

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**B.**  
**v.**  
**WIPO**

**122nd Session**

**Judgment No. 3645**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. B. against the World Intellectual Property Organization (WIPO) on 7 February 2014, WIPO's reply of 5 June, the complainant's rejoinder of 10 September and WIPO's surrejoinder of 23 December 2014;

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, a former staff member of WIPO, contests the rejection of her request to open an investigation into alleged misconduct on the part of the Director General.

The complainant joined WIPO in June 2011 as Strategic Adviser to the Director General and she tendered her resignation on 23 November with effect from 2 December 2012.

On 30 November 2012 she wrote to the Director of the Internal Audit and Oversight Division (IAOD) requesting that he open an investigation into possible violations by the Director General of the Standards of Conduct for the International Civil Service, WIPO Staff Regulations and Rules and applicable office instructions. In support of her request she submitted copies of emails that she had received and

which she said she believed demonstrated, on the part of the Director General, a pattern of degrading treatment, discrimination and abusive behaviour towards staff, a lack of respect for member states and their officials, and possible defamation.

By letter of 2 May 2013 the Director of IAOD informed her that, after having consulted the Independent Advisory Oversight Committee in accordance with applicable rules on possible conflict of interest, the IAOD proceeded with the preliminary evaluation of her “complaint”. Pursuant to that preliminary evaluation, the Director of IAOD concluded that the emails she had produced did not provide a legitimate basis to support allegations of wrongdoing against the Director General and did not warrant an investigation. He also considered the documentary and testimonial evidence gathered by IAOD during the preliminary investigation. He concluded that no investigation was warranted and therefore decided to close the case and take no further action. On 1 July the complainant’s counsel wrote to the Director General requesting a review of the decision of 2 May suggesting it was, *inter alia*, tainted by a gross conflict of interest, and requesting that an independent external investigation of the misconduct allegations be undertaken.

On 11 October the complainant filed an appeal with the Appeal Board as she had not received a reply to her request for review of 1 July within the prescribed eight weeks. By a letter of 25 October 2013 the Chair of the Appeal Board informed the complainant that he considered her appeal to be manifestly irreceivable as the Appeal Board had no jurisdiction in the case of a former staff member, in particular when the appeal did not relate directly to a decision taken at the time of separation and when the request for review to the Director General was filed too late. During its meeting in November 2013, the Appeal Board endorsed the Chair’s decision and summarily dismissed the complainant’s appeal.

On 7 February 2014 the complainant filed a complaint with the Tribunal against the implied rejection of her request for review of 1 July 2013.

The complainant requests the Tribunal to quash the decision of 2 May 2013 and to order that an independent, external investigation be conducted into her allegations of misconduct, and that the investigators

be appointed by and report their results directly to the WIPO General Assembly for appropriate action. She also seeks costs and asks the Tribunal to order any other relief it deems just and appropriate. She waives her right to receive moral or exemplary damages explaining that her complaint was filed only “to benefit WIPO and its staff”.

WIPO asks the Tribunal to dismiss the complaint on the grounds that it is time-barred and that the complainant has no cause of action. In any event the complaint is unfounded. It asks the Tribunal to award costs in favour of WIPO on the grounds that the complaint is vexatious.

#### CONSIDERATIONS

1. The complainant is a former WIPO staff member who held the post of Strategic Adviser to the Director General. The complainant commenced her employment with WIPO on 20 June 2011, and resigned on 23 November 2012, with an effective date of 2 December 2012.

2. On 30 November 2012, the complainant requested that the Director of the IAOD open an investigation into possible violations by the Director General of the Standards of Conduct for the International Civil Service, the WIPO Staff Regulations and Rules, as well as the applicable office instructions. Accompanying the request were a series of emails written by the Director General and obtained by the complainant during her employment as Strategic Adviser to the Director General. The emails allegedly showed a pattern of degrading treatment, discrimination and abusive behaviour towards staff; a lack of respect for member states and their officials; and possible defamations of WIPO personnel and others.

3. On 3 December 2012, the Director of the IAOD acknowledged receipt of the complainant’s 30 November 2012 request and informed her that the information she had submitted would be the subject of a preliminary evaluation.

4. On 11 December 2012, the complainant submitted two additional documents to the Director of the IAOD in support of her request for a misconduct investigation. The documents purportedly showed that WIPO's Safety and Security Coordination Service (SSCS) had collected personal objects from the offices of a number of staff members, which were then delivered to the Swiss police for DNA analysis, without the knowledge or permission of the affected staff members. The complainant claimed that SSCS might have acted under indirect instructions from the Director General, who was Deputy Director General at the time of the alleged wrongdoing.

5. After the completion of the preliminary evaluation of the requested investigation, on 2 May 2013 the Director of the IAOD informed the complainant that the emails she produced did not provide a legitimate basis to support the allegations of wrongdoing against the Director General or to warrant an investigation. As to the additional documents submitted on 11 December 2012, the testimonial evidence gathered during the preliminary evaluation demonstrated the allegations were unfounded. The Director of the IAOD also addressed additional concerns raised by the complainant regarding the amounts expended on settlement agreements but concluded that an investigation into the matter was not necessary. Lastly, the Director of the IAOD advised the complainant that the case was closed and no further action would be taken.

6. On 1 July 2013, counsel for the complainant requested the Director General to review the Director of the IAOD's decision to forego an investigation into her complaint. The request for review was based on an apparent conflict of interest between the Director of the IAOD and the Director General; a failure to apply the appropriate standard of proof during the preliminary evaluation; and an alleged improper intervention by members of WIPO's governance organs during the preliminary evaluation. The Director General was also asked to recuse himself from the appeal on account of the alleged conflict of interest and to direct the matter to the Chair of the WIPO General Assembly for a final administrative decision.

7. Having not received a reply from the Director General within the eight weeks stipulated in Staff Rule 11.1.1(b), on 11 October 2013, the complainant filed a statement of appeal against the Director General's implied rejection of the request for review with the Chair of the Appeal Board. On 25 October 2013, the Chair of the Appeal Board rejected the appeal as being manifestly irreceivable on the ground that the complainant, as a former staff member, did not have a cause of action. Subsequently, at its meeting in November 2013, the Appeal Board upheld the Chair's decision and summarily dismissed the complainant's appeal as clearly irreceivable and devoid of merit.

8. On 7 February 2014 the complainant filed her complaint with the Tribunal. In her complaint brief, she characterizes her appeal as directed against the Director General's implied rejection of her 1 July 2013 request for review of the decision of the Director of the IAOD not to conduct a full misconduct investigation into her allegations of wrongdoing. The complainant seeks a quashing of the 2 May 2013 decision and requests an independent, external investigation to be conducted into her allegations of misconduct. However, the complainant expressly waives her right to receive moral or exemplary damages on the basis that she brings her complaint "intending only to benefit WIPO and its staff". Additionally, the complainant requests the Organization to disclose a host of documents pertaining to her 30 November 2012 request for investigation. The complainant also asks for an oral hearing.

9. WIPO denies that the complainant is entitled to the relief sought, both on the basis of receivability and on the merits. The Organization also makes a counterclaim for costs, as it considers the complaint to be vexatious and blames the complainant for an alleged "leak" of the complaint to the media in breach of the confidentiality attached to legal proceedings filed before the Tribunal.

10. WIPO contends that the complaint is irreceivable for having been filed outside the ninety-day time limit prescribed by Article VII, paragraph 2, of the Tribunal's Statute and for lack of a cause of action under Article II. In support of its submission that the complaint is time-

barred, the Organization takes the position that WIPO's internal appeal system is not available to her as a former staff member and that a direct appeal to the Tribunal was the appropriate course of action. Having failed to file her complaint within the ninety-day period set out in Article VII, paragraph 2, the complaint is irreceivable. Specifically, the Organization points out that the complainant was notified of the decision of the Director of the IAOD on 3 May 2013. Accordingly the complainant had until 2 August 2013 to file her complaint with the Tribunal. However, she did not file her complaint with the Tribunal until 7 February 2014, well outside the ninety-day time limit.

11. The complainant asserts that her complaint is fully receivable. She submits that since her 30 November 2012 request for the investigation was made while she was still a serving staff member, she was required and entitled to appeal the 2 May 2013 decision in accordance with WIPO's Staff Rules governing internal appeals. Having exhausted the internal means of redress and not having received a final decision from the Director General, the complainant maintains that her internal appeal has been implicitly rejected by WIPO and that her complaint is receivable under Article VII, paragraph 3, of the Tribunal's Statute.

12. The complainant also argues that the Tribunal has consistently held that where an appeal is filed with an organization that is beyond its competence, it has a duty of care to inform the appellant and to direct her or him to the appropriate authority. The complainant states that this duty of care continues for former staff members, especially in respect of cases or decisions pending at the time of their separation from service. In the present case, the complainant maintains that the Organization first became aware of her mistaken belief that the internal appeal mechanism was available to her when she filed her request for review on 1 July 2013. Had the Organization advised her at that time of its belief that a direct appeal to the Tribunal was necessary, she would have been able to do so within the time frame required by Article VII. By failing to meet its duty of care, the Organization should be estopped from pleading irreceivability.

13. As the complaint does not disclose a cause of action, it does not meet the requirement of Article II, paragraph 5, of the Statute. As WIPO points out, even if the complainant had still been in the Organization's employ, the complainant was only a reporter of the misconduct, as such, the decision to close the case did not in any way implicate the terms and conditions of her employment. The complainant's reliance on Judgment 2654 is misplaced. In that case the complainant alleged in her internal complaint that she had been the victim of the harassing conduct about which she had complained. It was in these circumstances that the Tribunal recognized an obligation on the part of the organization to conduct an inquiry and investigate and its failure to do so resulted in a breach of duties which were actionable. This case is quite different. Additionally, the complainant has not claimed to have suffered any loss, damage or other injury stemming from the 2 May decision or the conduct the subject of her initial request for investigation. On this basis the complaint is irreceivable and it is unnecessary to determine whether it is also irreceivable because it is time-barred.

14. The remaining issue concerns the Organization's request for costs on the basis that the complaint is vexatious and that the complainant allowed the complaint to be leaked to the media in breach of the confidentiality attached to proceedings before the Tribunal. Both grounds for the counterclaim must fail. In the circumstances of this case, there is no evidence that would allow the Tribunal to characterize the complaint as vexatious. Nor has the Organization substantiated its claim that the complainant was responsible for the dissemination of the complaint to the media. Accordingly, the counterclaim must be rejected.

15. In the circumstances, the complainant's request for documents is rejected and her application for an oral hearing is denied.

#### DECISION

For the above reasons,

The complaint is dismissed, as is WIPO's counterclaim.

In witness of this judgment, adopted on 12 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ