

D. (No. 6)

v.

WIPO

139th Session

Judgment No. 4967

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms N. D. against the World Intellectual Property Organization (WIPO) on 12 November 2020 and corrected on 12 January 2021, WIPO's reply of 15 April 2021, corrected on 22 May 2024, the complainant's rejoinder of 30 June 2023 and WIPO's surrejoinder of 2 October 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 R.V.

Facts relevant to this case may be found in Judgment 4846, concerning the complainant's first complaint, and in Judgments 4964, 4965, 4966, 4968, 4969 and 4970, also delivered in public this day, concerning the complainant's third, fourth, fifth, 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.

On 31 May 2018, the complainant had a meeting with Mr R.V. to discuss her performance appraisal. On 1 June 2018, the complainant attended another meeting about her performance in presence of Mr R.V., Mr R.S. and another member of staff who worked in the IOD. In August 2018, the complainant submitted a rebuttal of her performance appraisal for the period from June 2017 to May 2018, requesting that the rating of her performance be changed from "Effective performance" to "Outstanding performance".

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

Also on 11 September, the complainant filed a complaint of harassment against her supervisor Mr R.V., in which she alleged that Mr R.V. "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 2018, 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 Mr R.V. for his comments.

On 12 November 2018, Mr R.V. submitted his 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, Mr R.V.'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 R.V. as 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 16 June 2020, the WAB concluded that there was no *prima facie* evidence that the alleged actions by Mr R.V. “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: “Although there is nothing in the file to suggest that Mr. [R.V.] set out to unsettle the [complainant], the Board was of the view that he failed to take an adequate managerial response to address the roots of the known tension between the [complainant] and her colleague(s). Avoiding to address the problem by suspending Section meetings or by limiting interaction among staff of the Section was not a solution as evidenced by the number of complaints filed by the [complainant] and the number of appeal proceedings initiated by the [complainant].” As a result, the WAB recommended that the complainant’s appeal be dismissed but that appropriate measures be taken by the Director General “to address, in the Board’s view, the inadequate managerial response of [Mr R.V.]”. The WAB further recommended that the complainant be granted moral damages for the delay in issuing its report.

By letter of 14 August 2020 from the Director, Human Resources Management Department (HRMD), the complainant was notified of the Director General’s decision to dismiss her appeal as unfounded and to award her 750 Swiss francs for the delay in the internal appeal procedure. The Director General agreed with the WAB that, despite his actions not constituting harassment, Mr R.V. “should have acted

more appropriately as a manager to address the existing tension within the Section, rather than discontinuing the team meetings and limiting the interactions among its members”. Therefore, the Director General decided that Mr R.V. would be required to attend a meeting with the Head of the Policy and Law Section, HRMD, during which it would be explained to him that his managerial response in relation to the complainant’s case was not appropriate, and would also be invited to seek guidance from the Office of the Ombudsperson to better equip him as a manager to address conflicts in the workplace. 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 R.V. 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. On 11 September 2018, she lodged a complaint of harassment by Mr R.V., her then supervisor. She expressly did so pursuant to Staff Rule 11.4.1 of the WIPO Staff Regulations and Rules and also by reference to Office Instruction 47/2016.

2. By a decision of 11 January 2019, the Director General dismissed the complaint in its entirety, considering it to be clearly devoid of merit. The complainant appealed against this decision to the WIPO Appeal Board (WAB) which, in a report dated 16 June 2020, recommended, in relation to the substance of the appeal concerning the allegation of harassment, that it be dismissed. It concluded there was no *prima facie* evidence that the alleged actions of Mr R.V. considered both individually and cumulatively, could reasonably and objectively be interpreted as constituting a form of harassment. By a decision of 14 August 2020, the Director General accepted the recommendations of the WAB, accordingly and relevantly, dismissed the appeal. This is the decision impugned in these proceedings.

3. The complainant asks the Tribunal to “combine” the eleven complaints that she has filed before the Tribunal. While the facts in each of these complaints are part of the same continuum of events, the legal issues raised are quite discrete. Accordingly, the complaints will not be joined.

4. 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.

5. The complainant advances her legal arguments under four general headings. The first heading is: “Mr. [R.V.] committed numerous acts of misconduct, including breach of duty of care, abuse of authority, discrimination and harassment, a cover-up of harassment, and the creation of a hostile work environment. The WAB and WIPO Administration disregarded all the evidence submitted by the Complainant”. The second general heading is: “WIPO Administration and WAB intentionally disregarded numerous pieces of probative evidence of harassment committed by Mr. [R.V.]. The impugned decision of WIPO Administration and recommendations of WAB to dismiss the harassment complaint without conducting investigations amounted to a breach of the duty of care, obstruction of justice, and institutional harassment. It violated core principles of integrity,

competence, incorruptibility and impartiality outline [sic] in Standards of Conduct for the International Civil Service”.

6. The third general heading is: “The impugned decision of the former Director General of WIPO reflects a hostile and toxic work environment nurtured and institutionalized by WIPO Administration, which constitutes a violation of labor and human rights”. The fourth general heading is: “The illegal decision of WIPO’s Administration to cover up harassment and mobbing of the Complainant led to systematic destruction of her mental and physical health and resulted in her constructive dismissal. Altogether, this sanctioned harassment constitutes violation of basic labor and human rights of the Complainant”.

7. Before considering the arguments mentioned above, it is convenient to refer to the relief sought by the complainant. It is identified in the form filed by the complainant on 12 November 2020 initiating these proceedings. The relief sought informs a consideration of the complainant’s pleas and how they should be understood. The first order sought is that there be an independent, external misconduct investigation of the complainant’s harassment claim against Mr R.V. by an independent, reputable external investigation company which, *inter alia*, has been approved by the complainant. The second order sought includes an award of material, moral and exemplary damages as a result of the alleged wrongful dismissal of her harassment complaint without such an investigation. It is tolerably clear that the complainant is requesting the Tribunal to determine, on the extensive material before it, that the allegations in the complaint of 11 September 2018 should have been investigated further by an external investigation company.

8. The Tribunal now considers the arguments advanced under the first general heading referred to above, namely that Mr R.V. committed numerous acts of misconduct, including breach of duty of care, abuse of authority, discrimination and harassment, a cover-up of harassment, and the creation of a hostile work environment. Also, that

the WAB and the WIPO Administration disregarded all the evidence submitted by the complainant. Under this general heading there were eight subheadings initially set out in a list, prefaced by the observation that they were “the harassing actions of Mr. [R.V.] [which] incorporated several cumulative discriminatory and abusive actions, such as [...]”. Following this list was a separate detailed discussion under each of the eight listed subheadings (and also under a further ninth subheading, namely “Creation of Hostile Work Environment and Contributing to Deteriorated Health Condition of the Complainant”) of the conduct impugned and related matters described extensively over 20 pages.

9. It is unnecessary to descend into a detailed analysis of what is then said under this first general heading. That is because the approach of the complainant fundamentally misconceives what would be required to persuade the Tribunal that the allegation of harassment should have been investigated further. The yardstick for determining whether the matter should have been investigated further is not what is subsequently said by the complainant in pleas in the Tribunal about the conduct of Mr R.V. and a range of other matters, but rather what was said, in this case, in the initial complaint lodged on 11 September 2018. Office Instruction 47/2016 prescribes the procedure for the consideration of a complaint. Indeed, as it did in this case, it can lead to the dismissal of the complaint without further investigation as provided for in paragraph 17 of the Office Instruction. According to paragraph 21 of Office Instruction 47/2016, “[n]ormally, a complaint should be referred for an independent investigation where, in the opinion of the Director General: (a) The alleged acts or conduct, if established, would constitute discrimination, harassment, abuse of authority and/or any other type of misconduct; and (b) There is credible information and/or prima facie evidence supporting the allegations”. In the absence of *prima facie* evidence, as confirmed by the WAB, and this was open on its analysis, the Director General had no obligation to refer the complainant’s complaint of harassment against Mr R.V. for an independent investigation. This approach has been endorsed by the Tribunal (see Judgments 4746, consideration 9, and 3640, consideration 5). That initial complaint created the parameters

for assessing the scope of the inquiry into the complainant's allegations and the mechanisms WIPO arguably should have adopted to undertake it (including appointing an independent external investigator), as part of determining the fate of the complaint. It is not the role of the Tribunal to assume the considerable burden of assessing what is said in the complaint of September 2018 and comparing and correlating it with what is said in the pleas which are considerably more expansive. On their face, they are not co-extensive, a point correctly made by the Organization in its reply. This plea under the first general heading is unfounded and should be rejected.

10. Under the second general heading, the complainant contends the Administration and the WAB intentionally disregarded numerous pieces of probative evidence of harassment committed by Mr R.V. and that the impugned decision of the Administration and recommendations of the WAB to dismiss the harassment complaint without conducting investigations amounted to a breach of the duty of care, obstruction of justice, and institutional harassment and violated core principles of integrity, competence, incorruptibility and impartiality outline (sic) in the Standards of Conduct for the International Civil Service. In support of this argument, the complainant descends into the detail of the conduct of Mr R.V. particularized under the first general heading. Again, the approach of the complainant fundamentally misconceives what would be required to persuade the Tribunal that the allegation of harassment should have been investigated further. As just noted, the yardstick for determining whether the matter should have been investigated further is not what is subsequently said in pleas in the Tribunal about the conduct of Mr R.V. and a range of other matters, but rather what was said in the initial complaint lodged on 11 September 2018. This plea under the second general heading is unfounded and should be rejected.

11. What is said in the complainant's brief under the third heading namely, that the impugned decision of the former Director General of WIPO reflects a hostile and toxic work environment nurtured and institutionalized by the Administration, which constitutes

a violation of labour and human rights and the fourth heading that the illegal decision of the Administration to cover up harassment and mobbing of the complainant led to the systematic destruction of the complainant's mental and physical health, resulted in her constructive dismissal and, taken all together, this sanctioned harassment constitutes violation of basic labour and human rights of the complainant, is almost certainly irrelevant to the question of whether an investigation of the type contended for by the complainant, should have been undertaken. In any event, the complainant does not advance any persuasive argument in her pleas that they are relevant. Accordingly, these pleas under the third and fourth general headings are unfounded and should be rejected.

12. In the result and for the foregoing reasons, the complaint should be dismissed.

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