

**SEVENTY-SECOND SESSION**

***In re O'SULLIVAN (No. 3)***

**Judgment 1155**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Stephen Denis Richard O'Sullivan against the International Criminal Police Organization (Interpol) on 19 January 1991 and corrected on 26 February, Interpol's reply of 18 April, the complainant's rejoinder of 3 July and the Organization's surrejoinder of 6 August 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 156 and Appendix VII of the Staff Rules of Interpol;

Having examined the written evidence and decided not to order oral proceedings, 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 employed as a reviser in the Organization's Language Department. When Interpol decided to move its headquarters from Saint-Cloud to Lyons he refused its offer to transfer him there.

By a decision of 5 June 1989 the Secretary General terminated his appointment on 19 June 1989. As provided by the Staff Regulations and Staff Rules he received an indemnity on termination of appointment. The Tribunal dismissed his challenge to the reckoning of the indemnity in Judgment 1080 of 29 January 1991.

In Judgment 1023 of 26 June 1990 the Tribunal ruled on the complainant's claims arising from the Administration's handling of his transfer and found it to be in breach of the rules that guaranteed an identical post at the new duty station for every official who consented to the transfer. Though the Tribunal held that Interpol had therefore infringed the complainant's rights, it could not rule on his claims to financial redress because the parties had not addressed them. Having upheld some objections by the Organization to receivability the Tribunal referred the complainant to Interpol for determina-

tion of the compensation he was entitled to, the amount to bear interest at the rate of 10 per cent a year from the date of termination.

By a letter of 7 July 1990 he informed the Secretary General that he would welcome proposals from him in order to settle the dispute. On 10 July the Secretary General sent him a cheque for 10,000 French francs, the Tribunal's award of costs, and informed him that his indemnity would be reckoned later. By a letter of 23 July the Secretary General sought documentary evidence from him to help in setting the amount of the indemnity; he also encouraged him to submit a proposal of his own which could help bring the proceedings to a close. In his reply of 31 August the complainant set out the terms of a proposed settlement.

By a decision of 21 September the Secretary General granted him an indemnity in the amount of 107,519.50 French francs and 13,678.90 francs in interest at the rate of 10 per cent a year from 19 June 1989, making a total of 121,198.40 francs.

By a letter of 20 October he asked the Secretary General to review the decision of 21 September and waive the jurisdiction of the Appeals Committee. The Secretary General confirmed his decision of 21 September in a letter of 24 October 1990 and gave him leave to go to the Tribunal forthwith.

B. The complainant submits that Interpol has failed to give due effect to Judgment 1023 and challenges on several counts the amount it has granted him.

Unlawful dismissal having caused him material and moral injury, Interpol should compensate him under both heads, not just the former.

The Organization has acted inconsistently by first announcing that it would set the amount of his indemnity on its own, then leading him to believe that it would discuss it with him, and in the end suddenly breaking off discussion for no stated reason.

The indemnity he got in lieu of five-and-a-half months' notice answers no reasonable criterion inasmuch as the Tribunal dismissed his claim to compensation in lieu of notice and held his dismissal to be unlawful because it was in breach of Article 2 of Section 2 of Appendix VII of the Staff Rules.

He objects to Interpol's reliance on "loss of potential earnings" as a criterion for determining the amount due to him in compensation. The Organization is mistaken in making out that all it has to do to give effect to Judgment 1023 is to work out the difference between what he would have earned at Interpol and whatever his income may have been elsewhere. Any assessment of the injury he sustained should take account of the fact that his career as a reviser was shattered because he faced the risk of downgrading to translator if he submitted to the uncertainties of competition

He seeks:

(a) material damages consisting of arrears of salary from 19 June 1989, the date of dismissal, compensation for leave due as from the same date, terminal entitlements for the same period and compensation in lieu of notice amounting to six months' salary less the five-and-a-half months already paid;

(b) 500,000 French francs in moral damages;

(c) interest at 10 per cent a year on the sums claimed under (a) and (b);

(d) 20,000 French francs in costs.

C. In its reply the Organization asks the Tribunal to join the complaint with Miss Burnett's third complaint and Mr. Vicente-Sandoval's fourth, the claims and the material facts being the same.

Interpol submits that it has paid the complainant a sufficient amount in compensation.

It disputes his allegation that there was no basis for the indemnity. In the letter of 21 September 1990 it explained, first, that the indemnity corresponded to the five-and-a-half months' salary he had claimed on 8 July 1989 in his request for review of the decision of 5 June and, secondly, that the only claims for financial relief it would consider were those he had made in his internal appeal. His original claims being what they were he is entitled to no more than Interpol has already paid him in execution of Judgment 1023.

The Organization denies the charge of inconsistency. Because his claims were extravagant it refrained from making any counter-proposals and granted him the most he was entitled to so as to have done with the matter.

The misapplication of Article 2 of Section 2 of Appendix VII of the Staff Rules did not vitiate the decision to terminate his appointment. That is borne out by what Judgment 1080 said about the reckoning of his terminal entitlement: had termination been unlawful the amount of entitlement would have been immaterial. Yet the Tribunal went into the merits of his claim to a larger indemnity and disallowed it.

D. In his rejoinder the complainant takes up the Organization's pleas in turn. He points out the contradiction in its acknowledging that the Tribunal's ruling was confined to the unlawfulness of his dismissal while maintaining that it discharged its financial liability towards him by meeting his claim to compensation in lieu of notice, which the Tribunal actually dismissed.

In compliance with point 1 of the Tribunal's ruling in Judgment 1023 Interpol should have restored him to his former status either by reinstating him or, failing that, by granting him compensation for the injury he had sustained.

The Organization has not carried through the reform of the Language Department and has not held the competition between revisers that it made out to be the linchpin of reform. He asks the Tribunal in the exercise of its power of

review to determine whether there ever really was any plan of reform.

E. In its surrejoinder Interpol maintains that the five-and-a-half months salary it paid him was compensation for its misapplication of Article 2 of Section 2 of Appendix VII of the Staff Rules, not compensation in lieu of notice, which he was not entitled to. Inasmuch as he was free to claim no more than he originally did - later claims being irreceivable - there is no need to say how much he has been granted under each head of injury.

He is mistaken in saying that the plan to reform the Language Department was just a ploy to get him to leave. To bear that out it produces a service note about the plan. The plan, which he relies on to prop up his exorbitant claim to compensation, was discussed in the context of the earlier cases and is no longer relevant. Since the injury came not from downgrading but from the threat of downgrading, it would be quite wrong in law to treat the threat as warranting the same redress as would the fulfilment of it.

#### CONSIDERATIONS:

1. Interpol was employing the complainant as a reviser in its Language Department when it decided to move headquarters from Saint-Cloud to Lyons. Having turned down its offer of transfer, he was paid the dismissal compensation prescribed in the Staff Regulations and Staff Rules. By Judgment 1080 of 29 January 1991 the Tribunal rejected his objections to the decision on the amount of the indemnity, a matter that is now closed.

This case is about the unlawful act Interpol committed in the course of transfer. In Judgment 1023 of 26 June 1990, which was about his second complaint, the Tribunal held that the Organization had not complied with the requirement in its Staff Rules that anyone who consented to transfer should get an identical post in Lyons. It therefore infringed his rights.

The Tribunal declined to rule on his claims to damages on the grounds that the parties' pleadings had not addressed them properly. It referred him to the Organization for determination of the compensation he was entitled to, the amounts to bear interest at the rate of 10 per cent a year from the date of termination.

2. On 10 July 1990 the Secretary General sent him a cheque for 10,000 French francs to cover his costs and on 23 July wrote him a letter which may be taken as an invitation to treat. He said that in reckoning material injury account should be taken of earnings lost on dismissal and of any subsequent earnings and asked the complainant to send copies of any papers at his disposal that might help in drawing up a suitable offer.

The complainant answered in a long letter of 31 August stating his claims.

But the discussion went no further, and on 21 September an individual decision was taken determining his entitlements under Judgment 1023. The total came to 121,198.40 French francs, made up of 107,519.50 in compensation as such and 13,678.90 in interest at the rate of 10 per cent a year. A cheque was appended to the letter. That is the decision impugned, and the complainant sought and was granted leave to go to the Tribunal directly.

3. Receivability is not at issue. For the sake of convenience the Tribunal rejects the Organization's application for joinder with complaints from two other former staff members.

4. The complainant's claims appear in paragraph B above: he wants much more than the impugned decision grants him.

The first head of damages he claims is material injury.

In its letter of 23 July 1990 Interpol asked him to give it figures of any earnings from subsequent employment or activity. His answer was: "Though I reveal that I am in employment, my conditions of service are no business of anyone but me, my employer and the French authorities. The injury to me, which the ILO Tribunal has acknowledged, remains the same whatever sort of work I may have been doing and however much I may have earned since leaving you, whether I am on the dole or the world's biggest business tycoon".

The complainant is wrong.

The first factor of material damages is his administrative and financial status at the date of dismissal, and Judgment

1080 gave some idea of that. By the time he left he had served Interpol for nine years and five months and the impugned decision states that his final monthly salary came to 19,549 French francs. He was paid 61,701 French francs in dismissal compensation.

The amount of damages paid according to the impugned decision is - apart from the interest - 107,519.50 francs, or five-and-a-half months' pay.

5. But the data in 4 do not suffice to determine the complainant's rights. For that purpose information is needed on what he has been doing since leaving the Organization: else he may obtain unjust enrichment.

Interpol sought information from him on that score but he refused to give it. That being his attitude, any claim from him for loss of earnings cannot but fail.

6. Though he alleges material injury under other heads, the evidence does not suggest that such injury, even if he did sustain it, flowed directly from Interpol's unlawful act. It may therefore be discounted.

7. There was also the moral injury he did suffer. As was said in 1 above, Interpol's unlawful act consisted in breach of a basic principle that governed the transfer of its headquarters and that required giving anyone sent to Lyons the same duties and career prospects as he had had at Saint-Cloud. Having been with Interpol for over nine years, the complainant had a reasonable expectation of keeping his post without further testing or competition. So Interpol committed a breach of good faith.

But in view of all the material circumstances the Tribunal concludes that Interpol did not underestimate the full injury to the complainant in setting the amount of damages by its decision of 21 September 1990 at 107,519.50 French francs.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
Mella Carroll  
A.B. Gardner