
Labour Rights of HQ-Status Staff: Why We're Pushing for Court Action



Due to upcoming changes to French law, a race against time is now under way over basic labour rights. It could have major implications for many HQ status staff, both journalists and non-journalists. The problem is this: if we don't speedily take action before the French labour courts (the "*Prud'hommes*"), we risk losing out on a large chunk of what AFP owes us due to its refusal to respect the law on a range of basic bread-and-butter issues.

The SUD trade union, which represents all categories of AFP staff, explains the issues involved, and offers some practical proposals for action.

Short-Changing Us on Holiday Pay

Those of you who keep up with union issues at AFP will know that for over 12 years starting in 1997, AFP management failed to respect the legal rules on the calculation of holiday pay, cheating many people out of considerable sums. In November 2011, faced with court challenges over the scandal, management finally paid out partial compensation to some 1,200 HQ-status staff. As we pointed out at the time, this measure was "*not fair, and not enough*". (See our analysis - French only - at <http://www.sud-afp.org/spip.php?article135>).

In fact, AFP has still not fully faced up to its responsibilities over the holiday pay issue, as is shown by a series of court rulings won by individual members of staff. Other proceedings are still under way; they relate in particular to the following issues:

- Management still refuses to recognise that the double end-of-year salary paid out to HQ-status wage-earners (the "*13th month*") should be included in the baseline used to calculate holiday pay. As we see it, this is clearly laid down in collective bargaining agreements;
- AFP's compensation pay-out underestimated the amount of holiday pay due to many journalists and white-collar staff ("*cadres*"), who should be benefiting from a seniority bonus.
- The pay for days off earned under the reduced-working time ("*RTT*") law should be calculated on the same basis as holiday days. Which means that "*RTT*" days should be better paid than they are at present.

An additional problem is management's failure so far to compensate expatriate HQ-status staff for income losses suffered due to the flawed holiday pay calculations. Although they have said in principle that they will make those payments, and calculate them using the same yardstick as that applied to other staff, they have so far been unable to tell us when this will happen. The only thing we know is that it's won't be this year!

Bonus Clawbacks

In recent months, SUD has used the monthly union-management meetings to denounce another injustice: the policy of "clawing back" bonuses each time someone gets a promotion. For at least

two decades, AFP management has been taking away with one hand what it gives with another, by eliminating or cutting back bonus payments when a staff member is promoted to a higher pay level.

For both individual promotions, made at the discretion of management, or for those provided for in the basic career plan agreements, the practice has the effect of either strongly reducing, or in some cases completely negating, the material gain that should ensue from a change in pay category. This means that most promotions are a sick joke.

Over and above the ethical issues involved, we believe that the practice of "clawing back" bonuses (*ratissage des primes*) will not stand up in court.

Annual Hikes in Bonuses and Other Benefits

A long-standing management practice has been to re-evaluate certain components of employee pay (for example, the "Special Bonus" or "*prime spéciale*") on March 1st every year. The yardstick being the annual collective-bargaining pay rises granted the previous year to all HQ status staff. Although this practice can be considered to be a "custom" (*usage*), and as such protected in law, AFP management has decided to simply stop respecting it. Without having taken the trouble to formally inform the unions, as the law would require.

Time for Court Action!

In the absence of joint union action, we have brought a small number of court cases to the "Prud'hommes" labour court since 2011. So far we have not sought to make this a general offensive. Today several of us are pushing ahead with court cases, and we invite you to join us. Here's why:

Just Give Us What You Owe Us

What we are aiming for here is not even to win new rights, but simply to demand ones that we should already have in law, but don't have in practice. On paper, it sounds like an open-and-shut case, but in practice, given the immoral and in some cases illegal practices of AFP management, we need to fight every inch.

The latest statements by CEO Emmanuel Hoog leave no room for doubt: management intends to make staff pay for its failure to run AFP in a rational and ethical manner. The [draft budget for 2013](#) announced by Hoog's team states baldly that there will be no pay rises whatsoever during the year, while the customary round of bonuses and promotions has purely and simply been cancelled. Even a further 0.9% pay rise agreed by France's national press employers for last year, and which was to have been paid out in two stages early this year, has been scuppered. Meanwhile M. Hoog goes on hiring high-flying managers and PR folk, while devoting precious resources to following the latest "buzz" on the Internet, with scant respect for AFP's [public interest mission](#).

We have therefore decided to act, rather than suffer in silence.

(NB: Our analysis of the 2013 budget (Fr) is here: <http://www.sud-afp.org/spip.php?article187>. For more on AFP's public interest mission, see http://www.sos-afp.org/en/statutes_article13)

New Law Sparks Race against Time for Employee Rights

The partial compensation paid out in November 2011 to make up for under-evaluated holiday wages covered five years of back-payments. This is because French labour law has up until now allowed wage-earners who have suffered an injustice to claim for compensation owed over that period. However this is almost certainly about to change: under the "*National Interprofessional Agreement*", or "ANI" law currently going through the French parliament, the statute of limitations for wage and other income compensation claims is likely to be reduced from five to three years!

The ANI statute, misleadingly entitled an "*employment protection law*", is expected to come into force in May. If despite our protests, the law is adopted in its current form, a large chunk of the unpaid compensation that AFP's staff are entitled to claim would be wiped off the slate: a gift to French employers in general.¹ Which is why we need to act now, since any cases filed with the Prud'hommes before the law comes into force would benefit from the old five-year rule and not the probable three-year one that will obtain in the future.

Legal Action Can Pay Off

Faced with situations of injustice or violations of the law, SUD-AFP has always viewed going to court as a legitimate avenue for union action. And we have in fact chalked up many more victories than defeats. Among the former was the lawsuit we took all the way to the French Constitutional Council, calling for staff of all nationalities to be allowed to take part in the triennial elections of staff representatives to the AFP board. That lawsuit ended discrimination against some 1,000 staffers around the world. For an account of that case in English, see <http://www.sud-afp.org/spip.php?article102>.

Today we are suggesting that some staff members might want to join us in taking cases before the French labour courts. We can thus pool our resources and give you access to the services of both our lawyer and SUD's trade union team.

Enough Already! We're Taking Them to Court

Paris, March 25, 2013

SUD-AFP (SUD Culture & Médias Solidaires)



- Address of this document on our web site: <http://www.sud-afp.org/spip.php?article194>
- Version française de ce texte : <http://www.sud-afp.org/spip.php?article193>
- Sign up for SUD-AFP's newsletter (Fr & Eng): <http://lists.sud-afp.org/mailman/listinfo/sud-infos>

Next Page: Explanatory Chart, With Examples

The table on the following page lays out the different types of actions that can be undertaken, and the current status of ongoing lawsuits, for each of the main HQ-status staff categories.

"*Already ruled on*" indicates that cases have been won - but as these are not class actions, the resulting victory is only valid for the individual(s) who brought the case.

¹ For a good analysis of the ANI law (in French), see <http://www.fondation-copernic.org/spip.php?article838>. For a factual but pro-employer explanation in English, see <http://www.internationallaborlaw.com/2013/02/06/about-the-national-agreement-reached-by-unions-in-france-is-french-labor-law-becoming-more-flexible-is-the-french-labor-code-revolutionized/>

Staff Category	Journalist	White Collar cadre (admin or technical: CA, CT)	Non-cadre secretarial (EP: employé de presse)	Blue-collar media worker (OT: ouvrier technique)
Avenues for Action				
Challenging clawback of performance bonus (prime de rendement)	Yes , and we have no doubt that bonus clawbacks are illegal	Yes , and we have no doubt that bonus clawbacks are illegal	Yes , and we have no doubt that bonus clawbacks are illegal	No . In most cases, "OT"s do not get the bonus in question
Integrating double pay for December (13th month) into calculation of holiday pay	Yes (court cases are under way)	Yes (court cases are under way)	To be investigated	Yes (already ruled on)
Seniority-based holiday time (see below)	Yes (court cases are under way)	Yes (already ruled on for an administrative "cadre")	Does not concern this staff category	Does not concern this staff category
Better pay for "RTT" days off	Yes (already ruled on in principle)	Yes (already ruled on)	Yes (already ruled on in principle)	Yes (already ruled on in principle)
Foreign language bonus	?	?	To be investigated	Yes (already ruled on)
Better pay for overtime hours	AFP does not pay overtime to journalists	AFP does not pay overtime to "cadres"	To be investigated	Yes (court cases under way)

Examples of Possible Gains

•**Bonus clawbacks:** Journalist Y is promoted to a higher category on March 1st, 2009 - but management "scrapes" 200 euros from her performance bonus.

In the four years to March 1, 2013, the amount lost comes to 10,400 euros (4 x 200 x 13) without taking into account repercussions on holiday pay. If journalist Y wins the case in the Labour Court under the present law, management has to pay back the unpaid amount in full, and of course start paying the missing bonus each month from then on.

•**Seniority-linked holiday time:** the collective bargaining agreement of the French Federation of Press Agencies ([FFAP](#)) for white-collar staff - which we believe also applies to journalists - calls for two extra holiday days after five years of employment, four days after 10 years and six days after 15 years.

For longer-serving staff members, that would amount to an extra week to be paid back for each of the five past years, under the current law. One court victory has already been won on this principle - and conformed by the Paris Appeal Court.

Any questions? Contact us at sudafp@orange.fr

We'll keep you informed, for joint action