

SEVENTIETH SESSION

***In re* VICENTE-SANDOVAL (No. 3)**

Judgment 1083

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Francisco Vicente-Sandoval against the International Criminal Police Organization (Interpol) on 9 January 1990, Interpol's reply of 5 April, the complainant's rejoinder of 12 May and the Organization's surrejoinder of 11 June 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 36(3)(d), 37 and 43(4) of the Staff Regulations and Articles 61(4), 105 and 106 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 joined the staff of Interpol on 24 August 1981. Because of the transfer of Interpol's headquarters to Lyons his post at Saint-Cloud was abolished by a decision of 12 October 1988 which set the date of termination of his appointment at 19 June 1989.

In a letter of 5 May 1989 he asked the Secretary General to let him take all his accrued leave together so that he could look for other employment. By a decision of 16 May 1989 he was relieved from work from the afternoon of 7 June though the official date of termination was still 19 June. Not having received his termination entitlements and papers, he lodged an internal "complaint" with the Secretary General on 7 June claiming a certificate of service, an attestation of dismissal for the purpose of enrolment in the unemployment register and payment of his salary, compensation for the balance of his leave entitlements, and termination indemnity. On 19 June 1989 the Organization made over the amounts and papers he wanted.

By a decision of 20 June 1989 the Secretary General told the complainant that since he had got what he was claiming in his internal "complaint" there was no call to put the matter to the Joint Appeals Committee or to the Tribunal. By a letter of 20 July 1989 the complainant asked the Secretary General to review his decision of 20 June constituting "rejection" of his internal "complaint" of 7 June and to let him appeal straight to the Tribunal. The Secretary General referred his case to the Appeals Committee on 28 July. On 26 September the Committee reported its opinion that he had shown no injury. In a decision of 6 October 1989, the one impugned, the Secretary General confirmed the decision of 20 June.

B. The complainant contends that by failing to make over by 7 June 1989 the papers and sums due Interpol was in breach of Articles 61(4), 105 and 106 of the Staff Rules. The twelve days' delay in fulfilment of its obligation and its contemptuous treatment of him caused him injury.

He asks the Tribunal to recognise that the actual date of termination was 7 June 1989, not the official date of 19 June, and he seeks a lump-sum award of 10,000 French francs in damages and costs.

C. Interpol replies that the complainant was mistaken in making his request for review of the decision of 20 June 1990 on the grounds that - to quote him - it constituted "rejection" of his internal "complaint" of 7 June 1989. The decision of 20 June did not reject his internal "complaint": it was in his favour. The only point which might have caused him injury was the Secretary General's refusal to refer the matter to the Joint Appeals Committee and let him go straight to the Tribunal. But the sole injury he does allege is the delay in making over the papers and sums due, and that was neither the subject nor the effect of the impugned decision. His complaint is irreceivable because he shows no injury attributable to that decision and because his pleas are irrelevant to it.

Besides, the only subject of his internal "complaint" of 7 June 1989 is the papers and sums due to him upon termination, and it has nothing to do with injury caused by delay in making them over.

Interpol's arguments on the merits are subsidiary. It submits that a certificate of service, an attestation of dismissal and terminal payments are due to the departing employee at the date of termination. The complainant was informed by the decision of 12 October 1988 that if he turned down the offer of transfer to Lyons he would be terminated at 19 June 1989, the date confirmed by the decision of 16 May. So he did not leave on 7 June but remained on the staff until 19 June. The Organization was therefore not in breach of its obligations under Articles 61(4), 105 and 106 in making over the papers and sums on 19 June.

D. In his rejoinder the complainant maintains that his complaint is receivable. His letter of 7 June 1989 did plainly allege injury due to Interpol's failure to comply with the Staff Rules and its obligations towards him by the date at which he was actually terminated. The Secretary General's letter of 20 June was evasive and failed to address the main point. He presses his earlier contentions and further alleges discrimination in that others in like case were better treated.

E. In its surrejoinder Interpol answers several points raised by the complainant in his rejoinder, rejecting in particular his charges of discrimination, in support of which he offers, in its view, not a shred of evidence.

CONSIDERATIONS:

1. The complainant is impugning a decision the Secretary General of Interpol took on 6 October 1989 to dismiss his request for review of a decision of 20 June 1989.

The earlier decision had addressed an internal "complaint" he had lodged on 7 June claiming payment of his salary, compensation for his accrued leave, termination indemnity, the grant of a certificate of service and an attestation of dismissal for the purpose of his enrolment in the unemployment register. In his "complaint" he had asked that the formalities should be completed by 7 June 1989 - the date at which he believed his termination would take effect - and he had observed that in the circumstances referral to the Joint Appeals Committee would serve no purpose and he should be allowed to go straight to the Tribunal.

The Secretary General answered on 20 June that the deadline for making over the papers and the sums due was not 7 June, the date to which the complainant had brought forward his departure by applying for and obtaining the grant of annual leave; it was 19 June, the scheduled date of termination and the date at which the papers and sums due had actually been made over. So the Secretary General said he saw no need for appeal to the Joint Appeals Committee or for complaint to the Tribunal.

On 20 July 1989 the complainant made a request for review of the decision of 20 June on the grounds of Interpol's admission that it had not met its obligations under the rules until 19 June and of the injury the delay had caused him; he again sought permission to appeal directly to the Tribunal. Instead of deciding on his request the Secretary General referred his case to the Joint Appeals Committee on 28 July 1989 in accordance with Article 43(4) of the Staff Regulations.

In a report of 26 September 1989 the Committee recommended rejecting his claims on the grounds that the facts he cited had caused him no injury, and the Secretary General accepted that recommendation in the impugned decision of 6 October 1989.

Receivability

2. Interpol objects to receivability on the grounds that the complainant fails to show any injury due to the rejection of his request of 20 July 1989 and that his pleas are irrelevant to that decision. It argues that the Secretary General met his claim of 7 June 1989 by handing over on 19 June the papers and sums due. The decision of 20 June, it submits, did not reject that claim and so caused him no injury. Neither did the impugned decision of 6 October 1989 since it merely rejected his appeal of 20 July 1989 against the decision of 20 June. The refusal to let him go straight to the Tribunal was just a procedural matter and in any event he did not object in his request of 20 July 1989 and has not done so in his complaint, the only issue he raises therein being the Organization's delay in making over the papers and sums due. Interpol concludes that his complaint is irreceivable because the delay was "neither the subject nor the effect of the impugned decision".

3. The Organization's reasoning is quite implausible, and the brief chronological account in 1 above of the complainant's claims and Interpol's replies suffices to show up its objections to receivability as unsound.

One preliminary point is that the matter of referral of his request of 20 July 1989 to the Committee is not at issue because, as Interpol points out, neither in the complaint form nor in his submissions does he challenge it.

What his request was about was the date of termination: he said that it was 7 June, not, as Interpol made out, the 19th, that the Organization had therefore acted 12 days late and that he was entitled to redress on that account. The Secretary General rejected that claim on 20 June, the Committee on 26 September and the impugned decision on 6 October. That final refusal did cause him injury and so his complaint, which challenges it, is receivable.

The merits

4. The nub of the case is the complainant's contention that he did not get the papers and his terminal entitlements by 7 June, when he actually left, but on 19 June, the date the Organization set for his departure. He claims redress for the injury he attributes to the 12 days' delay.

Interpol is mistaken in seeking to limit the dispute to the matter of the papers and entitlements - thereby excluding his claim to redress - on the grounds that his internal "complaint" of 7 June 1989 was not about the delay. For one thing, it could not possibly have been, since not until 20 June 1989 did the Organization take 19 June, and so by implication refuse to take 7 June, as the date. For another thing, he did expressly raise the matter of the delay in his request of 20 July, the one the decision of 6 October 1989 rejected.

5. His main plea in support of his claim to redress for the 12 days' delay in the performance of the Organization's obligations is that he left not on 19 June, the official date, but at mid-day on 7 June.

Interpol's answer is that, though the papers and payments were indeed due by the date of termination, that was the date at which his post at Saint-Cloud was abolished and a new one established at Lyons, no matter when he may have declined the offer of transfer (it was on 16 December 1988) and that his post was abolished by a decision of 12 October 1988 as from 19 June 1989.

6. The Organization's reasoning is sound.

The complainant is not challenging the lawfulness of his dismissal for abolition of post, which was indeed in line with Articles 36(3)(d) of the Staff Regulations on termination and 37 on notice. That decision, which was taken on 12 October 1988, made 19 June 1989 the date of termination.

The date of 7 June 1989 is just the one at which he was authorised to take leave of absence. On 5 May 1989 he had applied for permission to use up his leave credit for the purpose of seeking other employment at the end of the period of notice, and on 16 May 1989 Interpol gave its consent, adding that that "makes no difference to the official date of your termination, which is still 19 June 1989".

As Interpol maintains, therefore, he did not leave on 7 June but remained on the staff up to 19 June, and not letting him have the papers and his entitlements before that date caused him no injury whatever. His complaint is groundless.

7. He alleges breach of Article 61(4) of the Staff Rules, which says that "The indemnity on termination of appointment shall fall due as soon as the said termination actually takes effect ...".

He is again mistaken. As the Organization says, what entitled him to the indemnity was the transfer of headquarters to Lyons and the consequent abolition of his post at Saint-

Cloud. Abolition was on 19 June, and that is when he was paid the indemnity. His claim is unsound in fact and in law.

8. Since his objections to the delay fail, so do his claims to redress for the alleged injury and to costs. His contention that others who left were better treated need not be entertained: there is no evidence to support it, and it is irrelevant anyway since the others were not in the same position in fact and in law as he.

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 Mr. Edilbert Razafindralambo, Deputy Judge, have signed here-under, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner