

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

114th Session

Judgment No. 3186

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs S. N. against the World Intellectual Property Organization (WIPO) on 17 August 2010 and corrected on 2 November 2010, WIPO's reply of 7 February 2011, the complainant's rejoinder of 16 May and the Organization's surrejoinder of 23 August 2011;

Considering Articles II, paragraph 5, and VII 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. Information regarding the complainant's career at WIPO is to be found in Judgments 3185 and 3187, also delivered this day, concerning the complainant's first and third complaints. It may be recalled that she was recruited on a short-term contract, which was renewed several times. As from 2001 she performed the duties of an Assistant Examiner at grade G3 in the Processing Service of the Patent Cooperation Treaty (PCT) Operations Division. She was promoted to grade G4 in 2003.

On 12 December 2008 the Assemblies of the Member States of WIPO approved the Revised Program and Budget for the 2008-2009 biennium, which provided for the creation of 30 General Service posts in order to initiate the process of regularising short-term positions whose holders were responsible for core, continuing functions within the Organization. Information Circular No. 20/2009 of 25 May 2009 advertised a competition to fill 29 of these positions. The complainant applied for several of them, including 15 Assistant Examiner posts in the Processing Service. On 19 August, having learned from Information Circular No. 30/2009, published on 13 August, that she had not been selected, she asked the head of the above-mentioned service to apprise her of the reasons for his choice. On 14 September he replied that he had merely provided information to the Appointment and Promotion Board, and that it was the Board alone which had made recommendations to the Director General. As the Board's deliberations were secret, he advised her to contact the Human Resources Management Department for more details of the selection process. The complainant impugns the information circular of 13 August 2009 insofar as it contains decisions concerning her.

B. The complainant contends that her complaint is receivable. Principally, she submits that, since the Organization did not provide her with any information about her right to file a complaint with the Tribunal, the time limit for doing so laid down in Article VII, paragraph 2, of the Statute of the Tribunal does not apply to her. Subsidiarily, she argues that the provisions of the Staff Regulations and Staff Rules and the fact that her contracts were silent with regard to the remedies available to her led her to believe that she did not have *locus standi* before the Tribunal. Since her mistake was thus caused by the Administration, she considers that her complaint should be exempt from the time bar.

On the merits, the complainant submits that the appointments to the posts for which she applied were taken *ultra vires*, because Information Circular No. 30/2009 was signed only by the Director of the Human Resources Management Department, whereas Staff

Regulation 4.8 requires that staff appointments be made by the Director General. She states that, despite the request which she submitted to the Head of the Processing Service, the Organization never notified her of the reasons for her non-selection. She also contends that the selection process lacked transparency and that the Rules of Procedure of the Appointment and Promotion Board were breached in two respects, particularly because the Board did not call for interview “the candidates considered most promising”. She also submits that the principle of equal opportunity was not respected, that the Director General committed an obvious error of judgement in rejecting her applications and that, by refusing to regularise her position, the Organization breached both her right to a proper administrative situation and the principle of non-discrimination.

The complainant asks the Tribunal to set aside the decision rejecting her applications and appointing other persons to the posts for which she applied, or, alternatively, to stay the proceedings until a final decision is taken on the allegations of harassment that she has brought against her direct supervisor because, in her opinion, that person exerted “significant influence over the decision to reject [her] application[s]”. She also asks the Tribunal to order WIPO to restart the procedure for regularising short-term General Service employees. She claims damages in the amount of 75,000 euros and 7,000 euros in costs.

C. In its reply WIPO considers that the complaint is irreceivable for two reasons. First, the complainant does not have *locus standi* before the Tribunal, because she has never had the status of an official within the meaning of Article II, paragraph 5, of the Statute of the Tribunal. Indeed, subparagraph (2) of paragraph (b) of the introduction to the Staff Regulations and Staff Rules explicitly excludes from the scope thereof staff “engaged for short-term service, that is for periods of less than one year”. Secondly, the complaint was filed out of time because the complainant, who could have enquired about the means of redress available to her, filed it more than nine months after the expiry of the time limit for challenging Information Circular No. 30/2009.

On the merits, the Organization endeavours to show that each of the complainant's contentions is unfounded. It emphasises in particular that – contrary to the advice of the Head of the Processing Service – she never contacted the Human Resources Management Department to find out why she had not been selected. It denies that the complainant did not receive equal treatment and points out that neither the Appointment and Promotion Board nor the Director General regarded her as being the most suitable candidate for the posts to which she aspired.

D. In her rejoinder the complainant submits that her complaint is receivable because, as the Tribunal found in Judgment 1272, it may rule on any employment relationship arising between an organisation and its staff, whether under the terms of a contract or under the Staff Regulations. On the merits, she states that the reasons which WIPO gives in its reply for rejecting her applications are inadequate.

E. In its surrejoinder the Organization reiterates its objections to receivability and adds that the legal status of short-term employees of WIPO is “correctly” defined not only in short-term contracts but also in the Staff Regulations and Staff Rules. On the merits it maintains its position.

CONSIDERATIONS

1. The complainant, who has been employed under a short-term contract renewed several times, has been performing the duties of an Assistant Examiner in the Processing Service of the PCT Operations Division at WIPO since 2001.

2. On 25 May 2009 WIPO initiated a process of regularising short-term General Service employees like the complainant by opening a competition for 29 positions reserved for those employees. On

10 June 2009 the complainant applied for several of them and, in particular, for 15 Assistant Examiner posts in the Processing Service.

An Appointment and Promotion Board was set up to examine the applications. The Director General followed the Board's recommendations and the list of successful candidates was published on 13 August 2009. The complainant, whose name was not on that list, then asked the Head of the Processing Service to inform her of the objective reasons why her applications had been rejected. After outlining the selection process, the head of that service advised her to contact the Human Resources Management Department if she wished to obtain more detailed information. The complainant did not follow that advice.

3. Principally, the complainant seeks the setting aside of the decision to reject her applications and to appoint other candidates to the posts to which she aspired. Subsidiarily, she asks the Tribunal to stay the proceedings until a final decision is taken on the allegations of harassment that she has brought against her direct supervisor. This last claim would become moot if it transpired that, as the Organization contends, the instant complaint was filed out of time.

4. The Tribunal finds that, contrary to WIPO's submissions, the Tribunal is competent to rule on the complaint, even though it has been filed by an employee holding a series of short-term contracts (see Judgments 3090, under 4, and 3091, under 10).

5. However, Article VII, paragraph 1, of the Statute of the Tribunal reads:

"A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations."

As the complainant did not avail herself of any internal means of redress before filing her complaint, it is irreceivable and must be dismissed. There is therefore no reason to rule on the plea that the complaint has been filed out of time.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 6 January 2013, 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 6 February 2013.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet