

SEVENTY-THIRD SESSION

***In re* EL GHABBACH (No. 3)**

Judgment 1181

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Mahmoud el Ghabbach against the International Criminal Police Organization (Interpol) on 15 August 1991, Interpol's reply of 8 October, the complainant's rejoinder of 16 November and the Organization's surrejoinder of 3 December 1991;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, Article 43 of the Staff Regulations and Article 4 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. In Judgment 1079 the Tribunal referred the complainant, a Syrian born in 1947, to Interpol for determination of the compensation he was entitled to both in lieu of notice and for accrued annual leave. On 7 February 1991 the Secretary General sent him a cheque for 10,000 French francs, the Tribunal's award of costs, and asked him to give any information that might help in reckoning the amount of the compensation. On 26 February 1991 the complainant submitted to the Secretary General his proposals for settlement.

By a decision of 5 March 1991 in execution of Judgment 1079 the Secretary General granted him compensation in the principal amount of 136,383 francs plus 23,904.91 francs in interest at the rate of 10 per cent a year from 19 June 1989 and drew to his notice the appeal procedure in the Staff Regulations and Staff Rules. The complainant got notice of the Secretary General's decision on 9 March and made a "request for review" by a letter of 9 April 1991.

Article 43 of the Staff Regulations provides for two sorts of appeal. Under 43(1) an official who has received notice of a decision by the Secretary General may challenge it, by such a "request for review", within thirty days of such notification, and the Secretary General decides after taking into account the Joint Appeals Committee's opinion. Under 43(4), when an official has submitted a "written complaint" and no decision has been taken within sixty days, he may ask the Secretary General to submit his "complaint" to the same Committee.

The Joint Appeals Committee, to which the complainant's request for review was referred, held that it had been filed after the thirty-day time limit in 43(1): the time limit had begun on the day after notification and so had expired at 8 April. Since the request had been one day late, the chairman of the Committee invited the complainant by letter of 16 April to explain. He answered that he had made a mistake by counting a calendar month instead of the thirty days. The Committee recommended rejecting his appeal.

By a letter of 15 May 1991, the decision impugned, the Secretary General rejected it as time-barred.

B. The complainant refers the Tribunal to his earlier complaints, which the Tribunal ruled on in Judgments 1079 and 1124, and sets out the salient issues in his dispute with Interpol. He asks the Tribunal to regard the facts and pleas he relied on in his second complaint as relevant to this one. He submits that the Appeals Committee ought to have treated his letter of 9 April as a "complaint" as well as a request for review.

He seeks an award of arrears of pay from 19 June 1989; compensation in lieu of notice equivalent to six months' pay; compensation for accrued leave; complementary terminal indemnity; 500,000 French francs towards moral and material damages, interest on the amount due less the 136,383 francs already paid according to the decision of 5 March 1991; and 20,000 francs in costs.

C. Having obtained leave from the President of the Tribunal to confine its reply to the issue of receivability, Interpol submits that since the complainant got notice on 9 March 1991 of the decision of 5 March setting his compensation at the equivalent of six months' salary, his request of 9 April was time-barred under Article 43(1) of the Staff Regulations. Indeed in his letter of 22 April to the chairman of the Appeals Committee he acknowledged that the time limit had run out at 8 April.

Since he has already filed four appeals it is implausible that he mistook the thirty days for a calendar month.

In answer to his plea that his letter of 9 April was both a request for review and a "complaint" Interpol points out that its decision of 5 March stated under the heading "Grounds" that it could not grant him any more than he had claimed from the Tribunal. To set the amount due to him in compensation it took the figures he had given in his letter of 26 February 1991. So his letter of 9 April was a request for review that had to be lodged within the thirty days and may not be treated as a "complaint".

D. In his rejoinder the complainant says that Interpol is deliberately conflating the formal and the substantive aspects of his complaint. He submitted three internal appeals, not four, as Interpol makes out. He presses his claims.

E. In its surrejoinder Interpol maintains that there is no new argument in the rejoinder to warrant waiving the time limit. He did file four internal appeals. His claims are irreceivable because they are time-barred, and those the Tribunal dismissed in Judgment 1124 are res judicata as well.

CONSIDERATIONS:

1. By a decision of 5 March 1991 the Secretary General of Interpol set at 160,287.91 French francs the amount of compensation that the complainant, a former official, was entitled to under Judgment 1079. In this complaint, which he filed on 15 August 1991, the complainant is challenging that individual decision and one the Secretary General took on 15 May 1991 on his "request for review".

2. Is the complaint receivable?

According to the certificate of delivery the complainant got the original decision of 5 March 1991 by registered post on 9 March. On 9 April he made his request for review. His request was put to the Joint Appeals Committee, but the Committee recommended rejecting it on the grounds that it was out of time and therefore irreceivable. The Secretary General endorsed that recommendation in the impugned decision of 15 May 1991.

3. The Staff Regulations and Staff Rules of Interpol distinguish between two sorts of internal appeal: a "request for review" and a "complaint".

According to Article 43(1) of the Staff Regulations there will be a request for review when the official has received notice of a decision by the Secretary General which he objects to and instigates proceedings to have it reviewed. The time limit for filing such a request is thirty days from the date of notification of the challenged decision.

According to Article 43(4) an official who has made a "complaint" on which no decision has been taken within sixty days may ask the Secretary General to submit his "complaint" for an opinion to the Joint Appeals Committee.

4. The complainant pleads that his letter of 9 April 1991 was both a "request for review" and a "complaint". But that plea cannot succeed: the decision of 5 March 1991 determined the amount of compensation due and was therefore an answer to his objections to the decision on his entitlements.

5. Article 43(1) sets a time limit of thirty days from the date of notification for making the request for review. According to Article 4(5) and (6) of the Staff Rules, "the day on which or from which a period or duration commences or runs shall not be included in the period or duration concerned" and, if a period "is due to expire on a day other than a work-day ... the period shall expire at the end of the following work-day".

In this case the thirty days began at 10 March 1991, the morrow of the day on which the complainant got notice of the individual decision. That 10 March was a Sunday is irrelevant. The thirty days therefore expired at midnight at the end of Monday 8 April. That day was not a public holiday, and so by 9 April the complainant's request for review was out of time.

6. He submits that he made a material mistake by reading the thirty days as one calendar month.

Time limits for internal appeals must be strictly complied with. The complainant failed to abide by the Staff Regulations, and the mistake he supposedly made is irrelevant because the Organization did not seek to mislead him. Since he has not exhausted the internal means of redress his complaint is irreceivable under Article VII(1) of the Tribunal's Statute.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

(Signed)

Jacques Ducoux

Mella Carroll

P. Pescatore

A.B. Gardner