

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**N. (A.) (No. 4)**

**v.**

**WIPO**

**127th Session**

**Judgment No. 4087**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr A. N. against the World Intellectual Property Organization (WIPO) on 22 January 2015 and corrected on 7 March, WIPO's reply of 15 June, the complainant's rejoinder of 11 September and WIPO's surrejoinder of 21 December 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the validity of a competition procedure in which he took part and the lawfulness of the ensuing appointment.

The complainant entered the service of WIPO in 1999. At the material time, he was performing duties at grade P4. On 27 April 2010 WIPO published a vacancy announcement for the grade P5 position of Head, Operations Service. The complainant applied and was shortlisted and interviewed by the selection panel, but his application was unsuccessful. Having exhausted all internal means of redress, he filed a complaint with the Tribunal, on 15 February 2012, challenging the validity of the competition procedure and the lawfulness of the appointment of Ms V. This complaint – his second – culminated in

Judgment 3421, delivered in public on 11 February 2015, in which the Tribunal set aside the appointment in question and ordered that the competition procedure be resumed at the stage at which it became flawed, namely when the shortlisted candidates were interviewed.

On 3 May 2013, shortly before the surrejoinder in the case leading to Judgment 3421 was filed, the Organization published a new vacancy announcement for the grade D1 post of Director, Operations Division. The complainant submitted an application and, on 13 June, asked whether the post had been advertised as a result of the reclassification of the P5 post occupied by Ms V. He received a reply in the negative. In a memorandum of 23 August 2013, the complainant informed the Administration that, having consulted the electronic recruitment management system, he noted that he had not received the e-mail of 16 July 2013 which should have notified him that his application had been rejected; he asked to be provided with the reasons why his application had been rejected and with information on the procedure followed by the Appointment Board. By a memorandum of 10 September 2013, he asked the Director General to review the decisions to reject his application and to appoint Ms V. at the end of the competition, asserting that she did not meet the required criteria for the post, in particular with regard to the required diploma. The complainant also asked why the grade D1 post had been created and whether the grade P5 post formerly occupied by Ms V. would be put up for competition.

On 18 September 2013, in reply to his memorandum of 23 August, the complainant was informed that for “some users”<sup>\*</sup> of the electronic recruitment management system, there had been an e-mail malfunction, that the reason for the rejection of his application was that in terms of experience, he “did not meet [...] all of the required qualifications for the post”<sup>\*</sup> and that, for reasons of confidentiality, his requests for information could not be granted. By a letter of 1 November 2013, the complainant was informed that his request for review had been rejected, that the grade D1 post had been created in response to an increase in workload requiring leadership and coordination capacity at the executive

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<sup>\*</sup> Registry’s translation.

level, that the grade P5 post was to be reallocated to another division and that it would be re-advertised in due course.

On 29 January 2014 the complainant referred the matter to the Appeal Board seeking the setting aside of the decision of 1 November 2013 and of the decisions resulting from the disputed competition, the resumption of the competition procedure, redress for the injury that he claimed to have suffered and an award of costs. On 18 July 2014, since the Appeal Board considered that the complainant was entitled to know the reasons why his application had been unsuccessful, he was sent a redacted copy of the report of the Appointment Board, on which he had the opportunity to comment.

In its conclusions of 25 August 2014, the Appeal Board recommended that the Director General dismiss the appeal, since the complainant did not meet the criterion of 15 years of professional experience required in the vacancy announcement. By a letter of 24 October 2014, which constitutes the impugned decision, the complainant was informed of the Director General's decision to accept the Appeal Board's recommendation and dismiss his appeal on the grounds that he had no cause of action.

The complainant asks the Tribunal to set aside the impugned decision, as well as the other decisions resulting from the disputed competition procedure and the vacancy announcement, to declare the reclassification of the disputed post "legally non-existent", to redress all of the injury which he considers he has suffered and to award him costs in the amount of 8,000 euros for the internal appeal proceedings and the proceedings before the Tribunal. He further requests the Tribunal to order the disclosure of the competition file and the documents upon which the Appeal Committee relied in concluding that he did not have the required number of years of experience. He also asks the Tribunal to order Ms V. to produce a copy of the diploma of which she had availed herself and WIPO to produce a copy of the documents that it had to obtain from Ms V. in order to ascertain whether she held the requisite diplomas or, if they are not able to do so, to "provide explanations

accordingly”\*. In his rejoinder, the complainant challenges the receivability *ratione temporis* of the reply.

WIPO asks the Tribunal to dismiss the complaint as irreceivable because the complainant has no cause of action and, subsidiarily, as unfounded. It explains that the complainant has already been provided with all relevant information concerning the competition and maintains that he is not entitled to consult the competition file. At the request of the Tribunal, it forwarded a copy of the complaint to Ms V. and invited her to share any observations, but she did not wish to comment. In its surrejoinder, WIPO provides evidence that its reply was filed within the prescribed time limits.

#### CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 24 October 2014 whereby the Director General, in accordance with the Appeal Board’s recommendation, dismissed his appeal against the result of the competition opened to fill the post of Director, Operations Division, in which he had taken part, on the grounds that he had no cause of action.

2. The complainant asks the Tribunal to disregard the defendant’s reply as irreceivable because it was received by the Registry of the Tribunal only on 16 June 2015, whereas the time limit expired on 15 June 2015.

However, the evidence on file shows that the time limit prescribed by the Registry was respected. It should be recalled that the date of filing of complaints and briefs before the Tribunal is, in principle, the date on which they are sent and not the date on which they are received by the Registry (see, for example, Judgment 3566, consideration 3). The file contains a delivery receipt showing that the reply was deposited at the International Labour Office, secretariat of the International Labour Organization, where the Tribunal is based, on 15 June 2015. As the

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\* Registry’s translation.

reply was thus sent on that date at the latest, that is within the prescribed time limit, which expired that evening, the complainant is wrong to claim that it was filed late (see Judgment 3648, consideration 2).

3. The defendant challenges the receivability of the complaint on the grounds that the complainant has no cause of action. As the lack of a cause of action constitutes the very reason for the impugned decision, this objection to receivability is, in this case, directly linked to the merits of the complaint.

4. The Director General's decision to dismiss the complainant's appeal for lack of a cause of action was based on the fact that the complainant "did not meet the requirements of the post (in terms of the minimum number of years of extensive professional experience required)".

The Tribunal finds this reason to be well founded. According to the vacancy announcement in question, in order to be eligible for appointment, candidates had to possess at least "15 years of extensive professional experience, including in leading positions in the field of protection of intellectual property rights, in particular in the area of trademarks".

5. The complainant submits that the impugned decision is tainted by an error of fact in that, contrary to the view of the Director General, he did have the minimum of 15 years of professional experience required by the vacancy announcement. In support of this assertion, he produces before the Tribunal a document downloaded from the Organization's Intranet on 16 September 2014, which indicates that the total length of his professional activity, on that date, was 16 years and 11 months.

6. However, the Tribunal notes, firstly, that pursuant to Article 3(b) of the Rules of Procedure of Appointment Boards, "[t]he Board shall deliberate on the basis of the individual application files submitted by the candidates". The complainant's description of his experience provided in his application file, which obviously did not

include the subsequent document referred to above, showed that he had less than 15 years of professional experience. Secondly and above all, having examined the document produced by the complainant, the Tribunal finds that in order to consider that he possessed at least 15 years of professional experience that was relevant based on the vacancy announcement, a period of service (from October 1996 to August 1997) during which the complainant worked as an educational assistant in a school would have to be taken into account. However, this period of activity clearly cannot be regarded as a period of professional experience relevant to the post in question and it therefore could not be taken into account.

The Director General was therefore right to consider that the complainant did not meet the condition of minimum length of professional experience stipulated in the vacancy announcement. Therefore, even though he was admitted to the competition, through an error on the part of the Organization, the complainant was not, in fact, eligible for appointment to the post in question.

7. In accordance with the Tribunal's well-established case law, an official has no cause of action to challenge the decision to appoint another official to a post if she or he is not eligible for appointment to that post (see, for example, Judgments 2832, consideration 8, and 3644, consideration 7). In view of the complainant's lack of a cause of action, all other pleas that he raises against the impugned decision are of no avail. In light of the above considerations, the complaint must be dismissed in its entirety.

8. Nonetheless, the Tribunal notes that the defendant Organization's practice of admitting, in recruitment competitions, applications from officials who do not meet the conditions stipulated in the vacancy announcement, which, amongst other things, has the effect of raising ill-founded hopes that they might be appointed, gives rise to administrative problems that it would be advisable to avoid.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 14 November 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

*(Signed)*

PATRICK FRYDMAN

FATOUMATA DIAKITÉ

YVES KREINS

DRAŽEN PETROVIĆ