

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

A. (No. 4)

v.

Interpol

136th Session

Judgment No. 4658

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr H. A. against the International Criminal Police Organization (Interpol) on 11 May 2020 and corrected on 11 June, Interpol's reply of 29 October 2020, the complainant's rejoinder of 3 February 2021 and Interpol's surrejoinder of 12 March 2021;

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

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

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

The complainant challenges his suspension with pay during disciplinary proceedings against him.

Facts relevant to this case are to be found in Judgment 4659, also delivered in public this day, concerning the complainant's fifth complaint, in which he challenges the decision to dismiss him for serious misconduct following the disciplinary proceedings in question. Suffice it to recall that the complainant was charged with having threatened a colleague and a preliminary inquiry was opened. At the end of that inquiry, the investigators drew up a report in which they concluded that the allegations against the complainant were supported by sufficient

evidence and recommended that disciplinary proceedings be initiated against him.

On 12 April 2018 the complainant received a copy of the Secretary General's decision to institute disciplinary proceedings and the decision dated 3 April 2018 to suspend him from duty with pay under Staff Rule 12.2.2(2). The decision stated that this measure had been taken at the request of his hierarchy owing to "[l]oss of confidence; [c]oncern for smooth functioning of the Organization". The decision also stated that the suspension was not a disciplinary measure, that it would be re-examined after two months and that it would last for a maximum period of four months or until such time as the Joint Disciplinary Committee handed down its opinion, whichever occurred first.

On 11 June 2018 the complainant lodged an internal appeal against the decision of 3 April 2018 to suspend him.

The Secretary General extended the suspension for the first time on 8 August 2018, until 17 October 2018, unless the Joint Disciplinary Committee issued its opinion before that date. On 11 October 2018, as that opinion had not yet been issued, the Secretary General extended the suspension for a second time, until 17 December 2018, unless the Joint Disciplinary Committee issued its opinion before that date. On 20 September and 17 October 2018, the complainant lodged two further internal appeals against the extension decisions of 8 August and 11 October 2018.

By a letter dated 13 December 2018, the Secretary General notified the complainant that he was extending the suspension until 24 December 2018.

On 24 December 2018 the Secretary General decided to dismiss the complainant. The latter filed a fourth internal appeal against that decision on 15 February 2019, which was joined to his three appeals concerning his suspension.

On 10 December 2019 the Joint Appeals Committee recommended that the Secretary General reject the complainant's four internal appeals. On 6 February 2020 the Secretary General notified the complainant that, having reviewed the Committee's opinion, he had decided to reject

his appeals insofar as they concerned his suspension. That is the impugned decision, insofar as it relates to the complainant's suspension.

In his fourth complaint the complainant asks the Tribunal to set aside the impugned decision to the extent that it confirms his suspension and the suspension decisions of 3 April, 8 August and 11 October 2018. He claims full compensation for the injury he considers he has suffered, which he assesses at 50,000 euros at least. He also seeks exemplary or punitive damages in the amount of at least 30,000 euros. Lastly, he seeks a fair award of costs.

Interpol requests the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The complainant seeks an order setting aside both the decision to suspend him during the disciplinary proceedings against him and the various decisions extending that measure.

2. As the Tribunal has stated on a number of occasions, a measure of suspension decided in the context of disciplinary proceedings, with or without pay, is an interim measure which in no way prejudices the decision to be taken on the merits as to whether a disciplinary sanction should be imposed on the official concerned. However, since it imposes a constraint on the official, it must be legally founded, justified by the requirements of the organisation and in accordance with the principle of proportionality. A measure of suspension will not be ordered except in cases of misconduct (see, in particular, Judgments 4519, consideration 2, 3035, consideration 10, and 2365, consideration 4(a)). Such a decision lies at the discretion of the organisation's executive head. It is subject therefore to only limited review by the Tribunal and will not be set aside unless it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the evidence (see, in particular, Judgments 4586,

consideration 8, 4519, consideration 2, 4452, consideration 7, 3037, consideration 9, 3035, consideration 10, 2698, consideration 9, and 2365, consideration 4(a)). In order to assess whether a measure of suspension is lawful, the Tribunal must determine whether the conditions required to take such a measure were met at the time it was ordered, all subsequent facts being irrelevant (see, in particular, Judgments 3036, consideration 13, 3035, consideration 12, and 2365, consideration 4(c)). Where a measure of suspension has been extended, the Tribunal must also determine whether the conditions for each extension decision were met at the time that decision was taken (see, in particular, Judgment 4586, consideration 10). Lastly, while an authority may adopt a measure of suspension if it considers, on the basis of the evidence before it and at its own discretion, that the charge of misconduct against an official is reasonable, there is no need at this stage to prove that the accusations are well founded (see, in particular, Judgments 3036, consideration 13, 3035, consideration 14(a), and 2698, consideration 11).

3. With regard to the Secretary General's power to suspend the complainant for the duration of the disciplinary proceedings, the following relevant provisions of the Staff Rules should be taken into account:

- under Staff Rule 12.2.2(2), when a charge of misconduct or serious misconduct is made against an official and if the Secretary General considers that the charges are well founded and that the official's continuance in office pending the results of an inquiry might be prejudicial to the service, the Secretary General may suspend her or him from duty during the inquiry of the charges against him and pending completion of disciplinary proceedings, after giving her or him the opportunity to be heard;
- under Staff Rule 12.2.2(3), the suspension is without prejudice to the rights of the official and does not constitute a disciplinary measure; the suspended official continues to receive her or his pay unless the Secretary General considers that the charges of misconduct against the official concerned may justify her or his dismissal or summary dismissal;

- under Staff Rule 12.2.2(4), the Secretary General must notify in writing the official concerned of the decision to suspend her or him. The decision must state the reasons for the decision and its probable duration;
- under Staff Rule 12.2.2(5), suspension is normally for a maximum of four months, except where the Joint Disciplinary Committee has been asked for its opinion in the matter and considers that an additional inquiry is necessary, or pending the result of criminal proceedings;
- under the same provision, a measure of suspension must be re-examined after two months.

4. Among the many pleas entered by the complainant, there are three that are decisive for the outcome of this dispute.

5. Firstly, the Tribunal notes that, as the complainant states, he was not given the opportunity to be heard prior to the Secretary General's decision to suspend him with pay. The complainant's hearing by the two officials in charge of the preliminary inquiry cannot be considered as granting an "opportunity to be heard" within the meaning of aforementioned Staff Rule 12.2.2(2). It is clear that, at the hearing, the complainant was unaware that he was liable to be suspended and he was unable to be properly heard regarding the appropriacy of that measure. There was therefore an obvious breach of the aforementioned Staff Rule.

6. Secondly, the complainant submits that the decision of 3 April 2018 to suspend him and its various extensions did not state adequate reasons in that they did not really enlighten him as to what had led the Secretary General to take those decisions.

The Tribunal recalls that, pursuant to aforementioned Staff Rule 12.2.2(4), the Secretary General's decision to suspend an official must state the reasons for that decision. In any event, precedent has it that any administrative decision, even when the authority exercises discretionary power, must be based on valid grounds (see, for example,

Judgments 4437, consideration 19, and 4108, consideration 3; see, concerning particularly the obligation to provide reasons for a measure of suspension, Judgment 4455, consideration 11).

In the present case, the following reasons were stated for the measure of suspension decided on 3 April 2018: “[...] your hierarchy has requested, pursuant to Staff Rule 12.2.2(2), that you be suspended from service pending the outcome of any disciplinary proceeding. The reasons provided are as follows: Loss of confidence; Concern for smooth functioning of the Organization”. The Tribunal observes that the two reasons given are not further explained in the Secretary General’s confidential memorandum of 26 March 2018 informing the complainant of the charges against him. Nor is there any evidence in the file of the request made by his hierarchy, with the result that the Tribunal cannot identify who made the request or determine the specific facts underpinning those two reasons. This is all the more problematic given that, even before the internal complaint had been lodged against him, the complainant had been heard by his immediate superior in the presence of the person who lodged the complaint and that, at that point, his superior had not deemed it necessary to take any further action, as he felt that he was dealing with a dispute between schoolchildren. Furthermore, at his hearing before the Joint Appeals Committee on 17 July 2019, the same superior stated the following about the two reasons why the complainant had been suspended: “I do not know the extent of what has been established by the inquiries, but from what I heard when I met the two [members of staff] and from the discussions I was able to have with project managers who had been in contact with the countries in the MENA region [countries in the Middle East and North Africa region], as well as with [members of staff] who had worked with [the complainant], I believe that the precautionary measures were such as to preserve the integrity of the work carried out by my department and by the Organization and that they ensured that everything ran smoothly”. In such circumstances, the Tribunal is of the view that the reasoning given for the suspension decision of 3 April 2018 is a generic formula which, in the absence of any other explanation, is meaningless. Accordingly, adequate reasons were not given for the

decision and there was an obvious breach of Staff Rule 12.2.2(4) in this case.

7. Thirdly, the complainant, referring to aforementioned Staff Rule 12.2.2(5), also criticises the Organization for not having re-examined the measure of suspension decided on 3 April 2018 after two months.

The Tribunal notes that, even though the measure of suspension was decided on 3 April 2018 for a maximum period of four months or until the Joint Disciplinary Committee had delivered its opinion if it were to do so before that date, as permitted by aforementioned Staff Rule 12.2.2(5), the same provision nonetheless required the Organization to reconsider on its own initiative after two months whether the measure initially decided ought to be ended. However, there is nothing in the file that allows the Tribunal to find that the Organization did so, and Interpol refrains from addressing this issue in its submissions.

It must therefore also be found that the obligation to re-examine the measure of suspension after two months was not complied with, and that this constitutes a breach of Staff Rule 12.2.2(5).

8. The three blatant flaws that have been identified in considerations 5 to 7 above are sufficient for the Tribunal to find that the measure of suspension decided on 3 April 2018 and the various decisions to extend it must be set aside, without there being any need to rule on the other pleas entered against them.

9. The complainant seeks an award of damages, which he assesses at “at least 50,000 euros” under all heads.

The Tribunal notes firstly that the complainant continued to receive his salary throughout his period of suspension, so he did not suffer any material injury.

As regards moral injury, the Tribunal considers that the complainant’s suspension was in itself liable to cause serious damage to his professional reputation and to make him feel humiliated. In the particular circumstances

of the case, the complainant has suffered moral injury that will be fairly redressed by awarding him damages of 5,000 euros on this account.

10. By contrast, despite the conspicuous nature of some of the defects identified, there are no grounds to accept the complainant's claim for exemplary or punitive damages. An award of such damages is only warranted in exceptional circumstances, which are not evident in this case.

11. As the complainant succeeds, he is entitled to costs, which the Tribunal sets at 8,000 euros.

DECISION

For the above reasons,

1. The measure of suspension decided by the Secretary General of Interpol on 3 April 2018, and the various decisions to extend it adopted on 8 August, 11 October and 13 December 2018, as well as the decision of 6 February 2020 insofar as it concerned the complainant's suspension, are set aside.
2. Interpol shall pay the complainant moral damages in the amount of 5,000 euros.
3. The Organization shall pay him costs in the amount of 8,000 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 1 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ