

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**116th Session**

**Judgment No. 3259**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgments 2830 and 3014 filed by Mr S. G. G. on 13 March 2012, the reply of the World Intellectual Property Organization (WIPO) of 13 June as corrected on 31 July, the complainant's rejoinder of 29 August and WIPO's surrejoinder of 4 December 2012;

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 application seeks the execution of Judgments 2830, delivered on 8 July 2009, and 3014, delivered on 6 July 2011.

2. By Judgment 2830, the Tribunal set aside the decision of 22 October 2007 confirming that of 28 February 2007 to terminate the complainant's appointment, on the grounds of administrative reorganisation, since the Organization ought to have done its utmost to find a post matching the complainant's qualifications and ascertained

whether he was prepared to accept a post at a lower grade to that which he had previously held. The Organization was therefore invited to take a fresh decision after having examined the various conceivable redeployment possibilities with the complainant. If redeployment proved to be objectively impracticable owing to a lack of available posts matching the complainant's abilities, the Organization was to determine with him the definitive amount to which he would then be entitled upon separation from service (considerations 9 and 10).

3. The complainant was informed by letter of 30 November 2009 that it had been impossible to identify a vacant post matching his abilities, either at the grade which he had held when his appointment was terminated, or at a lower grade, and he was notified of the final amounts due, according to WIPO's calculations, pursuant to the above-mentioned consideration 10. As the request for review which he submitted thereafter was dismissed, he referred the matter to the Appeal Board. The Board considered that the Organization had not examined the various conceivable redeployment possibilities with the complainant, as required by Judgment 2830, and recommended that it should undertake a new redeployment process. On 18 July 2011 the Director General decided to adopt that recommendation.

In the meantime, WIPO had submitted an application for interpretation of Judgment 2830, in which it asked the Tribunal to fix the date of separation to be taken into account when calculating the final sums due to the complainant. In Judgment 3014 the Tribunal rejected this application on the grounds that Judgment 2830 was neither uncertain nor ambiguous.

4. The complainant states that, seven months after the delivery of Judgment 3014 and more than two years after that of Judgment 2830, he has still not received any redeployment proposal and he asks the Tribunal to find that WIPO has failed to execute both judgments and, in substance, to order his reinstatement as of 28 February 2007, or the payment of his salary and all related allowances, including pension rights, and interest thereon, for the

period between the latter date and that on which he would have taken retirement if his appointment had not been terminated, i.e. 24 April 2013.

5. It is clear from the written submissions and the explanations given to the Tribunal by the parties that renewed, serious and thorough efforts were made, with the complainant's participation, to find him a new job within the Organization. The only reason why those efforts did not bear fruit was that no vacant post matching the complainant's wishes, abilities and qualifications could be found. While the extraordinary length of the redeployment procedure is certainly regrettable, it may be ascribed largely to the complainant's own conduct.

His pleas regarding the execution of Judgment 2830, insofar as it required the Organization to examine the various conceivable redeployment possibilities with him, are therefore manifestly unfounded. The same is naturally true of his request for reinstatement, without there being any need to examine whether the claims submitted to the Tribunal in this connection are receivable.

6. The complainant submits subsidiarily that Judgment 2830 has not been executed, because WIPO calculated the amounts due to him on separation from service up to the date of the termination of his appointment. In his opinion, the decision of 22 October 2007, confirming that of 28 February 2007 to terminate his appointment was set aside by the Tribunal and was not replaced by a new termination decision at the end of the redeployment process. The Organization should therefore be ordered to pay the complainant his salary and all related allowances, including pension rights, for the period between 28 February 2007 and 24 April 2013, the date on which he would have taken retirement if his appointment had not been terminated. On the other hand, the complainant does not, however, dispute the calculation of the compensation due to him under Judgment 2830, assuming that the date to be taken into account in determining it was 28 February 2007.

The complainant's appointment was terminated as a result of administrative reorganisation entailing inter alia the abolition of his post. That termination took effect on 28 February 2007, and on that

date he definitively separated from the Organization. Judgment 2830 did not order WIPO to reinstate him as of 28 February 2007, but to re-examine with him redeployment possibilities in another post matching his abilities, even if it were at a lower grade. Since such redeployment proved to be objectively impossible owing to a lack of available posts, the Organization's sole remaining duty under Judgment 2830 was to "determine [...] the definitive amount to which [the complainant was] entitled upon separation from service". Thus, it rightly chose 28 February 2007 as the date for determining that amount. The complainant has no grounds whatsoever for saying that the date to be taken into account was that on which he would normally have retired, since that argument would lead to his being granted plainly unwarranted favourable treatment.

The complainant's plea in relation to the execution of Judgment 2830, insofar as it required the Organization to provide him with correct compensation for the termination of his appointment, is therefore likewise manifestly unfounded.

7. The application for execution must therefore be dismissed.

#### DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 7 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller  
Seydou Ba  
Patrick Frydman  
Catherine Comtet