

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**P.**

**v.**

**Interpol**

**124th Session**

**Judgment No. 3844**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. P. against the International Criminal Police Organization (Interpol) on 6 November 2015, Interpol's reply of 29 January 2016, the complainant's rejoinder of 4 March and Interpol's surrejoinder of 3 May 2016;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

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

The complainant challenges the decision to terminate his appointment at the end of his probationary period for unsatisfactory performance and conduct.

The complainant joined Interpol on 1 February 2014 under a three-year fixed-term contract as Programme Manager of a project called Stadia arising out of an agreement signed between Interpol and Qatar. The confirmation of his appointment was subject to his satisfactory completion of a one-year probationary period.

On 31 May 2014 the complainant's supervisor conducted an interim assessment, according to which the complainant's performance was rated as satisfactory under all areas reviewed.

In June the complainant informed his supervisor that he was experiencing difficulties with respect to the governance structure of the Stadia project, in particular with the role of Ms W., who acted as both chairwoman of the project for Interpol and Security Advisor of the Qatar Supreme Committee for Delivery and Legacy. On 10 July 2014 he was issued an oral warning by his supervisor for inappropriate behaviour towards Ms W.

In light of concerns regarding three key areas, namely respect, teamwork and professional conduct, a Performance Development Plan was established for the complainant. As from September 2014 his performance was reviewed monthly in order to monitor his progress. In the monthly review for December 2014 his supervisor rated the objectives in the areas of respect and professional conduct as being achieved. However, in the last review concerning the month of January 2015 the complainant's supervisor rated the objectives in all three key areas as "not achieved" and concluded that the complainant was not suitable for continued employment at Interpol. By a letter of 27 January 2015 the complainant was informed of the decision to terminate his appointment with one month's notice on the grounds of unsatisfactory performance and conduct.

The complainant requested a review of that decision. His request was rejected by a letter of 3 March 2015. In the internal appeal he lodged on 6 March 2015, he denied that his conduct and performance had been unsatisfactory, took issue with Ms W.'s dual role, deplored the fact that he had been put in a situation of almost permanent conflict with his manager and Ms W. and claimed that the project's funds had been mismanaged. He requested to be reinstated.

In its report of 14 August 2015 the Joint Appeals Committee found that the complainant had been given full support and assistance during his probationary period and that the decision to terminate his appointment was "justified from a procedural perspective". Regarding other matters raised by the complainant, it concluded that they could not be considered as they were beyond the scope of its administrative mandate.

On 24 August 2015 the Secretary General, emphasising that the termination of an appointment during a probationary period is a discretionary decision which, in this case, was based on “an objective and prolonged assessment of [the complainant’s] performance and conduct” and handled in full compliance with the internal rules and the relevant principles of international civil service law, decided to dismiss the complainant’s internal appeal. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to order his reinstatement. He claims material damages in an amount equal to the sums he would have received had his appointment been confirmed, as well as moral damages.

Interpol requests the Tribunal to dismiss the complaint as unfounded. It submits that the accusations made by the complainant concerning the governance of the Stadia project and the alleged mismanagement of its funds are outside the Tribunal’s scope of review.

#### CONSIDERATIONS

1. The complainant began working at Interpol on 1 February 2014 as Programme Manager of project Stadia. In accordance with Regulation 2.5(1) of Interpol’s Staff Manual he was placed on a mandatory 12-month probationary period. In September 2014 he was informed that he would be placed on a Performance Development Plan to address concerns his supervisor, the Director of the Operational Services Directorate (OS), had with regard to the complainant’s performance, specifically in three key areas: “respect”, “teamwork”, and “professional conduct”. In the Performance Development Plan’s last review concerning the month of January 2015, the complainant’s supervisor found that while there had initially been some improvement in the complainant’s behaviour, it was not consistent enough to outweigh the risk posed to the Organization by the complainant’s inappropriate conduct. The Director of Administration informed the complainant by a letter dated 27 January 2015 that his contract would be terminated at the end of his probationary period, with one month’s notice. Following an internal appeal, the Secretary General maintained the decision to

terminate the complainant's appointment at the end of his probationary period. That is the impugned decision.

2. The complainant bases his complaint on the grounds that the flawed governance structure of the Stadia project was the source of his conflicts and performance issues, and that the final review of his Performance Development Plan was inappropriate as his December review was mainly positive, rating two out of the three objectives as being "achieved".

3. The Organization submits that the complaint is unfounded as the termination of the complainant's appointment was based on his unsatisfactory performance and conduct which were observed through an objective and prolonged assessment period. The Organization argues that it respected the rules and regulations regarding the probationary period and termination of his appointment in accordance with the Staff Manual.

4. The Tribunal recalls that "[a]ccording to the case law [...], the Tribunal is competent to review the lawfulness of any decision by the Director-General to terminate a staff member's probation. In particular, it may determine whether that decision is based on errors of fact or law, or whether essential facts have not been taken into consideration, or whether clearly mistaken conclusions have been drawn from the facts, or, lastly, whether there has been an abuse of authority. The Tribunal may not, however, replace with its own the executive head's opinion of a staff member's performance, conduct or fitness for international service (see Judgment 318, considerations). Other cases mention, as further grounds on which the Tribunal will review such decisions, a formal or procedural flaw, or lack of due process (see, for example, Judgments 13, 687, 736, 1017, 1161, 1175, 1183 and 1246) which, it has been noted, must be substantial to invalidate an end-of-probation termination decision." (See Judgment 2427, consideration 2.)

5. The complaint is unfounded. In the present case the complainant was duly notified that his performance and conduct were not at the appropriate levels as early as July 2014, as he received an

explicit oral warning in that regard from his supervisor, the Director, OS, on 10 July. In September the complainant was placed on a Performance Development Plan, which focused on three key areas which needed improvement, namely “respect”, “teamwork”, and “professional conduct”. In his nine-month Performance Assessment Report (PAR), dated 31 October 2014, it was again noted that the complainant’s performance and conduct needed to improve. Under a subsection of the category “quality of work”, it was noted *inter alia* that “[d]ue to his lack of experience in Policing he is requiring some development in the different interpretation of Risk and Threat issues that can bring about different outcomes from what he might expect from his own current experiences and knowledge”. Under a subsection of the category “interpersonal skills” it is noted that the complainant “has experienced difficulties in adapting to the unique environment of Interpol and the Governance arrangements for project Stadia. This has led to the activation of a performance development plan [...] to seek a change in his behaviour in this regard. He needs to ensure flexibility in his behaviour and working practices to better tolerate this business landscape.” Under the heading “Objectives for the next evaluation period” two things are listed: “to continue to develop himself and the team into a cohesive unit to deliver on the project objectives” and “to develop the flexibility within himself to adapt to his current working environment”. His overall rating for this PAR was “meets some requirements”. The complainant did not contest the PAR, he ticked the box marked “I agree” and signed it.

6. The Tribunal finds no flaws in the substantial or procedural aspects of the termination of the complainant’s appointment. The Joint Appeals Committee noted in its report that the termination of his appointment “was managed in accordance with [the] requisite organizational policies”. The complainant asserts that the Committee considered the process which led to the decision to terminate his appointment, but not the substance of that decision. The Tribunal considers that the Joint Appeals Committee evaluated the substance of the question, noting expressly that “Management made a concerted effort throughout [the complainant’s] probationary period to assist him improve his working methods, teamwork and professional conduct to

meet organizational requirements”. The comment made by the Committee, that the other matters raised by the complainant “could not be considered by the [Joint Appeals Committee] as they were out of its administrative mandate”, referred to the complainant’s allegations regarding the governance of the project. In the present complaint the complainant also raises the issue of the project’s governance not being “in line with INTERPOL rules and more generally not being right for any project because it created a possible conflict of interest”. The complainant seems to oppose the position of the chairwoman of the project. The Tribunal finds that the fact that the chairwoman of the project Stadia also worked for the customer of the project was governed by an agreement made between Interpol and the customer prior to the complainant joining the Organization and does not violate the complainant’s contract or the Staff Manual. Therefore, the complainant has no cause of action regarding the position of the chairwoman.

7. The complainant claims that the termination of his appointment was inappropriate because the December review of the Performance Development Plan was mainly positive, with two out of the three objectives being marked as “achieved” and one being marked as “in progress”, whereas his final review for January showed a clearly noticeable decrease in all his objectives, which were marked as “not achieved”. In the final comments section of the last monthly review, the Director, OS, wrote, in relevant part, as follows:

“Throughout the following months as detailed in the various minutes of the monthly review meetings [the complainant] has shown some signs of progress with gradings of ‘objective achieved’ for the month of December, for Respect and Professional Conduct. However, I have again witnessed a significant change in his behaviour through the month o[f] January showing a strong negative aspect. These negative behavioural traits have not only been in the general direction of myself, [Ms W.], and the wider organisation INTERPOL and its related business practices, which were the primary motivators for the reviews, but now also into his own team and the clients in country (Qatar).

Reflecting on the past year I have lost any sense of confidence that [the complainant] fully appreciates the sensitive working environment he is employed in at INTERPOL. Looking back at the totality of his behaviour during these months of review this unique working environment presents many challenges that require a maturity and professionalism of its employees

that can and do go above and beyond those of other organisations at many times. It necessitates a keen understanding of the position of responsibility, accountability and diplomacy that are required at all times, especially from managers in a culturally diverse environ[ment] such as INTERPOL.

[The complainant] has repeatedly shown disregard for these behavioural requirements especially in the areas of Respect, Teamwork and Professionalism. There have been continued episodes where he has sought to challenge and undermine the decision making by his senior manager (Director OS), external advisor ([Ms W.]) and those of the organisation (Secretary General). He has been unable to accept his role and position in the organisation and sought to over promote his position of responsibility to external clients. He has not achieved the level of management and teamwork expected from a small mixed ability project team that has led to difficulties in team dynamics, internal relationships and poor work planning and delivery. This has led to impact on delivery of work packages to the clients being late or incomplete.”

The Tribunal notes that the summary by the Director, OS, in the comments section of the Performance Development Plan’s last review evaluates not only the January period but also expressly takes into account the complainant’s conduct since he assumed his position on 1 February 2014. His recommendation that the complainant is not suitable for the role of Programme Manager is justified by the detailed comments in each section of the Performance Development Plan reviews as well as by his final assessment.

8. The Tribunal notes that the episodes and the complainant’s attitude, to which the Director, OS, referred to in the comments cited above, are documented. No issue raised by the complainant demonstrates that the Organization’s assessment of his conduct or suitability to work at Interpol is unreasonable, unjustified or flawed, nor are any of the vitiating elements identified in Judgment 2427, cited above, present in this case. The complainant’s claim that his appointment was terminated in retaliation for his having raised an argument about the use of funding for the project is unfounded. He only raised this in his 29 January 2015 request for review of the 27 January decision to terminate his contract, and it can be added that his claims were not substantiated. In light of the above, none of the claims raised by the complainant are founded.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 10 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ