

**SEVENTY-FOURTH SESSION**

***In re* BURNETT (No. 4),  
O'SULLIVAN (No. 4)  
and VICENTE-SANDOVAL (No. 5)**

**Judgment 1214**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Stephen O'Sullivan against the International Criminal Police Organization (Interpol) on 22 February 1992, Interpol's reply of 15 April, the complainant's rejoinder of 30 June and the Organization's surrejoinder of 16 September 1992;

Considering the fourth complaint filed by Miss Jane Burnett against Interpol on 2 March 1992, the Organization's reply of 21 April, the complainant's rejoinder of 30 June and the Organization's surrejoinder of 15 September 1992;

Considering the fifth complaint filed by Mr. Francisco Vicente-Sandoval against Interpol on 2 March 1992, Interpol's reply of 22 April, the complainant's rejoinder of 24 June and the Organization's surrejoinder of 14 September 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 36(3)(d) and (e) of the Staff Regulations and Articles 100(4), (5) and (7) and 101(2) and Section 2 of Appendix VII of the Staff Rules of Interpol;

Having examined the written submissions and decided not to order hearings, which none of the parties has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. As stated under A in Judgments 1023 and 1024, the complainants used to work as revisers in the Language Department of Interpol. They had their appointments terminated because they turned down offers of transfer to Lyons when the Organization moved headquarters there from Saint-Cloud.

In this case they are pleading breach by Interpol of the following articles of the Staff Rules:

Article 100(4):

"An official under contract, whose appointment has been terminated for medical reasons in application of Article 36(3)(c) of the Staff Regulations, shall be entitled, for the two years following the date of termination of his appointment to priority consideration of his applications for posts which are the subject of vacancy notices ..."

Article 100(5):

"During the two years [following termination], the Personnel Department shall send the vacancy notices to the former official ... by registered mail."

Article 100(7):

"A former official entitled to priority consideration of his application may not claim the right to be reappointed to the detriment of any person who is a more suitable candidate for the post to be filled."

and Article 101(2):

"If the Secretary General has terminated the appointment of an official under contract in application of Article 36(3)(d) of the Staff Regulations, Article 100(4), (5) and (7) [recte] shall apply, mutatis mutandis."

Article 36(3) of the Regulations reads:

"The Secretary General may also decide to terminate the appointment of an official of the Organization:

...

(d) if, following:

- ...

- suppression of the official's post,

- ...

there is no vacant post which is to be filled and for which the Secretary General considers that the official concerned has the requisite qualifications;

(e) if, pursuant to any one of the three situations listed in (d) above, the official concerned refuses to take up the vacant post offered to him by the Secretary General in the belief that the official has the requisite qualifications;

..."

On 26 September 1990 each of the complainants was sent by the Personnel Department a circular letter along with notices of vacancy. Interpol did not thereafter send any of the notices of vacancy it issued.

On 18 June 1991 the complainants each submitted a "complaint" to the Secretary General alleging breach of the above provisions and claiming damages.

By individual decisions of 1 July 1991 the Secretary General rejected their claims on the grounds that the Organization was under no duty to send notices to former officials who had turned down offers of identical posts in Lyons.

Mr. O'Sullivan requested a review of the decision in a letter of 26 July 1991 and Miss Burnett and Mr. Vicente-Sandoval in letters of 30 July. The cases were referred to the Joint Appeals Committee on 2 August. The Committee submitted an advisory opinion to the Secretary General on 27 November 1991. All but one of its members held the appeals to be receivable and all that they should be rejected as devoid of merit.

By individual decisions of 3 December 1991 the Secretary General informed the complainants that he endorsed that recommendation. Those are the decisions under challenge.

B. The complainants submit that Interpol's sending them notices of vacancy on 26 September 1990, purportedly "in accordance with Articles 101(2) and 100(4), (5) and (7) of the Staff Rules", establishes their right to be sent any notices it issued in the two years after their dismissal. Two of them explain that they were interested in openings because they were in sore straits: Miss Burnett was unemployed until 31 May 1990 and Mr. Vicente-Sandoval until 18 August 1990.

Mr. O'Sullivan claims damages in the amount of six months' gross salary plus interest from the date of termination and 20,000 French francs in costs. Miss Burnett seeks damages equivalent to six months' gross salary and 15,000 francs in costs. Mr. Vicente-Sandoval too wants six months' gross salary and 15,347 francs in costs.

C. Interpol replies that Article 101(2) of the Staff Rules applies to termination under Article 36(3)(d) of the Staff Regulations, which covers, among others, cases where it has abolished an official's post and can find no suitable vacancy. When it abolished the complainants' posts at Saint-Cloud it did offer them identical ones at Lyons, which they refused. So 101(2) does not apply to them.

Interpol says it sent them the notices on 26 September 1990 just by way of precaution, not by virtue of any right they might have.

As for the injury they allege, they never expressed interest in posts at Lyons and do not explain how they have

reckoned the sums they seek in damages. Even if the Tribunal upheld their allegations of injury they should be awarded less.

D. In their rejoinders the complainants cite Judgments 1023 and 1024 and maintain that they were asserting their acquired right to their duty station, not refusing offers of vacancies. So 36(3)(e) does not apply to them. Sending them the notices on 26 September 1990 could not but lead them to believe that they came under 36(3)(d); the Organization's own action conferred a right on them. By failing to send them notices either before or after 26 September 1990 and thereby depriving them of the chance to apply Interpol caused them injury in the two years after dismissal. After deciding to apply to them Articles 101(2) and 100(4), (5) and (7) of the Staff Rules the Organization should have gone on doing so for as long as it was required. They mention particular posts which they learned of in the appeal proceedings and which they might well have been appointed to. They maintain that the amounts they claim are reasonable.

E. Interpol develops its pleas in its surrejoinders. In its submission Article 101(2) of the Staff Rules, which refers to Article 100(4), (5) and (7), applies only to someone who has had his appointment terminated under Article 36(3)(d) of the Staff Regulations, i.e. someone whose post was abolished and to whom the Organization could offer no other post. The only other case of termination on abolition is where an official refuses an offer of an alternative post. Such cases come under Article 36(3)(e) of the Regulations, which is the material provision in this case, the complainants each having been offered posts they were qualified for. It is surprising that they have changed their minds and are now willing to compete for vacancies in Lyons. Why did they let the two years run out before accusing Interpol of breaking the rules. Interpol is not liable for the financial consequences of their refusing its offers.

#### CONSIDERATIONS:

1. The complainants were on the staff of Interpol as revisers in its Language Department when it decided, in 1988, to transfer its headquarters from Saint-Cloud to Lyons.

On 5 and 12 October 1988 it decided to abolish their posts as from 19 June 1989 and offer them new posts in Lyons.

On 19 September 1988 the Secretary General sent all the revisers a minute saying that in future there was to be only one post for a reviser in each language section and after the move to Lyons competitions would be held to fill those posts; revisers who were unsuccessful in the competitions would be offered translator's posts.

The complainants refused the transfer and were dismissed. They filed complaints with the Tribunal seeking the quashing of the decisions to transfer and to dismiss them. By Judgments 1023 and 1024 of 26 June 1990 the Tribunal allowed the complaints. It held that Interpol had not complied with Article 2 of Section 2 of Appendix VII to the Staff Rules, which said that anyone who accepted transfer to Lyons should be offered an identical post there, and had thereby infringed the complainants' rights. They were accordingly awarded compensation in amounts which the Tribunal, ruling on further complaints from them, determined by Judgments 1155, 1156 and 1157 of 29 January 1992.

Those issues are *res judicata*.

2. By letters of 26 September 1990 Interpol sent each of the complainants the texts of notices of vacancy dated 22 August and 14 September 1989.

On 18 June 1991 they filed internal appeals alleging that Interpol had neglected to send them all the notices issued in the two years since their dismissal. The Organization rejected their appeals and they submitted internal "complaints" to the Joint Appeals Committee. The Committee in turn recommended rejecting them as devoid of merit. The Secretary General decided on 3 December to endorse the Committee's recommendation, and those are the decisions they impugn.

Since the complaints raise the same issues Interpol's application for joining them is granted and they will form the subject of a single ruling.

3. The case is about the complainants' right to receive notices of vacancies in the Organization in the two years following the termination of their appointments.

The provisions about sending such notices are Articles 100(4), (5) and (7) and 101(2) of the Staff Rules. Taken together, those provisions mean that, where an official's appointment has been terminated under Article 36(3)(d) of the Staff Regulations, i.e. for reasons that include "suppression of the official's post" and where "there is no vacant post ... for which the Secretary General considers the official concerned has the requisite qualifications", the official has the right to be sent any notices of vacancy issued in the two years following the date of termination.

The material issue is whether, as the complainants contend, Article 36(3)(d) of the Regulations and Articles 100 and 101 of the Rules apply to their own termination.

4. The applicable Staff Rules prescribe "transitional measures" in Appendix VII, and Section 2 of the appendix sets out in three articles "Special provisions relating to the transfer of the Organization's Headquarters from Saint Cloud to Lyons".

Article 1 of Section 2 is about officials who have no acquired right to "the location of their duty station", i.e. anyone who "took up his appointment before the date of entry into force" of the Regulations and Rules, who "was informed, in his letter of appointment ... of the future transfer" of headquarters to Lyons and who "accepted ... the fact that he might be transferred ... to Lyons". Article 1(1) adds that "the pertinent provisions" of the Regulations and Rules "shall apply" in particular where the official has not taken up the post he has been assigned to on transfer.

Article 2 of Section 2 is about officials who do have an acquired right to their duty station. Article 2(2) reads:

"The transfer of the Organization's Headquarters to Lyons shall imply first of all the suppression of the posts occupied in Saint Cloud by the officials concerned and, secondly, the simultaneous creation of the same posts in Lyons. Each post thus created shall be offered to the official of the Organization who, on the date of the decision ... occupies the corresponding post in Saint Cloud. ..."

The rest of Article 2 is about notice of termination, the "period for consideration" of the offer of transfer, and the indemnity on termination for someone who turns it down.

The provisions of Article 2 are comprehensive and detailed. Some of them, such as the rules about the period for consideration, are exceptional and special provisions that have no counterpart in the body of the Regulations and Rules, to which indeed Article 2 - unlike Article 1 - contains no reference.

The special character of Article 2 is borne out by the text of Article 3: 3(1) reads:

"Articles 1 and 2 of the present Section shall not prevent application of the appropriate provisions of the Staff Regulations and the present Rules permitting termination of appointment for any other reason, including the suppression of posts in Saint Cloud which are not created in Lyons."

That reference is to termination for reasons other than those stated in Articles 1 and 2, viz. termination under Chapter VI of the Regulations and Chapter VIII of the Rules, which are about "Cessation of service" in general. And one example is termination under 36(3)(d) of the Regulations following "suppression of the official's post" where "there is no vacant post ... for which the Secretary General considers the official concerned has the requisite qualifications".

It is clear from Article 3 that ordinary cases of termination are still to be dealt with under the Regulations and Rules and independently of the special provisions in Articles 1 and 2 of Section 2 of Appendix VII save insofar as Article 1 refers to the "pertinent provisions" of the Regulations and Rules.

The complainants are therefore wrong in contending that Article 2 of Section 2 applies to termination under 36(3)(d). Indeed in the contingency Article 2 provides against, which is abolition of post, another post is to be created in Lyons - perforce a vacant one - and offered to the official. So the two conditions for applying 36(3)(d) can never be met anyway in the circumstances covered by Article 2.

Since Article 101(2) of the Staff Rules, and Article 100(4), (5) and (7), to which 101(2) refers, apply only where the official has been terminated under 36(3)(d), they cannot apply to cases covered by Article 2 of Section 2, and Interpol is therefore under no duty in such cases to send notices of vacancy.

5. The complainants are further mistaken in relying on the reference to Articles 100 and 101 in Interpol's letter of 26 September 1990 sending each of them the notices.

The Organization seems to have acted imprudently rather than in bad faith in sending the notices. Its letter of 26 September 1990, which was in printed form with a blank for the name of the addressee, was, it appears sent indiscriminately to everyone who had been terminated for any reason, whether entitled to get notices or not. The conclusion is that it had no effect in law and conferred on the complainants no entitlement they did not have under the rules anyway.

6. The complainants accuse Interpol of disregarding Judgments 1023 and 1024. What the Tribunal held in those judgments was that Interpol had misapplied Article 2 by failing to offer an identical post in Lyons to everyone who had an acquired right to his duty station in Saint-Cloud and had accepted the transfer. It never questioned the fact that Interpol had created posts in Lyons and offered them to the complainants. So its judgments did not have the effect of making applicable to them Article 36(3)(d), which means that there is a right to be sent notices only if there was "no vacant post" at the time of abolition.

7. Since the complainants' main claims are dismissed so too are their claims to damages and to costs.

DECISION:

For the above reasons,

The complaints are dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

William Douglas  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner