

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

H. (No. 3)

v.

Interpol

138th Session

Judgment No.4844

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr R. H. against the International Criminal Police Organization (Interpol) on 29 November 2021 and corrected on 19 December, Interpol's reply of 27 April 2022, the complainant's rejoinder of 2 August 2022 and Interpol's surrejoinder of 28 October 2022;

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 the decision to suppress his post.

The complainant joined Interpol in February 2012 as a web content editor under a short-term contract which was subsequently renewed. With effect from 1 October 2012, he was appointed as a marketing and video production editor at grade 5 in the Communications Office, under an externally-funded fixed-term contract.

By letter of 25 February 2016, the complainant was informed that, the external funding having come to an end, his appointment would terminate on the expiry of three months' notice as a decision had been made on 16 November 2015 to suppress his post. He therefore separated from service on 3 June 2016. However, on 22 August 2016 he was

reintegrated in his post, again under a fixed-term contract, which, following several extensions, was due to expire on 31 January 2020. That appointment fell within the Organization's ordinary budget from 2017 onwards.

On 11 June 2019 the Secretary General approved a new strategy for the management of Interpol's resources, including a new communications strategy, which involved restructuring the Communications Office and specifically underlined the need to outsource certain activities. The objective was to improve efficiency of the communications process and timely delivery within the allocated budget. Staff meetings were then held, invitations to tender drawn up and an internal audit of the Communications Office carried out in September 2019. Out of around twenty posts in the Office, five were eventually suppressed as a result of this outsourcing strategy, including the complainant's post.

By letter of 28 November 2019, the complainant was informed that his post was suppressed with immediate effect following the reorganisation of the Communications Office which had led to the outsourcing of some of his duties. The letter also stated that, in accordance with Staff Regulation 11.1(4), the Administration would undertake efforts to reassign him to a vacant post consistent with his qualifications and experience within three months from the date of notification of the post suppression, that he would be entitled to priority consideration of his application and that, if he could not be reassigned within that period, his appointment would be terminated on two months' notice.

On 27 January 2020 the complainant lodged an internal appeal, claiming that the outsourcing of his activities and subsequent suppression of his post was a "pretext [...] to get rid of [him]" and requesting the withdrawal of the decision of 28 November 2019 and compensation for the harm he alleged to have suffered. On 31 January he was asked to complete his internal appeal by providing a written summary of the reasons, as required by Staff Rule 13.1.2, within five working days. In addition, he was informed that same day that his contract of appointment would be extended until 29 February to comply with the three-month reassignment period referred to in the letter of

28 November 2019. On 7 February 2020 the complainant confirmed that his internal appeal was complete, following which, on 11 February, the Secretary General – who considered the appeal to be receivable – forwarded it to the Joint Appeals Committee.

By letter of 2 March 2020, the complainant was notified of the decision to terminate his contract of appointment on the grounds that it had not been possible to identify a suitable vacant post by the end of the reassignment process. The letter stated that he was entitled to two months' notice together with an indemnity on termination of appointment and that he was exempted from performing his duties with effect from 4 March 2020 and throughout the notice period. On 7 April 2020, having discovered that one of his colleagues had been transferred to the post of planning officer at grade 5 in the Communications Office, he lodged an internal appeal against the transfer decision, claiming that he should have been given priority in being reassigned to that post. The outcome of that internal appeal gave rise to his second complaint before the Tribunal, which is the subject of Judgment 4843, also delivered in public this day.

On 30 April 2020 the complainant lodged a new internal appeal against the decision of 2 March 2020 to terminate his appointment. The appeal was referred to the Joint Appeals Committee, which, on 22 June, informed the complainant of the composition of the Committee and of his right to object to two members, and invited him to supplement his internal appeal. The Committee also informed him that it had decided to join that appeal with the appeal of 27 January 2020 in order for the two cases to be dealt with together, in accordance with Staff Rule 10.3.4. On 24 June 2020 the complainant requested compensation for what he regarded as the unreasonable delay in handling his case and objected to the joinder of his internal appeals. The Committee confirmed its composition on 26 June and explained its decision to join the appeals. On 30 June the complainant raised new procedural objections, in particular to the composition of the Committee. On 7 July he was provided with certain clarifications and was informed that one member of the Committee was going to be replaced.

In its single opinion of 29 December 2020 - communicated to the complainant on 4 January 2021 - the Joint Appeals Committee, having extended the deadline several times to allow the parties to make their submissions, recommended that the appeals be dismissed and, therefore, that the decisions to suppress the complainant's post and terminate his appointment be upheld. However, the Committee considered that the complainant should be compensated for the multiple procedural errors committed by the Organization during the appeal procedure, for its failure to respond to the Committee's request for documents and for the lack of sufficient evidence of its attempts to reassign the complainant within the prescribed three-month period. Between January and June 2021, the complainant enquired about the progress of the procedure. He was told that the final decision would be communicated to him within a reasonable period. On 28 July 2021, having gathered further information on the efforts made by the Organization to reassign the complainant, the Secretary General gave the latter the opportunity to submit his observations thereon, which, however, he failed to do. On 1 September 2021 the complainant was notified of the Secretary General's decision, dated 31 August 2021, to follow the Joint Appeals Committee's recommendation to dismiss his appeals. The Secretary General stated that he agreed with the findings that the procedures for suppressing the complainant's post and terminating his appointment had been correctly followed, but he considered that none of the grounds on which the Committee had found an award of compensation to the complainant to be warranted was in fact substantiated. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, together with the decision of 28 November 2019 to suppress his post, to order redress for the injury he considers he has suffered, which he assesses as at least 45,000 euros, and to award him costs of 7,000 euros.

Interpol asks that the complaint be dismissed in its entirety as unfounded.

CONSIDERATIONS

1. In the present complaint, the complainant seeks the setting aside of the impugned decision of 31 August 2021, notified on 1 September 2021, and also of the decision of 28 November 2019, to the extent that both decisions had the effect of suppressing his post. By another complaint, his fourth, which is the subject of Judgment 4845, also delivered in public this day, he seeks the setting aside of the decisions of 2 March 2020 and 31 August 2021 concerning the termination of his fixed-term appointment.

2. In its reply, the Organization asks the Tribunal to order the joinder of these two complaints, on the grounds that the two internal appeals lodged by the complainant against the initial decisions of 28 November 2019 and 2 March 2020 were joined by order of the Joint Appeals Committee, that the two complaints are “inseparably” linked and that joining them would allow savings to be made on the management costs that would be incurred if the Tribunal were to deal with the cases separately.

The complainant states that he is strongly opposed to this request for joinder, contending in particular that, “in advocating a joinder of cases before the Tribunal on economic grounds”, the Organization breaches its own rules concerning the joinder of internal appeals, causes delays to the appeal procedure and adversely affects the right of appeal, both administrative and contentious, by making the conditions for the exercise of that right more stringent.

The Tribunal recalls its case law, according to which, in principle, the touchstone for the joinder of complaints is that they involve the same or similar questions of fact and law, and it is not sufficient that they stem from the same continuum of events (see Judgment 4753, consideration 6). Recently, the Tribunal has specifically stated that the cost of judgments is an irrelevant consideration in that regard (see Judgment 4822, consideration 4).

In the present case, the Tribunal acknowledges that there is a certain connection between the decision to suppress the complainant's post, following the restructuring of the Communications Office, and the decision to terminate his appointment when it was not possible to reassign him thereafter. However, the decisions in question are different in nature, the legal context for each is, in part, individual, and the fundamental issues raised are different. It must also be noted that the two decisions are not entirely interdependent, since a measure taken to suppress a post could be followed by a reassignment decision, the outcome of which would be completely different from a termination of appointment. It is irrelevant in this respect that the Joint Appeals Committee, acting within its own prerogative, considered it appropriate to join the two internal appeals that had been referred to it.

For these reasons, the Tribunal will not order that the two complaints be joined in the light of the aforementioned case law.

3. The Tribunal has consistently held that a decision concerning the restructuring of an international organisation's services, including one involving the abolition of a post, lies at the discretion of the executive head of the organisation and is therefore subject to only limited review. The Tribunal must verify whether this decision was taken in accordance with the rules on competence, form or procedure, whether it involves an error of fact or law, whether it constituted misuse of authority, whether it failed to take account of material facts or whether it draws clearly incorrect conclusions from the evidence (see, for example, Judgments 4139, consideration 2, 4099, consideration 3, 3582, consideration 6, 2933, consideration 10, 2510, consideration 10, and 1131, consideration 5).

One of the various pleas raised by the complainant against the decision of 28 November 2019 to suppress his post, which falls within the scope of the Tribunal's limited power of review, is decisive for the outcome of the dispute. The plea in question is that the author of that decision had no authority to take it.

4. The complainant submits that the decision to suppress his post, which fell within the remit of the Secretary General's competence, was taken by the Director of Human Resources Management, to whom the relevant authority had not been delegated.

In its reply, the Organization asserts that the decision in question formed part of the general resources management strategy approved by the Secretary General on 11 June 2019 and makes reference to Staff Instruction No. 2012.31 of 1 November 2012 which, according to the Organization, delegated to the Director of Human Resources Management the power to take such a measure. It adds that the basis for the decision to suppress the post was subparagraph 3(d) of Staff Regulation 11.1 governing termination of appointment. In its surrejoinder, Interpol submits that the Staff Manual does not dissociate the decision to suppress the post from the decision to terminate the appointment.

5. The Tribunal considers it clear from the evidence that the argument that prior authority had been granted by the Secretary General on 11 June 2019 must fail. On that date, the Secretary General simply approved a communication relating to the new general resources management strategy, which provided, in particular, for the restructuring of the Communications Office. The only mention in that communication of any outsourcing was the following: "Where possible, we will look to outsource part of the communications process in order to maximize efficiency and ensure on-time and on-budget delivery".

It does not appear from that mention that any posts that would need to be subsequently suppressed, such as the complainant's post, had already been specifically identified at that stage, and it therefore cannot be said that, in approving the communication in question, the Secretary General had decided to suppress the complainant's post.

In fact, following that communication, a whole process – including meetings and an audit – was set up to identify the posts to be suppressed, and it was at the end of that process that the decision was taken to suppress the complainant's post.

The Tribunal notes that Interpol does not claim that the Secretary General took any decision after 11 June 2019 concerning the suppression of the complainant's post. On the contrary, the Organization asserts that it was the Director of Human Resources Management who took that decision on the basis of the aforementioned Staff Instruction No. 2012.31, as is expressly confirmed by the wording of the decision of 28 November 2019. It is apparent from that Staff Instruction that the Director of Human Resources Management had delegated power to take a "[d]ecision to terminate the appointment of an official because his post has been suppressed", which did not include the actual decision to suppress the post.

6. Interpol maintains that the distinction between the decision to suppress the post and the subsequent decision to terminate the appointment following this suppression is artificial. It argues that the Staff Manual does not provide for suppression of post independently of the termination of appointment because the two measures have a common legal basis, namely Staff Regulation 11.1(3)(d); it is for this reason that the contested decision of 28 November 2019 and the delegation of power conferred by the aforementioned Staff Instruction No. 2012.31 both refer to that provision.

However, the Tribunal notes that, as already stated above, Staff Regulation 11.1(3)(d), to which Staff Instruction No. 2012.31 refers, only concerns termination of appointment following the suppression of a post, and not the suppression of the post itself. Those are two separate decisions, one of which does not necessarily lead to the other, and which, in principle, do not take place simultaneously.

Admittedly, nothing in the Staff Manual expressly specifies the authority competent to decide, prior to a termination of appointment, to suppress a post with the likelihood that a termination of appointment will ensue. However, it is clear that this authority can only be, in the absence of an express delegation of power to that effect, the Secretary General himself, by virtue of the general authority conferred upon him as the executive head of the Organization.

7. In the present case, it must be noted that Interpol has not been able to produce before the Tribunal a delegation of power to the Director of Human Resources Management enabling her to take the decision of 28 November 2019.

It follows from the foregoing that the decision of the Director of Human Resources Management of 28 November 2019 and, consequently, the decision of the Secretary General of 31 August 2021 must be set aside for that reason.

8. To the extent that the decision to suppress the post did not, in itself, bring about the termination of appointment, the Tribunal will not award material damages for that setting aside.

9. With regard to moral injury, the complainant argues, convincingly in the Tribunal's view, that the announcement of the suppression of his post came as a shock to him and that he felt "alarmed [...] and anxious due to the deep uncertainty surrounding his job and his livelihood".

The Tribunal considers that the decision was indeed such as to cause the complainant moral injury, which must be redressed by ordering the Organization to pay him compensation of 5,000 euros.

10. In the circumstances, there is no need to rule on the other pleas raised against the impugned decision, none of which would lead to an increase in the amount of damages awarded.

11. Lastly, the complainant complains that the internal appeal procedure lasted nineteen months, which was "totally excessive" in view of the circumstances of the case. He assesses the resulting moral injury suffered in the sum of 10,000 euros.

It must be recalled that the Tribunal has consistently held, firstly, that the unreasonableness of a delay in examining an internal appeal must be assessed in the light of the particular circumstances of the case and, secondly, that the amount of compensation liable to be granted under this head ordinarily depends on two essential considerations,

namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4727, consideration 14, 4684, consideration 12, 4635, consideration 8, 4173, consideration 12, and 3160, consideration 17).

In the present case, the Tribunal observes that nineteen months elapsed between the date when the complainant lodged his first internal appeal, 27 January 2020, and the date when he was notified of the Secretary General's decision thereon, 1 September 2021. In view of the nature of the contested decision, which was liable to compromise the further maintenance of the employment relationship between the complainant and the Organization, such a delay must be considered, in absolute terms, as excessive.

However, the Tribunal notes in this regard that:

- the Organization has established that the Covid-19 pandemic and the lockdown measures imposed by the French authorities had the effect of substantially delaying, at least initially, the examination of the internal appeals by the Joint Appeals Committee, which must, in particular, follow a collegial and adversarial procedure;
- the Joint Appeals Committee had, during its investigations, found it necessary to ask the Organization for further information;
- further submissions were made by the parties to the Committee during the procedure;
- the examination of the internal appeal was delayed by various procedural incidents;
- the Secretary General, having received the Committee's opinion, found it necessary to carry out additional checks pursuant to Staff Rule 10.3.6(1) and (2);
- the additional information gathered was forwarded to the complainant on 28 July 2021 and he was given a deadline of one month to respond.

In these circumstances, the Tribunal considers that the time taken to issue the impugned decision of 31 August 2021 is not such as to warrant the award of compensation under this head.

12. As the complainant succeeds, he is entitled to the sum of 7,000 euros which he claims in costs.

DECISION

For the above reasons,

1. The decision of the Secretary General of 31 August 2021 as well as the decision of 28 November 2019 are set aside.
2. Interpol shall pay the complainant 5,000 euros in moral damages.
3. It shall also pay him 7,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 23 May 2024, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER