

## SEVENTIETH SESSION

### Judgment 1084

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. J.-F. P. S. against the International Criminal Police Organization (Interpol) on 2 January 1990 and corrected on 13 February, Interpol's reply of 10 May, the complainant's rejoinder of 17 July and Interpol's surrejoinder of 25 September 1990;

Considering Articles II, paragraph 5, and VII, paragraph 2, of the Statute of the Tribunal and Articles 18(1), 43(1)(a) and 52(3) of the Staff Regulations and Articles 44, 45, 106, 127(3), 128, 145, 149(11) and (13) and sections 1, 2 and 3 of Appendix I and Section 1 of 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. On 7 April 1988 the Executive Committee of Interpol approved new Staff Rules. Article 44 of the Rules states that in conformity with Article 18(1) of the Staff Regulations, on the classification of posts, all officials except the Secretary General shall be classified in one of four categories, A, B, C or D. Category C consists of "administrative and technical posts". A schedule in section 1 of Appendix I to the Rules sets out "the general classification of posts by category and by grade". Under category C a "head of group" has grade 5 and a "head of section" grade 4, which is higher.

Article 1 of Subsection 2 of Section 3 of Appendix I sets out eight factors to be taken into account in rating a post: the diversity and complexity of the work, the existence of guidelines and so forth. Article 10 of the same subsection reads:

"A post is rated by giving it a certain number of points for each of the eight factors. The appropriate grade for the post is obtained by applying a table of equivalences to the total number of points. This table of equivalences is published as a Staff Instruction."

The conversion table was issued in a staff instruction that came into effect on 12 September 1988, the range of points being 400 to 489 for grade 4 and 330 to 399 for grade 5.

The complainant, a Frenchman who was born in 1949, took up duty with Interpol at Saint-Cloud on 1 February 1984. By a letter of that date the Secretary General informed him that he was appointed to a post as head of the General Accounts and Analysis Section.

On 13 June 1988 he wrote a letter to the Secretary General pointing out that his pay slip for June described him as "head accounts service" and asking that he be given his proper title.

The new Staff Rules came into effect on 26 June 1988. On 28 July the complainant wrote again to the Secretary General observing that his pay slip for July called him "head of group" and gave him grade 5, step 7, in category C under the new Rules and that as "head of section" he was entitled to grade 4, step 6, according to the schedule in Appendix I. He supplied a description of his post and, in accordance with Article 2(2)(b) of section 2 of Appendix I, asked the Secretary General to submit his case to a Joint Classification Committee set up under Article 145. The Secretary General did so. In its report of 24 October 1988 the Committee made its own detailed rating of the complainant's post and recommended no change in grade. On 2 November 1988 the Secretary General confirmed at C5 the grading of the complainant's post as "head of the Accounts Group".

On 7 December 1988 the complainant submitted a "request for review" under Article 43(1)(a) of the Staff Regulations. The request went to the Joint Appeals Committee, which reported on 26 September 1989. It too made an evaluation of the complainant's post, to which it gave a total of 376 points, and recommended confirming the

grading. By a decision of 6 October 1989, the one impugned, the Secretary General endorsed that recommendation, after reducing the tally of points to 361.

The complainant left Interpol on 6 June 1989 in the circumstances Judgment 1020 describes.

B. The complainant observes that the post he applied for at the end of 1983 and was appointed to in 1984 bore the title of "head of section", that his duties were never officially altered and that he performed them until he left in June 1989. It was wrong to change his title to head of group because he had an acquired right to the title of "head of section". As such he was entitled under the schedule in section 1 of Appendix I to the new Rules to C4, the grade granted to other staff members of similar rank. Other staff members who, like him, held grade J under the old Staff Rules were granted C4. He was therefore discriminated against. Though the old system of grading was unclear it should have been sorted out according to fair and objective criteria. The Organization misused the new Staff Rules to bring about an arbitrary, unfair and surreptitious downgrading of his post and thereby caused him undue injury. Neither the Classification Committee nor the Appeals Committee looked at the rating of posts similar to his own, and that would have shown up the discriminatory treatment of him.

He further contends that he had an acquired right to the recognition of his seniority in his new grade: since he had reached step 6 in his former grade, J, by virtue of that seniority he should have been granted the same step in grade C4, instead of step 7 in C5.

The Classification Committee wrongly treated his case as a request for reclassification and went into the evaluation of his duties, whereas what he was claiming was recognition of the grade he was already entitled to under the Rules. His supervisors mistakenly altered the description of his post so as to belittle his duties and responsibilities. Though it invited comments from him, and he submitted them on 19 October 1988, the Committee took no account of the arguments he had put forward in his original request of 28 July 1988 and it thereby acted in breach of Article 149(11) of the Staff Rules, which requires it to hear "the views of all the parties concerned".

The Joint Appeals Committee proceedings were dilatory. The complainant was not sent Interpol's answer until 7 April 1989 and it missed the deadline of 14 days in Article 127(3) of the Staff Rules. There were other procedural flaws.

The Appeals Committee failed to rule on the complainant's claim of 28 July 1988, thereby misconstruing its competence under Article 128 of the Staff Rules. Instead it too went into the rating of his post and he strongly objects to its handling of the matter.

He asks the Tribunal to order that the title of head of section be restored to him, that he be paid the difference in salary between grades C4 and C5 for the period from July 1988 to June 1989 and compensation in lieu of another three months' notice. He claims an award of 100,000 French francs in damages for professional and moral injury and in costs. He further asks that the "attestation" Interpol gave him on 28 September 1989 in accordance with Article 106 of the Staff Rules be amended accordingly and drafted according to usage in the host country.

C. In its reply Interpol submits that the complaint is devoid of merit.

It contends that according to the Tribunal's case law a title cannot constitute an acquired right: it is not the title, but the content, of a post that is of decisive importance to someone who takes up an appointment with the Organization. A title is just a minor matter of terminology. According to Article 7 of section 1 of Appendix VII, which is headed "Table of equivalence of titles", the term "former titles" in that table means the titles appearing in pay slips in the month preceding the date of entry into force of the Rules. The complainant's former title on his pay slip was "head accounts service", a title that did not appear in the table at all: there was therefore no provision for converting it. Besides, a change of title affords no cause of action unless the official loses prestige, and the complainant did not.

Interpol made a correct conversion of the complainant's grade in accordance with the table in Article 8 of section 1 of Appendix VII: the table shows that the proper classification of officials like him in former category J is C5. His contention that officials who formerly held lower grades have also been given C5 is irrelevant. An official has no acquired right to any particular grade. Since there was no clause in the complainant's contract of service stating what grade he would have, grade cannot have been of decisive importance to him in accepting appointment. He can show no injury due to the change of grade. The change of title had no effect on the change of grade: the two

changes were distinct. Posts carrying the same title are not always given the same grade. Even supposing he had had a right to keep the title of head of section he would not necessarily have got C4.

He suffered no loss of pay on conversion of his grade from J, step 6, to C5, step 7; indeed he got an increase in pay of 140 French francs a month by virtue of a guarantee in Article 9 of section 1 of Appendix VII that his step in his new grade should carry no lower a salary.

Recognition of seniority confers no right to the same step in the new grade as the staff member had in the old: it means that seniority must be reckoned from the date of appointment even if prior to the entry into force of new Staff Rules. Besides, the step does not necessarily match seniority.

The complainant's allegations of discrimination are unfounded since Interpol applied the transitional provisions of the Staff Rules alike to everyone who had taken up duty before the new Rules had come in.

As for his contention that the joint committees failed to answer the pleas in his letter of 28 July 1988 and his objection to their merely applying the method of rating prescribed in the Rules, he himself applied for referral to the Classification Committee. It had no choice but to follow the classification procedure set out in Article 45 of the Rules and it did not act in breach of Article 149(11).

As for the Appeals Committee, it correctly construed its competence under Article 128(1). Interpol did respect the deadline for answering the complainant's request for review, and his allegations of other procedural flaws are mistaken.

As to the merits, the joint committees made a thorough review of his post and drew no clearly mistaken conclusion from the evidence. The complainant does not challenge their detailed evaluation of the eight relevant factors, and his objections to their method of rating are mistaken because they had no choice but to follow the Rules.

The Organization concludes that the impugned decision is sound, that it caused him neither professional nor moral injury and that his claims should fail in their entirety.

D. The complainant rejoins that Interpol's reply is misleading in that it often misrepresents his line of argument so as to defeat a thesis he never put forward. He enlarges on his pleas and seeks to refute the Organization's. He submits that his title was not just a matter of terminology but was closely bound up with the nature of his responsibilities and the grading of his post, that the title of head of group belittled him, and that the grading he got, and that appears in his certificate of service, does cause him professional and moral injury. He argues that Interpol's comments on the reckoning of his step are misconceived. He develops his contention that he was treated unfairly and in breach of equal treatment and he discusses the cases of other officials in support of that contention. He comments on the factor-rating system and points to features of it he sees as unfair. He explains why his second and fourth complaints are relevant to this one. He presses his claims and further invites the Tribunal to rule on "the correctness of the dismissal procedure" followed in his case, which he submits was in breach of good faith and of the rules.

E. In its surrejoinder the Organization denies distorting the complainant's reasoning and submits that it can hardly have misread his arguments when his rejoinder addresses its pleas in reply. It develops those pleas with particular reference to his claim to the title of chief of section, grading of his post, his allegations of breach of equal treatment, the method of classification of posts and the reckoning of his seniority. It points out that his application for review of the dismissal procedure is a new claim and therefore irreceivable and is in any event unfounded because there is no connection between the decision impugned in this case and the complainant's dismissal.

#### CONSIDERATIONS:

1. The complainant joined Interpol on 1 February 1984. Although the title of his post was "head of the General Accounts and Analysis Section" his pay slips described him as "head accounts service". The Executive Committee of the Organization adopted new Staff Rules on 7 April 1988. By June 1988 the complainant was at step 6 in grade J. On 13 June 1988, before the new Rules came into force, he asked the Secretary General to give him back his title as head of the General Accounts and Analysis Section. But his pay slip for July 1988 still described him as head of group. It also put him at step 7 in a new grade, C5.

On 28 July 1988 he asked the Secretary General to refer the matter to the Joint Classification Committee and

claimed reinstatement in his original title and the upgrading of his post to C4.

In records of meetings it held on 20 September and 21 October 1988 the Committee found that the title "head of the General Accounts and Analysis Section", though in his contract of appointment, was not in the post description supplied by the head of the Administrative Division. The Committee unanimously held the C5 grading to be reasonable.

On 2 November the Secretary General endorsed the Committee's findings.

By a letter of 7 December 1988 the complainant put to the Secretary General a "request for review", the Secretary General referred the matter to the Joint Appeals Committee, in its report of 26 September 1989 the Appeals Committee recommended rejecting the claims, and the Secretary General did so by the impugned decision of 6 October 1989.

The acquired right to a title

2. The complainant accuses Interpol of denying his acquired right to the title it granted him on appointment.

The Appeals Committee's report and the impugned decision, which relate only to the grading of his post, say nothing of the title of head of section and the Organization therefore objects to the receivability of his claim to that title.

The objection is unsound. The claim the complainant originally made on 13 June 1988, i.e. before the new Staff Rules came into force on 26 June, was that he should get back the title in his contract of appointment as head of the General Accounts and Analysis Section. In his appeal of 28 July 1988 to the Joint Classification Committee he confirmed his claim to the title, and he pressed it on 7 December 1988 in his request to the Secretary General for review of the refusal to upgrade his post. Although the sole subject of the impugned decision - and indeed of the Appeals Committee's report - was the grading, the rejection of his claim may be inferred and his complaint challenging that decision, which he filed within the time limit in Article VII(2) of the Tribunal's Statute, is receivable.

3. He alleges breach of his acquired right to his original title and of Article 52(3) of the Staff Regulations. He points out that the vacant post that Interpol advertised and that the Organization appointed him to was for the "head of the General Accounts and Analysis Section" and that his contract of appointment called him head of section. He submits that only for the sake of convenience did his monthly pay slips shorten his title to "head accounts service". That was why on 13 June 1988, before the new Rules came in, he asked for his proper title. In answer, however, Interpol referred to him on his pay slip for July 1988 as "head of group" at grade C5, step 7.

4. Earlier judgments explain what an "acquired right" is in the law of the international civil service. A right will be acquired when he who has it may expect it to be respected notwithstanding any amendment of written rules. One instance is where the right arises under a clause of the contract that the parties intend should be inviolate. Not all contractual rights are acquired rights: the parties must have expressly or by implication precluded the possibility of impairing them.

Although the complainant was granted the disputed title in his contract of appointment, his pay slips called him head of the accounts service up to the date at which the new Rules came into force. He does make out that by changing his title after that date from head of section to head of group Interpol downgraded his post and duties and so denied him both grade C4 and better salary advancement. But the change made no difference to the level of his duties and responsibilities, the nature of his work or his salary; he was still in charge of accounts in the eyes of colleagues and subordinates; he sustained no appreciable injury; and there was therefore no breach of any acquired right.

5. The Organization further points out that even if he had had the title of head of section before the new Rules came in that would have made no difference to his new grade: grade comes before title, not title before grade. Interpol explains that the grade depends on the rating the Joint Classification Committee makes according to the method laid down in subsection 2 of section 3 of Appendix I to the Staff Rules.

Though the complainant objects to the C5 grading - his pleas on that subject are taken up below - there is no good reason to question Interpol's view that his former title would not necessarily have entitled him, as he maintains, to

C4.

6. As to his prospects of salary advancement, Interpol points out that one consequence of adopting the new rules was to give him a higher salary.

That does not quite take his point, which is about his prospects. Had he had C4 the outlook would certainly have been better for him and the real issue is whether the material rules warranted refusing him C4. It is a matter of grading and it is dealt with in the following paragraphs.

Regrading

7. One of the complainant's pleas is that the grade he got under the new Rules was wrong in law because the procedure was improper and in breach of those Rules. He wants C4, step 6, instead of C5, step 7.

His objections to the procedure in the Joint Classification Committee are unsound. Article 128(3) of the Staff Rules requires the Joint Appeals Committee to "check on whether the proper procedure was followed for taking the decision" and "rule on the substance of the case brought before it, even if it finds that there was some irregularity in the procedure followed for taking the impugned decision". That means that the Appeals Committee proceedings remedied any flaw there may have been in the classification procedure.

8. The complainant contends that the Appeals Committee committed procedural errors of its own: it held that it was not competent to entertain his arguments about his personal status such as his acquired rights and to go beyond the issues covered by the Classification Committee's report and the Secretary General's decision; and it declined to rule on his claim to his title as head of the General Accounts and Analysis Section. The Secretary General took the same stand in his decision of 6 October 1989.

The contention is unsound. Refusal to entertain a claim is not a procedural error but implied rejection of the claim. Since, as was stated in 2 above, the complainant is free to put to the Tribunal pleas that the Organization by implication rejected, he may not properly object to the refusal by the Appeals Committee and by the Secretary General to take up the claim.

9. The complainant's other objections to the internal appeal proceedings also fail.

One is that the Organization failed to meet the time limit of fourteen days set in Article 127(3) of the Staff Rules for communicating the Secretary General's memorandum in reply to his request of 7 December 1988. But the objection is unsound: not only is the time limit not binding but in any event it starts at the date at which the Secretary General receives the request from the Chairman of the Committee. He did not get the complainant's request until 18 January 1989 and his memorandum was sent to the complainant in good time, on 25 January.

The complainant's other objection is that the Joint Appeals Committee was late in reporting: it failed to comply with the requirement of Article 149(13) of the Staff Rules that it give its opinion "within a reasonable period". In this case it did not report for ten months. But, as the Organization explains, the delay was due to the transfer of headquarters and staff from Saint-Cloud to Lyons and in the circumstances the time the Committee took was reasonable.

10. The complainant's main substantive objection is to the Appeals Committee's and the Secretary General's grading of his post.

He points out that his contract of appointment called him head of section; that by virtue of Article 2 of Section 1 of Appendix VII to the Rules he should have been automatically graded C4, not C5, in accordance with Tables 1 and 2 in Section 1 of Appendix I; and that, in keeping with Article 6 of Section 1 of Appendix VII, there should have been no change in the step - No. 6 - he had acquired by dint of length of service.

The Organization's answer is that the complainant's contract gave him no acquired right to the title of head of section and that grade comes before title anyway.

That argument is upheld in 4 and 5 above.

As for his step, Interpol submits that an acquired right to length of service confers no acquired right to step. The

safeguard of seniority in Article 6 of Section 1 of Appendix VII means no more than that all service from the date of appointment will count.

Article 9 of Section 1 of Appendix VII is about "Determination of steps on the salary scales applicable to the new grades" and it says that officials who, "the day before the date of entry into force" of the Staff Regulations and Rules, were classified, as was the complainant, in category J "shall be placed in the salary scale applicable to their new grade ... on the step which entitles them ... to a salary identical to that to which they were entitled" on that day. Interpol met that requirement since, as was said in 6 above, the complainant's salary at step 7 of C5 was actually higher than it had been before.

The Organization's plea therefore succeeds.

11. More cogent is the complainant's objection to the grading of his post at C4.

To arrive at that grading the Joint Appeals Committee applied the "Post rating method" prescribed in Subsection 2 of Section 3 of Appendix I to the Staff Rules. The complainant is not actually saying that it did not, but merely that it was not of one mind on how to apply the method, particularly on the allotment of points according to one of the rating factors. He contends that the minority opinion of the Committee ought to have been taken into account on that point.

When opinion splits as it did in this case both sides will obviously be open to criticism on points of detail. The issue is, after all, one that calls for broad assessment by people thoroughly familiar with the nature of the work, so that the rating will depend rather on experience than on the mere letter of the rules. The members of the Joint Appeals Committee plainly had the required experience; the Secretary General, who in the last resort has to exercise his discretion, followed the majority view; and that view must prevail unless it can be shown to rest on some mistake of principle. For the reasons set out below it cannot.

12. The complainant is mistaken in contending that the Joint Appeals Committee ought to have rated posts other than his so as to test the method prescribed in the Staff Rules. What the Committee had to do was to review the rating of his post and his alone, and there is nothing in the rules that called upon it to compare the post with others. Neither the Secretary General nor the incumbents had asked it to review the grading of other posts and it did not have at its disposal the data such review would require.

13. The complainant submits that the Joint Classification Committee ought to have rated his post on the strength, not of the post description drawn up by his supervisors, but of the one he himself had supplied on 15 March 1988.

Interpol answers that the post description the Joint Classification Committee took was one the Personnel Department had provided on 13 September 1988, and the Tribunal notes that it matches the one he has produced. His plea is therefore mistaken in fact.

Also unsound is his related contention that his supervisors belittled the duties of his post. For one thing, he cannot properly deny that the Joint Classification Committee based its rating on a post description identical to the one he had provided himself. For another, there is no reason to suppose that his supervisors exerted any influence whatever on the Committee's opinion.

14. Another mistaken objection he makes is to Interpol's having published the rating scale on 12 September 1988, after the new Staff Rules had come into force and after he had made his application for regrading.

The material provision on determination of grade is Article 10 of Subsection 2 of Section 3 of Appendix I. It provides for publishing a "table of equivalences" in the form of a staff instruction but it sets no deadline for doing so. The table obviously had to be published after the Rules had come into force.

15. The complainant's further objections to the actual decision also fail.

He takes the Secretary General to task for reducing - "to be on the safe side", he says - the total number of points his post got. The Secretary General did indeed give it fewer points for the fourth rating factor than the majority of the Appeals Committee gave it. But the objection fails because in any event the classification of the post remains the same, whichever of the two numbers is taken.

16. Again, he alleges breach of equal treatment in that the decision was taken not during but just before the transition from the old to the new grading system.

The objection is irreceivable because it refers to a period prior to the classification proceedings introduced by the new Staff Rules and therefore does not relate to the impugned decision of 6 October 1989.

It is in any event devoid of merit. Though the Organization did make "adjustments", they affected either staff in grades lower than the complainant's or else staff in the same grade but holding posts as head of network or of project or as legal draughtsman, whose position therefore differed from the complainant's in fact and in law. So there is no question of breach of the principle of equal treatment as consistently defined in the case law.

17. Lastly, the complainant's application in his rejoinder for review of the correctness of the proceedings for his dismissal is irreceivable since it is outside the ambit of his claims as stated in his complaint.

18. Since his main claims fail so does his claim to damages for moral and professional injury. There is therefore no need to make any connection, as he asks, between this complaint and his other pending complaints, in which the cause of action is distinct.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice-

President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Edilbert Razafindralambo, Deputy Judge, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

(Signed)

Mohamed Suffian  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner