

SEVENTY-FOURTH SESSION

***In re* BAEUMER, CLAUS
and HANSSON**

Judgment 1239

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Ludwig Baeumer against the World Intellectual Property Organization (WIPO) on 26 July 1991;

Considering the complaints filed by Mr. Paul Claus and Mr. Bo Hansson against WIPO on 31 July 1991;

Considering the interlocutory order in Judgment 1197 of 15 July 1992;

Considering the Organization's further brief of 17 August 1992 and the complainants' observations of 15 September 1992;

Considering that the Organization did not reply to the Registrar's letter of 16 September 1992 inviting it to make final submissions;

Considering Regulation 3.5(e) of the Staff Regulations of the International Bureau of WIPO;

Having examined the written submissions;

A. In accordance with the Tribunal's instructions in Judgment 1197 WIPO has supplied, with comment, the texts of the amendments to its Staff Regulations and Staff Rules as announced in circular 48/1990; resolution 42/221, adopted by the General Assembly of the United Nations on 21 December 1987, and resolution 44/198, adopted by the Assembly on 21 December 1989; and Chapter V, on remuneration structures, and Chapter VI, on the post adjustment system, of the Report of the International Civil Service Commission for 1989 to the Assembly. The material points are set out in 4 below and the Organization's comments are summed up under 5.

B. In observations on the Organization's brief the complainants submit that WIPO has failed to explain, as the Tribunal ordered, how resolution 44/198 takes account of fluctuations in rates of exchange and why it may be treated as a permanent measure under the common system. Since each of them has sustained a cut in salary greater than the 0.5 per cent rate allowed by the International Civil Service Commission, they allege breach of their acquired rights.

CONSIDERATIONS:

1. This judgment is further to the interlocutory one, No. 1197, which sets out the background to the case.
2. Being unable to rule on the complaints insofar as they relate to the period following 1 July 1990, when the WIPO's Staff Regulations were amended, the Tribunal ordered in Judgment 1197 further submissions from the parties on several specific questions and further items of evidence from the Organization.
3. In answer the Organization has submitted a brief to which it appends the material items, namely: the text of the amendments to the Staff Regulations as they appear in circular 48/1990 of 18 July 1990 headed "Amendments to the Staff Regulations and Staff Rules (No. 40)"; two resolutions of the United Nations General Assembly, No. 42/221 of 21 December 1987 and No. 44/198 of 21 December 1989; and excerpts from the International Civil Service Commission's report for 1989, cited in resolution 44/198. The complainants have also filed comments.
4. Those items show that in accordance with resolution 42/221 the Commission now draws a distinction between the effects of fluctuations in rates of exchange and those of inflation in the cost of living for the purpose of

reckoning the post adjustment allowance. Its report for 1989 bears out that it took due account of that distinction in reckoning post adjustment at the various duty stations, whatever the method of reckoning may have been.

5. The gist of the Organization's position is that it has solved once and for all the problem of shifting rates of exchange by putting in its Staff Regulations a new provision that is in line with the common system. The provision is clause (e) of Regulation 3.5, which is headed "Post adjustment", and it reads:

"The multiplier applied for calculating the post adjustment shall be that established for Geneva by the International Civil Service Commission, and the effective date of any change in the multiplier shall be as fixed by the said Commission."

6. The texts which WIPO has supplied - and of which the complainants do not deny the relevance - allow of a ruling on the dispute between the present parties.

7. One first and salient point is that the Organization belongs to the common system of the United Nations, in particular for the purposes of staff pay. That being so, it comes under the authority of the General Assembly and the International Civil Service Commission.

8. The conclusion is that the special arrangements the Organization made under former Regulation 3.1 bis could not be kept in the long run in defiance of the rules of the common system. In a memorandum of 24 August 1987 the chairman of the Commission made that quite plain to the Director General. He took WIPO severely to task for applying to the pay of its staff criteria that were not in line with the rules of the common system and for treating its officials better than the staff of other organisations in the system which did abide by the rules.

9. Secondly, the further submissions show that under Regulation 3.5(e), which sets the amount of post adjustment allowance for Geneva, that allowance must - whatever the method of reckoning may be - include a factor calculated to offset movements of the United States dollar on the exchange market. Though some aspects of the post adjustment are to be further considered, they relate to the alignment of pay with increases in the cost of living, not with shifts in rates of exchange. It thus appears that as a matter of principle the condition in circular 78/1988 for an end to the transitional arrangements is met. All the measures taken by the Director General to amend the Staff Regulations and announced in circular 48/1990 are described as "provisional". But the term has no particular significance in the context of the removal of the transitional arrangements. It merely denotes the special power vested in the Director General by Regulation 12.1 to adapt the Regulations to changes in the common system in advance of approval by WIPO's Coordination Committee. So the Tribunal may conclude that the amendment of the Staff Regulations as from 1 July 1990 marks the Organization's final realignment with the rules of the common system and therefore amounts to "the adoption of permanent measures" within the meaning of circular 78/1988.

10. The only point still at issue is whether such realignment may be in breach of any acquired right of WIPO staff under former Regulation 3.1 bis as preserved for almost twenty years under the transitional provisions.

11. As the International Civil Service Commission explains in its report, the arrangements for compensation under the common system are more complicated in that they have to work at many duty stations and for exchange rates other than the rate between dollar and Swiss franc. Moreover, they take account of the fact that not all staff incur expenses solely in the country of their duty station. But the conclusion is that on the whole the arrangements under the common system afford a reasonable degree of compensation for the risks inherent in fluctuations in the dollar exchange rate. There is therefore no breach of the staff's acquired rights in the Organization's decision, following adoption of the General Assembly's resolutions and so as to conform with the rules of the common system, to cancel a particular benefit it had earlier granted to its staff. As is held in Judgment 1241 of this day (in re Barton and others), a benefit granted at a particular point in time to a staff member or a group of staff members may not indefinitely preclude reforms that are in the general interest. It was just such reforms that the amendments made in the Staff Regulations as from 1 July 1990 were intended to achieve.

DECISION:

For the above reasons,

The complaints are dismissed. In witness of this judgment Miss Mella Carroll, Judge, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

Mella Carroll
P. Pescatore
Michel Gentot
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.