

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**113th Session**

**Judgment No. 3145**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. G. against the World Intellectual Property Organization (WIPO) on 5 October 2010 and corrected on 5 and 15 November 2010, the Organization's reply of 17 February 2011, the complainant's rejoinder of 25 March, WIPO's surrejoinder of 29 June, the complainant's further submissions of 18 June and the Organization's final observations thereon dated 26 July 2011;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a British national born in 1974, was employed by WIPO as a translator from 1998. After a succession of short-term contracts, in June 2001 she received a two-year fixed-term appointment which was renewed for a period of three years.

In August 2001 the complainant, who is very tall, complained to WIPO's Medical Service that she was suffering from neck and shoulder pains. Her state of health subsequently deteriorated and she took an increasing amount of sick leave. She was on continuous sick leave as from March 2004, with full pay until 19 July 2004 and with half pay until 19 April 2005. By 21 June 2005 she had used up all her leave entitlement, and on 1 July 2005 she was therefore placed on special leave without pay. She was informed by a letter of 28 March 2006 that her contract would not be renewed when it expired on 31 May 2006.

On 21 September 2004 she had submitted an accident report to the company with which WIPO had taken out collective accident insurance, but her claim for coverage had been rejected.

On 9 July 2004 the complainant had also sent a letter to the WIPO Staff Pension Committee to request, inter alia, the granting of a disability benefit. At the request of the Secretary of that Committee she underwent a medical examination. The medical report which she submitted indicated that, on the balance of probabilities, her health problems had been caused by her working conditions at WIPO between 1998 and 2001, and that it appeared necessary for her to avoid work involving intensive use of a computer and mouse. In March 2005 she agreed to seek a second medical opinion before her file was formally transmitted to the Pension Committee for a decision. She was examined by an orthopaedic surgeon who reported on 21 June that the complainant's health problems resulted from the poor ergonomic conditions in which she had worked, but that she might well be able to resume the kind of work she had been doing at WIPO provided that she was given a workstation perfectly adapted to her needs.

The complainant was informed by letter of 19 July 2005 that the Staff Pension Committee had considered her request for a disability benefit in the light of the medical opinions and had rejected it because, in the Committee's opinion, the reports had concluded that her incapacity for work was neither total nor permanent. In October 2005 the complainant requested a review of that decision. The file was then

forwarded to a medical board in accordance with the provisions of the Administrative Rules of the United Nations Joint Staff Pension Fund (UNJSPF). In September 2006 this board concluded that the complainant was suffering from degenerative changes in her cervical spine due to the unsound ergonomics of her workstation, but that part-time work avoiding computer activities and carried out in ergonomically sound working conditions would be within her capabilities.

The complainant was advised by letter of 10 October 2006 that the Staff Pension Committee had decided to maintain its initial decision not to award her a disability benefit because, according to the medical board's report, she could work part time, whereas incapacity must be total in order for it to be recognised by the UNJSPF. On 8 December 2006 the complainant filed an appeal with the Standing Committee of the Pension Fund, which was dismissed by a decision of 14 August 2007. On 9 November of the same year she filed an application with the United Nations Administrative Tribunal challenging the latter decision.

In the meantime, on 9 October 2007, the complainant had submitted to the Director General of WIPO a request for compensation for the injury caused by the health impairment resulting from the unsound ergonomics of her workstation. This request had been rejected on 18 January 2008. As her request of 27 February for review of this decision was also rejected, on 29 May 2008 she referred the matter to the Appeal Board. On 24 July 2008 the proceedings before the Board were suspended, at the complainant's request, until the proceedings then pending before the United Nations Administrative Tribunal had been completed.

In Judgement No. 1494, delivered on 23 December 2009, that Tribunal considered that, since the complainant was "neither disabled nor unable to carry out duties that were suited to her abilities and clearly to her skills", the Standing Committee of the UNJSPF had made the right decision when it refused to grant a disability benefit to her. However, it found that, on several occasions, the Administration had been less than considerate towards her and that her symptoms

were due to her unsound working conditions. The Tribunal added that, although she had drawn the Administration's attention to her difficulties as early as August 2001, it had not exercised due diligence in that her office furniture had not been replaced until February 2004. It awarded her compensation for the injury suffered in the amount of 5,000 United States dollars.

The proceedings before the WIPO Appeal Board resumed in January 2010 and the Board issued its opinion on 8 May. The Director General informed the complainant by a letter of 7 July 2010 that he had decided partially to adopt the Board's conclusions, and he proposed that she should either accept a payment of 128,127.65 Swiss francs, which he described as a "gesture of goodwill", corresponding to unpaid salary and related entitlements for the period between 19 July 2004 and the date of the end of her contract, 31 May 2006, or submit to another medical assessment, because a diagnosis of demyelination established in October 2009 raised some doubt as to the allegedly work-related origin of her health problems. If the findings of this assessment were to rule out the causal link claimed by the complainant, WIPO would not pay her the above-mentioned sum, but she might be able to reapply for a disability benefit. Lastly, the Director General offered to provide her with assistance if she wished to take legal action to contest the position adopted by the insurance company, but he refused to pay the legal costs that such action would entail. That is the impugned decision. WIPO effected the aforementioned payment in September 2010.

B. The complainant submits that, in the opinion of all the doctors consulted and of the medical board, her health problems are linked to her professional duties at WIPO and are, in particular, the result of the unsound ergonomics of her workstation. Although on several occasions she informed her supervisor of her dissatisfaction with and anxiety about her working conditions, she never received an adequate reply or the slightest support from her employer. The complainant takes issue with her superiors' attitude which she describes as "totally inappropriate", and she asserts that she was treated in an offensive manner. In her opinion, by failing to meet its obligation to provide her

with an ergonomically sound workstation, WIPO has caused her such severe health problems that she will never again be able to work as a translator. She also criticises the Organization for not having paid all the compensation to which she considers herself entitled in respect of the injury suffered, since it merely executed its decision of 7 July 2010 by paying her 128,127.65 francs.

The complainant asks the Tribunal to set aside the impugned decision and to order the Organization to pay her various sums corresponding to her health insurance premiums from July 2005 to May 2006, with interest as from 31 May 2006, her health insurance premiums from 1 June 2006 until she reaches retirement age, loss of earnings during her term of employment, with interest, loss of earnings calculated on the basis of an income corresponding to her last net monthly salary, her medical expenses since 31 May 2006 with interest up to 31 May 2008 and legal fees, less the sum of 128,127.65 francs already paid by WIPO.

C. In its reply the Organization submits that the complaint is irreceivable, because the request for compensation which the complainant sent to the Director General on 9 October 2007 was time-barred. According to WIPO's Staff Rules, any staff member who wishes to appeal must as a first step ask for a review of the administrative decision in question within eight weeks of the date on which he or she received written notification of that decision. In the instant case, the complainant's request was sent more than one year and four months after the end of her contract. WIPO also submits that, if it had in fact breached its obligation to provide the complainant with a safe, ergonomically sound working environment, she ought to have brought this issue to the Organization's attention within the prescribed time limits, but she failed to do so. It likewise emphasises that, if the Tribunal were to consider that the complaint was not time-barred, it would still not be receivable, because the complainant's claims were addressed, incorrectly, to WIPO instead of to the insurance company which at the material time insured its staff against the risk of occupational accidents. In this connection, it points out that the compensation which the complainant claimed in September 2004 from

that company was denied on the grounds that her health problems were not work-related. The Organization also draws attention to the fact that, in accordance with the Statute of the Tribunal, the latter is competent to hear only disputes between an official and the international organisation employing him or her and it contends that, in the instant case, the complainant's complaint against WIPO does not lie within the Tribunal's competence. It explains that the sum of 128,127.65 francs was paid in full settlement of all claims.

It asserts that it took numerous steps to bring the complainant's workstation into line with the ergonomic standards applying in the United Nations system and it therefore questions the causal link between her health problems and her working conditions.

It also points out that, "to add a further regrettable complication to what is already a difficult case", in September 2009 the complainant was diagnosed as suffering from demyelination, a neurological auto-immune disease most commonly manifesting as multiple sclerosis. In view of this diagnosis, it proposes that an independent neuroradiologist should be asked to determine whether the symptoms which appeared while the complainant was employed with WIPO were the first signs of demyelination, which, in its opinion, would prove "beyond all doubt" that they were not caused by her working conditions.

D. In her rejoinder the complainant challenges the argument that her complaint is irreceivable because her request for compensation of 9 October 2007 was allegedly submitted out of time. She also rejects the argument that the Tribunal is not competent to hear her complaint, since the purpose of the complaint is to obtain compensation for the injury suffered as a result of WIPO's manifest breach of its obligation to provide its employees with appropriate working conditions, as the benefits paid by an occupational accident insurance company are not intended to cover such injury. However, she asks the Tribunal to stay its proceedings pending the outcome of the legal action she undertakes to bring forthwith against the insurance company. The complainant stresses that the sum which she received in September 2010 cannot be

deemed to represent a full settlement of all claims, because it does not cover all the injury which she has suffered.

E. In its surrejoinder the Organization fully maintains its position. It states that it does not object to the complainant's proposal that the proceedings be stayed.

F. In her further submissions the complainant argues that, if WIPO considered that the medical board's findings in September 2006 were questionable, it ought immediately to have requested a second medical opinion and to have given her the means of initiating proceedings against the insurance company. She maintains all her claims and presents the additional claim that the defendant should first be ordered to defray all the costs of any action in or out of court against the said company.

G. In its final observations WIPO reiterates its argument that the symptoms displayed by the complainant during her employment with WIPO could well have been connected with incipient demyelination and not with a work-related disease. In its view, the medical board's report of September 2006 is irrelevant and it would be necessary for the Tribunal to order a medical examination by an independent neuroradiologist with the requisite experience in diagnosing multiple sclerosis. Moreover, it states that it does not intend to defray the costs of proceedings against the insurance company.

#### CONSIDERATIONS

1. The complainant was employed by WIPO as a translator from 1998. At the material time she held a fixed-term contract. In August 2001 she began to complain of neck and shoulder pains. She took sick leave on several occasions as from the following month and then, after 15 March 2004, for an indeterminate period. By July 2004 she had exhausted her entitlement to sick leave on full pay and by April 2005 her entitlement to sick leave on half pay. On 1 July 2005

she had also exhausted her annual leave entitlement and she was placed on special leave without pay.

2. After she had applied to the WIPO Staff Pension Committee for a disability benefit and undergone two medical examinations, the complainant was informed in July 2005 that her application had been rejected. On 17 October of the same year she sent a letter to the Secretary of the United Nations Joint Staff Pension Board to request a review of that decision. A medical board was then set up in accordance with the Administrative Rules of the UNJSPF. This board, consisting of a specialist designated by the complainant, a second specialist appointed by the Organization and a third selected by the first two members, issued its report in September 2006. It concluded that the degenerative changes in the complainant's cervical spine, which were unusually advanced for a woman of her age, were due to the unsound ergonomics of her workstation at WIPO and that she would be able to engage in part-time work (the percentage of which was unspecified) provided that she avoided using a computer and was given ergonomically sound working conditions.

On 11 October 2006 the complainant – whose contract had expired on 31 May 2006 and had not been renewed – was informed that the Pension Committee had decided to maintain its initial decision not to award her a disability benefit.

3. On 8 December 2006 the complainant appealed against this decision to the Standing Committee of the UNJSPF, but she was advised by a letter of 14 August 2007 that the Committee had upheld that decision, mainly on the grounds that she was not incapacitated for service reasonably compatible with her capabilities, due to injury or illness constituting an impairment to health which was likely to be permanent or of long duration, within the meaning of Article 33 of the Regulations of the UNJSPF. By a letter of 9 October 2007 the complainant brought this letter to the attention of the Director General of WIPO and she asked him for the first time for compensation for the injury arising from the health impairment caused by the unsound ergonomics of her workstation. She had already written to

him on 16 January 2007, but the purpose of that letter had been to inform him of her fruitless efforts to obtain a disability benefit from the WIPO Staff Pension Committee and of her “need for urgent medical care for which [she] d[id] not have the financial means to pay”. She had also forwarded to him a copy of the letter which she had sent on the same date to the Secretary of the United Nations Joint Staff Pension Board to request “urgent assistance”.

4. On 9 November 2007 the complainant filed an application with the United Nations Administrative Tribunal with a view to obtaining a disability benefit. In its judgement, delivered on 23 December 2009, that Tribunal found that the Standing Committee of the UNJSPF had made the right decision when it refused to grant such a benefit to the complainant.

5. In the meantime, on 29 May 2008, the complainant had also lodged an appeal with the WIPO Appeal Board, in order to seek compensation. This appeal was directed against the decision of the Director General of 27 February 2008 in response to the complainant’s request of 18 January 2008 for a review of the decision dismissing her request for compensation of 9 October 2007.

On 8 May 2010 the Appeal Board delivered its opinion, recommending that the Director General should:

- “(a) allow the appeal to the extent indicated below;
- (b) decide whether there are sufficient grounds for reviewing the conclusion of the medical specialists that the Appellant’s health impairment was attributable to [...] ergonomically unsound working conditions [...] and, if applicable, make appropriate arrangements for a prompt review by a medical board;
- (c) subject to any review referred to under (b) above, decide [...] that the Appellant be reimbursed unpaid salary and related entitlements that were due up to the end of her employment relationship [...];
- (d) decide that the Appellant should be given all necessary assistance in pursuing her claim for [...] insurance coverage [...] and that reasonable legal costs incurred by her in pursuing this claim should be reimbursed by the Organization.”

6. By a letter dated 7 July 2010 – which constitutes the impugned decision – the Director General informed the complainant that he had decided partially to adopt the Appeal Board’s conclusions and to propose that she should either undergo another medical assessment, or accept a sum corresponding to the salary and related entitlements which she had not received owing to the exhaustion of her entitlement to sick leave with full pay. He added that this was a “gesture of goodwill” and did not involve any admission of legal liability on the part of the Organization. He explained that WIPO had signed a contract with a reputable insurance company to provide compensation in the event of a work-related illness, accident or death, and the fact that the company had denied her coverage was not within the Organization’s control. This letter also mentioned the fact that the Director General did not necessarily agree with the Appeal Board’s conclusions on receivability. The above-mentioned sum was paid to the complainant in September 2010.

7. The complainant asks the Tribunal to set aside the impugned decision and to award her various sums, corresponding inter alia to her health insurance premiums and her loss of earnings, as well as costs, less the sum already paid by WIPO.

In her further submissions the complainant contends that the Organization must take responsibility for all the consequences of breaching its obligation to provide her with a “safe working environment which would not damage [her] health in any way”, and that “the Organization ought promptly to have requested in 2008, or even earlier, a fresh medical opinion [...] if it had really thought that the unanimous [opinion] of September 2006, signed by three specialists, needed to be reviewed, and to have offered [her] the means of initiating proceedings against the insurance company with which the Organization had taken out the insurance policy covering the risk of work-related illness and accidents”. In that respect, the complainant presents new claims to the effect that the Organization should first be ordered to defray all the costs of any action, in or out of court, against that company in order to obtain the payment of the lump sum due

under the insurance contract concluded by the Organization on behalf of its staff.

These claims, which were submitted only in the complainant's further submissions, must be dismissed as irreceivable.

8. The defendant argues that the complaint lies outside the Tribunal's competence because, in reality, the complainant intended to establish the liability of the insurance company and not that of the Organization itself.

However, the Tribunal notes that the purpose of the proceedings brought before it by the complainant is in fact to ascertain the Organization's liability arising from its wrongful failure to provide her with suitable working conditions.

These objections will therefore be dismissed.

9. WIPO also contends that the complaint is irreceivable because it was filed out of time. It observes that, according to Staff Rule 11.1.1(b)(1), any staff member who wishes to appeal against an administrative decision must as a first step request a review of that decision "within eight weeks of the date on which the staff member received written notification of the decision". It asserts that, in this case, the complainant did not submit any such request until 9 October 2007, in other words one year and four months after the end of her contract. It states that it objected to the appeal's receivability before the Appeal Board, but the latter dismissed this objection. In its opinion, if it had breached its obligation to provide the complainant with a safe, ergonomically sound working environment, she ought to have raised this issue with the Organization within the prescribed time limits. She did not, however, challenge the administrative decisions aimed at improving her working environment either when they were taken, between 1999 and 2004, or within the time limits laid down in the above-mentioned Staff Rule.

10. The Tribunal cannot accept this argument. It notes that the complainant was unable to lodge a claim until 9 October 2006, the

date on which she says that she received the medical board's report, by which time she had already separated from the Organization. As, in the absence of any indication to the contrary in the relevant Staff Regulations and Staff Rules, former staff members of WIPO have no access to internal means of redress, the objection to receivability based on the complainant's failure to comply with the time limit laid down in Staff Rule 11.1.1(b) must be dismissed.

11. The fundamental question in this case is whether the complainant's health problems were originally work-related.

In its opinion of 8 May 2010 the Appeal Board recommended *inter alia* that the Director General should decide whether there were sufficient grounds for reviewing the conclusions of the medical specialists that the complainant's health impairment was attributable to ergonomically unsound working conditions and, if applicable, make appropriate arrangements for a prompt review by a medical board.

In its submissions to the Tribunal the defendant questions the causal link between the complainant's health problems and her working conditions and, given that she was diagnosed as suffering from demyelination – a neurological auto-immune disease – in September 2009, it proposes that an independent neuroradiologist should be asked to determine whether the symptoms which appeared during her years of service with the Organization were the first signs of this demyelination which, in its opinion, would prove “beyond all doubt” that they were not work-related.

In its view, the medical board's report of September 2006 is irrelevant because it was not the board's task to ascertain whether the complainant's health problems were work-related, but only to determine whether her incapacity was likely to be total and permanent.

12. It is the Tribunal's opinion that, in the light of the foregoing, it is necessary, prior to judgment, to order, at the Organization's expense, a medical examination by a specialist appointed by the President of the Tribunal, whose terms of reference shall be specified hereinafter.

DECISION

For the above reasons,

1. A medical expert shall be appointed by order of the President of the Tribunal to determine whether the complainant's symptoms resulted from ergonomically unsound working conditions, or whether they had a different origin.
2. The expert shall examine the complainant, take into consideration all the evidence in the file submitted to the Tribunal and may ask the parties for any pertinent information, while respecting the adversarial principle.
3. The expert shall submit his report, seven copies of which shall be sent to the Registrar of the Tribunal, by 28 September 2012 at the latest.
4. Copies of this report shall be sent to both parties, who will have 15 days to submit any comments.
5. The expert's fees and the costs of the examination shall be defrayed by WIPO; the amount thereof will be subject to the approval of the President of the Tribunal.
6. The matter of costs is reserved.

In witness of this judgment, adopted on 4 May 2012, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2012.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet