Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

107th Session **Judgment No. 2829**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr S G. G. against the World Intellectual Property Organization (WIPO) on 22 October 2007 and corrected on 8 January 2008, the Organization's reply of 10 April, the complainant's rejoinder of 14 May and WIPO's surrejoinder of 8 August 2008;

Considering Article II, paragraph 5, 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. By a decision of 7 March 2006 the complainant was temporarily suspended from duty, with pay, pending the investigation of eight charges of serious misconduct on his part. He challenged this decision in his seventh complaint, which resulted in Judgment 2698, adopted on 9 November 2007. In that judgment the Tribunal concluded that the measure of suspension was lawful, but it ordered WIPO to pay the complainant 10,000 United States dollars in compensation for the moral injury which he had suffered, since the investigation had not been completed with all due speed.

On 19 February 2007, while the investigation was still proceeding, the complainant sent the Director General a letter in which he objected to the fact that he had been suspended from duty for almost a year, in breach of the principle of proportionality. He requested the annulment of his suspension from duty and his immediate reinstatement or, failing that, authorisation to file a complaint with the Tribunal. Having received no reply, on 12 April he lodged an appeal with the Appeal Board, asking it "to rule on [his] request to the Director General" dated 19 February. On 3 July the Board concluded that this appeal was irreceivable because its subject matter was *res judicata*, since the complainant's suspension from duty, on which no new administrative decision had been taken, had already been the subject of an appeal before it. The Board further considered that it was not competent to authorise the complainant to lodge a complaint directly with the Tribunal. The Director of the Human Resources Management Department advised the complainant in a letter of 19 July 2007 that the Director General, like the Board, deemed his appeal irreceivable as its subject matter was *res judicata*. That is the impugned decision.

B. The complainant asserts that the length of his temporary suspension was "plainly unreasonable". He contends that this kind of measure, which imposes a constraint, has considerable consequences for a person's career, infringes the "principle […] of a staff member's right […] to obtain a rapid decision" from the Administration and violates the "standards" of the international civil service. In this connection he refers to Staff Rule 110.2 of the United Nations (UN) which, in the version of 1 January 2002, stipulates that an investigation should last for a period of no more than three months. Noting that WIPO Staff Rule 10.1.2, concerning temporary suspension from duty, does not specify the length thereof, he considers that the UN Staff Rules should apply in his case. In his opinion, in refusing to grant his request for a review of the decision of 7 March 2006, the Director General misused his authority. Moreover, he claims that his suspension from duty was unwarranted.

The complainant is of the view that the Appeal Board, in dismissing his appeal, infringed the right of every international civil

servant to "appeal against a refusal to address the issues raised", a right which is established by the Tribunal's case law. He argues that the same reasoning applies to the Director General's final decision.

The complainant requests the setting aside of the decision of 19 July 2007. He claims 200,000 Swiss francs in compensation for the moral injury suffered and 20,000 francs in costs.

C. In its reply WIPO submits that the complaint is irreceivable, since the Tribunal has already ruled on the merits of this case in Judgment 2698, which has *res judicata* authority. The Organization points out that, as the Appeal Board noted, no new administrative decision had been taken with regard to the complainant's suspension when he submitted his second appeal against this measure. Furthermore, the Tribunal has thoroughly examined the issue of the length of his suspension from duty and has already awarded compensation to the complainant in respect thereof. The Organization considers that the complaint is an abuse of process.

WIPO replies on the merits subsidiarily. It reiterates the arguments which it presented in the case resulting in Judgment 2698. Recalling the various stages of the investigation, it states that it wished to follow the proper procedure and to conduct a complete, thorough inquiry; this led to some unintentional delays. It emphasises that it was not in its interests to drag out the suspension measure in view of its financial repercussions, since the complainant was receiving his full pay. WIPO says that his appointment was terminated for "compelling operational reasons" on 28 February 2007 and that, apart from the fact that his suspension ended on that date, the complainant's separation from service is unconnected with the present case.

D. In his rejoinder the complainant presses his pleas. He submits that the Organization is displaying a want of understanding and/or bad faith when it suggests that his complaint concerns only the merits of his temporary suspension. In fact he is challenging in particular the inadmissible length of this measure and in this respect he again refers to UN Staff Rule 110.2. He holds that the Tribunal did not rule on this matter in Judgment 2698, because the events of which he is now

complaining took place after he had filed his seventh complaint in November 2006.

The complainant contests the view that there is no link between the instant case and the termination of his appointment, since the latter was decided less than ten days after he had submitted his request for review on 19 February 2007. He considers that this termination is improper.

E. In its surrejoinder the Organization maintains its position. It points out that it is not bound by the UN Staff Rules and emphasises that the decision to terminate the complainant's appointment forms the subject of his tenth complaint which is pending before the Tribunal.

CONSIDERATIONS

1. The Director of the Human Resources Management Department of WIPO notified the complainant by letter of 7 March 2006 of his immediate temporary suspension from duty pending the investigation of several charges of serious misconduct on his part. The complainant first requested that the Director General review this decision and then lodged an appeal against it on 23 May. The Appeal Board concluded on 2 August that his appeal was without merit, but recommended that the Director General should conclude the investigation with all due speed. The complainant was advised by letter of 28 September 2006 that the Director General had dismissed his appeal.

In Judgment 2698 the Tribunal found that the Director General had not implemented the Appeal Board's recommendation that he should conclude with all due speed the investigation into the allegations of serious misconduct against the complainant and should take a decision within a reasonable time. It ordered the Organization to pay the complainant 10,000 United States dollars in compensation for the moral injury suffered. It emphasised in consideration 8 that facts occurring after the complainant's suspension, which had been

mentioned by the parties in their submissions, could not be considered in the proceedings leading to that judgment.

The complainant's appointment was terminated on 28 February 2007 on grounds that are contested before the Tribunal.

2. In the meantime, on 19 February 2007, the complainant had written to the Director General to request, inter alia, the annulment of his suspension, which had lasted for almost a year. Having received no reply, he lodged an appeal with the Appeal Board on 12 April. On 3 July the Board decided that the appeal was irreceivable pursuant to the *res judicata* rule, inasmuch as it had already issued an opinion on the measure of suspension and no new administrative decision had been taken on this matter. The complainant was informed by letter of 19 July 2007 that the Director General also deemed his appeal irreceivable pursuant to the *res judicata* rule.

The complainant asks the Tribunal to set aside that decision and to award him 200,000 Swiss francs in compensation for the moral injury suffered and 20,000 francs in costs. He submits that the Director General could not rely on the *res judicata* rule and that his suspension lasted for an excessively long time. He refers to UN Staff Rule 110.2 and infers from it that such a measure should in principle last for no longer than three months.

3. The *res judicata* rule applies to decisions of judicial bodies, but not to opinions or recommendations issued by administrative bodies. The Director General was therefore obviously wrong to cite this rule as the basis for declaring the internal appeal irreceivable on the grounds that the Appeal Board had already given an opinion on the suspension and that no new administrative decision had been taken on this matter.

4. The Tribunal notes that since then, in Judgment 2698 adopted on 9 November 2007 – to which the parties refer – it has itself ruled on the duration of the measure in question. However, in that judgment it clearly indicated that it could not consider facts occurring after the suspension. From this it must be inferred that neither the first internal

appeal nor Judgment 2698 was concerned with the fact to which the complainant objected in his second internal appeal, namely that the suspension measure lasted for nearly a year.

5. The complaint is therefore well founded and the impugned decision must be set aside.

The Organization shall pay the complainant 3,000 Swiss francs in compensation for the moral injury which he suffered owing to the fact that the merits of his internal appeal were not examined.

6. In addition, the Organization has not supplied any kind of justification for the plainly excessive duration of the suspension which formed the subject of Judgment 2698. It ought to have shown that special circumstances, such as the complexity of the inquiry, had not enabled it to complete this investigation with the dispatch required by Judgment 2698, under 13.

The complainant is entitled to compensation for the moral injury which he suffered owing to the excessive and unjustified duration of his suspension. The Tribunal sets *ex aequo et bono* the amount of compensation owed by the Organization for this reason at 10,000 francs.

7. The complainant shall also be awarded 3,000 francs in costs.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. WIPO shall pay the complainant 3,000 Swiss francs in compensation for the moral injury which he suffered owing to the fact that the merits of his internal appeal were not examined.

3. It shall likewise pay him 10,000 francs in compensation for the moral injury which he suffered owing to the excessive duration of his suspension.

4. It shall also pay the complainant costs in the amount of 3,000 francs.

In witness of this judgment, adopted on 7 May 2009, 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 8 July 2009.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet