Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

EIGHTY-NINTH SESSION

**Judgment No.
1975**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. S. against the International Criminal Police Organization (Interpol) on 25 May 1999 and corrected on 29 June, Interpol's reply of 30 September, the complainant's rejoinder of 23 November 1999, the Organization's surrejoinder of 20 January 2000, the complainant's further submissions dated 28 February and Interpol's observations of 10 May 2000;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a French national who was born in 1968, entered the service of Interpol on 1 June 1990 as a security guard at grade 10 in the Security Sub-Division of the General Administration Division.

On 9 September 1998, while he was in the Security Centre, the complainant used a paperclip to block the reset button (marked "S22 Acquit") which clears the alarms of the anti-intrusion security system in the General Secretariat. The head of the team on duty that day, Mr P., noted the deactivation and, in a memorandum dated

15 September, reported the incident to the Deputy Head of the Security Group. In a meeting on 22 September with the Deputy Head of General and Social Affairs and the Deputy Head of the Security Group, the complainant admitted the facts and confirmed them in a note of the same day. Also on 22 September, the Deputy Head of the Security Group sent a memorandum to the Director of Administration and Finance requesting the instigation of a disciplinary procedure against the complainant. By a letter of 23 September, the Secretary General informed the complainant of his decision to suspend him from duty with pay as of that date and to refer the matter to the Joint Disciplinary Committee. In its report dated 23 November, that Committee's recommendation, supported by a majority of two of its members, was for a "transfer with downgrading", while the third member proposed "relegation by one step". By a letter of 30 November 1998, the Secretary General informed the complainant of his decision to dismiss him, with notice and termination indemnity. He told him his service would be terminated on 4 March 1999 after a three-month notice period beginning on 4 December 1998.

On 22 December, the complainant appealed against the above decision. In its report of 23 March 1999, the Joint Appeals Committee unanimously recommended the rejection of the appeal. By a letter of 26 March 1999, which is the impugned decision, the Secretary General informed the complainant that his appeal had been rejected.

B. In justification of his act, the complainant explains that the work performed by outside firms at the headquarters of the Organization regularly set off the alarms. On the day of the incident, the firm responsible for maintaining the gardens was using lawnmowers. The use of the lawnmowers and the sharpening of their blades in the basement were setting off the fire alarm, which gives a general evacuation order if an incident is not identified and resolved within a maximum of three minutes. Constant and keen attention and vigilance were therefore required. For this reason, the complainant deactivated the alarm recall buzzer, which did not prejudice the security system, since the mechanisms which set off and clear the alarm were still functioning. He adds that this deactivation was a frequent practice among the security guards.

The complainant contends that, for the sole purpose of making the facts seem more serious than they really were and in order to justify his dismissal, the initial complaint against him and the report containing the charges deliberately exaggerated and misrepresented them. Citing the conclusion of the Joint Disciplinary Committee, according to which “the button in question was only a simple *indicator*, of *secondary importance* in the alarm system”, he says that the alarm was so far from being essential that it had not even been originally planned.

With regard to the examination of the case by the Joint Appeals Committee, the complainant makes three observations. First, it was improper that Mr P., the author of the memorandum of 15 September 1998, represent the Organization during the investigation organised by the Appeals Committee, since it was Mr P. who had made the unfounded accusations against him and was known to be hostile to him. Secondly, the procedure for clearing and resetting the alarms, which is constantly followed, was not described to the investigator of the Committee, who was thereby deliberately misled. Finally, the investigation was not adversarial and was undertaken unbeknown to the complainant. Furthermore, the employee who had assisted him before the Joint Disciplinary Committee was refused access to the site. The complainant asks the Tribunal to order a new investigation and to hear the official in question.

In support of his contention that the sanction imposed upon him is excessive, the complainant refers to the report of the Joint Disciplinary Committee in which the Committee chose, in view of the quality of his work, not to recommend his dismissal. He adds that not only is the above sanction unlawful, but it is all the more abusive in view of the circumstances in which it was imposed. He had to return his badge and was escorted to the exit door of the building in the presence of the whole staff. This was done in such haste that he did not undergo the medical examination on cessation of service provided for by Article 104 of the Staff Rules. In addition to unemployment, the fact that he was unable to find a job caused him substantial moral injury, which has since resulted in psychological problems.

The complainant asks the Tribunal to quash the decision of the Secretary General of 26 March 1999 and order his reinstatement; or, failing that, to find his dismissal unlawful and abusive and, as a consequence, to order the Organization to compensate him for the harm suffered; and to grant him damages totalling not less than 200,000 French francs.

C. The Organization replies that the complainant does not deny the facts, but endeavours to minimise their importance.

It states that because of the highly technical nature of the security system, the Joint Disciplinary Committee's report contained inaccuracies. Consequently, the Committee drew wrong conclusions about the small importance of the button which was unlawfully blocked by the complainant. In support of its argument, Interpol describes the alarm system in detail and the function of the button "S22 Acquit" which, in its view, demonstrates the full value of the button and the danger of unlawfully blocking it. It says that endeavouring to minimise the gravity of the fault by playing down the role of the button which the complainant blocked is not only irrelevant, but also unjustified, since the button in question, which is linked to a "buzzer", acts as an alarm.

Interpol argues that it is of no avail for the complainant to insist on challenging Mr P.'s evidence, because the impugned decision is not based on his evidence, but on an objective analysis of the fault which was committed.

It submits that the complainant's criticisms of the Joint Appeals Committee's examination of the case are unfounded: the technical aspects of the fault committed gave rise to a broad adversarial debate.

As for the proportionality of the sanction, Interpol relies firstly on the aggravating circumstances – the fact that the complainant had forgotten that he had blocked the "S22 Acquit" button – and, secondly, the existence of precedents, since on several occasions the complainant had been accused of not respecting security instructions which, among other measures, had resulted in his being given a written warning on 1 February 1996.

The Organization emphasises that it did indeed take into account the opinion of the Joint Disciplinary Committee in deciding to dismiss the complainant when it awarded him the termination indemnity and three months' notice.

Finally, Interpol contends that it was a mere oversight that the complainant did not undergo the medical examination required on cessation of service.

D. In his rejoinder the complainant challenges Interpol's presentation of the facts. In his view, both the report containing the charges and the procedure followed by the Joint Disciplinary Committee and then the Joint Appeals Committee were based on Mr P.'s evidence and his memorandum of 15 September 1998. He reaffirms that the procedure in these two Committees was not adversarial. Referring to the report of the Joint Disciplinary Committee he refutes the technical explanations provided by Interpol to assess the gravity of his conduct and to justify the sanction imposed. Finally, he reiterates that it was a frequent practice for security guards to deactivate the alarm recall buzzer.

E. In its surrejoinder Interpol considers that the complainant is contradicting himself by citing the recommendation of the Joint Disciplinary Committee in support of his pleas, while at the same time challenging the fact that he did not have an opportunity to be heard by that Committee. It points out that Mr P., in view of his hierarchical level, was not required to assess the gravity of the fault committed by the complainant and that he simply reported the facts. Interpol adds that it would be wrong to treat the complainant's claim that it was a constant practice to deactivate the alarms as mitigating circumstances.

F. In further submissions, the complainant indicates that in April 1999 two other officials of Interpol committed acts identical to those with which he is charged, but that no measures were taken against them.

G. In its final observations, Interpol states that disciplinary measures have been taken against the two officials mentioned by the complainant.

CONSIDERATIONS

1. The complainant, a security guard in the Security Sub-Division of the General Secretariat of Interpol, was dismissed with notice and termination indemnity by a decision of the Secretary General dated 30 November 1998. This decision was taken after consulting the Joint Disciplinary Committee and on the grounds of a serious fault committed by the complainant on 9 September 1998 when he artificially blocked the reset button which clears the alarms of the General Secretariat's anti-intrusion security system. The complainant appealed for the sanction to be reviewed but, by a decision of 26 March 1999, which followed the recommendation of the Joint Disciplinary Committee, the Secretary General rejected the appeal. The Tribunal has before it a receivable complaint seeking the quashing of that decision, the reinstatement of the complainant and compensation for the prejudice he suffered as a result of his dismissal which the complainant says was unlawful and abusive.

2. Before examining the complainant's pleas, the circumstances which led Interpol to initiate a disciplinary procedure against him should be recalled .

3. On 9 September 1998, the complainant was assigned to the Security Centre, where he was supervising all the security systems. Around 9 o'clock in the morning, after a lawnmower had repeatedly set off the alarms, he believed that he was justified in blocking the "S22 Acquit" reset button with a paperclip, thereby deactivating the recall buzzer. He left his post at around 10.30 a.m. without informing the head of the team who replaced him that the buzzer had been deactivated. The head of the team, noting the presence of the paperclip, reactivated the system and immediately phoned through to the complainant to tell him that he "should not have done that type of thing and that he should have made sure he had taken out the paperclip". It was only a few days later, on 15 September 1998, that the head of the team informed his supervisor about the incident. It appears that he revealed it because the complainant had told him that he should keep quiet about it, otherwise the supervisor would be informed that he slept while on duty in the Security Unit in the afternoons.

When he was informed of the incident, the Secretary General of Interpol decided to suspend the complainant and to initiate disciplinary proceedings against him. The report containing the charges, that was submitted to the Joint Disciplinary Committee emphasised that the artificial neutralisation of an alarm was against the procedures in force and was liable to interfere with the proper functioning of the security systems. It also revealed that the complainant had previously received several calls to order which he had ignored and that “the fact of having envisaged incriminating the head of the team to prevent him from informing his supervisor about the incident constituted suspect behaviour”. The report concluded from the nature of the fault, aggravated by precedents, that the employee had committed serious professional misconduct for which a significant sanction should be imposed on him.

4. After a detailed investigation and many meetings, the members of the Joint Disciplinary Committee reached the unanimous opinion that the charges amounted to a disciplinary fault, in view of the complainant’s serious failure to follow security instructions, his negligence in failing to inform the person who took over from him and his inability to justify fully that his action had resulted from overwork. However, the Committee admitted certain attenuating circumstances, and particularly the fact that the blocked button was only an indicator of secondary importance. It considered that the complainant should be given the benefit of the doubt with regard to his alleged “threats” intended to prevent one of his colleagues from reporting him.

In view of these elements, and despite their severe criticism concerning his “very irresponsible approach” and his “lack of professionalism betraying an absence of respect for security instructions and his failure to take his duties seriously”, two members of the Joint Disciplinary Committee recommended that the fault committed by the complainant should be sanctioned by a transfer with downgrading while the third member recommended merely a relegation by one step. The Secretary General did not follow this recommendation. He considered in his decision of 30 November 1998 that the serious fault admitted by the Committee was unjustifiable and that the complainant’s attitude demonstrated his incapacity to follow instructions, which was incompatible with him remaining in the service of Interpol. The Joint Appeals Committee found that the penalty imposed was not disproportionate in view of the charges against the complainant and that Interpol could no longer trust him or continue his engagement as a security guard. It therefore unanimously recommended the dismissal of the complainant’s internal appeal. This recommendation was followed by the Secretary General, whose decision has been referred to the Tribunal.

5. The complainant has several pleas in support of his challenge. Firstly, he contends that the charges against him are incorrect and that Interpol deceived the Joint Appeals Committee after an investigation which was carried out in breach of the principle of adversarial process. Secondly, he submits that the sanction imposed is excessive and not proportionate to the charges against him, particularly since the quality of his work had been found to be satisfactory.

6. On the first point, the lengthy debates in the Committees to which the dispute was referred, as well as in the submissions to the Tribunal, concerning the actual security risks implied by the blockage of an alarm button which is only set off in the event of a new intrusion, in an area already signalled as “under attack”, are not decisive. Yet it is still true that, as argued by Interpol, it is not for employees responsible for security to modify the functioning of the alarm systems disregarding the procedures in force. Employees responsible for ensuring the security of international organisations, especially when, like Interpol, they are located in sensitive sites, have a special duty to be vigilant and cannot set themselves up to judge the utility of any specific device. Moreover, the principle of adversarial process was not breached and the complainant had every opportunity to defend himself before the Joint Disciplinary Committee and the Joint Appeals Committee. If the latter delegated one of its members on 11 February 1999 to examine the functioning of the security system, of which the blocked “S22 Acquit” button forms part, it was with a view to understanding the technical debate which had arisen between Interpol and the complainant and to report back to the Committee. The findings are known to the complainant who challenges their value as proof, and there was no reason to conduct the investigation in the presence of the complainant or his adviser who had every opportunity to describe the manner in which the system operates and to challenge Interpol’s arguments. No new adversarial inquiry is therefore necessary. Finally, although the complainant contends that it is improper for the employee who had reported the incident to be present during this inquiry and says that he made trumped up charges against him, the evidence shows that it was the employee’s duty to report the incident and that his presence in the inquiry carried out by the Joint Appeals Committee was explained by the nature of his functions. Throughout the procedure, the complainant was able to put forward his arguments in his defence and there are no grounds for considering that the principle of adversarial process was not respected, nor that the charges made against the complainant were based on mistaken evidence. In this respect, it may be noted that Interpol withdrew its initial charge that the complainant had used threats against the employee who had discovered the neutralisation of the device to deter him from reporting the incident.

7. On the second plea, the Tribunal finds that the sanction imposed on the complainant, although severe, is not disproportionate. The case law has it (see, for example, Judgment 937, *in re* Fellhauer) that when disciplinary action against an employee is out of all proportion to the offence according to both objective and subjective criteria, there is a mistake of law which warrants setting the impugned decision aside. But in this case Interpol, which has to take special care in ensuring the observance of security rules, rightly considered that anyone found guilty of the flagrant and deliberate violation of the rules concerning the alarm systems cannot continue in its employment. Moreover, the evidence shows that the complainant had previously been the recipient of several remarks and calls to order, as well as a warning, and that he should have been particularly careful to comply with the applicable rules. The complainant believes he can argue that the neutralisation of the buzzer was a common practice and cites cases in which acts similar to those with which he is charged were not punished. But these allegations, for which no proof is provided, are denied by Interpol. Moreover, the fact that other employees engaged in reprehensible practices for which, according to Interpol, disciplinary action was taken against them, does not diminish the complainant's disciplinary responsibility. Interpol's written submissions further show that when this alarm is to be deactivated in cases of breakdown or maintenance, a special procedure has to be followed. Not only did the complainant not report his neutralisation of the alarm, but he also omitted to inform the person who took over from him at the Security Centre. In the circumstances, the fault committed is sufficiently serious to justify dismissal with notice and termination indemnity, which is not the most serious penalty that could have been imposed. The plea of disproportionality must therefore fail and with it the claims for the decision to be set aside, and consequently for damages, since no flaw has been found in the conditions under which the decision was reached. The oversight by the Personnel Department, which omitted to carry out the statutory medical examination, does not affect the lawfulness of the impugned decision.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 19 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

(Signed)

MICHEL GENTOT JEAN-FRANÇOIS EGLI SEYDOU BA

CATHERINE COMTET