

**SEVENTY-SECOND SESSION**

***In re* BURNETT (No. 3)**

**Judgment 1156**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Miss Jane Burnett against the International Criminal Police Organization (Interpol) on 18 January 1991 and corrected on 22 February, Interpol's reply of 16 April, the complainant's rejoinder of 3 July and the Organization's surrejoinder of 5 August 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 61, 101 and 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 she refused its offer to transfer her there.

By a decision of 16 June 1989 the Secretary General terminated her appointment on 19 June 1989. As provided by the Staff Regulations and Staff Rules she received an indemnity on termination of appointment. The Tribunal dismissed her challenge of the reckoning of the indemnity in Judgment 1080 delivered on 29 January 1991.

In Judgment 1024 of 26 June 1990 the Tribunal ruled on the complainant's claims arising from the Administration's handling of her transfer and found it to be in breach of the rules that guaranteed an identical post at the new duty station for each official who consented to the transfer. Though the Tribunal held that Interpol had therefore infringed the complainant's rights, it could not rule on her 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 determination of the compensation she was entitled to, the amounts to bear interest at the rate of 10 per cent a year from the date of her termination.

On 6 July 1990 the Secretary General sent her a cheque for 10,000 French francs, the Tribunal's award of costs, and informed her that her indemnity would be reckoned later. By a letter of 23 July he sought documentary evidence from her to help in setting the amount of the indemnity; he also encouraged her to submit a proposal of her own which could help to bring the proceedings to a close. In her letter of 13 August she set out the terms of a proposed settlement.

By decision of 21 September the Secretary General granted her an indemnity in the amount of 65,094 French francs and 8,281.42 francs in interest at the rate of 10 per cent a year from 19 June 1989, making a total of 73,375.42 francs.

By a letter of 16 October she asked the Secretary General to review the decision of 21 September and waive the jurisdiction of the Appeals Committee. He confirmed his decision of 21 September in a letter of 23 October 1990 and gave her leave to go to the Tribunal forthwith.

B. The complainant submits that Interpol has failed to give effect to Judgment 1024 and challenges on several counts the amount it has granted her.

Though it acknowledges its obligation to pay her material damages, Interpol refuses to compensate her for the moral injury that her unlawful dismissal has caused her.

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

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

She objects to Interpol's reliance on "loss of potential earnings" as a criterion for determining the amount due to her in compensation. The Organization is mistaken in making out that all it has to do to give effect to Judgment 1024 is to work out the difference between what she would have earned at Interpol and whatever her income may have been elsewhere. Any assessment of the injury she sustained should take account of the fact that her career as a reviser was shattered because she faced the risk of downgrading to a translator's post if she submitted to the uncertainties of competition.

A further example of Interpol's inconsistency is its decision to grant another former official in like case compensation in the amount of five-and-a-half months' pay.

She contends that under Judgment 1024 she is entitled to payment not of one, but of several amounts in compensation.

She 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 three months' already paid;

(b) 350,000 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 submits that it has paid the complainant a sufficient amount in compensation.

It disputes her 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 three months' salary she had claimed on 15 July 1989 in her request for review of the decision of 16 June and, secondly, that the only claims for financial relief it would consider were those she had made in her internal appeal. Her original claims being what they were, she is entitled to no more than Interpol has already paid her in execution of Judgment 1024.

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

It also acted quite consistently by giving the other official she mentions five-and-a-half months' salary in compensation, since that is as much as he claimed in his request for review of the decision.

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

The Tribunal ordered Interpol to pay her compensation in an amount to be determined. That did not mean it owed her more than one form of compensation.

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

In compliance with point 1 of the Tribunal's ruling in Judgment 1024 Interpol should have applied Article 156 of the Staff Rules and restored her to her former status either by reinstating her or, failing that, by granting her compensation for the injury she 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. She asks the Tribunal in the exercise of its power of review to determine whether there ever really was any plan of reform.

She charges the Organization with failing to comply with Article 101 of the Staff Rules which lays upon it a duty to send her notices of suitable vacancies for a period of two years.

E. In its surrejoinder Interpol maintains that the three months' salary it paid her 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 she was not entitled to. Inasmuch as she was free to claim no more than she originally did - later claims being irreceivable - there is no need to say how much she has been granted under each head of injury.

The plan to reform the Language Department, which she relies on to prop up her exorbitant claim for 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.

Lastly, Interpol says that it had no duty in law to send vacancy notices to the complainant, since Article 101 of the Staff Rules relates only to a staff member whose post has been abolished and for whom no other post has been found.

#### 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, she was paid the dismissal compensation prescribed in the Staff Regulations and Staff Rules. By Judgment 1080 of 29 January 1991 the Tribunal rejected her objections to the decision on the amount of the indemnity, a matter that is now closed.

This, her third case, is about the unlawful act Interpol committed in the course of transfer. In Judgment 1024 of 26 June 1990, which was about her 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 had therefore infringed her rights.

The Tribunal declined to rule on her claims to damages on the grounds that the parties' pleadings had not addressed them properly. It entertained and upheld several objections of Interpol's to the receivability of her claims. It referred the complainant to the Organization for determination of the compensation she was entitled to, the amounts to bear interest at the rate of 10 per cent a year from the date of termination.

2. On 6 July 1990 the Secretary General sent the complainant a cheque for 10,000 French francs to cover her costs. On 23 July he wrote her 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 her to send copies of any papers at her disposal that might help in drawing up a suitable offer.

The complainant answered in a long letter of 13 August stating her claims.

But the discussion went no further, and on 21 September an individual decision was taken determining her entitlements under Judgment 1024. The total came to 73,375.42 French francs, made up of 65,094 in compensation as such and 8,281.42 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.

4. The Organization's reckoning of the amount of compensation due to the complainant rests on a point of law: it maintains that in letting her have no more than the equivalent of three months' pay in execution of Judgment 1024 it has taken the highest figure she may lay claim to. It cites a letter she wrote on 15 July 1989 asking for review of

a decision of 16 June 1989. Under her contract of service and the Staff Regulations and Staff Rules dismissal requires three months' notice. Since the Organization acted unlawfully in bringing forward by three months the deadline for her answer to the offer of transfer and so making her serve six months' notice instead of three, she is entitled to three months' pay in compensation. In the Organization's submission her letter of 15 July 1989 puts a limit on her entitlements. That, it argues, is borne out by the wording of Judgment 1024, which says that she may not submit to the Tribunal claims she did not put to the Organization in the internal proceedings. So her claim to damages is restricted to compensation for the period of notice.

5. Judgment 1024, which ruled on the complainant's second complaint, stated both in the reasoning and in the decision that Article 2 of Section 2 of Appendix VII to the Staff Rules had been misapplied. For that reason the Tribunal declared her to be entitled to compensation for the injury she had sustained. It observed that the parties had not addressed the issue and accordingly referred her to Interpol for determination of the compensation to which she was entitled.

Those issues are *res judicata*. The Organization acknowledges that to some extent since the impugned decision grants her compensation in execution of the judgment.

In its reasoning the Tribunal declared several preliminary claims to be irreceivable on the grounds that she had not submitted them in the course of the earlier internal proceedings. The complainant's letter of 15 July 1989, which Interpol says determines once and for all her financial entitlements, relates to the date of her separation and not to its unlawfulness.

In the particular circumstances of the case the parties were required to discuss all the financial consequences of Interpol's unlawful act. That act caused the complainant injury for which the mere award of dismissal compensation is not sufficient redress but which must be assessed with due regard to all the consequences of the Organization's improper treatment of her. That compensation grants redress for part of the prejudice but not for all of it. There is therefore no inconsistency between the Tribunal's ruling in Judgment 1024 and the objection to receivability which the Tribunal allowed. There are two quite distinct notions.

It appears from the foregoing that the Organization is mistaken in contending that the complainant's letter of 15 July 1989 precluded her claiming any amount over and above what she claimed in that letter.

6. What sum, then, is due to her in compensation for the act the Tribunal held in Judgment 1024 to have been unlawful?

The complainant's claims come under many heads and are plainly inflated. They appear in full in paragraph B above.

A preliminary remark is called for. It is regrettable that, yet again in a dispute between Interpol and its staff, there has been no real prior exchange of views between the parties even though the Tribunal has had to send more than one case back for that very purpose.

7. The first factor of material damages is the complainant's administrative and financial status at the date of dismissal, and Judgment 1080 gave some idea of that. By the time she left she had served Interpol for 19 years and 5 months, and the impugned decision states that her final monthly salary came to 21,698 francs. Under Article 61 of the Staff Rules she has been paid 179,551.50 francs in dismissal compensation.

The amount of damages paid according to the impugned decision is - apart from the interest - 65,094 francs, or three months' pay.

The gross loss to the complainant may be worked out from the above figures.

8. The second factor is how she has fared since dismissal: else she may obtain unjust enrichment. From 4 July 1989 to 31 May 1990 she was paid unemployment benefit, though she does not say how much, and after spending over 40,000 francs on necessary computer equipment she started on 1 June 1990 to do free-lance work. The pleadings yield no information beyond that.

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

10. The data at the Tribunal's disposal are therefore sparse, despite the duty of someone who alleges material injury to prove it or offer at least some cogent evidence of it.

11. There was also the moral injury she 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 19 years, the complainant had a reasonable expectation of keeping her post without further testing or competition. So Interpol committed a breach of good faith.

12. For want of exact figures as a basis of an award the Tribunal has no choice but to set a lump-sum figure that will cover all heads of injury and reflect the complainant's seniority, pay and earning potential, yet limit the duration of Interpol's liability.

In the circumstances a fair award of damages for the alleged injury under all heads will be 120,000 French francs. Since Interpol has already paid the complainant a lump sum of 65,094 francs under the impugned decision it shall pay her another 54,906 francs, plus interest thereon at the rate of 10 per cent a year as from the date of her termination.

It shall also pay her 10,000 francs in costs.

#### DECISION:

For the above reasons,

1. The sum due to the complainant is increased by 54,906 French francs, from 65,094 to 120,000 francs.
2. The balance of 54,906 francs shall bear interest at the rate of 10 per cent a year as from the date of her termination.
3. The impugned decision is quashed insofar as it is at variance with the Tribunal's ruling.
4. Interpol shall pay the complainant 10,000 French francs in costs. 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