

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**D. (No. 4)**

*v.*

**WIPO**

**139th Session**

**Judgment No. 4965**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Ms N. D. against the World Intellectual Property Organization (WIPO) on 13 October 2020 and corrected on 14 December 2020, WIPO's reply of 14 April 2021, the complainant's rejoinder of 1 May 2023 and WIPO's surrejoinder of 2 August 2023;

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 contests the decision, taken without an investigation, to dismiss her complaint of harassment against Mr S.

Facts relevant to this case may be found in Judgment 4846, concerning the complainant's first complaint, and in Judgments 4964, 4966, 4967, 4968, 4969 and 4970, also delivered in public this day, concerning the complainant's third, fifth, sixth, seventh, eighth and tenth complaints, respectively.

On 15 May 2016, the complainant started working as Evaluation Officer, at grade P-3, in the Evaluation Section of the Internal Oversight Division (IOD), under the supervision of Mr E., who was a P-5 staff member at the time, and Head of the Internal Audit Section and had

been designated as Acting Director, IOD. The IOD comprised of three sections: Evaluation, Investigation, and Internal Audit.

On 24 May 2017, the IOD received an anonymous complaint stating that the complainant had engaged in unauthorized outside activities while being a WIPO staff member. On 31 May, the complainant was notified of the opening of an investigation against her. The investigation was outsourced to an external investigation company, which issued its report in January 2018. On 22 February 2018, the Director, Human Resources Management Department (HRMD), informed the complainant that the investigation substantiated that she had engaged in two unauthorized outside activities but that the Director, HRMD, had decided not to institute disciplinary proceedings against her and to close the matter without further action.

On 12 September 2017, the complainant filed a complaint of harassment, including sexual harassment, against Mr E.

In May 2018, new information arose about the complainant's engagement in another unauthorized outside activity. A new investigation was launched, which was entrusted to the same external investigation company which had conducted the first investigation.

In an email dated 16 August 2018 addressed to the Director General, the complainant sought an extension of the 90-day time limit to file a harassment complaint, as provided in Staff Rule 11.4.1, which she stated was due to expire on 18 August 2018. She did not mention in her request who the alleged offender was. On the same day, the Director, HRMD, responded to the complainant that the Director General had decided to extend the time limit for her to file a harassment complaint from 90 days to 120 days, "on the assumption that [her] request [...] was submitted within the statutory 90-day time limit" and "without prejudice to the determination of the receivability of [her] complaint, if and when it is filed".

On 11 September 2018, the complainant filed a complaint of harassment against her colleague, Ms J.E., who worked in the Evaluation Section, IOD.

On 26 October 2018, the complainant filed a complaint of harassment against Mr S., Head of the Investigation Section, IOD, in which she alleged that Mr S. “ha[d] engaged in improper and unwelcome conduct in 2017 which created for [her] an intimidating, hostile and offensive work environment as defined in [Office Instruction] 47/2016 at paragraphs 10 (a) abuse of authority; and 10(d), harassment”. On 30 October, the Director General, taking note that the complaint was directed against an IOD staff member, sought the advice of the Independent Advisory Oversight Committee (IAOC) on how to proceed, pursuant to paragraph 19 of the Internal Oversight Charter. The IAOC advised that, before considering whether the matter should be investigated, the complaint should first be shared with Mr S. for his comments.

On 16 November 2018, Mr S. submitted his response to the complainant’s complaint of harassment. On 19 November, the IAOC advised the Director General to proceed with the review of the complaint in accordance with Staff Rule 11.4.1 and Office Instruction 47/2016. On 20 December 2018, Mr S.’s response was transmitted to the complainant.

By letter of 11 January 2019, the Director General informed the complainant of his decision to dismiss her complaint of harassment against Mr S. as time-barred and devoid of merit.

On 11 March 2019, the complainant resigned from WIPO, with effect from 11 April 2019.

On 10 April 2019, the complainant lodged an appeal with the WIPO Appeal Board (WAB), directed against the 11 January 2019 decision.

In its report dated 6 May 2020, the WAB concluded that there was no *prima facie* evidence that the alleged actions by Mr S., “considered both individually and cumulatively, could reasonably be interpreted as constituting a form of harassment, in accordance with the definition laid down in paragraph 10(d) of the [Office Instruction] 47/2016, as such to warrant the referral for an independent investigation pursuant to paragraph 21 of the said [instruction]”. As a result, the WAB recommended that the complainant’s appeal be dismissed as unfounded.

It further recommended that the complainant be granted moral damages for the delay in issuing its report.

By letter of 6 July 2020 from the Director, HRMD, the complainant was notified of the Director General's decision to dismiss her appeal as unfounded and to award her 600 Swiss francs for the delay in the internal appeal procedure, without "find[ing] it necessary to take a decision on the threshold procedural issue of whether or not [her] [a]ppel was receivable", but "reserv[ing] its position in relation to the issue of receivability, should [the complainant] decide to take the matter further". That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order that an investigation into her complaint of harassment against Mr S. be conducted by an "independent, reputable, external investigation company" which would agree not to conduct any other assignment for WIPO for the next five years. She claims material, moral and exemplary damages, including for the "dismissal by the Director General of her harassment complaint without a proper, independent investigation" and "the excessive delay in completing the investigation", in the amount of at least 250,000 Swiss francs. Finally, she seeks the reimbursement of her legal fees, the payment of interest as well as "[s]uch other relief as is fair, just and necessary".

WIPO contends that the complaint is irreceivable and, in any event, unfounded, and asks the Tribunal to dismiss it in its entirety.

#### CONSIDERATIONS

1. This matter concerns a complaint, filed on behalf of the complainant alleging harassment against her by another member of staff of WIPO. The complaint, in a skeletal form, was filed by her lawyer on 13 October 2020.

2. WIPO raises, as a threshold issue (amongst others), whether the complaint is receivable having regard to Article VII of the Tribunal's Statute. Paragraph 2 of that article declares that for a complaint to be

receivable it must have been filed within 90 days after the complainant was notified of the impugned final decision.

3. In a letter dated 12 October 2020 by which the complaint was filed, the complainant's lawyer admits that the final decision on which the complaint is based, was received by him on or about 8 July 2020 and also admits, correctly, that the due date for filing a complaint with the Tribunal was 6 October 2020. He requested that the "tardy filing" be accepted by the Tribunal for reasons which he gave centrally concerning the health of his daughter who had, about this time, contracted the COVID-19 virus. As will emerge shortly, the Tribunal does not have a discretionary power to extend time under Article VII and, accordingly, whether the reasons given were compelling or not, is irrelevant.

4. The above request in the letter of 12 October 2020 was referred by the Registrar to the President of the Tribunal. The President decided to follow the normal procedure and not the summary procedure, with the caveat that the issue of receivability would be determined by the Judges called upon to rule on the case. The Tribunal notes in this regard that, according to Article 14 of the Tribunal's Rules, the President may shorten or extend any time limit set in accordance with these Rules or may, in exceptional cases, reopen a time limit which has expired and set a new one. However, Article 14 concerns time limits set by the Rules. In the present case the time limit is set by the Statute. Article 14 has, relevantly, no application (see, for example, Judgment 40, consideration 6).

5. Moreover, the Tribunal generally has no power to waive non-compliance with Article VII or to extend time so as to alter its effect (see, for example, Judgment 59, consideration 3). Plainly enough, the source of the Tribunal's powers and jurisdiction (and its limits) is the Statute. A necessary implication of Article VII, paragraph 2, is that those powers, and specifically the powers deriving from the competence of the Tribunal created by Article II, cannot be called in aid to alter the effect of Article VII, paragraph 2.

6. By operation of Article VII, paragraph 2, the complaint is irreceivable and should be dismissed. In these circumstances, it is unnecessary to grant the complainant's application for oral proceedings.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 16 October 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER