

S. (No. 4)

v.

WIPO

130th Session

Judgment No. 4288

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr A. S. against the World Intellectual Property Organization (WIPO) on 15 October 2018 and corrected on 3 December 2018, and WIPO's reply of 6 March 2019, the complainant having failed to file a rejoinder within the allocated time;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant contests the decision to reject his allegations of harassment.

On 6 April 2017 the complainant, a WIPO staff member, filed a harassment complaint with the Director of the Human Resources Management Department (HRMD). He alleged that his colleague, Ms N., had harassed him in the corridor on 26 January 2017 by talking in an appropriate manner to him. He had reported the incident straightaway to his supervisor and the three of them had met the following day, but Ms N. had continued to show aggressive and hostile conduct. He also alleged that another colleague, Mr L., had acted inappropriately during a team-building event in February by removing a chair as not to sit next to him. He had reported this incident to his supervisor a few days later.

In accordance with the applicable rules, the Director of HRMD referred the matter to the Director General, who decided, pursuant to Staff Regulation 11.4(b), to delegate his authority to take a decision to the Deputy Director General. The complainant asked the Deputy Director General to recuse herself, alleging in particular that she had already reviewed some of his earlier claims. She did not recuse herself and rejected his harassment complaint.

In May 2018 the Appeal Board, to which the matter had been referred, recommended dismissing the appeal. It found that there was no real or apparent conflict of interest on the part of the Deputy Director General, stressing that the mere fact that she had been appointed to decide on previous cases brought by the complainant was not per se sufficient to conclude that she had a conflict of interest in deciding upon his allegations of harassment. It held that there was no evidence of discrimination or harassment on the part of Ms N. and Mr L. It noted that, in accordance with paragraph 10(d) of Office Instruction No. 47/2016, a single act might constitute harassment in exceptional cases. The complainant did not show that the acts he complained of on the part of Ms N. and Mr L. were of such a particular gravity to constitute harassment.

By a letter of 16 July 2018 the complainant was informed that the Director General had decided to accept the recommendation to dismiss his appeal. He endorsed the findings that there was no legal obligation on the part of the Deputy Director General to recuse herself, and that no harassment had occurred. The Director General indicated that he regretted the complainant's use of disrespectful terms and criticisms concerning WIPO and the United Nations system in general. That is the impugned decision.

The complainant asks the Tribunal to find, through an independent and impartial investigation, that Ms N. and Mr L. have harassed him and/or discriminated against him, and that they have violated relevant Staff Regulations and Rules. He also asks the Tribunal to consider appropriate disciplinary sanctions against them. He asks the Tribunal to conclude that Mr N., the former acting Director of the Small and Medium-Sized Enterprises and Entrepreneurship Support Division, and the Director General failed to provide justice and a safe workplace free of harassment and discrimination. He seeks compensation for the physical, moral and psychological harm caused by the conduct of his

colleagues and by WIPO's failure to redress the situation. Lastly, he asks the Tribunal to grant him any other relief it deems equitable, fair and just.

WIPO asks the Tribunal to reject the complaint as devoid of merit. It considers that the complaint is vexatious and that the complainant has used inappropriate and offensive language in his pleadings and therefore makes a counterclaim for costs.

CONSIDERATIONS

1. The complainant was, at relevant times, a member of staff of WIPO. In addition to this complaint filed in the Tribunal on 15 October 2018, there is another complaint filed on 27 August 2018 which is the subject of a judgment given at the same time as this (see Judgment 4287). No request is made by the parties for the two proceedings to be joined and, in any event, joinder would not be appropriate given that the factual foundation of each case is different as are the legal issues that are raised for consideration.

On his complaint form, the complainant requests oral proceedings. However, as the written submissions are sufficient for the Tribunal to reach a reasoned decision, the Tribunal sees no need for oral proceedings. That request is thus denied.

2. These proceedings have their genesis in a memorandum of the complainant dated 6 April 2017 to the Director of HRMD. That memorandum addressed specific conduct of two other members of staff of WIPO, Ms N. and Mr L., towards the complainant that was said to have taken place on 26 January 2017 (and in a subsequent meeting) and 3 February 2017 respectively. The memorandum was headed "[c]omplaint of harassment/misconduct against [Ms N.] and [Mr L.]". While, on one view, the memorandum could be seen as alleging misconduct as well as raising a grievance about discrimination and harassment, it appears it was dealt with thereafter primarily as a grievance about discrimination and harassment only, and this also appears not to have been challenged by the complainant.

3. Much of the complainant's brief is a narrative of earlier events that he views as discriminatory or harassing conduct. Conduct over a period of time can inform the characterisation of particular

conduct as harassment (see Judgment 4233, under 3). However in the present case, the complainant seeks to establish that the conduct the subject of the quite specific allegations in the memorandum of 6 April 2017 was, of itself, harassing conduct. It was those allegations that were considered by Ms W., Deputy Director General, acting on delegation from the Director General. She concluded in a decision dated 19 July 2017 that the complaint was clearly devoid of merit. Thereafter the complainant pursued an internal appeal resulting in a report of the Appeal Board dated 16 May 2018. The Board, in a detailed and balanced report, considered the reasoning and analysis of Ms W. and the material before it and concluded that the conclusion of Ms W. was correct, namely that the allegations of harassment against Ms N. and against Mr L. were devoid of merit. The Board also rejected contentions by the complainant that the process by which his harassment complaint was considered was flawed and, in particular, that Ms W. should have recused herself. It recommended the appeal be dismissed in its entirety, a recommendation accepted by the Director General in a decision dated 16 July 2018 which is the impugned decision in these proceedings.

4. It is difficult to discern from the complainant's brief the basis on which he challenges the impugned decision beyond arguing, in substance, that the conduct he complained of in the memorandum of 6 April 2017 was harassing conduct as well as challenging the involvement of Ms W. in the consideration of his harassment complaint. In a detailed reply, WIPO contests both issues and argues, as the Appeal Board and in turn the Director General had concluded, that his claims of harassment were devoid of merit. The complainant did not file a rejoinder rebutting those arguments.

5. The Tribunal has reviewed the material and argument advanced by the complainant, which are substantially repetitive of the material and argument advanced in the internal appeal process. The Tribunal is satisfied that the conclusions of both the Appeal Board and the Director General about the characterisation of the conduct complained of are correct. Accordingly, the complaint should be dismissed.

6. WIPO seeks a costs order against the complainant on the footing that his complaint is vexatious, an abuse of process and, in addition, the complainant has used entirely inappropriate and offensive

language in his pleas. The Tribunal is not satisfied such an order should be made.

DECISION

For the above reasons,

The complaint is dismissed, as is the counterclaim for costs.

In witness of this judgment, adopted on 24 June 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ