Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

N. (No. 10)

v.

WIPO

(Application for execution)

124th Session **Judgment No. 3823**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3225 filed by Ms S. N. on 18 December 2015 and corrected on 26 January 2016, the reply of the World Intellectual Property Organization (WIPO) of 2 May, the complainant's rejoinder of 25 July, corrected on 28 July, and WIPO's surrejoinder of 31 October 2016;

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

Having examined the written submissions;

CONSIDERATIONS

1. This application for execution concerns Judgment 3225, delivered in public on 4 July 2013, of which the decision and consideration 9, to which the decision refers, read as follows:

Decision in Judgment 3225:

"1. The impugned decision is set aside.

2. WIPO shall examine the complainant's rights as indicated under 9 [...].

3. It shall pay the complainant compensation in the amount of 3,000 euros for moral injury.

4. It shall also pay her 3,000 euros in costs.

5. All other claims are dismissed."

Consideration 9 of Judgment 3225:

> "Although, during those 13 years [of short-term contracts], the complainant regularly obtained promotion and at the end of that period was given a fixed-term contract, she nonetheless suffered material injury, the amount of which must be determined. It will be incumbent upon the Organization to pay the complainant any additional salary and the financial benefits of all kinds to which she would have been entitled had she received a fixed-term appointment as from 14 May 1999. Any sums due shall bear interest at the rate of 5 per cent per annum from their due dates until their date of payment."

2. The complainant alleges that the defendant did not execute that judgment properly as, when reconstructing her career, it refused to re-classify her at the grade which, in her view, she should have held considering the duties that she actually performed during her employment under successive short-term contracts. She submits that those duties were described in Judgments 3185, 3186 and 3187, which were delivered before Judgment 3225 and which also have *res judicata* authority on this issue. The defendant's duty to re-classify her was, according to her, confirmed by Judgment 3270, which was rendered after Judgment 3225.

3. At this stage, a brief review of the subject matter of the aforementioned judgments is useful.

(a) In Judgment 3185, the Tribunal set aside an evaluation report for the period 1 April 2008 to 31 March 2009 on the grounds that it took into consideration mistakes that had been attributed to the complainant and recorded systematically without her knowledge and that, relying on the publication of an office instruction, it wrongly called into question the definitive appraisal of her services during the previous evaluation period.

In Judgment 3186, in view of the complainant's failure to exhaust internal means of redress, the Tribunal did not examine the merits of a complaint seeking the setting aside of a decision rejecting several job applications made by the complainant and appointing other candidates to the posts to which she aspired.

Lastly, in Judgment 3187 the Tribunal likewise did not examine the merits of a complaint directed against the refusal to investigate allegations of unauthorized access to the complainant's computer; the

decision to close the file was taken during the proceedings before the Tribunal and the complainant was therefore entitled to take her case to the Organization's internal appeal bodies.

Those three judgments, delivered in public on the same day, were the first to be rendered on the complainant's complaints. Their summaries of the facts and the initial considerations of Judgments 3185 and 3186 gave brief details of her career at WIPO and, in particular, the position that she had held since 2001. Those details merely repeated information provided by the defendant in its submissions. In the present proceedings, the complainant submits that WIPO, which was required by Judgment 3225 to evaluate the injury in respect of which compensation was due, was bound by those facts, yet it failed to take them into account, despite the fact that, in the complainant's view and as has just been stated, they too were *res judicata*.

The Tribunal observes that the points of fact to which the complainant refers are plainly not *res judicata.* These arguments are hence completely devoid of merit.

(b) In Judgment 3270, the Tribunal ruled that the complainant's seventh complaint had become moot insofar as it concerned the issue of whether the promotion to grade G5 that she was granted with effect from 1 June 2011 should have been awarded retroactively. In that judgment, delivered in public on 5 February 2014, some six months after the public delivery of Judgment 3225, the Tribunal stated the following:

> "7. With regard to the claims to reimbursement of the internal tax levied on the complainant's salary, as already stated, pursuant to Judgment 3225, WIPO must retroactively place the complainant in the situation which would have been hers had she received a fixed-term contract as from 14 May 1999. Since persons holding such contracts are subject to internal taxation, this claim is groundless and must therefore be rejected, without there being any need to rule on its receivability.
>
> 8. The question arises whether Judgment 3225 has not rendered the complainant's other claims groundless.
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> That judgment did not expressly deal with each of the requests made by the complainant in her memorandum of 30 May 2011 [in which she disputed the date on which her classification at grade G5 became effective] but they are closely related to her career path during the period when she held successive short-term contracts. Indeed, both parties' arguments in their

> submissions to the Tribunal are mainly based on the complainant's status prior to 1 June 2012 [the date on which she was given a fixed-term contract].
>
> The correct execution of Judgment 3225, in accordance with consideration 9 thereof, is sufficient to place the complainant in the situation to which she legitimately aspired when she rightly disputed the precarious position in which she had been placed. It is therefore precisely in this context that WIPO will have to determine whether the claims set out in the memorandum of 30 May 2011 are well-founded, it being understood that the complainant is not entitled to financial benefits greater than those which she would have obtained if her employment relationship had been reclassified at the correct time.
>
> In these circumstances, it must be found that Judgment 3225 has rendered the claims in question moot."

4. Under Article VI, paragraph 1, second and third sentences, of the Statute of the Tribunal, the Tribunal's judgments are final and without appeal, but it may consider applications for interpretation, execution or review of those judgments. As the case law has consistently stated (since Judgment 82, under 6), the Tribunal's judgments are therefore immediately operative, a principle also stemming from their *res judicata* authority. International organisations that have recognised the Tribunal's jurisdiction are bound to take whatever action is required by a judgment, which must be executed as ruled (see, for example, Judgments 1887, under 8, 3003, under 12, 3152, under 11, and 3394, under 9). Furthermore, the parties must work together in good faith to execute judgments. Execution must occur within a reasonable period of time, having regard to all the circumstances of the case, especially the nature and the extent of the action which the organisation is required to take (see, for example, Judgments 2684, under 6, 3066, under 6, and 3656, under 3).

5. In this case, the action required of the defendant is clearly set out in consideration 9 of Judgment 3225. Both parties acknowledge, moreover, that this judgment is not open to interpretation. Such is also the case of Judgment 3270.

However, the complainant contends, as stated above, that WIPO has misunderstood what Judgment 3225 entails, as it refuses to reconstruct her career, in terms of her classification, from the date on

which her second short-term contract became effective. She also argues that WIPO has not correctly executed Judgment 3225 since it has not paid her the additional salary due to her for the periods of breaks in service which were imposed on her when each of her short-term contracts was renewed.

The merits of each of these criticisms will to be examined in turn.

6. According to the complainant, WIPO breached the principle of equal treatment and its duty to assign to each post the appropriate grade in the post structure. In her view, the designation of her functions shown in her contracts was not decisive; her initial post of pamphlet maker should have been classified at grade G3 instead of G2 and her subsequent post of assistant examiner should have been classified at grade G5 from the outset, and not at grade G3 and then G4, as was the case.

That plea is devoid of merit. It amounts to an attempt to open a discussion on another issue, namely whether WIPO correctly evaluated the nature of the duties assigned to the complainant during the period when she worked under short-term contracts. However, she does not provide sufficient evidence to establish that the duties that she actually performed during that period would have been classified differently had she been employed under a fixed-term contract, which is the only material issue with regard to Judgment 3225, and likewise Judgment 3270, which refers to Judgment 3225.

7. In the complainant's view, WIPO failed in its duty to "redefine breaks between contracts as periods of service, given that those periods did not interrupt [her] continuity of service". This plea is similarly without merit. Although the injury asserted by the complainant in this regard is among those that had to be redressed pursuant to Judgment 3225, it is clear that WIPO did discharge that obligation and that the reproach made in the present application arises from a misunderstanding, as the defendant states in its reply. The explanations provided in the reply and supporting documents suffice to persuade the Tribunal that the additional payments due in this respect pursuant to Judgment 3225 were effected to the complainant in full.

8. The application for execution must therefore be dismissed in its entirety, including the claim for reimbursement of the costs incurred by the complainant in commissioning an expert inquiry by an accountant, which she did of her own accord without the need for such a measure being established.

DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 28 April 2017, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ