

SEVENTY-SEVENTH SESSION

***In re* BLUSKE (No. 4)**

(Application for execution)

Judgment 1362

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 1328 filed by Mr. Guillermo Carlos Bluske on 23 March 1994, the reply of 27 April from the World Intellectual Property Organization (WIPO), the complainant's rejoinder of 18 May and the Organization's surrejoinder of 22 June 1994;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS:

1. This complaint, Mr. Bluske's fourth against the World Intellectual Property Organization (WIPO) arises out of the Organization's failing to execute Judgment 1328 of 31 January 1994 on his third complaint.
2. The Organization having twice refused to execute in one and the same case, the history of it is summed up below.

Judgment 1154 of 29 January 1992, on Mr. Bluske's first complaint, held to be unlawful WIPO's termination of his fixed-term two-year contract of employment and ordered it to reinstate him by extending his appointment or, if that proved impossible, to pay him the equivalent of one year's salary and allowances in damages for all forms of injury sustained.

In Judgment 1242 of 10 February 1993, on his second case, the Tribunal found that, though WIPO had paid him damages as Judgment 1154 had ordered, it had made no effort to discharge its primary duty, which was to do its utmost to reinstate him. The case was therefore sent back to the Organization for a new decision on reinstatement and he was awarded the equivalent of one further year's salary and allowances in damages for all forms of injury he had sustained because of its failure to execute Judgment 1154.

Judgment 1328 of 31 January 1994, on his third complaint, dismissed some misconceptions about Judgment 1242 and held that the Organization had failed to execute it. The defendant had not yet taken a properly substantiated decision on reinstatement and had failed to pay the complainant the award of damages, which, unlike the one in Judgment 1154, had been unconditional. It ordered WIPO to pay him compound interest and take an express and properly substantiated decision on reinstatement at the earliest possible date.

3. This complaint demurs at the Organization's persistent refusal to decide on reinstatement and pay the sums awarded in Judgment 1242. By way of redress the complainant is seeking in essence damages in an amount equivalent to the salary and allowances he would have earned had he stayed on in WIPO until the age of retirement, plus compensation for the loss of pension rights due to the premature termination of his employment.
4. Though it refrains from entering a formal plea the Organization submits that the complaint may be irreceivable because the complainant has come straight to the Tribunal before putting a formal claim to it. It says it wants "an early solution that satisfies both sides" and still hopes to settle the whole case with the complainant out of court. It describes reinstatement as "obviously out of the question" for the reasons it gave in its reply to the second complaint (see Judgment 1328 under 6); so it "sees no point in taking an express decision to that effect". It points out that the complainant held only a two-year appointment and it regards as extravagant his claim to damages for loss of a full career up to the age of retirement, including pension rights. It takes him to task for passiveness in

failing to look for employment in another international organisation or in private enterprise.

5. On the issue of receivability it suffices to refer to what Judgment 1328 said under 14 to 17: since the complainant has found difficulty in securing the execution of earlier judgments he is free to come back to the Tribunal directly without first going through any internal appeal procedure.

6. As to the merits, since the dispute arose out of the decision not to renew his two-year appointment the Organization is right as a matter of principle to refuse his claim to damages for loss of a full career. The two consecutive awards of one year's salary afford sufficient redress to someone who had a rightful expectation of renewal for no more than two years. His claims under this head fail.

7. But not a whit less sound on that account are the claims he rests on WIPO's failure to pay him the damages awarded in Judgment 1242 and on its refusal to take an express and properly substantiated decision on reinstatement.

8. For the delay in paying him the damages there is already a penalty in Judgment 1328: payment of interest on the sums due. As he has asked, such interest is further due on the award of costs in that judgment.

9. The Organization has not discharged its obligation to take an express and properly substantiated decision on reinstatement by passing critical and incidental comment on the complainant's qualifications in its pleadings on his second complaint. The constant thrust of the three earlier judgments was to secure from the Organization, on account of its grossly unlawful termination of his appointment in 1991, discharge of its obligation to communicate to him a proper decision. He might then impugn that decision if it was not to his liking, and the Tribunal might if need be review the reasons for it, which is something it has not yet been able to do. The complainant is entitled to such decision as a matter of course, without having to ask for it and without delay. That obligation WIPO has stubbornly ignored, it is in breach of the rule of law in the international civil service, and that is not to be brooked.

10. So the Tribunal must rule yet again on WIPO's refusal to discharge the obligation to decide on reinstatement. As it has stated more than once, its judgments are to be given immediate effect. In the regrettable event that the Organization continues to disregard that rule and fails to act within 30 days of the date of delivery of this judgment it must pay the complainant 10,000 Swiss francs by way of penalty for each further month of delay.

11. Since the complainant has succeeded in his main claims - to execution of the earlier judgments - he is entitled to costs, and the amount is set at 10,000 French francs.

DECISION:

For the above reasons,

1. The Organization shall, within thirty days of the date of delivery of this judgment, take the decision ordered under point 2 of the ruling in Judgment 1328.

2. If it fails to do so within the thirty days it shall pay the complainant the sum of 10,000 Swiss francs by way of penalty for each further month of delay.

3. It shall pay him compound interest reckoned as from 31 January 1994 at the rate of 10 per cent a year on the award of costs in Judgment 1328.

4. It shall pay him a further sum of 10,000 French francs in costs for this complaint.

5. His other claims are dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner

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