

The Administrative Tribunal,

Considering the complaint filed by Mrs Nichola Moya Throup against the International Criminal Police Organization (Interpol) on 19 April 2001, Interpol's reply of 5 June, the complainant's rejoinder of 2 July and the Organization's surrejoinder of 14 August 2001;

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

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 was born in 1955 and is of British nationality. Between 1 July 1996 and 28 February 1998 she was employed by the Interpol General Secretariat in Lyons (France) on several fixed-term contracts. From 1 March 1998 she worked as an administrative assistant on a permanent contract. She tendered her resignation in a memorandum of 30 September 1999 and her contract was terminated on 31 December 1999.

In her memorandum the complainant explained that she had to resign because her husband, who worked for a company in Lyons, had been made redundant and was intending to seek employment in the south of France. She subsequently applied for a compensatory allowance under Interpol's Internal Unemployment Compensation Scheme (IUCS). The Rules on the IUCS are contained in Appendix VIII to the Staff Rules. Article 11(1)(c) of the IUCS Rules states that compensation shall be payable pursuant to "legitimate resignation, particularly where the official concerned resigns in order to accompany a spouse who is obliged to live elsewhere for professional reasons". On 15 December 1999 the complainant provided a copy of her husband's redundancy letter, a statement from her husband notifying his decision to work for a law firm in the south of France and a certified statement by the law firm indicating its intention to offer him employment. On 17 August 2000 she wrote to the Secretary General saying that she had received no response to her request for the compensatory benefit and asking if he could expedite the process. The Secretary General referred the matter to the IUCS Committee.

On 24 August the Committee met to examine her case. Its conclusion was that the documents supplied by the complainant had not shown that her husband was obliged, at the date when she tendered her resignation, to move home because he had "effective employment". It proposed re-examining her case if she produced relevant proof. In a decision of 29 August the Secretary General refused her request to receive the allowance but gave her the opportunity to submit further documentation justifying the change of residence. The documents she submitted were already known to the Committee. In a second meeting, on 25 September, the Committee reaffirmed its earlier finding. By a decision of 6 October 2000 the Secretary General rejected her request to become a beneficiary. The complainant lodged an appeal on 30 October, arguing that she resigned for a "legitimate" reason, which was solely in order to accompany her husband who was obliged to live elsewhere "for professional reasons".

The Joint Appeals Committee issued its opinion on 29 January 2001. It found that there was an element of constraint in her resignation and recommended that it should be regarded as "legitimate". In a decision of 2 March 2001, the new Secretary General confirmed the decision taken by his predecessor and rejected the complainant's appeal. That is the impugned decision.

Unsuccessful attempts were made to reach a settlement by mutual agreement. In a letter of 27 April 2001 the complainant put forward a proposal based on the amount she would have received as a beneficiary under the IUCS.

B. The complainant questions first whether after the appeal stage of the IUCS procedure the Secretary General has the power to overrule the opinion of the Joint Appeals Committee. Its opinion should not be regarded as a

"consultative opinion" that can be ignored, but rather as a "decision" taken under the IUCS Rules. She refers to Article 22(1) of the Rules which reads: "Any decision taken by the Secretary General after consultation of the IUCS Committee may be subject to appeal to the Joint Appeals Committee, or to the Administrative Tribunal ... after all internal means of appeal have been exhausted." Interpol staff, she points out, are not able to contribute to the French state unemployment insurance scheme and affiliation to the IUCS scheme is compulsory. The IUCS is jointly financed by Interpol and its employees. It is therefore unreasonable that the Secretary General should be able to overturn a "decision" made by the Appeals Committee in this type of appeal.

Secondly, the complainant contends that it is clear from the circumstances of her resignation, as set out in the documents she produced and in the report of the Joint Appeals Committee, that she is entitled to benefit under the IUCS.

She seeks the reversal of the Secretary General's decision of 2 March 2000 and asks to be admitted as a beneficiary of the scheme.

C. In its reply the Organization submits that the complaint is unfounded in fact and in law. It says that under the terms of the Staff Regulations and Rules the Secretary General does not have to follow the opinion of the Joint Appeals Committee. The Committee's opinion remains a consultative one. Indeed, Article 153(1) of the Staff Rules clearly states that "the Secretary General shall take into account the consultative opinion communicated to him but shall not be bound by it". The Committee does not have a different role in the case of internal appeals connected with the implementation of the unemployment insurance scheme.

The Organization expresses disagreement with the Joint Appeals Committee's interpretation of the documents produced by the complainant. Those documents do not prove that her husband was obliged to change his place of residence. He had no contractual promise of employment. The complainant did not produce evidence that she had resigned because her husband was obliged to live elsewhere for professional reasons, the condition mentioned in Article 11. Yet, there must be an element of obligation necessitating the change of residence. If that were not so it would distort the meaning of the words "for professional reasons" and would remove the "objective element" from the condition. It would result in a resignation being deemed "legitimate" for reasons deriving from personal convenience.

The Organization points out that in application of Article 50 of the Staff Regulations - on settlements by mutual agreement - the Secretary General proposed that the complainant should be allowed to benefit from the IUCS from the time when her husband did find employment. This would have been to her advantage as normally entitlement to compensation has to be determined on the actual date of resignation, but the complainant did not accept that course of action.

D. In her rejoinder the complainant states that she regards unemployment benefit as a fundamental right. She doubts whether the Secretary General has sole discretion to decide whether a person who has left Interpol is entitled to receive unemployment compensation. She wants to banish any suggestion that her "forced" resignation was considered to be for purely "personal convenience". She says that her initial claim was made in December 1999 and the supporting documents she provided were those requested by the Organization at the time.

Additionally, she queries whether Interpol can apply Article 50 of the Staff Regulations in the settlement of disputes regarding the IUCS scheme, but says it would seem reasonable for it to make a settlement on the basis of the proposal she made in her letter of 27 April 2001, the terms of which still hold.

E. In its surrejoinder the Organization states that the complainant's claim for compensation only dates from 17 August 2000, and she has not supplied proof that she made her claim at an earlier date. It examined the documents that she provided and confined itself to deciding on whether she was eligible to benefit under the IUCS Rules. In coming to his decision the Secretary General gave an objective interpretation of Article 11(1)(c).

Regarding a mutually agreed settlement, the Secretary General made legitimate use of the possibility open to him under Article 50. The complainant cannot appear to contest that such a settlement was allowed and, at the same time, press the proposal made on 27 April. The Organization observes that by pursuing the proceedings before the Tribunal it gave a clear indication that it had rejected her proposal.

CONSIDERATIONS

1. Interpol's Internal Unemployment Compensation Scheme (IUCS) was established to replace the French state unemployment insurance scheme to which Interpol officials do not contribute. The Rules governing the scheme are set out in Appendix VIII of the Staff Rules. Article 11(1)(c) of the IUCS Rules states that:

"(1) Compensation shall be payable pursuant to:

...

(c) legitimate resignation, particularly where the official concerned resigns in order to accompany a spouse who is obliged to live elsewhere for professional reasons."

2. By a memorandum of 30 September 1999 the complainant, who held a permanent contract, tendered her resignation stating that she had to resign due to her husband's loss of employment. She said it was his intention to seek employment in the south of France.

3. The complainant later requested that she should benefit from Article 11(1)(c) of the IUCS Rules. She provided a copy of a letter dated 29 September 1999 in which her husband was informed by his employer that due to reorganisation he would be made redundant; his post of Financial Director would cease to exist. Since he had not chosen to apply for other available posts, with effect from 1 October 1999, he was given three months' notice of termination. The complainant also submitted a document dated 15 December 1999 in which her husband stated that after receiving the notification of his redundancy on 29 September 1999, he had decided to take up work in a lawyer's office in Montpellier and to move to that region, and that that was why he had asked his wife to resign from Interpol. A further statement from the lawyer's office concerned, dated 10 December 1999, certified that the complainant's husband who had undertaken assignments abroad in the past on behalf of the firm was expected to undertake similar activities for their clients in the very near future.

4. The complainant's request was examined by the IUCS Committee under Article 19 of the IUCS Rules. It refused her request on 24 August 2000 on the grounds that she had not furnished adequate proof that at the time when she gave in her notice on 30 September 1999 her husband was obliged to move home because he had effective employment. She was given the opportunity to provide such proof. She resubmitted the same documents. The Committee then re-examined her request but again refused it on 25 September 2000.

5. This was followed by a decision of the Secretary General dated 6 October 2000 refusing the request on the grounds that the proof furnished was not sufficient to show that her husband, at the time she gave in her notice, was obliged to change his residence because he had effective employment. The matter went before the Joint Appeals Committee. In its opinion, dated 29 January 2001, it found that the interpretation made by the Organization of "effective employment" was too restrictive and that the statement from the lawyer's office was equivalent to an offer of employment which justified a change of residence. It recommended that her resignation be considered legitimate.

6. The Secretary General did not share this view. He decided on 2 March 2001 to reject her appeal on the ground that her resignation did not count as a "legitimate" resignation. He said that the statement from the lawyer concerned a hypothetical situation and in the absence of the essential elements of an employment contract, it did not equate to an offer of employment. He also stated that if the complainant's husband chose to change his place of residence for professional reasons, it was not because he was under any obligation to do so. Yet the requirement "for professional reasons", contained in Article 11, would lose all meaning if a resignation was deemed "legitimate" under that article in the absence of any obligation to change residence.

7. The complainant impugns the decision of 2 March. She advances two arguments:

(1) That the Secretary General is not entitled to disregard the opinion of the Joint Appeals Committee. She submits that considering the wording of Article 22 of the IUCS Rules the "decision" of the Joint Appeals Committee should be considered final.

(2) That, as set out in the opinion of the Joint Appeals Committee, she is entitled to be admitted as a beneficiary of the IUCS.

8. With regard to her first argument, the complainant is mistaken. Article 22(1) provides:

"Any decision taken by the Secretary General after consultation of the IUCS Committee may be subject to appeal to the Joint Appeals Committee, or to the Administrative Tribunal of the International Labour Organization (ILO) after all internal means of appeal have been exhausted."

9. The role of the Joint Appeals Committee is to provide a consultative opinion to the Secretary General. Article 153(1) of the Staff Rules states in part that:

"When making his decision, the Secretary General shall take into account the consultative opinion communicated to him but shall not be bound by it."

10. The purpose of Article 22 of the IUCS Rules is to refer back to the standard appeals procedure under which the Secretary General, after considering the consultative opinion of the Joint Appeals Committee, makes a final decision which can then be appealed to the Administrative Tribunal.

11. With regard to her claim to become a beneficiary under the IUCS, her resignation from Interpol would first have to be deemed "legitimate" in terms of Article 11(1)(c).

12. The Secretary General took the view, which was also shared by the IUCS Committee, that there must be an obligation on the official's spouse to move for professional reasons. The Tribunal agrees with this reasoning. The complainant's husband certainly chose to move, but this fell short of an obligation. The statement provided by the law firm did not amount to an offer of employment. When she submitted her resignation her husband was not obliged to move anywhere and therefore her resignation cannot be considered legitimate within the meaning of Article 11(1)(c) of the IUCS Rules.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2001, Miss Mella Carroll, Vice-President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 30 January 2002.

Mella Carroll

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet