

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S.

v.

Interpol

141st Session

Judgment No. 5139

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr H. S. against the International Criminal Police Organization (Interpol) on 19 April 2021 and corrected on 1 July 2021, Interpol's reply of 11 October 2021, the complainant's rejoinder of 17 December 2021 and Interpol's surrejoinder of 17 March 2022;

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 to reappoint rather than reinstate him when he was re-employed by Interpol following a break of several months.

The complainant worked for Interpol as Legal Officer at grade 5, from 8 April 2019 until 7 October 2019, on secondment from the United States Government.

Following the end of his secondment, on 13 December 2019, the complainant applied for the vacant position of Associate Legal Officer at grade 6, a lower grade than grade 5. On 11 March 2020, the Talent Acquisition and Mobility Branch of Human Resources Management (HRM) notified him that he had been selected for the position, attaching

an offer of appointment dated 6 March 2020, signed by the Director of HRM. The complainant countersigned the offer of appointment on 15 March 2020. The starting date for his appointment was to be determined in due course once he had completed the various administrative formalities.

On 22 October 2020, HRM transmitted to the complainant an appointment letter, dated 15 October 2020, signed by the Director of HRM, which stated: “The Secretary General has decided to appoint you to the post of Associate Legal Officer”. The cover email, however, indicated that the Organization had decided to “reappoint” him. On 23 October 2020, the complainant responded to the email and questioned the difference between reappointment and reinstatement, the impact on his leave and expenses, and if “the Organization ever consider[ed] [him] eligible for reinstatement”. On 28 October 2020, HRM and the complainant exchanged multiple emails regarding this issue, ending with the latter enquiring whether signing the acceptance letter would pre-empt or prejudice Interpol’s decision on reinstatement, to which he received no reply. On 29 October 2020, the complainant signed the attached letter of acceptance, noting expressly in his cover email that the issue of reinstatement was still pending.

On 3 November 2020, HRM sent a communication regarding his “onboarding” stating: “In accordance with Article 3.5 of the Staff Manual and after a thorough review of your situation and previous status, it has been decided not to reinstate you but to reappoint you to the position of Associate Legal Officer. Therefore, and in accordance with Staff Rule 3.5.1(3), the rules on new appointments laid down in Chapter 2 of the Staff Regulations and Rules shall apply to you. In consequence, the Letter of appointment approved on 29.10.2020 is still applicable.” This is the impugned decision.

On 21 November 2020, the complainant submitted a request for review to the Secretary General of the 3 November decision. Since Interpol had recruited him within 12 months of the end of his secondment, he argued that his return should have been through reinstatement, not reappointment. He further invoked that his service “shall be considered as having been continuous”, with the intervening

period considered as unpaid leave. He therefore asked that the reappointment decision be rescinded and that he be reinstated retroactively as of 7 October 2019, with all attendant rights and privileges. On 19 April 2021, the complainant filed a complaint with the Tribunal on the basis of Article VII, paragraph 3, of the Statute of the Tribunal, asserting that no decision had been taken within sixty days following the notification of his request for review.

The complainant asks the Tribunal to set aside the impugned decision and to order Interpol to reinstate him retroactively, with all legal consequences, rights, and privileges, including consideration of “having been in continuous service from his appointment to the Organization on 8 April 2019 through the present”, to pay him the gross monthly salary corresponding to the grade of his previous post applied retroactively, and his entitlement to two days of leave for travel applied retroactively. He also seeks 10,000 euros in moral damages, any other relief that the Tribunal considers just and proper, and costs.

Interpol asks the Tribunal to dismiss the complaint as irreceivable or, in the alternative, devoid of merit.

CONSIDERATIONS

1. The complainant challenges before the Tribunal the decision of 3 November 2020 by which the Talent Acquisition and Mobility Branch of HRM informed him that, following review, he would be reappointed rather than reinstated, in accordance with Staff Rule 3.5.1(3), and confirmed the applicability of the letter of appointment approved on 29 October 2020. The complainant contends that this decision contravened Staff Rule 3.5.1(1)(a) and deprived him of the benefits attached to reinstatement.

2. Regulation 13.4.1(3) of the Staff Manual provides that “[i]n the event that the Secretary General does not take action within 60 calendar days when a request for a review or an internal appeal is referred to him, the challenged decision shall be deemed to be final and may then be challenged before the [Tribunal]”. The complainant filed

his complaint directly to the Tribunal after his request for review, in accordance with Regulation 13.4.1(3) of the Staff Manual and Article VII, paragraph 3, of the Tribunal's Statute.

3. Article II of the Statute of the Tribunal provides, in paragraphs 1 and 5, that the Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of an official's appointment and of the provisions of the Staff Regulations of the organization that employs her or him. As the Tribunal has consistently held, it may be inferred from these provisions that, for a complaint to be receivable, among other requirements, the staff member must have a cause of action (see, for example, Judgments 4337, consideration 6, 4296, consideration 6, 4145, consideration 5, or 3426, consideration 16). A cause of action may be recognized only if the decision challenged by that official adversely affects her or him (see, in particular, Judgments 4322, considerations 8 and 9, 3198, consideration 13, 2952, consideration 3, and 1852, considerations 2 and 3). If the complainant does not allege the violation of rights which the Tribunal is called upon to protect under the terms of its Statute, the Tribunal cannot adjudicate on the complaint (see, for example, Judgment 4317, consideration 3).

4. Although the complainant asserts that being reappointed rather than reinstated was unfavorable to him, he has failed to demonstrate that the impugned decision adversely affected any of his rights. He has identified no provision of the Staff Regulations conferring an entitlement to reinstatement in his circumstances, nor has he shown that reappointment infringed his rights or legitimate interests or resulted in any loss of benefits. The complaint is therefore irreceivable for lack of a cause of action.

5. In any event, the complaint is unfounded.

Staff Regulation 3.5 entitled "Reappointment, reinstatement and change of appointment", of the Staff Manual, relevantly provides that "The Secretary General may, in accordance with the Staff Rules: (a) reappoint or reinstate a former official of the Organization;

(b) change the appointment of a seconded official into an appointment under contract.” Rule 3.5.1, entitled “Reappointment and reinstatement”, provides the following:

“(1) A former official may be:

- (a) reinstated if he is recruited within the 12 months following the date of his cessation of service, or;
 - (b) reappointed if he is recruited beyond the 12 months following the date of his cessation of service.
- (2) If an official is reinstated, his services shall be considered as having been continuous. For that purpose, the interval between cessation of service and reinstatement shall be considered as unpaid leave and the official shall return to the Organization any payment made to him at the time of cessation of service.

[...]”

In light of the wording of these provisions, the choice between reappointment and reinstatement lies within the discretion of the Secretary General. In the present case, considering that the position available and for which the complainant was recruited was lower in grade than the one which he held while on secondment, it is manifest that he could not be reinstated in a position at a grade other than the one which was advertised.

6. It follows from the foregoing that the complaint shall be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.