officials had suffered less severely for the same offence.

E. In its surrejoinder the Organization enlarges on its earlier pleas.

The decision under challenge is the one not of 20 March but of 2 July 1992, whereby on the recommendation of the Joint Disciplinary Committee the Secretary General dropped the charge arising out of the incident of 25 October 1991.

The complainant did show insubordination by refusing a task that was part of his job. Neither his workload nor his rejection for the post of operations analyst in January 1992 warranted his stand. The Organization did not suspend him so that it could do away with his post, and had not anticipated suspending him, as is plain from its enrolling him for expensive training courses.

Despite a mistake in his letter of acceptance there was no doubt that he had special working hours as defined in Article 74 of the Staff Rules and not personal working hours within the meaning of Article 76. As to the matter of overtime his complaint is in any case irreceivable since he failed to exercise his right to challenge within 30 days the settlement of his entitlements.

CONSIDERATIONS:

1. The complainant joined Interpol on 23 November 1989 as a system programmer. He was suspended from duty on 20 March 1992 and after disciplinary proceedings dismissed with three months' notice by a decision of 2 July 1992. He applied for review of that decision but the Joint Appeals Committee recommended upholding the sanction. The Secretary General of theOrganization agreed and therefore rejected his application by a decision of 12 January 1993, which he has duly challenged in this complaint.

2. Before taking up his pleas the Tribunal will sum up the factual background to the disciplinary proceedings. The complainant was responsible for operating, updating and saving computer files and data bases on several systems: IBM, Digital and Wang according to his job description. Early in March 1992 he was told he was to be in charge of a new operation which consisted in transferring data on magnetic tape from an IBM system known as CIS to a new one on Wang, known as ASF, that was being brought in. He refused to comply. The head of the EDP Section was so informed on 12 March and sent a memorandum on 17 March to all his staff setting out the organisation of work and stating just what operations the complainant was in charge of. The memorandum stated that "daily operations for the ASF system consist in transferring name data from the IBM to the Wang 8210 by means of a magnetic tape". The complainant expressed "disagreement" with the memorandum and again refused several times to carry out the exercise. On 19 March the head of Division IV ordered him to do so, saying it would take just a few minutes and, when the complainant again refused, warned that he would be reported to the Secretary General

for disciplinary action. The next day the head of division submitted a detailed report to the Secretary General and summoned the complainant to his office to say that he had recommended suspension from duty. When invited to comment the complainant answered that he had not changed his mind and then he left the office. An hour later he was informed that he was summarily suspended without loss of pay and that disciplinary proceedings were to be brought against him for insubordination and for a "professional fault" committed on 25 October 1991.

3. The case went to the Joint Disciplinary Committee. In the formal statement it put to the Committee Interpol charged the complainant with the offence of leaving work on 25 October 1991 - with serious consequences - before finishing a "back-up operation" and with gross insubordination in March 1992. In its report of 24 June 1992 the Committee held that though the incident of 25 October 1991 had shown negligence it afforded "no grounds for disciplinary action"; but in March 1992 he had been guilty of "wilful and repeated insubordination", had never since shown "the slightest contrition or change of mind" and had offered "unacceptable explanations for his behaviour". It unanimously recommended dismissing him for serious misconduct but letting him have notice and the termination indemnity.

4. The Secretary General agreed in the main: though he withdrew the charges arising out of the incident of 25 October 1991 he took the view that the complainant's insubordination amounted to serious misconduct warranting dismissal.

5. To challenge the sanction the complainant puts forward pleas that relate both to his suspension from duty on 20 March 1992 and to the decision of 2 July 1992 to dismiss him.

6. In his submission the procedure prior to the suspension was flawed in that he was denied due process and was not allowed to see all the evidence on which the Organization based its charges against him. But he is mistaken. The suspension procedure provided for in Article 112 of the Staff Rules must be expeditious if the Organization is to remove quickly someone to be charged with a disciplinary offence. There is no question at that stage of letting the official have all the written evidence on which the charges against him are to rest. All that need be said here is that the complainant was given clear and accurate information about the disciplinary action his behaviour was deemed to warrant. The conclusion is that there was no breach of due process.

7. He dwells at length on the circumstances surrounding the incident of 25 October 1991 in an attempt to show that his behaviour did not warrant disciplinary action. But, as the foregoing account reveals, that particular charge was dropped on the recommendation of the Joint Disciplinary Committee. So Interpol's reliance on it as grounds for the provisional measure of suspension caused him no injury.

8. The nub of his case is in fact not the suspension but the decision of 2 July 1992 to dismiss him.

9. His first plea is that the facts held against him did not amount to serious misconduct. Yet it is plain on the evidence that despite several warnings he acted in breach of Article 6(1) of the Staff Rules:

"Officials in command of departments shall maintain discipline within those departments, and their subordinates shall respect that discipline. Subordinates are entitled to express their views on the work they are given to perform and for which they are answerable to their immediate superiors, it being understood that they must, on the one hand, give those superiors all the information required for taking decisions and, on the other hand, comply with all decisions taken and obey the instructions they receive. ..."

So if he thought his new task outside the ambit of his job description - though the evidence fails to bear that out - he was free to tell his supervisors of his views but not to disregard his duty to "obey the instructions" he had received. His acts of disobedience were undeniably tantamount to misconduct warranting disciplinary action.

10. He then argues that the punishment is out of proportion to any offence he may have committed. Again he is wrong. As the Joint Disciplinary Committee unanimously held, he was guilty of "wilful and repeated insubordination", had never since shown "the slightest contrition or change of mind" and had offered "unacceptable explanations for his behaviour". The conclusion is that in the circumstances there was nothing disproportionate about the sanction.

11. Nor does the complainant succeed in his contention that Interpol's real intent was to abolish his post as system programmer and replace it with one for an operations technician. There is no evidence to bear that out. Even if the Organization did mean to reform its computer service, that afforded no grounds for the complainant's disobedience

let alone for supposing, as he makes out, that such abolition prompted his dismissal.

12. Lastly, he challenges the reckoning and settlement of overtime hours. On that score he has failed to exhaust the internal means of redress that were available to him. Interpol's plea that the claim is irreceivable therefore succeeds.

13. The evidence already filed by the parties suffices for a ruling on the case and there is no need to allow the complainant's application for the production of his personal file. His claims therefore fail in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

(Signed)

William Douglas
P. Pescatore
Michel Gentot
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.