

116th Session

Judgment No. 3245

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms N.A. Z. against the International Criminal Police Organization (Interpol) on 23 January 2012 and corrected on 2 February, Interpol's reply of 6 March, the complainant's rejoinder of 22 March and the Organization's letter of 19 April 2012 informing the Registrar that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant joined Interpol in 2007. On 26 February 2009 she was offered a 28-month appointment as Project Manager for the TACIS Central Asia project, commencing on 1 March 2009, which she accepted.

In June 2011 the complainant reported to the Director of Administration what she considered to be inappropriate behaviour on the part of her line manager, who was responsible for managing the project budget, and violations of rules concerning the use of donors'

funds. He replied that he would review the matter and decide on the course of action to be taken. The complainant's contract expired on 30 June 2011.

On 10 November 2011 she wrote to the Director of Administration alleging "mistreatment" during the period 1 January to 30 June 2011. She explained that the situation had started to deteriorate in April or May 2010 when her line manager had "forced" her to recruit one of his friends as a Project Assistant. The line manager and the Assistant had then acted in violation of applicable rules, in particular those concerning leave and participation to missions. She had reported the matter to the Human Resources Department and to a senior officer in Interpol and an internal audit had been conducted, after which the line manager had been transferred to another department. Around the same time she had completed her project, but she had been given no tasks to perform as from 1 January 2011. She had complained about the situation and had been told that she would be given new assignments in the near future, but nothing had been done before her appointment expired. She added that when she had reported that the funds allocated to the project budget for Central Asia were being misused by her line manager, no action had been taken. Given that she had been the manager of the project concerned she felt she had to protect her good name vis-à-vis donors and her career prospects, and to alert donors to the mismanagement of funds. She was therefore considering referring the matter to the Tribunal or contacting the media, unless Interpol acknowledged that her case had not been handled properly and that she had suffered moral and physical damage as a result of "mistreatment". Her legal representative then enquired whether an extrajudicial settlement might be reached.

By an e-mail of 25 November 2011 the Director of Administration informed the complainant's legal representative that the Organization considered that there was no reason to enter into negotiations with the complainant because her allegations were unfounded. He added that Interpol would provide the complainant with a positive reference

accurately describing her good work record if need be. That is the impugned decision.

B. The complainant contends that she was given no meaningful duties between 1 January and 30 June 2011, in retaliation for having reported her line manager's mismanagement of the project, and for having provided evidence of his fraudulent behaviour during the internal audit investigation, despite the fact that she had been instructed by higher management not to do so. She also submits that she was not offered further employment opportunities with Interpol despite the promises made to her. She alleges that she suffered and is still suffering moral and material damages as a result of the Organization's mistreatment and the fact she was not offered further employment. She adds that she is still suffering from a long-term illness which she contracted while on mission to Tajikistan in 2009. She contends that her illness might negatively impact her future employment possibilities, which might also be limited if Interpol does not provide her with a positive work reference.

The complainant asks the Tribunal to award her moral and material damages in an amount equivalent to five years' gross pay, calculated on the basis of her last full month's salary at Interpol. She also claims costs and asks for oral proceedings.

C. In its reply the Organization contends that the complaint is irreceivable on two grounds. First, there is no individual decision adversely affecting the complainant or violating her terms of appointment or the provisions of the Staff Regulations and Staff Rules. Second, the complainant has failed to exhaust internal means of redress. Indeed, she has not initiated an internal appeal, following the rules set out in Staff Regulation 13.2. In particular, she did not submit a request for review of a decision adversely affecting her to the Secretary General.

Interpol adds that, in any event, it was under no obligation to negotiate a settlement agreement. Indeed, Staff Regulation 13.5

provides that the Secretary General has full discretion in concluding a mutually agreed settlement designed at ending a disagreement.

D. In her rejoinder the complainant maintains her position. She emphasises that she abstained from initiating a formal appeal because she mistakenly believed that the Organization would honour its promises of further employment.

CONSIDERATIONS

1. The complainant was an official of Interpol. On 23 January 2012 she lodged, through her legal representative, a complaint with this Tribunal. The impugned decision was identified in her complaint as a decision of 25 November 2011. In the complaint, the complainant sought damages for injury and other damages not specifically described equivalent to five years' gross pay. She also applied for oral proceedings but, considering that it is sufficiently informed by the parties' pleadings and their annexes, the Tribunal disallows the complainant's application.

2. In her brief, the complainant recounted her employment history, in a summary way, at the Interpol General Secretariat in Lyon, commencing in 2007. During 2010 (and since March 2009) she had been a Head of Branch administering an EU-funded project in Central Asia. The project concluded on 31 December 2010. An incident occurred in mid-2010 when the complainant was requested, by her line manager, to recruit a woman and did so with the employment commencing on 1 June 2010. However implicit in the complainant's submissions in her brief, the recruitment of this woman was inappropriate and irregular. According to the complainant, it involved fraud. Indeed, the complainant reported this incident to the Human Resources Department and a more senior officer in Interpol. It appears that this resulted in an internal audit that concluded in a report, according to the complainant, which was finalised by Christmas 2010.

3. The complainant said she received no meaningful work between 1 January and 30 June 2011. This was a matter about which she made a written complaint in February 2011. During this period she met periodically with more senior officers and discussed other work she might do. While it is not entirely clear from the complainant's brief, it appears that her contract with Interpol concluded on 30 June 2011. That is certainly what is stated in a decision dated 26 February 2009 appointing the complainant to the position she held administering the project in Central Asia.

4. The impugned decision (of 25 November 2011) is said to be evidenced by an e-mail of that date from the Director of Administration to the complainant's legal representative. In the e-mail the Director says:

"I thank you for your e-mail. After careful review of the request of [the complainant] and the arguments she raises in her note, the Organization considers it has no reason to enter into a negotiation with [the complainant]."

5. The e-mail referred to in the quotation above is probably the one sent by the legal representative on 10 November 2011 to the Director of Administration. That e-mail contained the legal representative's enquiry as to whether an extrajudicial settlement could be reached.

6. In its reply, Interpol characterised the impugned decision as one not to enter negotiations in order to reach an extrajudicial settlement in relation to damages the complainant alleged she had suffered from January to June 2011. The complainant did not, at least expressly or directly, challenge this characterisation in her rejoinder.

7. Interpol argued in its reply that, on the assumption that the e-mail of 25 November 2011 constituted a final decision for the purposes of Article VII of the Tribunal's Statute (an assumption Interpol disputes), the complainant had not, as that Article requires, exhausted internal remedies. Reference was made to Staff Regulation 13.1 that provided for internal appeals, though such an

appeal must be made within 60 days of notification of the challenged decision.

8. It is difficult to see how the e-mail of 25 November 2011 constituted a final decision, for the purposes of Article VII, which had a legal effect on the complainant. While the Tribunal does not approach this question of whether there has been a final decision with undue formalism (see Judgment 3141, consideration 21), in the present case the e-mail constituted no more than a refusal to enter into settlement negotiations. Therefore, it cannot be viewed as a final administrative decision for the purposes of Article VII of the Tribunal's Statute. Moreover, it is clear that even if there had been a final decision, the complainant had not, as the Staff Regulations and Staff Rules provided, sought to appeal that decision. The complainant has thus not exhausted the internal remedies. The complaint is not receivable.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 1 November 2013, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Giuseppe Barbagallo
Dolores M. Hansen
Michael F. Moore
Catherine Comtet