

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

D. (No. 8)

v.

WIPO

139th Session

Judgment No. 4969

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Ms N. D. against the World Intellectual Property Organization (WIPO) on 14 December 2020 and corrected on 8 February 2021, WIPO's reply of 1 June 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 to dismiss her complaint of harassment directed against the external company mandated by WIPO to investigate allegations of misconduct involving her.

Facts relevant to this case may be found in Judgment 4846, concerning the complainant's first complaint, and in Judgments 4964, 4965, 4966, 4967, 4968 and 4970, also delivered in public this day, concerning the complainant's third, fourth, fifth, sixth, seventh 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).

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 2017, the complainant was notified of the opening of an investigation against her. The investigation was outsourced to an external investigation company (“the 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.

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. On 21 November 2018, the external investigation company provided the complainant with a draft investigation report for her comments.

On 15 January 2019, the IOD forwarded to the Director General the investigation report prepared by the external investigation company, consolidated with the complainant’s comments, which concluded that the complainant had engaged in a third unauthorized outside activity and that she had falsely declared during the first investigation concerning her two other unauthorized outside activities that she was not involved in any other outside activity. The investigation report further mentioned that the complainant had refused to cooperate with the second investigation.

Also on 15 January, the complainant, referring to Staff Rule 11.4.1 and Office Instruction 47/2016, filed a complaint of harassment against the external investigation company, in which she alleged that “[t]he role of [the external investigation company] in both investigations against [her] [...] [may be] potentially classified as malpractice”.

By letter of 24 January 2019, the Director, HRMD, charged the complainant with misconduct, based on the results of the second investigation against her.

On 6 February 2019, the Director General informed the complainant of his decision to summarily dismiss her complaint of harassment directed against the external investigation company. In his letter, the Director General explained that he considered the complaint to be inadmissible because it was not directed against a WIPO staff member. The Director General further noted that the issues raised by the complainant in her complaint regarding the two investigations conducted by the external investigation company could be raised as part of the challenge of any adverse administrative decisions taken as a result of such investigations and were the subject of other internal appeals by the complainant. Finally, the Director General stated that in any event, he considered the complainant's harassment complaint to be 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 6 February 2019 decision.

In its report dated 17 July 2020, the WAB concluded that the complainant's complaint of harassment against the external investigation company was inadmissible and recommended that her appeal be dismissed as irreceivable.

By letter of 15 September 2020 from the Director, HRMD, the complainant was notified of the Director General's decision to dismiss her appeal as irreceivable and to award her 800 Swiss francs for the delay in the internal appeal procedure. 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 the external investigation company be conducted by an "independent, reputable, [other] 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 15 January 2019, she wrote to the Director General lodging a complaint of harassment against the company external to WIPO which had been commissioned by the Organization to investigate the complainant’s conduct. She did so purportedly exercising rights conferred by Office Instruction 47/2016 and Staff Rule 11.4.1 of the WIPO Staff Regulations and Rules. It had, in that respect, produced an investigation report provided to WIPO.

2. By letter dated 6 February 2019, the Director General informed the complainant that he had decided to summarily dismiss her complaint of 15 January 2019. He did so on two bases. The first was that the complaint was inadmissible and the second was that, even if admissible, was devoid of merit. The complainant appealed against this decision leading to a report of the WIPO Appeal Board (WAB) of 17 July 2020. The WAB concluded that the complaint was inadmissible and, as a consequence, the appeal was clearly irreceivable. By letter dated 15 September 2020, the Director General informed the complainant that he adopted the WAB’s recommendation that the appeal be dismissed as irreceivable, and its reasoning. Accordingly, the appeal was dismissed. This is the decision impugned in these proceedings which were commenced by a complaint filed with the Tribunal on 14 December 2020.

3. Staff Rule 11.4.1 provided:

“(a) A staff member who believes that he or she has been subjected to discrimination and/or harassment (the ‘complainant’) may submit a complaint to the Director General. [...]

(b) **The staff member(s) subject of the complaint** (the ‘respondent(s)’) shall be notified of the complaint within fifteen (15) calendar days from his or her receipt thereof. The respondent(s) shall have thirty (30) calendar days from the date of receipt of such notification to provide a response.

(c) The Director General shall review the complaint and response and notify the parties in writing of a reasoned decision [...]

(d) The Director General shall, where deemed necessary, refer a complaint for an independent investigation and notify the parties accordingly, including any interim measure(s) he or she intends to apply. [...]" (Emphasis added.)

4. Office Instruction 47/2016, “Workplace-related conflicts and grievances” relevantly provided:

“14. A staff member who believes that he or she has been subjected to discrimination, harassment and/or abuse of authority [...] (the ‘complainant’) may submit a complaint pursuant to Staff Rule 11.4.1. The complaint shall be submitted in writing to the Director General, with a copy to the Director of the Human Resources Management Department (HRMD) [...]

[...]

17. If the Director General considers a complaint to be time-barred or clearly devoid of merit, he or she may dismiss it summarily for that reason and will inform the complainant accordingly, providing the reason therefor.

18. **The staff member(s) who are subject(s) of the complaint** (the respondent(s)) shall be notified of the complaint within fifteen (15) calendar days from his or her receipt thereof. The respondent(s) shall have thirty (30) calendar days from the date of receipt of such notification to provide a response, including any available evidence disproving or tending to disprove the allegations of the complaint or otherwise relevant to the allegations. The response shall be transmitted to the complainant. If the respondent does not respond to a complaint within the time prescribed, the proceeding will nevertheless continue.

[...]

20. Within sixty (60) calendar days from the date of the receipt of the response to the complaint, the Director General shall take a decision [...] and notify the parties accordingly, unless he or she assesses that the complaint should be referred for an independent investigation.” (Emphasis added.)

5. WIPO raises, as a threshold issue, whether this complaint is receivable given that, as it argues, the initial complaint of harassment was irreceivable and unsupportable under either the relevant Staff Rule

or Office Instruction. WIPO's construction of the relevant provisions is correct. It is plain that Staff Rule 11.4.1 and Office Instruction 47/2016 were concerned with complaints against another staff member or members within the framework of procedures to avoid or eliminate workplace-related conflicts and grievances. It was not intended to have any wider application or operation. References by the complainant to provisions in the WIPO General Conditions of Contract for the Provisions of Goods and Services and the Supplier Code of Conduct as well as the Code of Conduct for WIPO staff involved in procurement are to no avail in the face of the clear terms of the above provisions. It did not confer a right to initiate a complaint of harassment of the type maintained by the complainant on 15 January 2019.

6. In its surrejoinder WIPO raises what it describes as the "inappropriate language" of the complainant in her rejoinder. It refers to Judgment 3502, consideration 22. It is clear from the complaint form that the complainant was represented by a lawyer. What is not absolutely clear is who is the author of the document which constitutes the rejoinder. The document is signed by the complainant however it speaks of her in the third person. It is probable that the lawyer representing the complainant authored the rejoinder or at the least reviewed and approved it. Indeed, in the table of annexes to the rejoinder, the rejoinder is the first listed document and is described as having been authored by the lawyer. In any event, where a complainant is represented before the Tribunal by a lawyer, the responsibility for the content of his or her submission is legally attributable to the lawyer. It is desirable, in this context, to make the following observations about the position of a lawyer in proceedings before the Tribunal.

The opportunity for lawyers to appear before courts and tribunals comes with overarching responsibilities in terms of professionalism, integrity and civility. Standards of professional practice must be adhered to and maintained. In numerous domestic legal systems, courts demand high professional standards of practicing lawyers and a failure to meet them can result in a sanction by the court or a legal professional body including, as the ultimate sanction, the disbarring of a legal professional. An element of these standards involves the lawyer acting

courteously both towards his or her opponents, their representatives and the court or tribunal. Inappropriately extravagant or offensive language in written submissions should not be tolerated. While this Tribunal does not presently have a mechanism for sanctioning lawyers who do not adhere to these professional standards, it may become necessary to develop one. It might include reporting the lawyer's misconduct to the applicable bar association for action by it.

In the present case, WIPO's complaint about the language in which the rejoinder was expressed, was, as noted earlier, made in its surrejoinder. While the complainant did not seek to file supplementary submissions on this point, she, and to the extent relevant her lawyer, nonetheless did not, in fact, reply to these submissions. In these circumstances it is undesirable to express a concluded view about the language used in the rejoinder though it can be said that the Organization's grievance is not devoid of substance.

7. Accordingly, the complaint filed by the complainant on 14 December 2020 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 17 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