

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

## FIFTIETH ORDINARY SESSION

In re CARRIER

Judgment No. 546

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Intellectual Property Organization (WIPO) by Mr. Fernand Henri Carrier on 19 May 1982 and altered on 24 June and 29 July, WIPO's reply of 6 September, the complainant's rejoinder of 25 November and WIPO's surrejoinder of 23 December 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 7.4 and Appendix II of the Rules of Court, Chapter IX and Rule 10.1.1 of the WIPO Staff Regulations and Staff Rules of the International Bureau of WIPO, the secretariat of the Organization, Rules 12 and 19 of the Regulations and Rules of the Pension Fund and Rule 3 of the (Closed) Pension Fund;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant, a French citizen born in 1935, served on the staff of the International Bureau of WIPO for several years. By 1981 he was head of a unit. On 12 June 1981 the acting Director of the Administrative Division wrote to him saying that WIPO intended to end his appointment because of unsatisfactory performance. The Director General consulted the Joint Advisory Committee, which reported that the complainant was indeed incapable of performing his duties properly. The parties signed an agreement on 27 July: the contract between them was to end on 31 July and WIPO would pay him 50,000 Swiss francs in full and final settlement of any claim he might have against it. On 21 December the Secretary of the Board of the WIPO Pension Fund wrote to him saying that the Board had decided that in the circumstances and by way of compromise his termination benefit would fall half-way between 85,637 Swiss francs, the sum due, under Article 12 of the Fund Rules, on resignation, and 93,422 francs, the sum due on dismissal - or 89,529 francs. Since he had already received 69,487 francs from the United Nations Joint Staff Pension Fund the net amount due was 20,042 francs. On 23 December the complainant appealed under Article 19 of the Fund Rules claiming a larger sum. In a letter of 19 February 1982, the decision impugned, the Secretary replied that the Board confirmed its earlier decision. The complainant filed his complaint on 19 May 1982. In accordance with Article 7(4) of the Rules of Court of the Tribunal the Registrar called upon him, on 25 May, and again on 29 June and 1 July 1982, to correct his complaint by annexing the statement of arguments and facts required by Appendix II to the Rules. Considering that he had stated adequately the grounds for his complaint, he did not do so.

B. In entries under points 10 and 11 of the complaint form the complainant contends that he was in fact dismissed from WIPO and signed the agreement under duress. There was agreement only on the date of termination and the amount payable, not as to resignation. He seeks payment of the difference between the termination benefit due on dismissal and the sum actually paid, or 3,892.65 Swiss francs, plus the interest due as from 1 August 1981.

C. WIPO argues that there is no valid complaint to answer for want of the statement of facts and arguments required by Appendix II to the Rules of Court. In any case the claims are unfounded. The complainant was not dismissed, and there is no evidence to suggest that he was. Indeed, that the agreement sets a date for termination and fixes the amount due shows that there was no dismissal since, where there is, Chapter IX of the Staff Regulations and Staff Rules prescribes the period of notice and the amount of the indemnity. The purpose of the agreement was to spare the complainant's and his family's feelings and help him to find other work. The Fund Rules do not cover the case of termination by agreement, and the Board's decision was reasonable in the circumstances.

D. The complainant presses his claims in his rejoinder. In his view WIPO's interpretation of Appendix II to the Rules of Court is too rigid: a short statement of the facts and of his arguments appears in the complaint form itself,

even if it is not actually appended. Besides, his complaint would not have been forwarded for reply had it not complied with the Rules of Court. As to the merits, he reaffirms that he was in fact dismissed, as, he believes, is clear from his letter of 23 December 1981 to the Secretary of the Board, which is appended to his complaint. The rule under which the Joint Advisory Committee was consulted - Rule 10.1.1 - relates to dismissal and other sanctions. Obviously if he had refused to sign the agreement he would have been dismissed. Since the provisions of the Staff Regulations and Rules on dismissal had not been applied, the agreement was needed to settle the date of termination and the amount due to him. WIPO's explanation that the agreement was concluded for compassionate reasons is, to his mind, just cant. The Board's approach was mistaken and had no basis in law: it is impossible to strike a mean between two abstract notions such as dismissal and resignation.

E. In its surrejoinder WIPO again maintains that the complainant was not dismissed. The agreement which the complainant signed on 27 July 1981 determined the amount to be paid in full settlement of any claims, and he did not challenge it until he filed his rejoinder. Nor in his complaint did he allege any breach of the Staff Regulations or of his terms of appointment. Any such allegation would have been time-barred since he filed his complaint almost a year after concluding the agreement. Besides, there was no such breach. WIPO again invites the Tribunal to dismiss the complaint as irreceivable or devoid of merit.

#### CONSIDERATIONS:

1. The complainant and the acting Director of the Administrative Division of WIPO signed an agreement on 27 July 1981. It said: "It is hereby confirmed that the International Bureau of WIPO and Mr. Fernand Carrier have agreed that contractual relations between them shall cease on 31 July 1981 and that WIPO shall pay him 50,000 Swiss francs on that date in full and final settlement of any claim he may have against it. It is understood that any sum due from Mr. Carrier to the Mutual Association of International Civil Servants shall be paid directly by WIPO to the Association and shall therefore be deducted from the above-mentioned amount."

The complainant did not challenge the agreement in time, and it is now final. He does allege a formal defect and argue that he signed under pressure which deprived him of the freedom to make up his own mind, but he submits no claim to the Tribunal in respect of the agreement.

2. The decisions he impugns, as stated in his complaint, are those taken by the Pension Fund of WIPO on 21 December 1981 and 19 February 1982 concerning his supplementary entitlements under Rule 3 of the (Closed) Pension Fund of 23 August 1976.

3. The complaint is receivable. It was filed within the time limit and is sufficiently substantiated for the Tribunal to be able to pass judgment. WIPO's objections to receivability therefore fail.

4. Rule 3 of the Rules of 23 August 1976 refers to the Rules which came into force on 1 January 1975. Under Rule 12 of the latter Rules the amount of the separation benefit differs according as the Fund member has resigned or been dismissed from the staff of WIPO. The Board of the Fund has decided that, since the Rules are silent on the matter, the amount payable to an official in the event of an agreed termination should be half-way between the amount payable on resignation and that payable on dismissal.

The complainant's case is that for the purpose of calculating his separation benefit he should be treated as a dismissed official.

5. There being nothing in the rules about the entitlements of officials terminated in circumstances like the complainant's, the Board of the Fund simply decided what it thought was equitable. In fact the Administration of an international organisation has no discretion in the matter. It is the Fund Rules that determine the members' rights and the way in which they are applied must be objective. The Tribunal accordingly observes that there are only two possibilities under the material rules. If the complainant is to be treated as a case of dismissal, his claim will succeed; but if the agreement is to be treated as a resignation, he has no cause of action.

The evidence here is that the case is closer to dismissal than to resignation. WIPO says in paragraph 8 of its reply: "The complainant had been on the staff of the Organization for over fifteen years. Because this was a fairly long period, because of his family position (his wife has been on the staff for eight years and still is, and they have two children, still under age, living with them) and because he was still only 45 years old at the time, the Director General did not want to spoil his prospects of other employment. Dismissal would have had that effect, especially

if the reason had been stated, as indeed it would have had to be. The reason was 'his ... relapse brought on, according to the information available to the Joint Advisory Committee, by, among other things, the consumption of alcohol' (Appendix 3 to the complaint). WIPO wanted to safeguard his dignity in his relations with his family and other staff members, create the psychological conditions most likely to favour his recovery, and give him a better chance of finding employment. That is why it offered him an agreement, and after some days' thought he accepted. The offer and acceptance took the form of an agreement which was embodied in the written memorandum..."

In other words, WIPO acknowledges that its intention was to dismiss the complainant and that solely on compassionate grounds did it decide to conclude an agreement instead. The Tribunal accordingly takes the view that the complainant's contention is correct, and that he is entitled to payment of separation benefit at the dismissal rate prescribed in Rule 12(3).

6. He is also entitled to interest on the sum awarded by the Tribunal at 5 per cent a year from the date on which the complaint was filed. He is not, however, entitled to interest on the other amounts he may have received or may receive from WIPO.

7. In the circumstances the Tribunal awards him 1,000 Swiss francs in costs, to be paid by the Organization.

#### DECISION:

For the above reasons,

1. The Pension Fund of WIPO shall pay the complainant separation benefit at the rate prevailing when WIPO terminated his appointment (Article 12(3) of the Rules of the Pension Fund which came into force on 1 January 1975). The amount shall bear interest at the rate of 5 per cent a year from 19 May 1982, the date on which the complaint was filed.

2. WIPO shall pay the complainant 1,000 Swiss francs as costs.

3. His other claims are dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 30 March 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner