

**D. (No. 5)**

v.

**WIPO**

**139th Session**

**Judgment No. 4966**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Ms N. D. against the World Intellectual Property Organization (WIPO) on 15 October 2020 and corrected on 7 December 2020, WIPO's reply of 11 March 2021, the complainant's rejoinder of 30 April 2022 and WIPO's surrejoinder of 8 August 2022;

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 Ms J.E.

Facts relevant to this case may be found in Judgment 4846, concerning the complainant's first complaint, and in Judgments 4964, 4965, 4967, 4968, 4969 and 4970, also delivered in public this day, concerning the complainant's third, fourth, 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. Mr E. remained the Acting Director, IOD, until 1 February 2017, when Mr R.S. was appointed as the new Director. On 1 September 2017, Mr R.V. joined WIPO as Head of the Evaluation Section and became the complainant's direct supervisor.

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, Human Resources Management Department (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, in which she alleged that Ms J.E. "ha[d] engaged in improper and unwelcome conduct [...] 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 20 September, 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 the complaint should be shared with Ms J.E. for her comments.

On 12 November 2018, Ms J.E. submitted her response to the complainant's complaint of harassment. The IAOC then 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, Ms J.E.'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 Ms J.E. 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 18 May 2020, the WAB concluded that there was no *prima facie* evidence that the alleged actions by Ms J.E., “considered both individually and cumulatively, could reasonably and objectively 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]”. The WAB however noted the following, referring to two incidents that the complainant had described in her complaint as constituting alleged harassment: “Although there is nothing in the file to suggest that Ms. [J.E.] set out to unsettle the [complainant], the Board was of the view that Ms. [J.E.] failed to show, in some circumstances [...] professional courtesy towards the [complainant]. Considering Ms. [J.E.]’s higher grade and longer service than the [complainant], the Board believes that she could have been more careful when dealing with her colleague so as to preserve a collaborative professional relationship.” As a result, the WAB recommended that the complainant’s appeal be dismissed as unfounded but that “appropriate measures, in particular, to encourage Ms. [J.E.] to be more conscious of her actions and their impact on her colleagues and, more generally, to foster a culture of helpfulness and courtesy among colleagues” be taken. The WAB further recommended that the complainant be granted moral damages for the delay in issuing its report.

By letter of 17 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 650 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]ppeal was receivable”, but “reserv[ing] its position in relation to the issue of receivability, should [the complainant] decide to take the matter further”. Regarding the two incidents referred to by the WAB, the Director General considered that such events, “when considered in their specific context, were not of such a nature and gravity so as to warrant any measure vis-à-vis Ms. [J.E]”. 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 Ms J.E. 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. The complainant was, at relevant times, a member of staff of WIPO. She left the employ of the Organization in April 2019. On 11 September 2018, she lodged a complaint of harassment of her by another staff member, Ms J.E. Her complaint failed. Thereafter, she appealed to the WIPO Appeal Board (WAB) but was generally unsuccessful in persuading it she had been harassed. Her appeal was ultimately rejected by a decision of the Director General of 17 July 2020 which is the impugned decision in these proceedings.

2. The complainant sought oral proceedings, but the Tribunal is satisfied it is in a position to make a fair and balanced decision having regard to the written material provided by the parties.

3. WIPO raises, as a threshold issue, whether the complainant was out of time in introducing internally her grievance of alleged harassment by Ms J.E.

4. The time limit for submitting a complaint of harassment was found in Staff Rule 11.4.1 of the WIPO Staff Regulations and Rules. The provision required that a complaint must be submitted in writing within 90 calendar days from the date of the occurrence of the incident or the treatment complained of (or in the case of more than one incident, within ninety (90) calendar days from the occurrence of the last incident). The provision went on to require that the complainant describe the specific conduct that is the subject of the complaint and the specific circumstances under which it allegedly occurred. The complaint must be “accompanied by all relevant evidence available”. Office Instruction 47/2016 conferred a power on the Director General to extend the time limit and an extension must be requested before the time limit of 90 days had expired.

5. WIPO argues that having regard to the terms of the complaint submitted on 11 September 2018, the last incident of harassment involving Ms J.E. particularized in the complaint occurred on 8 March 2018 requiring the complaint, so it is alleged, to have been submitted by 7 June 2018. The complainant’s response is twofold. First, she argues there were incidents of harassment on 21 to 24 May 2018 and on 4 to 7 June 2018 and if this is correct the deadline, so she argues, would have expired on or about 20 August 2020. In her pleas in these proceedings, she alleges an incident of harassment on 12 November 2018.

6. The second element of the complainant’s response is that she sought and was given an extension of time in correspondence in August 2018. By email dated 16 August 2018, the complainant wrote to the Director General seeking that the time be extended to file a harassment

complaint noting that, as she perceived things, the 90-day deadline would expire on 18 August 2018. This led to a response on behalf of the Director General extending the time limit from 90 days to 120 days. This extension was subject to a caveat creating a condition subsequent in the following terms:

“This extension is granted on the assumption that your request below [for an extension] was submitted within the statutory 90-day time limit and is without prejudice to the determination of the receivability of your complaint, if and when it is filed. In particular, your attention is brought to paragraph 31 of Office Instruction No. 47/2016, ‘Workplace-related conflicts and grievances’ (OI attached for ease of reference), which provides that: ‘Extension of time limits shall be [...] requested before the time limit has expired [...]’”

7. Having regard to the caveat creating a condition subsequent (which relevantly repeats the provisions of Office Instruction 47/2016) and also the provisions of Staff Rule 11.4.1, a pivotal issue is whether the complaint alleged an incident of harassment, being the last incident of harassment in a course of harassing conduct, which had occurred within 90 days of the date of the request for an extension. The short answer is she does not. The most recent act of alleged harassment specifically attributable to Ms J.E. in the complaint occurred on 22 March 2018. Bearing in mind the requirement in Staff Rule 11.4.1 that the complainant describe the specific conduct that is the subject of the complaint and the specific circumstances under which it allegedly occurred, and that the complaint must be accompanied by all relevant evidence available, it could have been expected any very recent incidents of harassment would have been referred to in her complaint. The most recently reported incident of harassment in the complaint becomes the yardstick for evaluating the admissibility of the complaint (see, for example, Judgment 4900, consideration 29). The incident on 22 March 2018 was well beyond the 90 days in which the application for an extension should have been made. Accordingly, the condition subsequent was not satisfied and the extension was of no legal effect. Given these facts, it is patently the case that the harassment complaint filed on 11 September 2018 against Ms J.E. was also filed well beyond the 90 days in which the grievance should have been filed (as provided by Staff Rule 11.4.1) and was filed out of time.

8. As the complainant failed to prove that she has followed the procedure laid down in Staff Rule 11.4.1 and Office Instruction 47/2016 and in particular that she has observed the time limit set by the procedure, the Director General correctly decided that her harassment complaint was time-barred. Accordingly, her complaint filed before the Tribunal should be dismissed as unfounded.

#### 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