

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

T. (No. 2)

v.

Interpol

135th Session

Judgment No. 4619

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms E. T. against the International Criminal Police Organization (Interpol) on 9 July 2019, Interpol's reply of 28 October 2019, the complainant's rejoinder of 16 December 2019 and Interpol's surrejoinder of 8 April 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the decision not to place her on a roster.

The complainant joined Interpol in October 2014 as an administrative agent in the Anti-doping Unit of the Criminal Organizations and Drugs Sub-directorate at grade 9. She was promoted to Principal Agent at grade 8 in the Anti-corruption and Financial Crimes Sub-directorate with effect from 1 December 2015. In July 2017 she applied for the grade 6 post of Assistant Analyst in the Chemical, Biological, Radiological, Nuclear and Explosive Materials Sub-directorate (CBRNE), for which a vacancy notice had been published. She was shortlisted, invited to sit a written test – which she passed – and then to attend an oral interview. On 27 September 2017 she was notified that she had not been appointed to the post but had been placed on a roster

so that her candidacy could be considered should a vacancy arise in a similar post to the one for which she had applied. Between October 2017 and February 2018 the Administration provided further details of the existence and operation of the roster mechanism. In April 2018 the complainant's post was reclassified at grade 7 and she was given the title of Operational Assistant. She challenged that reclassification decision in an internal appeal, the rejection of which forms the subject-matter of another complaint (her fifth) pending before the Tribunal.

On 13 December 2018 and 8 January 2019 the complainant was informed that her applications for two vacant posts of Assistant Criminal Intelligence Analyst at grade 6 in which she had expressed an interest had been unsuccessful. She lodged an internal appeal with the Joint Appeals Committee, but the Secretary General of Interpol declared that appeal inadmissible in a letter of 25 February 2019. Following the complaint filed by the complainant against that decision, the Tribunal, in Judgment 4618, also delivered in public this day, set aside the impugned decision and remitted the case to Interpol for a fresh consideration of her internal appeal.

From 11 December 2018 to 10 January 2019 the post of Assistant Criminal Intelligence Analyst was advertised with a view to creating a roster of potential candidates who met the criteria to hold that post in case a vacancy arose within Interpol. On 12 February 2019 the Administration sent the Organization's staff members guidelines on creating and maintaining rosters and informed them that several posts would be becoming available, for which they were invited to apply.

On 13 March 2019 the complainant – who had expressed an interest in the post of Assistant Criminal Intelligence Analyst – was notified that her application had not been successful. She asked for explanations and a copy of the rules concerning the creation of rosters. She was informed that the fact that a staff member's name had been placed on a roster for a particular type of post did not necessarily entitle her or him to be automatically shortlisted, but rather that her or his application would be considered for the shortlist. On 30 April she requested to be informed of the reasons for the rejection of her application and expressed her suspicion that the Administration was retaliating against

her following the internal appeal that she had previously submitted against the refusal to classify her post at grade 6, and not grade 7 as the Organization had decided. On 6 May the Administration informed her that it needed to await the outcome of the appeal proceedings before issuing any new communications.

On 11 May 2019 the complainant lodged an internal appeal against the decision rejecting her application to be placed on the roster for the post of Assistant Criminal Intelligence Analyst. She asked for that decision to be withdrawn, her appointment to the post in question or, if appropriate, the re-opening of the selection procedure, full redress for the injury she considered she had suffered and an award of costs. By a letter of 28 May 2019, which constitutes the impugned decision, the Secretary General declared her appeal inadmissible on the grounds that the fact of not being offered a position did not constitute a decision with a legal effect on her situation and that the placement of her name on a roster did not create an automatic entitlement to be shortlisted.

The complainant asks the Tribunal to set aside the impugned decision and to order, if appropriate, the resumption of the internal appeal procedure. She also claims redress for all the injury she considers she has suffered and an award of 5,000 euros in costs.

Interpol submits that the complaint is irreceivable as the complainant has no cause of action. It asks the Tribunal to dismiss the complaint as irreceivable and unfounded.

In her rejoinder, the complainant reiterates her claims, assesses her injury at 1,000 euros per month from the date of the impugned decision until the actual resumption of the internal appeal procedure or, if the Tribunal does not remit the case to the Organization, until the date of this judgment, plus 10,000 euros on account of, in particular, Interpol's allegedly abusive and harassing tone in its reply.

Interpol argues that these new claims should be dismissed as irreceivable.

CONSIDERATIONS

1. The complainant submits that the impugned decision, in which the Secretary General rejected her internal appeal as inadmissible, was based on a blatant error of law in that he considered that the decision not to accept her application to be placed on a roster for filling the post of Assistant Criminal Intelligence Analyst did not constitute a decision open to internal appeal.

The Organization replies that it is for the Secretary General to decide whether an internal appeal is admissible and that the aspects challenged by the complainant in her appeal did not concern a flaw in the selection procedure. Moreover, it contends that the complaint filed with the Tribunal is also irreceivable since the complainant is not challenging an administrative decision. According to Interpol, the complainant does not allege a breach of her terms of appointment or of provisions of the Staff Manual that are applicable to her.

2. The Organization's reasons for contesting the receivability of the instant complaint before the Tribunal are closely linked to the grounds on which the Secretary General's impugned decision found the complainant's previous internal appeal to be inadmissible. Its objection to receivability will therefore be considered at the same time as the complainant's pleas.

3. The reasons for the decision of the Human Resources Directorate of 13 March 2019, which was the subject of the internal appeal lodged by the complainant on 11 May 2019, were stated in the following terms:

"Your application has been carefully assessed, but we regret to inform you that you have not been successful on this occasion. We appreciate this may be disappointing news and would like you to understand that this decision reflects our current recruitment priorities and the nature of the skills we are seeking."

In her internal appeal, the complainant asserted the following:

"I challenge the decision to reject my application submitted in respect of vacancy notice INT01892. I am appending the email informing me that my application had been unsuccessful. First, valid grounds were not stated for that decision. In its message of 6 May 2019, the Administration wrongly

refused to inform me of the reasons for the rejection, explaining that my request was linked to ongoing legal proceedings. Second, that decision is retaliation for the internal appeal that I submitted concerning my post classification. In September 2017, after written and oral tests arranged as part of the procedure to fill post INT01144, I was placed on the roster of candidates who could be appointed to posts of assistant criminal [intelligence] analyst at grade 6. In October 2018, after I had applied for post INT01887, I was informed [...] that the [Director of Human Resources Management] had advised that I not be selected on the basis of the roster. After several exchanges with [her] concerning notification of the exact reasons, no evidence of my removal from the roster was ever provided to me. Despite my requests, the Administration did not wish to confirm that the rejection of my application for post INT01892 was warranted by my continued inclusion on the roster. Its response of 6 May [2019] demonstrates the Administration's malice towards me. The harassment policy provides in Section I that '*failure to consider the staff member concerned for a warranted post or promotion*' is an act of retaliation. The Administration no longer appears to hide its acts of retaliation. I ask for the withdrawal of the challenged decision, my selection or subsidiarily the re-opening of [the] selection procedure, redress in full for the injury suffered and an award of costs."^{*}

4. In a letter of 28 May 2019, which constitutes the impugned decision, the Secretary General found the internal appeal to be inadmissible on the basis of the following considerations:

"Your internal appeal has been reviewed, in accordance with the provisions of Staff Rule 13.1.3, to determine whether it is admissible. Pursuant to Staff Rule 13.1.3(1)(a), an internal appeal may be deemed inadmissible if it is lodged against an act which does not constitute an administrative decision. The [...] Tribunal [...] has defined a 'decision' as an act by an officer of an organisation, which has a legal effect, ie: it relates to a decision involving the terms of your appointment or the provisions of the Staff Manual. The fact that you were not offered a position to which you have applied does not constitute a decision within the meaning of the Tribunal's jurisprudence. Therefore, pursuant to Staff Rule 13.1.3(1)(a) and the jurisprudence of the Tribunal, your appeal has been found inadmissible on the grounds that the appeal relates to an act, which does not constitute an administrative decision. Notwithstanding, you were provided information, by e-mail dated 15 March 2019, whereby you were informed that you remain on the roster, and that having your name on the roster does not create an entitlement to be

^{*} Registry's translation.

considered for a particular job, any application is considered [...] against the specific Terms of Assignment. You also raise the issue of harassment and retaliation. Should you feel this to be the case, you are within your rights to seek a resolution through the appropriate internal processes in place.”

5. In respect of the internal appeal procedure, the relevant provisions of the Staff Manual are as follows:

– Regulation 13.1: Internal procedures for the settlement of disputes

“(1) Any official of the Organization or, where applicable, any other person designated in Article II (6) of the Statute of the [...] Tribunal [...], may:

- (a) challenge an administrative decision, taken by the Secretary General, which he considers is prejudicial to his interests and conflicts with the terms of his employment agreement or with any pertinent provisions of the present Regulations, of the Staff Rules or of the Staff Instructions;

[...]

(2) A decision may be challenged within the Organization either through the review procedure or directly through the internal appeal procedure. These two procedures cannot be initiated simultaneously with respect to the same decision.”

– Rule 13.1.2: Content of the request for review and of the internal appeal

“(1) The request for review and the internal appeal shall be addressed in writing to the Secretary General. They shall be signed and dated by the official and shall include the following documents:

- (a) [a] copy of the challenged decision or of the request for a decision by the official;
 - (b) [a] written summary of the reasons.
- (2) If the request mentioned in (1) above is incomplete, the Secretary General shall inform the official of that fact immediately, and shall ask him to provide the missing elements within 5 working days of the notification of this information.
- (3) Expiry of the limitation period shall not prejudice the admissibility of the request if the latter was submitted before expiry of the said limitation period and supplemented in conformity with (2) above.

[...]”

– **Rule 13.1.3: Admissibility of a request for review or of an internal appeal**

“(1) Upon receipt of a request for review or of an internal appeal, the Secretary General shall first examine whether it is admissible. In particular, it may be declared not to be admissible when it:

- (a) challenges an act which does not constitute an administrative decision which can be challenged;
- (b) does not comply with formal requirements prescribed in Rule 13.1.2;

[...]

(3) When the Secretary General rejects a request for review or an internal appeal on grounds of admissibility, he shall give the reasons for his decision in writing. The challenged decision shall then become final.

(4) When the Secretary General considers a request for review or an internal appeal admissible, the review procedure or internal appeal procedure shall continue.”

– **Regulation 13.3: Internal appeal procedure**

“An internal appeal shall be addressed in writing to the Secretary General who, if he deems it admissible, shall consult the Joint Appeals Committee prior to taking a decision on the merits of the appeal.”

– **Rule 13.3.4: Powers of the Joint Appeals Committee**

“(1) The Joint Appeals Committee shall give a consultative opinion only on the aspects of the decision raised and challenged by an official in his internal appeal. The Chairman may invite the official to clarify the substance of his appeal.

[...]

(7) The Joint Appeals Committee shall verify, within the limits of the aspects challenged by the official, whether the decision concerned conforms to the official’s employment agreement, to the Staff Regulations, to the present Rules and to any pertinent Staff Instructions.”

6. In the present case, the Secretary General rejected the complainant’s internal appeal as inadmissible on the basis of aforementioned Staff Rule 13.1.3(1)(a) on the grounds that, in his view, the act challenged by the complainant in that appeal was not an administrative decision.

Under the Tribunal's settled case law, a decision to refuse to appoint an official of an international organisation to a post is in fact a decision that may be challenged in an internal appeal and ultimately before the Tribunal (see, for example, Judgments 4408, consideration 2, 4293, consideration 9, 4252, consideration 4, and 1204, consideration 6).

It is true that in this case the impugned decision does not, strictly speaking, concern a refusal to appoint an official to a post but a refusal to place her on a roster. The question is therefore whether such a refusal adversely affects a staff member in itself or, in other words, whether the fact of not being placed on such a roster is capable of having a legal effect.

The grounds for the impugned decision explicitly state that placement of a staff member on the roster does not confer an advantage in itself, as it does not create an entitlement to be considered for a particular job since any application is considered against the specific terms of assignment.

However, the Tribunal observes that, in urgent and exceptional circumstances, a manager may select a candidate who fulfils all the criteria for the vacant post directly from the roster. It follows that the fact of refusing placement on a roster is capable of producing legal effects and adversely affecting the person concerned, without there being any need to determine in these proceedings whether such a mechanism is compatible with all the other rules and regulations applicable to Interpol staff members. Accordingly, that refusal is a decision open to internal appeal.

It is clear from the foregoing that the Secretary General's decision to declare the complainant's internal appeal inadmissible rests on an obvious error of law.

The Tribunal considers that the Secretary General's decision raises particular concern given that Staff Rule 13.1.3, which allows him to prevent appeals from being considered by the Joint Appeals Committee, involves the fundamental safeguard provided to staff members of exercising the right of appeal against decisions that affect them and that this rule must therefore be applied extremely cautiously.

7. As the decision challenged by the complainant not to place her on a roster was, as has just been stated, an administrative decision open to appeal, it follows, contrary to what Interpol submits, not only that the complaint before the Tribunal is receivable, but also that the impugned decision of the Secretary General, in which he wrongly dismissed the complainant's appeal as inadmissible, must be set aside.

The case will be remitted to Interpol for the complainant's appeal to be considered by the Joint Appeals Committee in compliance with the procedure set out in the Staff Manual.

8. In view of the Organization's arguments in its submissions, the Tribunal considers it useful to reiterate that, under their terms of appointment and the applicable staff rules in an international organisation, all staff members who apply to be placed on a roster with a view to future appointment to a vacant post are entitled to have their applications considered in good faith and in keeping with the basic rules of fair and open competition (see, by analogy, Judgment 4524, consideration 8, and the case law cited therein). The Organization is therefore wrong to contend that the complainant's challenge to the decision not to place her on a roster in compliance with the Organization's guidelines on creating and maintaining rosters is not based on her terms of appointment or staff rules.

9. Whatever the eventual outcome of this dispute, the unlawful refusal to submit the complainant's appeal to the Joint Appeals Committee has had the effect of delaying its final settlement. That decision has, in itself, caused the complainant injury that will be fairly redressed by ordering Interpol to pay her compensation in the amount of 10,000 euros.

10. By contrast, the Tribunal considers that it is unnecessary to pay the complainant, as she requests, further compensation on account of the Organization's alleged abusive and harassing tone in the proceedings before the Tribunal.

11. As the complainant succeeds for the main part, she is entitled to the award of 5,000 euros which she claims in costs.

DECISION

For the above reasons,

1. The decision of Interpol's Secretary General of 28 May 2019 is set aside.
2. The case is remitted to Interpol in order that it may take action as indicated in consideration 7, above.
3. Interpol shall pay the complainant compensation in the amount of 10,000 euros.
4. It shall also pay her 5,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 10 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ