

SEVENTY-THIRD SESSION

In re HEITZ (No. 2)

(Interlocutory order)

Judgment 1198

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. André Joseph Léon Heitz against the Union for the Protection of New Varieties of Plants (UPOV) on 16 July 1991 and the Union's reply of 12 August 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal, former Regulation 3.1 bis and present Regulation 12.1 of the Staff Regulations of the International Bureau of the World Intellectual Property Organization (WIPO), which apply to UPOV staff as well;

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

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

A. The complainant is employed by the International Union for the Protection of New Varieties of Plants (UPOV), which is in Geneva. The background to his dispute with the Union is recounted in Judgment 1033 of 26 June 1990, which was about his first complaint. The issue is the effect on his salary of striking Regulation 3.1 bis from the applicable Staff Regulations, those of the International Bureau of WIPO. That provision formerly protected him and other staff against fluctuation in the rate of exchange between the United States dollar and Swiss franc through payment of a differential to compensate for any fall in monthly take-home pay. Judgment 1033 dismissed his first complaint because UPOV had not recognised the Tribunal's jurisdiction.

The Union having since recognised the Tribunal's jurisdiction the complainant has lodged this complaint.

In September 1988 the Coordination Committee of WIPO repealed Regulation 3.1 bis and approved a transitional provision whose purpose was to ensure that take-home pay should not fall below the level of October 1988. Circular 78 of 31 October 1988 so informed the staff both of WIPO and of the Union.

The General Assembly of the United Nations having adopted resolution No. 44/198 on 21 December 1989, the decisions WIPO took to put the resolution into effect included repeal of the transitional provision.

The complainant's pay slip for August 1990 gave a figure of take-home pay 73.65 Swiss francs lower in that month than in July. By a letter of 30 August he asked the Secretary-General of UPOV to review the administrative action notified in the pay slip. The Secretary-General's answer in a memorandum of 16 November was that his request raised no issue that had not already come up in his earlier case. On 28 December the complainant appealed to the Appeal Board of WIPO. In its report of 21 April 1991 the Board merely repeated what it had said about that earlier case in its report of 21 July 1989: the Secretary-General of UPOV had had no choice but to act on the Coordination Committee's decision and so the Board could not recommend allowing the appeal. By a memorandum of 2 May 1991, the impugned decision, the Secretary-General endorsed the Board's conclusions.

B. This complaint puts forward the same pleas as did the first one and also takes account of Judgment 1087 of 29 January 1991 on the similar complaints by Mr. Patrick Andrews and others against WIPO. He submits that the procedure for amending the Staff Regulations was flawed and that doing away with the differential that used to be due under 3.1 bis was in breach of the staff's acquired rights.

He invites the Tribunal (1) to set aside the Secretary-General's decisions granting him less take-home pay in August than in July 1990 and less in December than in November 1988, as well as similar decisions between

December 1988 and July 1990; (2) to restore to him the benefit of 3.1 bis as in force at 30 September 1988 at least as from August 1990 or, failing that, compensation for the injury he sustained between November 1988 and July 1990; and (3) to award him 5,000 Swiss francs in damages and 2,000 in costs.

C. In its reply the Union maintains in full the case it made out before and appends the brief summed up, under B, in Judgment 1196 delivered this day on the complaints by Mr. Andrews and others.

CONSIDERATIONS:

1. The complainant, an official of the International Union for the Protection of New Varieties of Plants (UPOV), objects to the effect on his pay of the repeal of a provision of the Staff Regulations that apply to the Union, the Staff Regulations of the World Intellectual Property Organization (WIPO). That provision, Regulation 3.1 bis, used to protect UPOV staff from the effects of fluctuation in the value of the United States dollar against the Swiss franc.

2. In 1989 the complainant filed a complaint that had the same gist, but Judgment 1033 of 26 June 1990 dismissed it on the grounds that, though UPOV staff were subject to WIPO's Staff Regulations, the Union had not at the time recognised the Tribunal's jurisdiction.

3. The Union having since done so, the complainant has filed this second complaint, which rests on the same pleas as did the first. Having been filed on 16 July 1991, it takes account of the issues the Tribunal considered in Judgment 1087 of 29 January 1991, an interlocutory order on the complaints of Mr. Patrick Andrews and others. The Tribunal rules this day also on those complaints in Judgment 1196.

4. The defendant having appended to its reply the submissions it filed in response to Judgment 1087, the papers are the same in this case as in those of Mr. Andrews and others.

5. This case does, however, raise an important question which, because the periods of pay at issue are different, does not arise in the other cases.

6. What the complainant wants in essence is the quashing of the decisions taken as a result of the repeal of 3.1 bis to determine the amounts of his monthly pay from December 1988 to July 1990.

7. It appears from the parties' submissions that the amounts of the staff's monthly pay in that period were reckoned on the strength of the transitional provision that replaced 3.1 bis. The transitional provision maintained the "take-home pay differential" but set a maximum limit at the point pay had reached by 1 October 1988, the date of repeal of 3.1 bis.

8. The complainant maintains that the payment for August 1990 was reckoned on the basis of "a set of measures applying decisions by the United Nations General Assembly in resolution 44/198" and that the application of the transitional provision ended with the adoption of those measures - a condition stated in paragraph 4 of circular 78 of 1988.

9. The complainant puts forward the same pleas as those that are addressed in Judgment 1196 (in re Andrews and others). One is that the procedure followed in amending the Staff Regulations was flawed, and the other that the withholding of the former take-home pay differential due under 3.1 bis was in breach of the staff's acquired rights.

10. For the reasons stated in Judgment 1196, under 11 to 19, the plea of breach of the procedure for repealing Regulation 3.1 bis fails as to the entirety of this complaint, and the plea of breach of acquired rights fails as to all but one of the monthly payments reckoned under the transitional provision, i.e. as to all the payments the complainant is objecting to but the one for August 1990.

11. As to the payment for that month, the only one still at issue, he submits that it was reckoned according to new rules that were brought in when WIPO's own Staff Regulations were adapted to the rules of the United Nations common system in accordance with the resolution - No. 44/198 - the General Assembly adopted on 21 December 1989. He says that the new rules were nevertheless not formally issued but simply notified individually to the few officials affected and that he cannot therefore give any further details.

12. The conclusion is that as to August 1990 he is in the same position as Mr. Ludwig Baeumer and others on

whose case the Tribunal makes an interlocutory order this day in Judgment 1197. As to that monthly payment the same further submissions are ordered from the parties as are set out in Judgment 1197 under 15 and 16.

13. Costs are reserved.

DECISION:

For the above reasons,

1. The complaint is dismissed as to the monthly payments from December 1988 to July 1990.
2. As to the payment for August 1990 the parties shall make the same further submissions, within the same time limits, as are called for under 15 and 16 in Judgment 1197 (in re Baeumer and others) of this day.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 15 July 1992.

(Signed)

Jacques Ducoux
Mella Carroll
P. Pescatore
A.B. Gardner