

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

## **106th Session**

## **Judgment No. 2803**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-L. P. against the World Intellectual Property Organization (WIPO) on 13 November 2007, the Organization's reply of 4 March 2008, the complainant's rejoinder of 8 April, as supplemented on 29 April, and WIPO's surrejoinder of 9 July 2008;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a French national born in 1952, joined WIPO in 1987 as head of section at grade P-4. From 1993 onwards he held various positions as director and coordinator before being appointed Senior Director of the International Registrations Administration Department, in the Sector of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred to as the "Trademarks Sector"), at grade D-2, in December 2003.

In 2006 the seven sectors of WIPO were restructured. The resultant changes took effect after the circulation of several office

instructions concerning the internal organisation of WIPO, including that numbered 64/2006 which gave rise to major restructuring of the Trademarks Sector. Several months earlier a Working Group on Organization and Productivity had been established within the International Registrations Administration Department to identify measures for streamlining registration operations. On 1 November 2006 the Group presented a report to the Assistant Director General of the Trademarks Sector (hereinafter referred to as the “Assistant Director General”) which contained a number of recommendations. On 2 November the complainant submitted some comments thereon which were forwarded, together with the report, to the Director General on 6 November.

On 11 December 2006 the complainant was informed by his immediate hierarchical superior, the Assistant Director General, that he was being transferred. He met with the Director General on 15 December in the presence of the Assistant Director General. On 19 December 2006 Office Instruction 64/2006, dated 15 December, was published. It contained the announcement of the complainant’s transfer to the Office of the Assistant Director General of the Trademarks Sector, where he would have the title of Senior Director-Advisor, as had been confirmed to him that same day by the Director of the Human Resources Management Department. By a memorandum of 25 January 2007 the complainant asked the Director General to review his decision; he alleged in particular that there was no basis for his transfer to the “non-job of Senior Director-Advisor”. On 6 March he was informed of the Director General’s decision to maintain the reorganisation announced in Office Instruction 64/2006 which mentioned his transfer.

The complainant lodged an appeal with the Appeal Board on 2 April 2007. In its report of 19 June 2007 the Board concluded that the transfer had not been arbitrary, that the complainant’s right to be heard had been respected and that the transfer had not been a demotion, but that his personal and professional dignity had been injured and that there had been misuse of authority insofar as the post

to which he had been transferred was not commensurate with his previous responsibilities and he had not been adequately informed of his new tasks and responsibilities. The Board recommended that “[t]he Administration identify by September 30, 2007, in consultation with the [complainant], an alternative post within the Organization that is commensurate with the [complainant’s] professional qualifications, level and experience”, but it did not recommend reversal of the transfer. On 3 October 2007 the complainant was informed by the Director of the Human Resources Management Department, on behalf of the Director General, that the latter accepted the Board’s conclusions that the transfer was not arbitrary and that due process had been observed. He also agreed with the Board’s recommendation not to reverse the transfer and was of the view that the position of Senior Director-Advisor was commensurate with the complainant’s professional qualifications, level and experience. The Director of the said department informed the complainant that no alternative position had been found within the Organization. He reminded him that he had declined to comment on his draft job description, and he sought his cooperation in fulfilling his new tasks and responsibilities. That is the impugned decision.

B. The complainant enters several pleas in support of his complaint. Firstly, he submits that the decision to “oust” him from his post was not based on legitimate grounds, and that it was taken arbitrarily. He draws attention to the Organization’s initial silence and says that he was not informed of his transfer until 11 December 2006, that he could not have a talk with the Director General until 15 December and that the second talk with him, which was scheduled for 18 December, never took place. He points out that he was notified on 19 December that the transfer decision was being maintained, yet the office instruction confirming the decision, which was published that same day, is dated 15 December 2006. According to him, the dates of the preceding and following office instructions show that it had in fact been drafted in November 2006. Moreover, the reasons for his transfer were not given to him before the decision to “oust” him was taken,

and the explanations provided afterwards were not serious or credible but “contradictory and irrational”. He acknowledges that his transfer took place in the context of a wider internal reorganisation, but argues that the latter did not necessitate his transfer. He also draws attention to the fact that he replaced a grade D-1 Director-Advisor, which meant that, even though he retained his D-2 grade, he was being demoted. In his view, the Working Group’s report contains nothing to support the argument that it was necessary to make changes in the structure of the sector’s senior management. He asserts that the core of his department has hardly altered, even after a second reorganisation in March 2007, and he concludes that he was “pushed out” in order to make way for the director of a related division.

Secondly, the complainant alleges, on the basis of the arguments put forward in connection with his first plea, that the disputed decision reflects “a lack of understanding of the service’s requirements and the Organization’s interests”. He draws attention to the fact that his transfer has deprived the Organization of his “full services”, which he performed to everyone’s satisfaction.

Thirdly, he emphasises that he was not consulted, that no reasons were given and that his right to be heard was violated and he infers that the decision is therefore tainted with serious legal and procedural flaws. He maintains that he was presented with a *fait accompli* and that the plan to transfer him “had already been hatched in secret” when it was announced.

Fourthly, he alleges a breach of good faith, since he believes that he has been badly treated. With hindsight, the Working Group appears to him to have been a “conspiracy”. Moreover, he considers that WIPO’s submissions to the Appeal Board and the “truths” listed in them were unacceptable. He states that, contrary to the Board’s recommendations, he was not consulted during the search for another post.

The complainant’s fifth plea is that his personal and professional dignity was injured. From one day to the next he was “pushed out” of a very demanding and gratifying operations-related post to a

“non-job” for which he had neither a job description nor a list of duties until the end of April 2007. In his opinion, the transfer could only cause people in WIPO and the outside world to have doubts about his work, competence and integrity.

As a sixth plea the complainant alleges misuse of authority owing to his ostracism and the Organization’s silence as to the reasons for his transfer. According to the complainant there are two interconnected reasons for keeping him in a “professional no-man’s land”: the Assistant Director General’s retaliation against him and the latter’s “blackmailing” of the Director General into assigning him to a post outside the Trademarks Sector.

The complainant also considers that the deliberations of the Appeal Board were tainted with procedural flaws.

He asks the Tribunal to set aside the decision to transfer him, to order his reinstatement in his post of Director and to determine all the other legal consequences of this setting aside. He also asks the Tribunal to order the publication of excerpts of the judgment on the Organization’s website and to bring the judgment to the attention of the WIPO Coordination Committee and the Union Assemblies of Madrid, The Hague and Lisbon. He claims moral damages in the amount of 100,000 Swiss francs and 50,000 francs as exemplary damages.

C. In its reply WIPO submits that there were valid grounds for the complainant’s transfer and it emphasises that the Director General has the discretion to order transfers in the Organization’s best interests.

It explains that side by side with the Working Group, which had focused its survey on the International Registrations Administration Department, the Assistant Director General had examined the structure and activities of the whole Trademarks Sector. He had reached the opinion that the increasingly complex challenges raised by developments in this sector called for alterations in the structure of its senior management. Among the changes made, two units were combined in a single International Registrations Department, which

replaced the unit headed by the complainant. The Organization contends that the head of this new department had to be a staff member who, unlike the complainant, had wider experience not essentially confined to the administrative sphere. It asserts that this reorganisation was the subject of a favourable assessment one year later. Furthermore, the Assistant Director General wished to strengthen his own executive office, where the complainant's skills and experience could be put to better use.

WIPO holds that the reasons for the complainant's transfer were discussed with him at the earliest opportunity at two meetings. He thus had the possibility of expressing his views and he admitted in his memorandum of 25 January 2007 that this transfer had been debated at length before the final decision was made. The Organization states that he was not presented with a *fait accompli* and that Office Instruction 64/2006 was not drafted in November 2006, as alleged by the complainant. It explains in this connection that office instructions are not necessarily numbered in chronological order. WIPO also asserts that there is nothing malicious in the fact that an important document with many consequences may be drafted in advance.

It contends that the setting up of the Working Group was not a "decoy", and it emphasises that reference was made to the Group's report only to the extent that it confirmed the conclusions reached independently by the Assistant Director General, who did not rely on that report to justify that it was necessary to transfer the complainant.

WIPO asserts that, contrary to the complainant's allegations, the post of Senior Director-Advisor is a proper job with real substance at senior management level; the transfer should not be seen as a demotion. It draws attention to the fact that the complainant refused to participate in the drawing up of his job description for almost a year after his transfer and it maintains that the Assistant Director General had no choice but to regard the draft job description as final. It claims that the alleged ostracism and sidelining of the complainant is entirely self-imposed and points out that he has not attended any of the monthly senior management meetings of the Trademarks Sector.

The Organization further contends that the complainant has not furnished any proof in support of his allegation regarding misuse of authority and it states that the Assistant Director General showed him the appropriate professional courtesy.

It disagrees with the Appeal Board's view that it ought to have transferred the complainant to a post comprising the same supervisory functions, for this would have excessively restricted the Director General's power with regard to assignments and transfers. To the best of its knowledge there is in fact only one post comprising management responsibilities comparable to those which used to be held by the complainant. It did not consult him, because no post was available. Moreover, the Organization does not subscribe to the Board's opinion that there was some misuse of authority owing to the delay in informing the complainant of his new tasks.

D. In his rejoinder the complainant enlarges upon his pleas. He submits a new claim that the Tribunal should order WIPO to pay him an additional 20,000 Swiss francs as exemplary damages for the "deeply shocking" defamatory arguments and pleas presented in its submissions.

He expresses doubts as to the objectivity, authenticity and admissibility of some of the evidence produced by the Organization. He rejects WIPO's allegations that he is responsible for the situation in which he finds himself because he refused to carry out certain tasks or to help to draw up his job description. In this connection he emphasises that the Organization produced four drafts of the job description, but that neither he nor the Tribunal have received the final version. The complainant points out that the post mentioned by WIPO comprising management responsibilities commensurate with those he held is in fact vacant because it is occupied by an acting director.

E. In its surrejoinder the Organization maintains its position. It rejects the complainant's allegations, especially the insinuation that it has fabricated evidence solely for the purposes of the case. It considers that since the complainant has deliberately chosen to remain distant or completely aloof from the activities of the Trademarks

Sector, he cannot now complain that his new post lacks substance. According to the Organization, the divergences in the job descriptions were small and there is only one official version. It also asserts that the acting director's post is not available and that that is a matter for the Organization, not the complainant, to determine.

## CONSIDERATIONS

1. Having held several positions in WIPO, the complainant reached grade D-2 and in December 2003 he was appointed Senior Director of the International Registrations Administration Department in the Trademarks Sector.

2. The decision giving rise to the dispute was taken in circumstances which may be summarised as follows.

On 1 November 2006 the Working Group on Organization and Productivity of the International Registrations Administration Department, which had been established on 26 June 2006 by the Assistant Director General of the Trademarks Sector on the instructions of the Director General, issued a report containing recommendations and a time frame for implementing them. The complainant received a copy thereof and on 2 November 2006 he presented his comments to the Assistant Director General.

Having examined the structure and activities of the whole of his sector, the Assistant Director General concluded that it was necessary to reorganise its management in order to enable the sector to meet the challenges facing it. In particular, it was decided that two units should be combined in a single administrative structure, namely a new division called the "International Registrations Department". The complainant, who had been informed of some of these changes, expressed doubts about them.

On 11 December 2006 the Assistant Director General called the complainant to a meeting to inform him of his transfer, to which the complainant objected. He was, however, transferred on 15 December 2006 to the post of Senior Director-Advisor in the Office of the



Assistant Director General of the Trademarks Sector. By a memorandum of 25 January 2007 the complainant asked the Director General to review the decision to transfer him; on 6 March he was notified of the Director General's decision to maintain the reorganisation announced in Office Instruction 64/2006 which mentioned the disputed transfer.

On 2 April 2007 the complainant lodged an appeal with the Appeal Board. In its report of 19 June 2007 the Board considered that since there was sufficient legal and factual basis for the transfer it could not be considered to be arbitrary, that the requirements of due process had been observed and that the complainant's transfer did not result in a demotion or in a change in his grade or salary. The Appeal Board did, however, find that there was evidence to a degree that the complainant had suffered moral injury to his personal and professional dignity and that there had been some misuse of authority. It therefore recommended that "[t]he Administration identify by September 30, 2007, in consultation with the [complainant], an alternative post within the Organization that is commensurate with [his] professional qualifications, level and experience".

On 3 October 2007 the complainant received a letter signed by the Director of the Human Resources Management Department informing him that the Director General had endorsed all the conclusions and recommendations of the Appeal Board in his favour, and that the Director General considered that the position of Senior Director-Advisor in the Office of the Assistant Director General, which had been defined, was commensurate with his professional qualifications, level and experience. The Director of the said department added that, without prejudice to that decision, but in order to show that the Administration had made every reasonable attempt to accommodate his concerns, his department had contacted all the relevant programme managers and had transmitted his career summary and a personal history form with a request that they should advise his department whether they had a position available for him, but unfortunately no such alternative position could be identified as available within the Organization. The complainant was asked to cooperate in drawing up a job description. That is the decision challenged before the Tribunal.

3. The complainant's claims are set out under B, above. In support thereof he puts forward several pleas which shall be examined in turn.

4. The complainant first submits that the disputed transfer was baseless and arbitrary.

(a) He takes the Administration to task over its initial silence prior to the adoption of the decision. He holds that the Assistant Director General did not inform him of his transfer until 11 December 2006, that Office Instruction 64/2006 is dated 15 December 2006 and was published on 19 December 2006, the day of his meeting with the Director of the Human Resources Management Department, but that this office instruction must have been drafted earlier, at the latest at the end of November since the office instructions preceding and following it were signed in the last week of November. He infers from the foregoing that the final decision to transfer him had already been taken long before he was informed of it during his talks with his hierarchical superiors.

The Tribunal has not found any evidence in the file which would lead it to question the dates of the signature and publication of Office Instruction 64/2006, i.e. 15 and 19 December 2006 respectively. It is not therefore possible to affirm that the complainant, who was received by his immediate hierarchical superior on 11 December 2006, had not been informed of the decision to transfer him before it became final.

(b) The complainant submits that there were no valid reasons for the disputed decision and that it was therefore arbitrary.

Staff Regulation 4.3(d) lays down that “[a]ny staff member may be transferred whenever the interests of the International Bureau so require”. In the instant case the complainant acknowledges that his transfer formed part of a wider internal reorganisation, but states that the latter did not necessitate his transfer. However, the Tribunal has consistently held that greater caution must be shown in interfering with a decision which is founded solely on the Organization's interests because the Director General must ordinarily be deemed to be the best judge of what they are (see Judgment 1050, under 4).

The complainant argues that whilst he was certainly “ousted” from his post because of the reorganisation, the latter was only a “conspiracy” to have him replaced by the director of another Division.

The Tribunal cannot entertain this argument, which is made up of mere allegations not resting on a shred of evidence. On the contrary, it finds that the reorganisation was undertaken partly in response to recommendations from a group which had worked for several months and that its sole purpose could not have been to “oust” a particular staff member from his or her post.

In transferring the complainant the Director General did not transcend the normal bounds of his discretion. The transfer decision cannot therefore be deemed to be arbitrary.

5. The complainant also submits that the transfer decision was contrary to the Organization’s interests. Relying on Judgment 1234 he contends that in the present case there is nothing in the material circumstances, in the background to the reorganisation, or in his talks with the Director General, the Assistant Director General and the Director of the Human Resources Management Department, to support the assertion that his transfer was in the Organization’s interests.

The evidence on file, like the report of the Working Group, shows that there were objective reasons for reorganising the Trademarks Sector and restructuring the International Registrations Administration Department, which now combined the two principal units (information and promotion, on the one hand, and operations, on the other) in a single structure.

The Organization considered that to head this new structure “there was a need for someone having experience going beyond the traditional responsibilities for managing operations, in particular someone with a sound legal and technical background in the field of trademarks and designs and, preferably, someone with experience acquired in a major trademarks and design office”. In its opinion the complainant did not entirely satisfy these criteria. It bases this assertion on the career summary of the complainant, a statistician by training,

whose professional experience was “mainly in the administrative sphere”.

In Judgment 1234, which the complainant cites, the Tribunal states:

“Although the Director-General will ordinarily be treated as the best judge of what the Organization’s interests are and the Tribunal will not ordinarily interfere in his assessment of them, nevertheless it will do so in this case. It is quite inadequate to plead that the decision to transfer the complainant was ‘in the interests of the Organization’. The basis for reaching that conclusion must be made clear so that the Tribunal may exercise its power of review and determine whether there exists any of the grounds for setting aside a discretionary decision of that kind.”

In the present case, in view of what is stated above, the Tribunal considers that the Organization’s clear explanation of the reasons for the complainant’s transfer enabled it to conduct a review and to conclude that the plea fails.

6. The complainant further submits that the decision to transfer him to another post is tainted by an “error of law” in that he was not consulted, that no reasons were given for the decision and that his right to be heard was violated.

(a) With regard to the lack of consultation, it must be recalled that the complainant was consulted by his immediate hierarchical superior on 11 December 2006 and by the Director General on 15 December 2006.

(b) With regard to the statement of reasons, these were clearly explained to the complainant not only during the above-mentioned talks but also in the course of the proceedings and the Tribunal has been able to review their genuineness.

(c) As for the right to be heard, the evidence on file shows that this right was respected, even though the complainant was unable to convince the Director General and the Assistant Director General, when he met with them on 15 December 2006, to abandon the plan to transfer him.

7. The plea that the principle of good faith was breached must equally be rejected. The complainant contends that, with hindsight, the Working Group seems to have been a “conspiracy”, an impression which is strengthened by the fact that the working procedures of the International Registrations Department have scarcely changed. He also submits that his meeting with the Director General on 15 December 2006 appears in retrospect to have been a “manoeuvre”.

However, the Tribunal agrees with the Organization that these bald assertions by the complainant are not supported by the slightest evidence. The fact that the Director General saw no point in seeing the complainant again before taking a final decision, as planned at the meeting on 15 December 2006, does not mean that this meeting was no more than a manoeuvre.

8. The complainant contends that the decision to transfer him stems from a misuse of authority. The Tribunal draws attention to the fact that, according to a long line of precedent going back to Judgment 476, in order for there to be misuse of authority it must be established that the decision rested on considerations extraneous to the Organization’s interests. It may be concluded from the above that this is not the case here.

9. Moreover, he submits that the transfer decision damages his dignity and reputation. He states that from one day to the next he was “pushed out” of a very demanding and gratifying operations-related post, where he was very active, to be given a “non-job” with a title but with no job description or list of duties until the end of April 2007, without responsibilities or tasks related to the sector to which he is still assigned. The Organization asserts that “[o]bjectively speaking, the post of Senior Director-Advisor is a real job entailing specific tasks and responsibilities. It can be of significant importance [...] and is absolutely not a fictitious post”.

On the basis of the evidence before it, the Tribunal shares the Appeal Board’s opinion that even if the complainant’s new post of director-advisor is not fictitious, he has suffered injury to his personal and professional dignity. Prior to his transfer he had important

administrative responsibilities and directly supervised some 120 staff members. After the reorganisation he found himself transferred to a position that was yet to be defined, with no management responsibility and no staff under his supervision. The Appeal Board was right to say that “the Administration had not been persuasive in demonstrating that the [complainant]’s new post was commensurate with his previous responsibilities”. That is why it recommended that “[t]he Administration identify by September 30, 2007, in consultation with the [complainant], an alternative post within the Organization that is commensurate with [his] professional qualifications, level and experience”. The Tribunal considers that the Organization had to follow this fully justified recommendation or give valid reasons why it had been prevented from doing so. It emerges from the file that the recommendation was not complied with and the arguments put forward by the defendant to vindicate itself do not convince the Tribunal that it made the necessary efforts to find another post satisfying the criteria defined by the Appeal Board.

It follows from the foregoing that the impugned decision must be set aside and the case remitted to the Organization in order that it may assign the complainant to a position commensurate with his professional qualifications, level and experience within a reasonable period of time not in excess of six months.

The complainant is entitled to compensation, which the Tribunal sets at 40,000 Swiss francs, for the moral injury he has suffered on account of his unlawful transfer to a post which, as stated above, was not commensurate with his level.

10. On the other hand, the Tribunal has found no evidence in the file to support the complainant’s assertion that the Organization’s behaviour towards him stemmed from a desire to retaliate. The award of exemplary damages, which he claims in this respect, is therefore not justified.

11. The complainant taxes the Organization with gratuitously using defamatory arguments and pleas during the proceedings and

on this ground claims exemplary damages in the amount of 20,000 francs.

The Tribunal will not entertain this claim as the Organization merely exercised its right to reply to the complainant's pleas and arguments.

12. Lastly, the complainant requests that this judgment be published and brought to the attention of the WIPO Coordination Committee and the Union Assemblies of Madrid, The Hague and Lisbon. In view of the circumstances, the Tribunal considers it inappropriate to grant such a request.

## DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The case is remitted to the Organization in order that it may proceed as indicated under 9, above.
3. The Organization shall pay the complainant the amount of 40,000 Swiss francs as compensation for the moral injury suffered.
4. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet