

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**116th Session**

**Judgment No. 3270**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mrs S. N. against the World Intellectual Property Organization (WIPO) on 13 August 2011 and corrected on 19 September, WIPO's reply of 22 December 2011, the complainant's rejoinder of 10 April 2012 and WIPO's surrejoinder of 12 July 2012;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal, and Article 6 of its Rules;

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

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

A. Information regarding the complainant's career at WIPO is to be found in Judgments 3185, 3186, 3187, 3225, 3226 and 3269, delivered on her six previous complaints respectively. It should be recalled that the complainant had been employed under a short-term contract which had been renewed several times.

On 16 May 2011 the Director General wrote to the complainant, who then held a post at grade G4, to advise her that she was one of the

50 short-term employees whose grade was going to be revised in pursuance of the principle of “equal pay for equal work”. He informed her that, as from 1 June 2011, she would be placed in a grade matching that of WIPO staff members who performed duties similar to hers, i.e. G5. On 30 May 2011 the complainant sent the Director General a memorandum in which she challenged the date on which her classification in grade G5 would take effect, since she considered that it should have been awarded to her retroactively. She also asked him to assign her the step corresponding to her length of service and to pay her, with interest, the sums which had been due to her since 2007, the year of publication of Office Instruction No. 31/2007 which had introduced a system of increases within grade for General Service short-term employees. She drew attention to the fact that her salary had been subject to internal taxation which, in her view, was unlawful, and she requested the reimbursement of the sums deducted for that reason and the recalculation of her pension rights accordingly. Lastly, she claimed compensation for the injury which she considered she had suffered on account of these “unlawful actions”.

In her complaint form the complainant indicates that she impugns the implied decision rejecting the requests contained in her memorandum of 30 May 2011.

B. The complainant submits that, although the Director General’s decision of 16 May 2011 was based on the principle of equality, he failed to give that decision wide enough scope to establish complete equality of treatment between WIPO staff members and short-term employees. She contends that, to achieve this, her classification at grade G5 should have been retroactive and that WIPO should correct her step to reflect her length of service and performance, in particular. She also asserts that there is no rule in force within WIPO which provides for the levying of internal tax on a short-term employee’s salary. She considers that she has suffered moral injury on account of the fact that she was unlawfully deprived of part of her remuneration and that WIPO has subjected her to unequal treatment.

The complainant asks the Tribunal to set aside the impugned decision and that of 16 May 2011 with respect to the date on which it took effect. She also asks the Tribunal to order WIPO to amend the date on which she was classified at grade G5 and to review the step assigned to her. She claims payment of the resultant sums due to her and reimbursement of those levied as internal tax. She explains that these sums should be accompanied by interest at 8 per cent per annum and the product of the capitalisation of that interest. She claims damages in the amount of 25,000 euros and 9,000 euros in costs. Lastly, she asks the Tribunal to rule that, should these various sums be subject to national taxation, she would be entitled to a refund of the tax paid from WIPO.

C. In its reply WIPO challenges the Tribunal's jurisdiction and raises several objections to recevability. First it contends that, as the complainant has never had the status of an official within the meaning of Article II, paragraph 5, of the Statute of the Tribunal, the latter has no competence to entertain her complaint. It considers that another reason why the Tribunal lacks competence is that the complaint does not concern non-observance of the terms of the complainant's contracts, but calls into question WIPO's policy on short-term employees. WIPO further submits that the complainant is wrong to base her complaint on Article VII, paragraph 3, of the Statute of the Tribunal, because the issues which she raises have formed the subject of "administrative decisions". It points out that these decisions were not challenged within the ninety-day period specified in paragraph 2 of that article and it submits that the complainant is therefore time-barred from challenging, first, the long-standing practice of levying internal tax on short-term employees' salaries and, secondly, the modalities of the system of increases within grade for General Service short-term employees, because that system was introduced in 2007. It emphasises that the complainant also failed to challenge the grade offered to her in her various contracts within the prescribed time limits. Lastly, WIPO points out that the complainant did not submit

her brief when she filed her complaint, in breach of Article 6, paragraph 1, of the Rules of the Tribunal. In WIPO's opinion, the fact that she did not correct her complaint until 19 September 2011 constitutes abuse of the time limit laid down in Article VII, paragraph 2, of the Statute of the Tribunal.

On the merits WIPO submits that, since short-term employees are not in an identical factual and legal situation to staff members, it was under no obligation to backdate the complainant's classification in grade G5, or to correct her step. It stresses that the complainant freely signed all the short-term contracts offered to her and accepted not only the grade and step specified therein, but also the monthly deduction of internal tax from her gross salary. The terms and conditions of employment annexed to those contracts stipulated that she would receive a net salary corresponding to the salary scale for short-term employees in the General Service category. This scale shows the net salary received in each grade and step by these employees after the deduction of internal taxation, *inter alia*. WIPO infers from the foregoing that in refusing to grant the complainant the grade and step which she wished and in subjecting her salary to internal taxation, it complied with the terms of her contracts.

D. In her rejoinder the complainant contends that in Judgment 3090 the Tribunal found that it may rule on any employment relationship arising between an organisation and its staff, whether under the terms of a contract or under Staff Regulations. Citing the case law, she also argues that filing a summary complaint and then correcting it within a period of 30 days, which may be extended, is consistent with the Rules of the Tribunal and with the right to due process.

On the merits the complainant maintains her arguments. She adds that the reference to "net salary" in the terms and conditions of employment applicable to temporary staff in the General Service category is not *per se* an adequate legal basis for the deduction of internal tax from her pay.

E. In its surrejoinder WIPO reiterates its position.

## CONSIDERATIONS

1. The complainant entered the service of WIPO in 1999 at grade G2. She was recruited on a short-term contract which was renewed several times. She was subsequently promoted to grade G3 and then to grade G4.

On 16 May 2011 the Director General informed her that her grade, like that of 49 other short-term employees, had been revised to bring it into line with that of staff members performing duties similar to hers and that she would therefore be placed in grade G5 as from 1 June 2011. In a memorandum dated 30 May 2011 the complainant took note of that decision and asked the Director General to backdate this change of grade, to grant her a step reflecting her length of service, to reimburse internal tax deductions and to adjust her pension rights accordingly.

2. The terms and conditions of the short-term contracts between WIPO and the complainant ceased to apply on 1 June 2012 when the complainant acquired the status of staff member, following her appointment to another post for which she had applied. That appointment occurred while another complaint filed by the complainant – her fourth – was pending before the Tribunal. In that complaint she took issue with WIPO's refusal to convert her short-term contracts into fixed-term contracts.

3. In Judgment 3225, delivered on 4 July 2013, the Tribunal considered that, notwithstanding the complainant's appointment, that complaint had not become entirely moot, since it was still necessary to determine whether the measures taken should not have been adopted earlier and, if so, whether the failure to do so had caused the complainant any injury warranting redress (consideration 4). Having found that WIPO had misused the rules governing short-term contracts by keeping the complainant in a precarious contractual situation for 13 years, the Tribunal set aside the impugned decision. It held that the complainant's employment relationship had to be

reclassified as if she had received a fixed-term contract as from 14 May 1999, the date on which her second short-term contract took effect (considerations 7 and 8).

4. The complaint presently before the Tribunal seeks the setting aside of the decision of 16 May 2011, mentioned under 1, above, insofar as the date on which it took effect is concerned and of the implied decision rejecting the requests made by the complainant on 30 May 2011.

5. Contrary to WIPO's submissions, the Tribunal does have competence to rule on the complaint, even though it was filed by an employee who at the time had been holding a series of short-term contracts (see, in particular, Judgments 3090, under 7, and 3185, under 4).

The complaint form was filed within the time limit specified in Article VII, paragraph 3, of the Statute of the Tribunal, albeit without the brief and supporting evidence which, according to Article 6, paragraph 1(b) and (c), of the Rules of the Tribunal, had to be appended to it. Contrary to WIPO's view, this does not signify that the complaint was submitted out of time, since paragraph 2 of the above-mentioned Article 6 affords the complainant the possibility of correcting a complaint that does not meet the requirements of the Rules. In the instant case, the complaint was corrected on 19 September 2011, within the time limit set by the Registrar of the Tribunal (see also Judgment 3225, under 5).

6. Consideration 9 of Judgment 3225 reads as follows:

“Although, during those 13 years, the complainant regularly obtained promotion and at the end of that period was given a fixed-term contract, she nonetheless suffered material injury, the amount of which must be determined. It will be incumbent upon the Organization to pay the complainant any additional salary and the financial benefits of all kinds to which she would have been entitled had she received a fixed-term appointment as from 14 May 1999. Any sums due shall bear interest at the rate of 5 per cent per annum from their due dates until their date of payment.”

7. With regard to the claims to reimbursement of the internal tax levied on the complainant's salary, as already stated, pursuant to Judgment 3225, WIPO must retroactively place the complainant in the situation which would have been hers had she received a fixed-term contract as from 14 May 1999. Since persons holding such contracts are subject to internal taxation, this claim is groundless and must therefore be rejected, without there being any need to rule on its receivability.

8. The question arises whether Judgment 3225 has not rendered the complainant's other claims groundless.

That judgment did not expressly deal with each of the requests made by the complainant in her memorandum of 30 May 2011, but they are closely related to her career path during the period when she held successive short-term contracts. Indeed, both parties' arguments in their submissions to the Tribunal are mainly based on the complainant's status prior to 1 June 2012.

The correct execution of Judgment 3225, in accordance with consideration 9 thereof, is sufficient to place the complainant in the situation to which she legitimately aspired when she rightly disputed the precarious position in which she had been placed. It is therefore precisely in this context that WIPO will have to determine whether the claims set out in the memorandum of 30 May 2011 are well-founded, it being understood that the complainant is not entitled to financial benefits greater than those which she would have obtained if her employment relationship had been reclassified at the correct time.

In these circumstances, it must be found that Judgment 3225 has rendered the claims in question moot.

9. It would not have been necessary to make the requests presented in the memorandum of 30 May 2011, or to file this complaint, if the complainant had had the status of a staff member throughout the period to which that document refers. For this reason, although she has not established that she has suffered any injury apart

from that for which Judgment 3225 has already provided redress, she is entitled to an award of costs, which shall be set at 1,500 euros.

10. The complainant asks the Tribunal to find that, should the sums awarded be subject to national taxation, she would be entitled to a refund of the tax paid from WIPO. In the absence of any present cause of action, this claim must be dismissed.

#### DECISION

For the above reasons,

1. WIPO shall pay the complainant costs in the amount of 1,500 euros.
2. All other claims, insofar as they have not become moot, are dismissed.

In witness of this judgment, adopted on 14 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