

SEVENTY-FIRST SESSION

***In re* DU BOUETIEZ DE KERORGUEN**

Judgment 1126

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Marie Christine du Bouëtiez de Kerorguen against the International Criminal Police Organization (Interpol) on 29 June 1990, Interpol's reply of 24 September, the complainant's rejoinder of 26 November 1990 and the Organization's surrejoinder of 11 February 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 38 of the Staff Regulations and Articles 2 and 61 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 served on the staff of Interpol from 6 October 1980 to 9 May 1989, when she was dismissed on the transfer of the Organization's headquarters from Saint-Cloud to Lyons. At the time of her dismissal she was a principal administrative attachée in the Personnel Service.

In pursuance of Article 2(3) of Section 2 of Appendix VII to the Staff Rules of Interpol she got notice of a decision of 8 September 1988 offering her transfer to Lyons or, if she did not want it, an indemnity on termination of appointment under Article 38 of the Staff Regulations and Article 61 of the Staff Rules. The "grounds" given for the decision included her acquired right to her duty station in Saint-Cloud under Articles 1 and 2(1) of Section 2 of Appendix VII to the Rules.

The complainant having turned down transfer to Lyons, a personnel officer informed her by a minute of 17 March 1989 that barring a salary rise she would get 27,700 French francs in termination indemnity. On 19 April she submitted to the Secretary General under Article 2 of the Staff Rules a request for review of that amount under Article 61(5). By a decision of 31 May the amount of her indemnity was set at 28,046 francs according to the scale in 61(1). By a decision of 13 June the Secretary General rejected her request of 19 April on the grounds that there were no "particular circumstances" relating to her personal situation within the meaning of the rule to warrant applying it.

On 29 June 1989 she submitted a "complaint" to the Joint Appeals Committee. By a decision of 14 August 1989 the Secretary General corrected the amount in his decision of 31 May to 24,712 francs and said that because of the Executive Committee's decision to put up the indemnity by 50 per cent she would get another 9,368 francs, over and above what she had already been paid. By a letter of 11 September 1989 she informed the Secretary General that the amount was still not enough and she sought his consent to direct appeal to the Tribunal.

On 12 September 1989 she requested review of the reduction in the amount of her original indemnity. She set the total due at 42,069 francs and claimed another 5,001 francs.

By letter of 18 September the Secretary General denied her leave to go straight to the Tribunal and asked her to make plain which decisions she wanted him to review. Her letter of 22 September 1989 answered that her appeal was against the decisions of 31 May and 14 August and she had "no mind to appeal against the decision not to apply Article 61(5)".

The Joint Appeals Committee reported on 2 March 1990. The Secretary General rejected her request by a decision dated 17 April 1990, the one now impugned.

By a decision of 21 September 1990 the Secretary General granted her the further 5,001 francs she had claimed.

B. The complainant submits that the transfer of the Organization's headquarters is a fact "exceptional" enough to warrant applying 61(5). She gives the names of two officials Interpol did apply the provision to: one of much the same age and in similar family circumstances and another with no acquired right to her duty station.

She sees no reason to put on a par someone with an acquired right to his duty station who turns down an offer of transfer and someone, with the same seniority, who leaves because of misconduct.

There are other cases that suggested she was treated unfairly: two officials in 1986 and 1987 went off with much bigger indemnities than what 61(1) provides for.

She objects to Interpol's altering the original amount of her indemnity after the personnel officer had approved it. She thereby lost 5,001 francs. Yet the Organization failed to press its demand for repayment of sums it had paid by mistake to two other officials who had no acquired right to their duty station and so should never have got indemnities at all. That is another unaccountable example of unfair treatment.

She claims termination indemnity in the amount of one-and-a-half months' gross salary for each year of service, or a net total, after deduction of sums already paid, of 131,230 francs; failing that, payment of the 5,001 francs subtracted from her indemnity. She claims interest on the award, moral damages and 20,000 francs in costs.

C. In its reply Interpol explains that it made over the 5,001 francs to the complainant after finding a mistake in its reckoning.

In its submission only under 61(5) may the Secretary General pay supplementary indemnity on termination. That provision requires "particular circumstances relating to the personal situation of the official concerned" to warrant such payment, but the complainant does not cite any. Besides, by the terms of her letter of 22 September 1989 she is estopped from making the claim and the decision of 13 June 1989 is therefore final.

What she is really objecting to is the purport of 61(1). But the Secretary General can do nothing about that: only the Executive Committee may amend it.

There was no breach of equal treatment. The nine officials who got a supplementary indemnity under 61(5) were not in the same position as the complainant. Seven of them - including Mr. Vermot, the one who had no acquired right to his duty station - were over 55 but had no pension entitlements. Since they had little hope of finding other work the Secretary General thought it only fair to let them have an early retirement benefit in the form of a supplementary indemnity. The others got the extra sums in reward for services they rendered in the last few months before termination.

That others may have got indemnities by mistake brings no grist to the complainant's mill. Besides, in the case of everyone but Mr. Vermot there was a decision correcting the mistake. Though he wrongly benefited from the arrangements for early retirement Mr. Vermot was treated as an exception because of his age.

Also different are the cases of those who got termination indemnities before the Staff Regulations and Staff Rules came into force. Because the Organization's position in law was obscure at the time it preferred to work out special arrangements for termination in each case. Besides, the terms of the settlements were not so good as the complainant thinks. In any event the arrangement for reckoning the indemnities amounted to no consistent practice and so Interpol was free to opt once and for all for the method of reckoning set out in Article 61, provided of course it told the staff and did not make the change retroactive.

There are two answers to the complainant's plea that she should get more than someone dismissed for unsatisfactory performance: for one thing, Interpol had to abide by Article 38 of the Staff Regulations; for another, she is mistaken in fact since because of the increase in the amount she did get more.

She fails to state the basis of her claim to more. The sum offered her is anything but "paltry". Unlike other international organisations Interpol has an unemployment insurance scheme.

The Organization observes, lastly, that she does not explain what the moral injury to her was.

D. In her rejoinder the complainant enlarges on her allegations of breach of equal treatment and on her other pleas. In her submission the reasoning in the reply does not hold water. Everyone she cited as having been paid indemnities before the Staff Regulations and Staff Rules came into force got more than she did and the arrangements made in those cases amount to a binding personnel policy. Why should others be rewarded under 61(5) for services rendered but not she? It is untrue that the mistaken payments were corrected. Mr. Vermot went off with unemployment and pension entitlements over and above the indemnity he was wrongly paid. Interpol is much less generous than most international organisations to staff who have to go.

The termination indemnity Interpol pays is paltry. Presumably the Organization preferred a slightly more generous scheme than French law prescribes to one based on collective agreements or on the practice of other international organisations.

She presses all her claims but the one to payment of the 5,001 francs.

E. In its surrejoinder Interpol takes up several pleas put forward in its reply. Citing Judgment 1080 of 29 January 1991 on similar cases, it submits that such arrangements as were agreed before the Staff Regulations and Staff Rules came into force were not so constant as to amount to any consistent practice in the matter and that the complainant may not claim the same unlawful treatment as Mr. Vermot got.

CONSIDERATIONS:

1. The complainant joined Interpol in 1980. In 1989 the Organization moved from Saint-Cloud to Lyons and offered her a post at its new headquarters. She resigned instead. Under Article 61(1) of the Staff Rules she was paid a termination indemnity reckoned according to a progressive scale based on seniority and terminal rate of pay. She is claiming a larger amount.

Her complaint has features in common with those of Mr. Barahona and seven other Interpol officials which the Tribunal ruled on in Judgment 1080 of 29 January 1991. It arises out of a decision of 31 May 1989 to grant the complainant the termination indemnity she was entitled to because she had turned down the offer of employment in Lyons. Whereas Mr. Barahona and the others, who each got a similar decision also dated 31 May 1989, sought and obtained leave to go straight to the Tribunal, the complainant went through the appeal procedure set out in the Staff Rules.

While her internal appeal was pending she, like the others, was granted, after correction of two material errors, a further sum equivalent to 50 per cent of the original indemnity. So she has been paid a total of 37,068 French francs on the strength of her eight years and eight months' service.

The appeal proceedings culminated in a decision which the Secretary General took on 17 April 1990 and which was to reject her appeal on the Joint Appeals Committee's recommendation.

2. The complainant filed within the prescribed time limit.

Her first claim is to payment of "termination or dismissal indemnity equivalent to one-and-a-half months' gross salary for each year of service, i.e. on the strength of eight years and eight months' service, a total of 168,298 francs". She makes a subsidiary claim.

3. In her original brief she relies solely on Article 61(5) of the Staff Rules, which in her submission applies to her case.

Article 61(1) sets out in detail the method of reckoning the indemnity, and 61(5) is in derogation therefrom. It reads:

"If the reasons for the termination of his appointment are not attributable to the Organization's official concerned, the Secretary General, exercising his discretionary power, may decide in exceptional circumstances and subject to budgetary limits, to grant the official concerned a supplementary indemnity on termination of appointment, taking into account the particular circumstances relating to the personal situation of the official concerned, such as his family commitments or the fact that, although relatively advanced in years, he cannot yet claim his retirement entitlements."

The Secretary General rejected the complainant's claim under 61(5) on the grounds that she had failed to show any "particular circumstances".

To her mind the move to Lyons is itself a "particular circumstance" and it would be unreasonable to put on a par someone who leaves because of misconduct and someone with no lesser seniority who has an acquired right to the duty station under the Staff Regulations. The further 50 per cent she has had does not take sufficient account of the difference between the two cases. She cites the case of others who got much more in compensation than 61(1) prescribes.

But the text of 61(5) confers no right to a supplementary indemnity, which is granted only because of the particular circumstances of individual cases, and the Tribunal sees no reason to allow the complainant the benefit that Interpol granted in the other three cases she mentions.

The six weeks' notice given to some staff members before the Staff Rules came into force merely anticipated those Rules and affords no grounds for finding breach of any general principle in the treatment of different groups of staff.

4. In her rejoinder the complainant alleges, rather briefly, that her indemnity was paltry. Her view is that though Interpol made slightly better provision than French legislation does it failed to follow the general lead of French collective agreements and the example of other international organisations.

As Judgment 1080 said, Interpol is an independent organisation, and the complainant cites neither any agreement nor even the existence of a co-ordinating body that would warrant comparison with other organisations. Nor is there any written text allowing Interpol to apply to its own staff the provisions of French collective agreements.

Though she does mention unemployment benefits payable in France to some officials they are not payable at Interpol and are therefore immaterial.

Her main claims fail.

5. In her original complaint the complainant made a subsidiary claim to payment of 5,001 francs, a sum she said had been docked from her indemnity because of a miscalculation by Interpol. The Organization had refused the claim in the internal appeal proceedings and only after she had gone to the Tribunal did it realise that it had made a mistake to her detriment over the figure of her salary. She was therefore right to claim the increase in the indemnity, and the 5,001 francs that she said was due - and that Interpol did not challenge - was duly paid. So she has obtained satisfaction and, without going into the reasons for the mistake, the Tribunal holds that it need not rule on the claim.

6. But since she did not get her due until she had filed her complaint she is entitled to an award of costs. The amount shall be 5,000 francs.

DECISION:

For the above reasons,

1. The Tribunal need not entertain the complainant's claim to payment of 5,001 French francs.
2. Interpol shall pay her 5,000 French francs in costs.
3. Her other claims are 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 3 July 1991.

(Signed)

Jacques Ducoux

Mohamed Suffian
Mella Carroll
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.