

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

119th Session

Judgment No. 3394

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3119 filed by Mr A. R. on 4 February 2013 and corrected on 11 April, the reply of the World Intellectual Property Organization (WIPO) of 16 July, the complainant's rejoinder of 2 September and WIPO's surrejoinder of 3 December 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

CONSIDERATIONS

1. The complainant has filed an application for execution of Judgment 3119, delivered on 4 July 2012, by which the Tribunal set aside the decision imposing on him the disciplinary sanction of dismissal with immediate effect and, in point 2 of the decision, ordered his reinstatement with all the legal consequences that that entailed, as specified under consideration 8 of the judgment. It also ordered WIPO to pay him an indemnity of 10,000 Swiss francs and 8,000 francs for costs.

2. Consideration 8 of the judgment in question reads as follows:

“The complainant is requesting immediate reinstatement and the restoration of all his rights. The Tribunal considers this request well founded.

Without prejudice to any future sanction which may be taken against him following renewed disciplinary proceedings, in accordance with the applicable procedure, the complainant must therefore be reinstated and will be entitled to payment of the salary and allowances which he would have received had he not been dismissed, from the date on which his employment ceased until the date of his actual reinstatement. The sums to which he would have been entitled had he remained in his post shall bear interest at a rate of 5 per cent per annum.”

3. The complainant was reinstated on the WIPO payroll as from 1 September 2012. On 1 November 2012 he “physically” returned to the Organization and was assigned an office without being given any particular duties until 6 February 2013, when he started work with the International Computing Centre under a loan agreement.

4. The Organization paid the complainant 18,000 francs, corresponding to the indemnity and costs awarded to him by the Tribunal.

5. As far as the execution of point 2 of the decision was concerned, the Organization paid the complainant two thirds of the sums due and withheld the remaining one third because, it maintained, the complainant had repeatedly refused to disclose any income which he might have received after his dismissal.

6. In the complaint form, the complainant asks the Tribunal to order:

“(1)The execution of Judgment 3119 on the terms set forth by the Tribunal concerning:

- The reimbursement with interest of all the salary and allowances which he would have received had he not been dismissed, from the date on which his employment ceased until the date of his actual reinstatement, as stipulated in the judgment, i.e. from 16 March 2010 until 1 September 2012. On 29 January 2013 the outstanding one third to be paid to [him] amounted to 108,547 [francs];
- His reinstatement [...] in his post on the same conditions as before his unfair dismissal.

(2) The award of damages for moral injury due to WIPO's non-compliance when executing the judgment and its unilateral interpretation thereof to the complainant's detriment.

(3) The award of damages for harm to his career, because since 1 November 2012 he has been placed in an administrative position without any duties, *a priori* until 1 February 2013.

(4) The reimbursement of legal fees.”

In his rejoinder he reduces his claims and finally requests the following:

- “• The full execution of Judgment No. 3119;
- Payment of the outstanding one third with the interest due under Judgment 3119. The complainant also asks to be supplied with the details of the indemnities in order to be able to check. (To date, although the complainant has requested this several times, he has received no details of the sum which WIPO must pay him.) On 29 January 2013 the outstanding one third due to [him] amounted to 108,547 [francs];
- The award of damages for the non-execution of Judgment 3119 and continued injury related to WIPO's serial negligence and gratuitous defamation;
- The reimbursement of legal fees;
- Lastly, in order to ensure the correct execution by the Organization of Judgment 3119 within a reasonable period of time, [the complainant] asks the Tribunal to set a sum which it deems appropriate and which WIPO will have to pay as a penalty for each month of delay.”

7. The defendant organization submits that the application must be dismissed in its entirety.

8. It contends that the Tribunal's judgment was based on incomplete information, in that the complainant failed to inform the Tribunal that, after his dismissal, he had found gainful employment elsewhere. According to WIPO, that is why the Tribunal did not stipulate in point 2 of its decision that WIPO must pay the sum in question “less the salary which the complainant [was receiving] from his new employer”.

9. The Tribunal's judgments carry the authority of *res judicata* and must be executed by the parties as ruled. They may not be called

into question except when an application for review is allowed. They may form the subject of an application for interpretation by the Tribunal only if one party considers that the ruling is deficient or insufficiently clear (see Judgment 1887, under 8).

10. The Tribunal considers that WIPO, by taking it upon itself to interpret Judgment 3119 and by deciding of its own initiative to pay the complainant only two thirds of the sums due under point 2 of the decision, breached its duty to execute that judgment fully and correctly.

Since, in the instant case, the Tribunal did not order the deduction from the sums due of any income received by the complainant during the period of his expulsion from WIPO, the latter was in no way entitled to make the full payment of these sums subject to the complainant's declaration of such income or, of its own initiative, to make any deduction in that respect from the aforementioned sums.

If the Organization deemed interpretation of the judgment in question necessary, it should have filed an application to that end. It did not do so. Moreover the Tribunal emphasises that, in Judgment 3119, it purposely decided that, unlike in certain other cases, in view of the circumstances, there were no grounds for deducting any income received by the staff member in question during his period of expulsion from the Organization.

The application for execution must therefore be allowed.

11. The Tribunal finds that the complainant's claim for interest on the outstanding sums is redundant in the context of this application for execution, since this interest was already awarded in Judgment 3119.

12. On the other hand, the complainant's claim for damages for moral injury resulting from the unilateral interpretation of the judgment to his detriment will be allowed. He will be entitled to compensation in the amount of 5,000 Swiss francs under this head.

13. As the claim in respect of injury due to "WIPO's negligence and gratuitous defamation" is not directly related to the execution of

Judgment 3119, it will not be examined in the context of the application for execution of that judgment.

14. In accordance with the principle of good faith and good administrative practice, the Organization will supply the complainant with the details of the sums due to him, as he requested.

15. The Organization will have to pay the complainant 5,000 francs as a penalty for each month of delay if it fails to honour its obligations within a period of 30 days as from the date of the delivery of this judgment.

16. The complainant is entitled to costs in relation to this application, which the Tribunal sets at 4,000 francs.

DECISION

For the above reasons,

1. The case is referred back to the Organization in order that it execute in full Judgment 3119 by paying the full amount of salary and allowances without any deductions whatsoever.
2. WIPO shall pay the complainant compensation in the amount of 5,000 Swiss francs for moral injury.
3. It shall pay him 5,000 francs as a penalty for each month of delay, as indicated under 15, above.
4. It shall also pay him an additional 4,000 francs for costs related to this application.
5. All other claims are dismissed.

In witness of this judgment, adopted on 14 November 2014,
Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba,

Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

(Signed)

CLAUDE ROUILLER

SEYDOU BA

PATRICK FRYDMAN

DRAŽEN PETROVIĆ