

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

A. and others

v.

WIPO

125th Session

Judgment No. 3943

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Messrs P. A. and A. L. on 7 October 2015 and by Ms L. B. and Mr S. L. on 8 October 2015 against the World Intellectual Property Organization (WIPO), each containing an application for the fast-track procedure, and WIPO's letters of 13 November 2015 informing the Registrar of the Tribunal that it rejected the complainants' application;

Considering the complaints of Mr L., Mr A., Ms B. and Mr L. corrected on 11 December 2015, WIPO's replies of 22 September 2016, the complainants' rejoinders of 28 February 2017 and WIPO's surrejoinders of 22 August 2017;

Considering the eleventh complaint filed by Mr N. B. H. against WIPO on 4 December 2015 and corrected on 11 January 2016, WIPO's reply of 22 September 2016, the complainant's rejoinder of 27 February 2017 and WIPO's surrejoinder of 22 August 2017;

Considering the complaints filed against WIPO by Mr A. A., Ms W. A., Ms V. B., Mr M. N. B. M., Mr N.-E. B., Ms C. B., Ms S. C., Mr M. C., Mr A. D., Mr A. H., Mr R. H. J., Ms M. I., Mr D. L., Ms M. M., Ms S. N. G. (her second), Ms A. O. M., Mr L. A. P. R., Ms G. P., Ms N. S., Mr A. S., Mr A. T. and Mr N. W. on 5 December 2015 and the complaint filed by Mr P. T. S. on 7 December 2015, these complaints having been corrected between 4 February 2016 and 21 April 2016, WIPO's replies of 19 September and 3 October 2016,

the complainants' rejoinders of 28 February 2017 and WIPO's surrejoinders of 22 August 2017;

Considering the complaints filed against WIPO by Ms L. B., Ms J. B., Mr J. C., Mr B. D., Mr R. D., Ms S. H. R. (her second), Ms A. L., Mr F. M., Mr A. N., Mr M. O., Ms R. S.-G. and Ms X. W. on 7 December 2015 and corrected between 10 February 2016 and 6 May 2016, WIPO's replies of 22 September and 17 October 2016, the complainants' rejoinders of 27 February 2017 and WIPO's surrejoinders of 22 August 2017;

Considering the complaints filed against WIPO by Mr D. G. and Ms S. S. on 1 August 2016 and corrected on 30 August, WIPO's replies of 21 December 2016, the complainants' rejoinders of 3 May 2017 and WIPO's surrejoinders of 22 August 2017;

Considering the complaints filed against WIPO by Ms I. C. and Mr M. T. on 4 August 2016 and corrected on 21 September and 22 October 2016 respectively, WIPO's replies of 7 and 15 February 2017 respectively, the complainants' rejoinders of 24 May 2017 and WIPO's surrejoinders of 22 August 2017;

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

Having examined the written submissions;

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

The complainants seek a redefinition of their employment relationships.

Between 25 November 2013 and 29 August 2014, relying in particular on Judgments 3090 and 3225 (delivered in public on 8 February 2012 and 4 July 2013 respectively), in which the Tribunal held that WIPO had misused short-term contracts and ordered it to redress the injury suffered by the complainants in those cases, the complainants in the present case, who had worked for WIPO for many years under short-term or similar contracts, requested the Director General, through their representative, to redefine their employment relationships, to draw all legal consequences therefrom and to award them moral damages. These requests were rejected.

Between 21 March and 25 November 2014 the complainants submitted requests for review, which were likewise rejected. The Director of the Human Resources Management Department pointed out to them that under Staff Rule 11.4.3 (a), a request for review had to “contain detailed reasons and any supporting documentation”. As theirs did not, the Director General was unable to review his decision to dismiss their requests for redefinition of their employment relationships.

The complainants then filed an appeal with the Appeal Board. A brief exchange of correspondence between the Secretary of the Appeal Board and the complainants’ representative ensued. In its conclusions, the Appeal Board noted that no details of the complainants’ individual contractual situation or of “related measures” taken by the Administration in their regard had been submitted, despite the fact that the Secretary of the Appeal Board had informed the complainants’ representative that he needed to provide precise information, in particular on the contractual status of each. As a result, the Appeal Board considered itself unable to “come to an individual conclusion or make a specific recommendation on any of the [complainants’] appeals” and it therefore found that the appeals as filed were irreceivable. It recommended unanimously that they be dismissed. In letters of 8 September 2015, 3 May 2016 and 6 May 2016, which are the impugned decisions, the complainants were informed that the Director General had decided to follow that recommendation.

The complainants ask the Tribunal to set aside the impugned decisions, to order WIPO to redefine their employment relationships and to draw all legal consequences therefrom. Some complainants additionally request that their fixed-term appointments be converted into permanent appointments. The complainants also claim moral damages, interest on the sums due and costs. Lastly, some of them ask the Tribunal to order WIPO to deduct from the various pecuniary awards made to the complainants an amount corresponding to the fees and taxes that they have undertaken to pay to their representative and to pay that amount directly to him.

WIPO submits that the complaints are irreceivable for various reasons, and particularly on the ground that the complainants have not

exhausted internal means of redress because the appeals filed with the Appeal Board were insufficiently detailed to allow consideration thereof. Subsidiarily, WIPO asks the Tribunal to dismiss the complaints as unfounded.

CONSIDERATIONS

1. The complainants seek the setting aside of the decisions of 8 September 2015, 3 May 2016 and 6 May 2016 by which the Director General of WIPO dismissed the internal appeals they had filed against his refusal to redefine their employment relationships with the Organization during periods when they were employed under short-term or similar contracts.

2. The 44 complaints essentially seek the same redress and raise the same legal issues. They may therefore be joined to form the subject of a single judgment.

3. In line with the recommendation of the Appeal Board, the Director General dismissed the complainants' appeals on the grounds that they were irreceivable since they did not contain sufficient information for the appeals body to consider them properly.

4. The evidence on the files shows that the complainants' appeals took the form of common briefs, filed on their behalf by a shared representative, setting out general arguments in support of the request for the complainants' employment relationships to be redefined but providing no details – or, at best, in some cases, only a few details – of the personal situation of each complainant. Moreover, the briefs were not accompanied by any annexes providing such information. Plainly, for the Appeal Board to rule on the merits of the complainants' claims for the redefinition of their employment relationships, it needed to be able to take into account the specific details of each complainant's situation, in particular the duration of their various contracts and the date on which these had taken effect. Even though the Organization would ordinarily possess such information, without it the complainants'

appeals did not allow the Appeal Board to rule on their merits and hence could not be regarded as being properly filed.

5. The Tribunal considers that when an internal appeal is tainted with a flaw – other than late submission – which prevents it from being considered as properly filed, it is for the appeals body, in the exercise of its duty of care, to enable the complainant to correct the appeal by granting her or him a reasonable period of time in which to do so (for a similar case, see Judgment 3127, under 10).

6. That requirement was not observed in this case. It is true that in emails of 15 August 2014 or, in some cases, 28 September 2015 the Secretary of the Appeal Board had drawn the attention of the complainants' representative, when the appeals were filed, to the fact that "the status of each appellant within WIPO should be stated or made apparent by the evidence submitted". However, that request for the appeals to be corrected did not indicate with sufficient clarity that it was incumbent on the complainants to provide all the information necessary for an examination of the merits of their claims to have their employment relationships redefined and, in particular, to specify the duration and the effective dates of the various contracts which they had held. The complainants cannot therefore be considered, in this case, to have received an appropriate request for their appeals to be corrected.

7. It ensues from the foregoing that the Director General was wrong to dismiss the complainants' internal appeals as irreceivable for the aforementioned reason. The impugned decisions must therefore be set aside, without there being any need for the Tribunal to rule on the other issues raised by the complaints, including that of the receivability of the internal appeals on which the Appeal Board did not give an opinion, nor to grant the application of one complainant for oral proceedings.

8. The cases will all be remitted to WIPO for the Appeal Board to consider the appeals afresh, after it has enabled the complainants to correct their appeals and set a reasonable time limit for them to do so.

9. In the particular circumstances of the case, and given the nature of the flaw that affected the complainants' internal appeals, there is no reason to award them moral damages in respect of the unlawfulness of the impugned decisions or the delay in processing their appeals. Nor will they be awarded costs.

DECISION

For the above reasons,

1. The decisions of the Director General of WIPO of 8 September 2015, 3 May 2016 and 6 May 2016 are set aside.
2. The cases are remitted to WIPO, which shall proceed as indicated in consideration 8, above.
3. All other claims are dismissed.

In witness of this judgment, adopted on 16 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Patrick Frydman, Vice-President, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

(Signed)

GIUSEPPE BARBAGALLO

PATRICK FRYDMAN

YVES KREINS

DRAŽEN PETROVIĆ