

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**114th Session**

**Judgment No. 3187**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mrs S. N. against the World Intellectual Property Organization (WIPO) on 17 August 2010 and corrected on 1 December 2010, WIPO's reply of 10 March 2011, the complainant's rejoinder of 13 June and the Organization's surrejoinder of 19 September 2011;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 6, paragraph 1, of its Rules;

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 3186, also delivered this day, concerning the complainant's first and second complaints. It may be recalled that at the material time the complainant, who had been recruited on a short-term contract which was renewed several times, held a grade G4 post in the Processing Service of the Patent Cooperation Treaty (PCT) Operations Division. On 1 April 2008 she received a warning message on her computer that someone had attempted to access her account. On 7 April she asked a member of

the Information Security Section to run a check. In reply she was told that the trace of some unauthorised logins had been found on her work computer. On 5 June she sent a memorandum to several senior officials, including the newly elected Director General who was to take office on 1 October 2008, in which she requested the opening of an investigation “to identify and unmask” the guilty person(s). The next day the Director General elect assured her that an investigation would be opened “immediately” and that she would be notified of its findings “in due course”. On 25 August 2008 the complainant informed him that she had received another warning message, identical to the first, and she asked him to forward the investigation findings to her. The next day the Information Security Section issued a report concluding that it was impossible to determine whether the new incident had been caused by a malicious act.

In March 2009 the complainant received a third warning message and an e-mail which she regarded as defamatory. The following month she wrote to the Director General to ask him to take steps to ensure that an end was put to these “malicious acts”.

On 4 December 2009 the complainant’s lawyer wrote a letter to the Director General in which he contended *inter alia* that the intruder attacks on his client’s computer and the sending of the above-mentioned e-mail constituted a violation of her rights and that the Organization had failed in its duty to protect its staff. He requested a meeting with a view to finding a solution to this situation. The Legal Counsel of WIPO replied by a letter of 22 December 2009 – which forms the subject of this complaint – that the Director of the Internal Audit and Oversight Division had never received a request from the complainant for the opening of a formal investigation and that, if she wished to have those matters investigated, she should send a formal request to the director of that division. He considered that a meeting was unnecessary in those circumstances.

The director of the above-mentioned division informed the complainant by a memorandum dated 30 August 2010 that, after having received her “complaint” containing allegations of unauthorised access to her work computer on 5 June 2008, his services had carried out a

“preliminary evaluation”. As no evidence in support of those allegations had been found, the file had been closed. The complainant received that memorandum on 12 October, whereupon she informed the director that she considered it “regrettable” that she had received it “more than two years after [the] serious incidents” which she had reported. The director wrote to her again on 22 October to tell her that the date on the memorandum was wrong and that it should have been 20 September 2010. He also detailed the steps in the investigation undertaken by his services.

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 it is plain from the two letters she received from the Director of the Internal Audit and Oversight Division that the Legal Counsel misinformed her in his letter of 22 December 2009 since, contrary to his assertions, an investigation was under way. As she thus felt that she was not protected and was being “treated disrespectfully” by the Organization, she states that she suffered “serious” moral injury for which she claims damages in the amount of 25,000 euros. She also claims 7,000 euros in costs.

C. In its reply WIPO raises several objections to receivability. First, it contends that 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”. The complainant, who has always held

contracts of less than one year, belongs to that category of staff. The Tribunal is not competent to rule on her complaint, because she has never had the status of an official within the meaning of Article II, paragraph 5, of the Statute of the Tribunal. The Organization explains that this is the reason why her contracts do not mention the possibility of filing a complaint with the Tribunal and why Chapter XI of the Staff Regulations and Staff Rules, entitled “Appeals”, does not apply to short-term employees. It stresses, however, that these employees are not deprived of all internal means of redress. The Organization also submits that the complaint was filed out of time, because the complainant lodged it more than eight months after receiving notification of the letter of 22 December 2009. It draws attention to the general principle of law that ignorance of the law is no excuse and denies that it was under any obligation to supply the complainant with information on her rights and duties. Lastly, WIPO points out that she did not submit her brief when she filed her complaint, in breach of Article 6, paragraph 1, of the Rules of the Tribunal, and it considers that the fact that she corrected her complaint only on 1 December 2010 constitutes abuse of the time limit laid down in Article VII, paragraph 2, of the Statute of the Tribunal.

On the merits, WIPO apologises to the complainant for sending her information that was only “partly correct” in its letter of 22 December 2009. However, it takes her to task for not seeking an explanation after receiving that letter, since that step would have enabled the Administration to notice the mistake. As the Organization considers that the complaint is vexatious, it asks the Tribunal to order the complainant to bear the costs of the proceedings.

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. Citing the case law, she also argues that filing a summary complaint and then correcting it within a period of 30 days, which may be extended, is consistent with the Statute and Rules of the Tribunal and with the right to due process.

E. In its surrejoinder the Organization reiterates its objections to the receivability of the complaint. It points out that the letter of 22 December 2009 was not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal. On the merits it presses all its pleas.

### CONSIDERATIONS

1. On 5 June 2008 the complainant requested the opening of an investigation into some intruder attacks on or attempts to hack her computer, which she had noted over a period of several months and which, in her opinion, constituted “obvious invasion of [her] professional life and privacy”. The next day, she was informed that an investigation of these “disturbing occurrences” was to be opened “immediately”. Another intruder attack was attempted in August 2008 and yet another in March 2009, the same month in which she received an e-mail which she regarded as defamatory. These events are said to have upset her to such an extent that she was obliged to take sick leave for quite some time.

On 4 December 2009 the complainant’s lawyer wrote to the Director General to complain of the Organization’s violation of its duty to protect his client, *inter alia*, and to invite him urgently to address the situation which she had brought to his attention. On 22 December 2009 the Legal Counsel of WIPO replied that he had been informed that the complainant had never sent the Director of the Internal Audit and Oversight Division a request for the opening of a formal investigation into her allegations in relation to intruder attacks on her computer and the sending of the above-mentioned e-mail.

It is that letter which forms the subject of the complaint now before the Tribunal.

2. Although this complaint, like those forming the subject of Judgments 3185 and 3186, also delivered this day, lies within its competence, the Tribunal considers that it is irreceivable, because the letter of 22 December 2009, in which the Legal Counsel informed the

complainant that the Director of the Internal Audit and Oversight Division had never received a request from her to open an investigation, could not be regarded as a decision causing injury.

3. However, the Tribunal notes from the evidence in the file that, after the complaint was filed, the director of the above-mentioned division informed the complainant by a memorandum dated 30 August 2010 (but in fact of 20 September 2010) that he had decided to close the investigation opened on 6 June 2008. The complainant shall be entitled to challenge that decision before the Organization's internal appeal bodies, if she so wishes, within the time limits laid down in the applicable rules, which shall run as from the date of the delivery of this judgment.

4. The complainant infers from the said memorandum that the information given to her on 22 December 2009 was wrong. In her opinion WIPO should be ordered to pay her damages for the moral injury it has thus caused her.

Since the Tribunal need not rule on the merits of the complaint, it will not grant either this claim or the claim of costs.

5. It follows from the foregoing that the complaint must be dismissed in its entirety.

6. WIPO asks the Tribunal to order the complainant to defray its costs on the grounds that the complaint is vexatious. The Tribunal considers that the Organization's request is particularly unfounded in view of the mistake that it made in wrongly advising the complainant in its letter of 22 December 2009 that no investigation had been opened after the lodging of her complaint.

DECISION

For the above reasons,

1. The complaint is dismissed, as is WIPO's counterclaim.
2. The complainant may, if she so wishes, challenge the decision of which she was notified by a memorandum dated 30 August 2010, as indicated under 3 above.

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