

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

T. (No. 3)

v.

Interpol

135th Session

Judgment No. 4620

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms E. T. against the International Criminal Police Organization (Interpol) on 26 February 2020 and corrected on 13 May, Interpol's reply of 13 August 2020, the complainant's rejoinder of 2 November 2020 and Interpol's surrejoinder of 1 February 2021;

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 her performance assessment and complains that she was not able to exercise her right to an effective internal appeal in its regard.

After having worked as an external consultant for Interpol for around a year, the complainant was recruited by the Organization on 13 October 2014 as an administrative agent at grade 9 in the Anti-doping Unit of the Criminal Organizations and Drugs Sub-directorate under a short-term appointment expiring on 15 March 2015. Her letter of appointment stated that she had been hired in the context of an increase in the Organization's activity owing to an anti-doping project funded by external sources, specifically the World Anti-Doping Agency

(WADA), an independent international entity created and financed by the sporting movement and governments. Her contract was extended several times and she was promoted to Principal Agent at grade 8 in the Anti-Corruption and Financial Crimes Sub-directorate as from 1 December 2015. In September 2016 she was appointed to the same post at the same grade for one year, until 30 September 2017, in the framework of a specific project also financed by WADA, the Energia project, which was planned to last for three years. On 23 August 2017, following the agreement of funding for her post in connection with the continuation of the project in question, she was informed that her short-term appointment would be extended for two further years, until 31 August 2019.

Following a reclassification procedure for her post, the complainant was promoted to Anti-Doping Operational Assistant at grade 7 from 1 April 2018. However, she considered that her duties were at grade 6 level and therefore challenged that reclassification in a request for review then an internal appeal submitted on 12 November 2018. That appeal was subsequently rejected and the complainant submitted a new complaint (her fifth), which is currently pending before the Tribunal.

The complainant – who alleges that the working environment deteriorated so considerably after the submission of that appeal that it became harmful to her health – was placed on sick leave from February 2019.

In a letter of 8 July 2019 sent by recorded delivery, Interpol sent the complainant two performance assessment reports – respectively covering the periods from 1 December 2017 to 31 March 2018 and from 1 April 2018 to 31 March 2019 – for her to insert her observations and comments. Staff Instruction No. 2006.04, which concerns the performance assessment system, was enclosed with the letter. An offer was also made to the complainant to have the reports sent electronically to her personal email address. The letter was returned to the Organization's headquarters because the addressee was not known at the address indicated. Having managed to obtain the complainant's new postal address, Interpol sent her a new letter on 2 August 2019, which was also returned because the addressee had not collected it.

On 28 August the complainant received an email sent to her private account by the Human Resources Management Directorate, which invited her to review several documents, including the aforementioned letters of 8 July and 2 August 2019 and a decision of 8 August 2019 notifying her of the confirmation of her appointment ending as planned on 31 August 2019. The complainant impugned that decision in her fourth complaint to the Tribunal. On 30 August 2019 she returned the assessment reports with her comments. Specifically in respect of the report covering the period from 1 April 2018 to 31 March 2019 – which noted a number of shortcomings – she expressed her complete disagreement. She stated that it had been drawn up without a preliminary discussion with her and contained false and misleading statements that indicated abusive behaviour by her managers.

By emails sent on 1 October 2019 the complainant submitted an internal appeal against her annual performance assessment for 2018-2019. She asked for the performance assessment report at issue to be withdrawn, full redress for the injury she considered she had suffered and an award of costs. As she did not receive a reply, on 4 February 2020 she enquired what action had been taken in response to her appeal. Interpol submits that it became aware of a possible appeal by the complainant for the first time on that date owing to a technical difficulty with receiving emails from electronic addresses external to the Organization. On 11 February 2020 the Human Resources Management Directorate acknowledged receipt of the email of 4 February and undertook the steps necessary to obtain confirmation of receipt of the emails of 1 October 2019. According to the Organization, owing to the global situation caused by the COVID-19 pandemic, its IT services had been ordered to put in place exceptional measures enabling remote working, which did not allow the necessary action to be taken at the time.

As she had not received any communications regarding her appeal of 1 October 2019, on 26 February 2020 the complainant filed a complaint with the Tribunal against what she considers to be its implied rejection. She asks the Tribunal to set aside the performance assessment in question together with, if appropriate, the implied rejection of her appeal and to order Interpol to remove that performance assessment from all its files,

to redress the injury she claims to have suffered, which she assesses at 15,000 euros at least, and to pay her costs in the amount of 7,000 euros.

Interpol submits that the complaint is irreceivable as the complainant did not exhaust internal remedies. It asks the Tribunal to dismiss the complaint in its entirety as irreceivable on that account and unfounded in any event.

CONSIDERATIONS

1. Interpol submits that, by acknowledging receipt on 11 February 2020 of the email of 4 February 2020, it took action to deal with the internal appeal lodged by the complainant in her emails of 1 October 2019, thereby forestalling an implied rejection that could be referred directly to the Tribunal in view of the interpretation of Article VII, paragraph 3, of the Tribunal's Statute given in its case law.

2. Under Article VII, paragraph 3, of the Tribunal's Statute:

“Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and her or his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration.”

As the Tribunal recalled in, for example, Judgments 4174, consideration 4, and 3975, consideration 5, it is clearly established in the case law that where the Administration takes any action to deal with a claim, this step in itself constitutes a “decision upon [the] claim” within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal. Moreover, firm precedent has it that when an organisation forwards a claim before the expiry of the prescribed period of 60 days to the competent authority, that step in itself constitutes a decision on the claim (see, on these points, Judgments 3956, 3034, 2681, 786, 762 and 532). However, it is also clear from the case law that when an organisation merely acknowledges receipt of a claim addressed to it, that will not amount to a decision on the

claim for the purposes of Article VII, paragraph 3 (see Judgment 533, consideration 3).

In this case, as may be seen in the email of 11 February 2020, the Organization merely acknowledged receipt of the complainant's email of 4 February without taking any action whatsoever to deal with that appeal.

3. The Tribunal notes that Staff Rule 13.1.1(2) provides that internal appeals must be submitted within 60 calendar days of the notification of the challenged decision. The emails of 1 October 2019, to which the complainant refers in this respect, are dated within that time limit.

The annexes to the complaint show that on 1 October 2019 the complainant sent an email to the operational email address of the Human Resources Management Directorate and the official email address of the Human Resources Director. In that email she explicitly stated that she was submitting an internal appeal against her latest annual performance assessment. She also stated that two documents were attached to the email, namely her latest performance assessment and an internal appeal memorandum addressed to the Secretary General.

Interpol does not convincingly dispute that it received the email to at least one of the electronic addresses in question. The Organization's argument that the documents were not attached again to the reminder email sent on 4 February 2020 is irrelevant since the Organization should have requested them if it did not receive them.

Moreover, the Organization's other argument that former Interpol staff members ordinarily submit internal appeals to it by post is likewise irrelevant since that is not required by the provisions of Chapter 13 of the Staff Manual. The Tribunal also observes that the Organization itself acknowledges that it had already accepted other internal appeals submitted by the complainant in the form of emails.

4. It is evident from the foregoing that the Organization's objection to receivability must be dismissed.

5. In support of her complaint, the complainant alleges, in particular, a breach of her right to an effective internal appeal on account of the Organization's failure to act following the submission of her internal appeal.

This plea is well founded. By not dealing with the complainant's internal appeal, the Organization denied her the opportunity to exercise her right to an effective internal appeal and thereby undermined the fundamental safeguard provided by that right. The impugned decision will therefore be set aside, without there being any need to examine the complainant's other pleas.

The case will be remitted to Interpol for the complainant's internal appeal to be considered in compliance with the procedure set out in the Staff Manual. On that point, the Tribunal points out that, while the complainant is opposed to that remittal, she cannot assume, as she does in her submissions, that the Joint Appeals Committee will not give her appeal due consideration.

6. Whatever the eventual outcome of this dispute, the failure to consider the complainant's internal appeal has had the effect of delaying its final settlement. That failure alone has caused the complainant moral injury that will be fairly redressed by ordering Interpol to pay her compensation in the amount of 10,000 euros.

7. Since the case is remitted to the Organization, claims of any kind relating to the alleged unlawfulness of the performance assessment in question must be dismissed for the time being. It will be for the competent bodies to consider them in the context of that remittal.

8. As the complainant succeeds for the main part, she is entitled to the award of 7,000 euros which she claims in costs.

DECISION

For the above reasons,

1. The implied rejection of the complainant's internal appeal lodged on 1 October 2019 is set aside.
2. The case is remitted to Interpol in order that it may examine the complainant's internal appeal as indicated in consideration 5, above.
3. Interpol shall pay the complainant compensation in the amount of 10,000 euros for moral injury as indicated in consideration 6, above.
4. It shall also pay her 7,000 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