

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

L. R. (No. 3)

v.

WIPO

128th Session

Judgment No. 4158

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Ms K. L. R. against the World Intellectual Property Organization (WIPO) on 12 June 2017 and corrected on 18 September, WIPO's reply of 22 December 2017, the complainant's rejoinder of 19 May 2018 and WIPO's surrejoinder of 28 August 2018;

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

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

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

The complainant submits that WIPO has not fully compensated her for the injury that she suffered as a result of being subjected to harassment.

At the material time, the complainant held a grade P-5 post at the WIPO Academy. On 13 November 2013 she filed a complaint for harassment against her second-level supervisor, Ms G., with the Joint Grievance Panel, which, following a preliminary evaluation, considered that there were grounds for opening an investigation. In its report of 10 October 2014, the Internal Oversight Division (IOD) concluded that

Ms G. had repeatedly and consistently engaged in harassment towards the complainant.

In a report dated 2 February 2015, the Joint Grievance Panel found that the working environment at the Academy was dysfunctional and marked by conflict, but it considered that the IOD had not established clearly or convincingly that Ms G. – whose harshness and intransigence it emphasized – had engaged in harassment of the complainant. It therefore recommended that the latter’s complaint be dismissed. On 22 June 2015 the complainant was informed that, in accordance with this recommendation, the Director General had decided to dismiss her complaint.

Her request for review of this decision having been dismissed on 14 December 2015, the complainant referred the matter to the Appeal Board on 29 March 2016. She asked it to recommend the Director General to set aside the decision of 14 December 2015, to recognize that she had suffered harassment, to award her compensation for the injury which she considered she had suffered and to pay her costs. In its conclusions of 28 November 2016, the Appeal Board stated that it had no mandate to decide which of the conflicting reports established by the Joint Grievance Panel and the IOD should prevail. It therefore recommended that the matter of whether the complainant had suffered harassment should be considered by a person or persons independent from the Administration, that the complainant should be awarded moral damages in the amount of 2,000 Swiss francs since she had been deprived of a harmonious working environment, and that her claim for costs should be rejected since she had not provided any supporting evidence.

On 21 December 2016 the Director General pointed out the Appeal Board that its conclusions did not contain sufficient reasoning for him to take an informed decision. He therefore asked it to provide “supplemented conclusions”, which it did on 24 January 2017.

By a letter of 15 May 2017, the complainant was informed that, in the Director General’s view, there had been unexplained delays in the handling of the case by the Joint Grievance Panel and that the latter had not examined her allegations in the light of the correct legal standards. Moreover, the Director General considered that the IOD investigation

was also flawed, particularly in that it had not assessed the complainant's allegations in detail and had failed to interview certain staff members. Furthermore, the Director General criticized the Appeal Board for not examining the complainant's allegations in detail and considered that an independent review would not be able to remedy the established flaws and would cause further delay. For these reasons, the Director General had decided to undertake a detailed review of the complainant's allegations and had concluded that she had been subjected to harassment. Consequently, he had decided to award her compensation of 30,000 Swiss francs under all heads. Moreover, the complainant was advised that WIPO did not normally reimburse costs arising from internal appeal proceedings and that the Director General had decided to award her compensation of 500 Swiss francs for the delay in issuing his final decision. That is the impugned decision.

The complainant requests the Tribunal to set aside the impugned decision in that it only partially recognized the harassment and injury suffered, to order WIPO to award full compensation for the injury suffered and to order it to pay her punitive and exemplary damages. Furthermore, the complainant claims costs in respect of the internal appeal and the complaint submitted to the Tribunal and requests that an amount corresponding to the fees and taxes which she has undertaken to pay to her counsel be deducted from any monetary awards made to her and that such amount be paid to her counsel.

WIPO submits that the complaint should be dismissed as unfounded. It points out that it has no obligation to reimburse costs incurred by a staff member in internal appeal proceedings.

CONSIDERATIONS

1. The complainant requests the Tribunal to set aside the WIPO Director General's decision of 15 May 2017 insofar as it only partially recognized the harassment and injury suffered, to award full compensation for the injury suffered and to order WIPO to pay punitive and exemplary damages.

2. In its conclusions of 28 November 2016, the Appeal Board recommended, in view of the conflicting reports of the IOD and the Joint Grievance Panel, that the matter of whether or not the complainant had been subjected to harassment by Ms G., her second-level supervisor, should be considered by a person or persons independent from the Administration. It also recommended that the complainant be awarded moral damages in the amount of 2,000 Swiss francs since she had been deprived of a harmonious working environment, and that her claim for costs should be rejected since she had not provided any supporting evidence.

After an unsuccessful request to the Appeal Board to give its opinion on the merits of the case, the Director General took the impugned decision, for which he gave extensive reasons. After explaining why he could not accept the Appeal Board's recommendation to refer the case to a person independent from the Administration, the Director General explains that both the Joint Grievance Panel and the IOD committed a number of irregularities. Accordingly, he acknowledges that the Panel deprived the complainant of the possibility of replying to Ms G.'s comments, that the delays involving the Panel were unjustified, that the Panel relied on inadequate evidence and that it disregarded the Tribunal's case law in rejecting the allegation of harassment on the grounds that it was unintentional or that the complainant had some share of the responsibility for the deterioration of the working environment. Similarly, the Director General criticizes the IOD for not examining the complainant's allegations in detail, for failing to interview certain witnesses, for focusing too much on Ms G.'s managerial style, and for wrongly considering that there was an agreement limiting the latter's competencies.

In view of these irregularities, and taking into account the impossibility of arranging a new investigation because of Ms G.'s departure from the Organization, the Director General considered that he himself should undertake a detailed review of the complainant's allegations, from which it appeared that certain incidents, at least when viewed cumulatively, could indeed be described as harassment: for example, Ms G.'s attitude towards the complainant during meetings in the presence of other persons, the tone and content of various e-mails

– on which certain staff members were copied – which Ms G. had sent to the complainant, the abusive comments made by Ms G. in the context of the complainant's evaluation or, more generally, the criticisms of the complainant's performance made in front of other persons, including her subordinates. Regarding certain other incidents, the Director General states that it is not possible to determine whether they were proper exercises of Ms G.'s managerial responsibilities.

The Director General considered that, viewing the complainant's circumstances and allegations as a whole, harassment had indeed occurred. He therefore decided to award the complainant compensation of 30,000 Swiss francs. He also considered that the delay in taking a decision could not be ascribed to the complainant and warranted additional compensation of 500 Swiss francs.

3. The complainant contends that this decision is unlawful on the grounds that the Organization merely fixed a sum of money as compensation for the injury without seeking to identify the effects that the harassment had on her or to rectify them.

Where an organization establishes the existence of harassment, it should put an end to it as quickly as possible, restore the victim to a normal work situation and, if necessary, redress the injury caused. Ordinarily, this redress takes the form of monetary compensation for the injury suffered. It is self-evident that, according to the circumstances of each case, particular measures, for example supervision or support, may also be required. But an organization is only required to take such measures if they are essential or, at least, necessary. In the present case, the complainant did not make any particular request during the internal proceedings, nor does the file submitted to the Tribunal suggest a situation that would have called for additional measures.

Moreover, the complainant's first and second complaints, each of which is the subject of a judgment delivered this day, show that the negative assessments of the complainant's performance were removed from her evaluation reports for 2012 and 2013 and from her administrative file. Ms G. has no longer been with the Organization since 16 May 2014 and the complainant occupies a new post which does not appear to pose

any particular problem. In her submissions, the complainant fails to indicate what measures she wished to see implemented in order to provide more adequate compensation for the injury suffered and merely refers in general terms to certain examples, such as a skills assessment or training. In the present case, none of these measures appears to have been necessary.

The plea fails.

4. The complainant considers that the amount of compensation awarded is insufficient.

With regard to damages, the complainant bears the burden of proof and she or he must provide evidence of the injury suffered, of the alleged unlawful act, and of the causal link between the unlawful act and the injury (see Judgments 3778, consideration 4, 2471, consideration 5, and 1942, consideration 6).

The Director General recognized that the complainant had been subjected to harassment which had caused her injury. The challenge relates solely to the amount of compensation intended to redress it.

5. The complainant contends that, in the assessment of injury, the Organization only took account of specific facts and not of the systematic nature of the harassment. The impugned decision shows that the Director General took account of all of the complainant's circumstances and allegations, including the content of the e-mails sent to the complainant by Ms G. and the latter's general attitude during meetings with the complainant. In so doing, he recognized the repetitive if not systematic nature of the harassment and set the amount of compensation accordingly.

The complainant's arguments regarding this point cannot therefore be accepted.

6. The complainant refers to various other irregularities committed by the Joint Grievance Panel which should have been taken into account in setting the amount of compensation. She submits that, since it had been dissolved as from 1 January 2014, the Panel was no

longer competent to examine the complaint; its composition was unfair; it refused without justification to examine two of her allegations; it took account of Ms G.'s comments even though they had been submitted late; and it took no account – or at least “little account”^{*} – of the IOD's report.

Inasmuch as the Director General dismissed the Joint Grievance Panel's report, the Tribunal considers that it is not necessary to examine the complainant's arguments concerning the irregularities which allegedly tainted this opinion. Indeed, since the latter was not taken into account by the Director General, the arguments in question are irrelevant.

In addition, the cited irregularities are not, in the present case, such as to aggravate the moral injury suffered by the complainant.

7. The complainant contends that the amount of compensation is in any case insufficient in view of what was recognized in the impugned decision, namely the procedural errors committed and the harassment established.

The amount of compensation must be the subject of a specific examination, which takes into account all relevant factors, such as the seriousness, nature and duration of the injury suffered and also whether or not the organization withdrew the irregular decision and rectified the irregularity.

In view of all the circumstances of the case, the Tribunal considers that it is not established that the compensation awarded to the complainant is insufficient.

8. In light of the above, it is evident that the complainant is not entitled to punitive or exemplary damages either.

9. Lastly, the complainant requests an award of costs for both the internal appeal and the complaint submitted to the Tribunal.

10. With regard to costs for the internal appeal, the Appeal Board had recommended in its conclusions that the request for costs be rejected for lack of supporting evidence. In the impugned decision, the Director

^{*} Registry's translation.

General also rejected this request on the grounds that the Organization did not normally reimburse the costs of legal assistance in connection with internal appeal proceedings.

The Tribunal notes that there is no rule which obliges the Organization to defray legal costs incurred in the context of internal appeal proceedings (see Judgments 2996, consideration 23, and 221, consideration 7).

This plea is therefore unfounded.

11. Since the complainant does not succeed, she is not entitled to costs.

12. In light of the above, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 2 May 2019, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

(Signed)

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ