

S. (No. 3)

v.

WIPO

130th Session

Judgment No. 4287

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr A. S. against the World Intellectual Property Organization (WIPO) on 27 August 2018 and corrected on 7 October 2018, and WIPO's reply of 14 January 2019, the complainant having failed to file a rejoinder within the allocated time;

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

Having examined the written submissions;

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

The complainant contests the decision lifting his non-disciplinary suspension from duties.

On 25 May 2016 the Director of the Human Resources Management Department (HRMD) informed the complainant, who was a staff member, that he was temporarily suspended from duty with pay with immediate effect for an initial period of one month. She explained that the suspension might be lifted earlier or extended as justified by the circumstances, but should not normally exceed 90 days, and that, in accordance with Staff Rule 10.1.3(d), the suspension did not constitute a disciplinary measure. She indicated that since 23 May he had behaved in a highly inappropriate and aggressive manner, posing clear, serious and imminent threats to WIPO and its staff (including to his supervisors and the Director General). Upon receipt of the letter, the complainant

wrote straightaway to the Director of HRMD asking her to elaborate further on the reasons she gave for suspending him. He wrote to her again on 31 May explaining that he considered the suspension to be an act of retaliation following his email of 22 May submitting misconduct complaints against certain senior officials. He added that he considered the suspension to be another act of institutional harassment and humiliation. He asked her to withdraw immediately the suspension and to apologise for the humiliation caused to him.

The Director of HRMD informed the complainant on 15 June 2016 that she had decided to lift his temporary suspension based on the information received from the Internal Oversight Division (IOD) the day before. IOD had interviewed him and concluded that he had no intention of behaving in a violent or otherwise inappropriate manner. She requested him to report to work as of 16 June. She reminded him that all staff had a duty to contribute to a respectful and harmonious workplace. She cautioned him against creating any disturbance in the workplace, including by engaging in any conduct which might be perceived as a threat, cause anxiety or concern to other staff, or damage WIPO's reputation. On 13 September the complainant asked the Director General to review the decision of 15 June 2016. He argued that the arbitrary lifting of the suspension decision on 15 June showed that the initial suspension was illegal. Thus, it was only on that date that he became aware that the suspension decision was ripe for an administrative appeal. Consequently, he challenged the lifting of his temporary suspension and the cautionary statement contained in the letter of 15 June 2016 together with the suspension decision. He requested that the matter be dealt with by a competent agency outside WIPO alleging conflict of interests on the part of the Director of HRMD and the Director General. The appropriate authority, in his view, would be the Chair of the WIPO General Assembly, the Chair of the WIPO Coordinating Council, or the Independent Advisory Oversight Committee (IAOC).

On 14 November 2016 the Senior Director, Patent Cooperation Treaty Operations Department, informed the complainant that the Director of HRMD had recused herself and designated him as the competent authority to examine his request for review. He considered that the request for review was time-barred insofar as it concerned the suspension decision of 25 May. He also found that the decision of 15 June was not a decision adversely affecting the complainant and

therefore it was not subject to challenge under Staff Rule 11.4.3. He nevertheless stated on the merits that the measure of suspension was taken in accordance with Staff Rule 10.1.3(a) and that the statements contained in the letter of 15 June were reasonable. Considering that the sealing of the complainant's office while he was suspended from duties may have offended him, he apologised on behalf of WIPO and awarded him 1,000 Swiss francs in compensation. On 4 April 2017 the complainant filed an appeal with the Appeal Board against that decision.

In its report of 26 March 2018 the Appeal Board recommended dismissing the appeal. It held that since the complainant had not filed a request for review of the suspension decision, the matter could not be raised in the appeal. It noted that the matters relating to his suspension were dealt with in the context of his internal complaint of harassment, which was based on the suspension decision; that internal complaint had been rejected in February 2017. It also noted that he had objected to the suspension decision in writing to the Director of HRMD on 25 and 31 May, and therefore rejected the allegation that he became aware of the consequences of the suspension decision only on 15 June. On the merits, the Appeal Board found that the Director of HRMD's reminder of his duty to contribute to a respectful and harmonious workplace was lawful. The Administration had followed its standard practice concerning suspension and had not violated his rights or humiliated him. The Appeal Board agreed that the sealing of his office was inappropriate but, given that the complainant had returned the compensation that WIPO had awarded him, it did not recommend any further action in that respect.

By a letter of 28 May 2018 the complainant was informed that the Director General had decided to endorse the recommendation to dismiss his appeal. He nevertheless decided to award him 500 Swiss francs for the Appeal Board's delay in issuing its conclusions. That is the impugned decision.

The complainant asks the Tribunal to order that his appeal be expeditiously examined and investigated by a competent agency outside WIPO, namely the Chair of the WIPO General Assembly, the Chair of the WIPO Coordinating Council, or the IAOC. He also asks the Tribunal to order WIPO to issue a public apology concerning his illegal suspension from duty indicating that it was irregular, wrongful and unjustified. He further seeks the quashing of the decision of 25 May 2016 and its

arbitrary and capricious lifting on 15 June 2016, and the removal of all reference to them from his personal file or WIPO's file (with the exception of a copy of the public apology that he is requesting). He claims moral damages, exemplary damages and an award of costs for all legal expenses incurred in bringing the complaint. Lastly, he asks the Tribunal to grant him any other relief it deems equitable, fair and just.

WIPO asks the Tribunal to reject the complaint as irreceivable, and devoid of merit. It asks the Tribunal to award costs against the complainant on the grounds that his complaint constitutes an abuse of process, and to condemn the complainant's use of inappropriate language in his pleadings.

CONSIDERATIONS

1. The complainant was, at relevant times, a member of staff of WIPO. In addition to this complaint filed in the Tribunal on 27 August 2018, there is another complaint from the complainant filed on 15 October 2018 which is the subject of a judgment given at the same time as this (see Judgment 4288). No request is made by the parties for the two proceedings to be joined and, in any event, joinder would not be appropriate given that the factual foundation of each is different as are the legal issues that are raised for consideration.

On his complaint form, the complainant requests oral proceedings. However, as the written submissions are sufficient for the Tribunal to reach a reasoned decision, the Tribunal sees no need for oral proceedings. That request is thus denied.

2. On 25 May 2016, the complainant was temporarily suspended from duty. On 15 June 2016, the Director of HRMD decided to lift the suspension and this decision was confirmed by the Senior Director, Patent Cooperation Treaty Operations Department. On 13 September 2016, the complainant wrote to the Director General in a document entitled "Request for Review Against Administrative Decision dated 15 June 2015". In the body of the document, the first section is headed "IMPUGNED DECISION". This section commences with a sentence "This is a request for review of the Director of Human Resources Management Department's decision dated 15 June 2015 (Annex 1) in which the [complainant] was informed that his irregular suspension

of 25 May 2016 (Annex 2) had been lifted” and the complainant continued to particularise other related matters addressed in the letter of 15 June 2016. It is quite obvious that, in context, the two references to 15 June 2015 just quoted in the request for review were, in fact, a reference to 15 June 2016.

3. Equally obvious, particularly having regard to the specific language used, is that the request for review was concerned with the decision to lift the suspension. Indeed, as WIPO recounts in its reply: “On August 23, 2016, the [c]omplainant submitted a complaint of harassment to the Director General centred on the decision of the Director of HRMD to temporarily suspend him from duty on May 25, 2016. His harassment complaint was eventually dismissed by the Deputy Director General, Ms [W.], on February 21, 2017. It should be highlighted that the [c]omplainant did not contest this decision.” The complainant has not filed a rejoinder and thus has not challenged this narrative in the reply.

4. The complainant’s request for review was rejected by a decision of 14 November 2016 and, thereafter, he appealed to the WIPO Appeal Board. In its report of 26 March 2018, the Board addressed the scope of the appeal. It observed that “the matters related to the suspension and its circumstances cannot be raised in the present [a]ppeal since this would be out of time due to the failure to file a request for review”. An argument to the same effect is advanced by WIPO in these proceedings. This founds a submission by WIPO that these proceedings can only concern the decision to lift the suspension coupled with a submission that the complaint is irreceivable. In his brief, the complainant challenges directly the decision and cautionary statement contained in the letter of 15 June 2016 by saying that it was not a benign statement and that it was “baseless, discriminatory and intended to intimidate and humiliate” and this had legal consequences. The Tribunal rejects this characterisation of the letter. Insofar as it concerns the complainant’s future behaviour, it is a balanced and thoughtful reminder to the complainant about his obligations as a staff member.

5. The decision to lift the complainant’s suspension (as opposed to the decision to suspend him) did not involve non-observance of any Staff Regulation or the terms of his appointment. Indeed it was a

decision which was beneficial to him and, in that respect, he has no cause of action to contest it.

Insofar as the complainant purports to impugn the decision to suspend him, he cannot do so because he has not exhausted internal means of redress as required by Article VII of the Tribunal's Statute. Accordingly, on either basis, the complaint is irreceivable and should be dismissed.

6. WIPO seeks a costs order against the complainant on the footing that his complaint is vexatious, an abuse of process and, in addition, the complainant has used entirely inappropriate and offensive language in his pleas. The Tribunal is not satisfied such an order should be made.

DECISION

For the above reasons,

The complaint is dismissed, as is the counterclaim for costs.

In witness of this judgment, adopted on 24 June 2020, Mr Patrick Frydman, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

DRAŽEN PETROVIĆ