

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

116th Session

Judgment No. 3246

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. G. against the World Intellectual Property Organization (WIPO) on 5 October 2010 and corrected on 5 and 15 November 2010, the Organization's reply of 17 February 2011, the complainant's rejoinder of 25 March, WIPO's surrejoinder of 29 June, the complainant's further submissions of 18 June and the Organization's final observations thereon dated 26 July 2011;

Considering the interlocutory order contained in Judgment 3145, delivered on 4 July 2012, and the order of the same date, by which the President of the Tribunal appointed a doctor to carry out a medical examination, in Switzerland, in order to determine whether the complainant's symptoms resulted from ergonomically unsound working conditions, or whether they had a different origin;

Considering the letter of 22 August 2012 in which the *Centre d'expertise médicale* informed the Registrar of the Tribunal that the complainant had not kept the appointment set for her;

Considering the correspondence recording various attempts to arrange a medical examination in the United Kingdom, the complainant's country of residence;

Considering the letter of 3 May 2013 by which the Registrar asked the complainant to inform her, within 60 days, whether she agreed to undergo a medical examination nearer to her home and the e-mail of 5 July 2013 in which the complainant stated that she was “unable to attend any further medical appointments which [would] cause yet further delays”;

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;

CONSIDERATIONS

1. The complainant requests the setting aside of the decision of 7 July 2010 constituting the reply of the Director General of WIPO to her claim for compensation for the consequences of her deteriorating state of health which, in her opinion, was due to the Organization’s breach of its obligation to provide her with a “safe working environment which would not damage [her] health in any way”.

In addition, she asks the Tribunal to award her various sums corresponding inter alia to her health insurance premiums and what she considers to have been her loss of earnings, as well as costs.

In Judgment 3145, delivered on 4 July 2012, the Tribunal found that the fundamental question in this case was whether the complainant’s health problems were originally work-related. As it considered that it was unable to decide that question on the basis of the available evidence, the Tribunal ordered, prior to judgment, a medical examination to be conducted, at the Organization’s expense, by a specialist appointed by the President of the Tribunal.

2. By an order of the same date, the President of the Tribunal appointed a doctor of the *Centre d’expertise médicale* in Nyon (Switzerland) to carry out this examination.

After the specialist informed the Tribunal that the complainant had not kept the appointment which had been set for her, the Registrar asked her for the reasons for this failure to appear. The complainant then explained that her state of health had precluded travel. However, the various attempts to arrange a medical examination in the United Kingdom, the complainant's country of residence, were unsuccessful because she merely replied that, in her opinion, any further medical examination would be pointless.

By a letter of 3 May 2013 the Registrar informed the complainant that she was running the risk that the Tribunal might find that she had not enabled it to rule on the merits of her claims and that it would have no option but to dismiss her complaint if she was still unwilling to undergo the medical examination which had been ordered. The complainant merely indicated, in an e-mail of 5 July, that she saw no point in undergoing any further medical examination. She did not alter this position on 29 August after the Registrar had informed her that her case would be heard by the Tribunal at its session in November 2013.

The Tribunal finds that, as the complainant wilfully refused to undergo the specialised medical examination ordered in Judgment 3145, it is not in a position to rule on her complaint, which must therefore be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 November 2013, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Claude Rouiller
Seydou Ba
Patrick Frydman
Catherine Comtet