

SEVENTY-NINTH SESSION

***In re* PARY (No. 3)**

Judgment 1437

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Lazaro Pary against the World Intellectual Property Organization (WIPO) on 4 July 1994, WIPO's reply of 3 October, the complainant's rejoinder of 1 December 1994 and the letter of 11 January 1995 from WIPO's Legal Counsel informing the Registrar of the Tribunal that the Organization did not wish to enter a surrejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence and disallowed the complainant's application for the hearing of witnesses;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant's career in WIPO is set out under A in Judgment 1179. At the material time he was an operator of photocopy machines in the Reproduction Section of WIPO's General Administrative Services.

By a letter of 23 September 1993 the Director General informed him of a decision to transfer him under Staff Regulation 4.3(d) to a post as messenger-driver in the Conference, Communications and Procurement Section as from 1 October 1993. In a letter dated 15 October the complainant asked the Director General to review that decision. In the absence of a reply he lodged an internal appeal with the Appeal Board in a letter of 20 December 1993, asking the Organization to give him work that made the best possible use of his skills and personal qualities. In its report of 21 April 1994 the Board recommended that the Director General should uphold the decision of 23 September 1993 but restrict the job to messenger. In a memorandum of 29 April 1994 - the decision impugned - the Director General told the complainant that he endorsed the Board's recommendation.

B. The complainant submits that there are no objective grounds for his transfer and that it was ordered in response to pressure from his supervisors, who were bent on crushing him body and soul. It is unfair of WIPO to have transferred him four times, willy-nilly, supposedly "in the interests of the International Bureau", on the pretext of administrative reform, to the detriment of his health, career and personal interests and without heed to his rightful expectations and his background.

After fifteen years with the Organization he was made a messenger-driver - the lowest rung of the ladder - though he does not even have a "proper driving licence". That was a blow to his career and a lowering of his status.

What brought about the transfer was a letter he wrote to the Director of the Personnel Division on 5 July 1993 to complain of working conditions in the Reproduction Section. Though warranted, his grievance drew a fierce onslaught from supervisors and fellow staff alike. He cites several incidents, some of them going back years, as proof of their abiding dislike. They were wrong to blame him for getting a doctor from the United Nations Joint Medical Service to come and inspect the workplace. It was unfair too to charge him with disobeying orders.

In its report of 21 April 1994 the Appeal Board disregarded essential evidence he had adduced and factual proof of the formal and substantive flaws in the decision he was challenging. At the hearings the Administration put pressure on the doctor from the United Nations. In a medical certificate dated 21 March 1994 that doctor wittingly understated the complainant's ailments in incomprehensible and even suspect disagreement with his own doctors.

The description of the new messenger post was "trumped up" during the appeal proceedings and, in breach of the rules, the post has no grade.

He seeks the quashing of the Director General's decision of 29 April 1994 and transfer to a post similar to the one

he held previously or any other corresponding to his "university education and linguistic skills". He asks for damages equivalent to the loss of salary resulting from his transfer and compensation for the "financial upgrading" of his former post. He claims moral damages in the sum of 60,000 Swiss francs and 10,000 francs in costs.

C. In its reply WIPO contends that the decision to transfer the complainant was taken *intra vires* and shows neither flaw nor mistake.

The Administration duly took account of his health and lack of a proper driving licence. It did not assign him the duties of a driver, which include the loading, unloading and carrying of parcels and other mail in containers, and the job description was drafted accordingly. But without a word of explanation he refused to sign it. The Director of the United Nations Joint Medical Service gave him a check-up, made an enquiry and came to the view that he was fit enough to be a messenger.

There is no substance to his charges of hostility on his supervisor's part. More than once he himself had asked for transfer from his post in the Reproduction Section to one in which his working conditions would suit him and in which his qualifications might be put to better use.

The reasons for his transfer were the reform and modernisation of the Reproduction Section - which will mean doing away with many jobs - and the need for more messengers, drivers and guards in the Conference Section. The transfer was in the Bureau's interests and in his own too since his new duties were physically less taxing and not so stressful and offered better career prospects. With the overhaul of the Reproduction Section there will be new posts he can apply for. So he is wrong to say he has lost opportunities for advancement and promotion.

D. In his rejoinder the complainant maintains that the Organization's answer to his grievances will not do. The reasons it is giving now for his transfer do not square with the ones the Director General offered to the Appeal Board. It never found out the material facts before moving him and it tried to cover up later by changing the job description. It is untrue that a medical examination and the alleged enquiry by a United Nations doctor prompted a new description of his post.

CONSIDERATIONS:

1. The complainant used to be an operator of photocopying equipment in the Reproduction Section of WIPO. By a decision of 23 September 1993 the Director General transferred him to a post as messenger-driver in the Conference, Communications and Procurement Section. He objected to his transfer, the fourth in a short while, and asked the Director General to review the decision with due regard to his seniority, health, qualifications and age. Having got no answer, he went to the Appeal Board. In its report of 21 April 1994 the Board recommended upholding the decision but restricting his new job to messenger. He is impugning the Director General's decision of 29 April 1994 endorsing the Board's recommendation. He wants a post like the one he had before or any that matches his training and skills. He claims damages under several heads.

2. WIPO Staff Regulation 4.3, which is about promotion and transfer, reads:

"(c) 'Transfer' shall mean the assignment of a staff member to another post without promotion. A transfer may be effected without having recourse to a competition.

(d) Any staff member may be transferred whenever the interests of the International Bureau so require. Any staff member may at any time request consideration for transfer in his own interest."

The material issue is whether the complainant's transfer was in the Bureau's interests, as WIPO maintains, or due to personal considerations which - he makes out - were actuated by a determination to "crush him body and soul" and a spirit of revenge for his behaviour.

3. The Tribunal is not satisfied on the evidence that there was anything improper in the Director General's deciding to transfer the complainant. The transfer was in the Organization's interests. It took several facts lawfully into account. One was the reform of the Reproduction Section. Another was the need for more messengers in the Conference Section to deliver mail and supplies to different parts of WIPO premises.

4. It may be a pity he was made a "messenger-driver" when it appears he had no proper driving licence and so could perform only some of the duties in the original job description. As the Appeals Board said, the Organization

should have checked beforehand his qualifications for messenger-driver. But the Director General removed that formal flaw by deciding on 29 April 1994 to follow the Board's recommendation and by amending his job description. The mistake has caused him no injury because he has done only messenger work since transfer. Nor does the evidence suggest that he was too unwell to perform such duties.

5. He alleges harassment and even victimisation by supervisors and other staff. Whether sound or not, his grievances are immaterial to the impugned decision.

6. Nor is there any reason to suppose that his transfer was hidden disciplinary action or attributable to his staff union work: as was held in 3 above, it was taken in WIPO'S interests. His allegations of flaws in reports on his performance and of delay in advancement have no bearing on this case: the transfer had plainly nothing to do with his behaviour, he kept his grade, and his prospects of promotion did not suffer.

7. In sum, his claim to the quashing of the transfer fails and so do his claims to damages and to reassignment.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

(Signed)

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner