

SEVENTY-FOURTH SESSION

***In re* HEITZ (No. 2)**

Judgment 1240

THE ADMINISTRATIVE TRIBUNAL,

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

Considering the interlocutory order in Judgment 1198 of 15 July 1992;

Considering the Union's further brief of 17 August 1992 and the complainant's observations of 21 September 1992;

Considering that the Union did not reply to the Registrar's letter of 22 September 1992 inviting it to make final submissions;

Having examined the written submissions;

A. In accordance with the Tribunal's instructions in Judgment 1198 the Union has supplied, with comment, the texts of the amendments to Staff Regulations and Staff Rules of the World Intellectual Property Organization (WIPO) - which apply to UPOV staff - 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 Judgment 1239 (*in re* Baeumer and others), also delivered this day, under 4, and the Union's comments are the same as those attributed to WIPO in that judgment under 5.

B. The complainant's main observations are summed up under 4 and 6 below.

CONSIDERATIONS:

1. As was said in Judgment 1198, under A, the complainant is an official of the International Union for the Protection of New Varieties of Plants (UPOV). The Union has its headquarters in Geneva, its executive head is also Director General of the World Intellectual Property Organization (WIPO), and its officials are subject to WIPO's Staff Regulations and Staff Rules. At issue is the "take-home pay differential" the Union used to pay its staff to offset fluctuations in the rate of exchange between the United States dollar and the Swiss franc.

2. In Judgment 1198 the Tribunal dismissed most of this complaint but reserved its ruling on monthly payments made after the changes that UPOV and WIPO had made in the rules on 1 July 1990. The reckoning of those payments raises the same issues of law as do the complaints against WIPO (*in re* Baeumer and others), and for want of sufficient information the Tribunal was formerly unable to rule on those issues. In Judgment 1198, which in turn refers to another Judgment, No. 1197, about those WIPO cases the Tribunal ordered the Union to produce further items of evidence and both parties to submit further observations on the reserved issues.

3. The defendant Organization has produced the texts and commented on them.

4. In his own observations the complainant goes further than the other complainants. In the first part of his brief he addresses the Tribunal's rejection in Judgment 1198 of his claims as to the period prior to 1 July 1990. He objects to that ruling on the grounds that the circumstances of the case prevented him from pleading his case in full. He makes out that the Tribunal cannot have given due account to his pleas and may have committed an error of judgment.

5. Those comments are not admissible. The complainant was given, in keeping with the Rules of Court, the

opportunity of stating his views in full at the earlier stages of the proceedings. So there is no basis for his challenging the authority of the interlocutory order insofar as it made a final ruling on most of his claims. His arguments under this head will not be entertained.

6. In answer to the Tribunal's questions about the common system of the United Nations, which the WIPO says it fell in line with on 1 July 1990, the complainant argues that the new provisions do not amount to a "permanent measure" within the meaning of circular 78/1988. In his submission the condition will not be met until there is what he calls a "satisfactory solution" to the problem of shifting rates of exchange. He maintains that the rules of the common system fall short on two counts: first, they provide for only partial compensation, by distinguishing between an official's local expenses and those he may incur away from headquarters, for which there is no compensation; and secondly, they still blur the distinction between changes in the cost of living and fluctuations in rates of exchange.

7. The Tribunal rules on the complainant's arguments in the judgment also delivered this day, No. 1239, on the WIPO cases. It follows in particular that in accordance with the resolutions adopted by the United Nations General Assembly a distinction is henceforth to be made between increases in the cost of living and compensation for shifts in rates of exchange, which is indeed a separate issue.

8. The complaint fails for the same reasons as do the complaints against WIPO.

DECISION:

For the above reasons,

The complaint is 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