

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

N.
v.
WIPO

140th Session

Judgment No. 5010

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms D. N. against the World Intellectual Property Organization (WIPO) on 29 August 2022 and corrected on 30 September 2022, WIPO's reply of 18 January 2023, the complainant's rejoinder of 21 April 2023 and WIPO's surrejoinder of 24 July 2023;

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, who was transferred to WIPO from another organization, challenges the decision to extend her fixed-term contract for a period of only one year and not to grant her a continuing appointment similar to that which she held prior to her transfer.

The complainant, who held a continuing appointment at the United Nations (UN) Secretariat, began to work for WIPO in January 2017 as a Human Resources Performance and Development Specialist, at grade P-4, in the Performance and Development Section (PDS) of the Human Resources Management Department (HRMD). She was initially released from the UN under a six-month reimbursable loan governed by the Inter-Organization Agreement concerning Transfer,

Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances (the Inter-Organization Agreement). The loan was extended twice, until 31 December 2017 and then until 31 December 2019.

Meanwhile, in 2018 WIPO issued a vacancy announcement for the P-4 position of Human Resources Performance and Development Specialist in PDS. The position was offered as a fixed-term appointment with an initial duration of two years, the first year being a probationary period. The complainant applied for the position and was selected. At WIPO's request, the UN agreed to transfer her to WIPO under the Inter-Organization Agreement. The loan agreement was therefore terminated and the complainant was transferred to WIPO with effect from 1 March 2019.

On 22 May 2020, following another competitive recruitment procedure, the complainant was informed that she would be appointed as Head of PDS and promoted to grade P-5 with effect from 1 June 2020. On 28 May 2020 she wrote to the Administration requesting the conversion of her fixed-term appointment to a continuing appointment. She pointed out that her fixed-term appointment had been confirmed at the end of her probationary period and that she met the requirements of Office Instruction No. 41/2019 on Continuing and Permanent Appointments. On 29 May 2020 the Deputy Director of HRMD, Ms D., informed her that she could not be granted a continuing appointment at that time, but that her request would be addressed in 2021 as part of a review of all pending cases.

In February 2021, shortly before the expiry of her fixed-term appointment, the complainant was informed that the Director General had decided to extend her contract for only one year, because the Organization's human resources strategy was undergoing a major review which was likely to have an impact on the structure of PDS. The complainant accepted the extension but expressed her surprise at its short duration and reserved the right to challenge it.

On 14 April 2021 the complainant wrote to Ms D. seeking further explanations as to why her contract had been extended for only one year, and why she had not been granted a continuing appointment.

Ms D. replied on 27 April 2021, by email, that the granting of continuing appointments had been suspended because of the COVID-19 pandemic and that the extension of her contract had been limited to one year because there was a strong possibility that the ongoing review of the Organization's human resources strategy would lead to changes within HRMD which would affect PDS.

On 11 May 2021 the complainant filed a request for review of the decision to grant her a one-year extension of contract, arguing that she ought to have been granted a continuing appointment instead. She relied in particular on paragraph 8(c) of the Inter-Organization Agreement, which provided as follows with respect to staff members transferring from one organization to another:

“Subject to satisfactory completion by the staff member of any period of probation which it may require, the receiving organization will, if it is possible to do so in accordance with its normal policies, grant the staff member an appointment of duration not less than that of his or her appointment in the releasing organization.”

Her request for review was rejected by a decision of 9 July 2021. The Director General considered that the decision to extend her contract by only one year was a lawful exercise of managerial discretion based on valid operational reasons and that, although she was eligible for a continuing appointment, it was not possible to grant her one, having regard to the ongoing review of WIPO's human resources strategy and the business needs of the Organization. The Director General took the view that paragraph 8(c) of the Inter-Organization Agreement did not place WIPO under an obligation to grant a continuing appointment to staff members who met the eligibility requirements. On 8 November 2021 the complainant lodged an appeal with the WIPO Appeal Board (WAB) challenging the decision of 9 July 2021.

On 25 November 2021 the Director General informed the complainant that, as a result of the restructuring of HRMD, there was no longer a need for the position of Head of PDS that she occupied and, consequently, her employment at WIPO would end. However, he had decided exceptionally to grant her a final one-month extension of appointment, until 31 March 2022, and efforts were being made to identify another position for her. The complainant was subsequently

offered a position in the WIPO Academy under a non-renewable fixed-term appointment for a period of nine months commencing on 1 April 2022, which she accepted.

The WAB submitted its report to the Director General on 26 April 2022, recommending that the complainant's appeal be dismissed. The WAB concluded that it was within the Administration's discretionary authority with respect to the renewal of fixed-term appointments and the granting of continuing appointments, to await the outcome of the human resources strategy review before deciding to make longer-term commitments to staff members whose positions were likely to be affected, as was the case for the complainant.

By a letter of 30 May 2022, the complainant was informed that the Director General had decided to accept the conclusions and recommendation of the WAB and hence to dismiss her appeal. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to order WIPO to grant her either a continuing appointment with retroactive effect from 1 March 2021, or, failing that, a five-year contract extension in her current position and grade or in another position commensurate with her experience and qualifications at her personal grade, with immediate effect or from 1 January 2023. In the event that she has separated from service at the time when the Tribunal delivers its judgment, she seeks retroactive reinstatement at WIPO in a position commensurate with her experience and qualifications, and the payment of all salary, emoluments, allowances and benefits from the date of separation until the date of reinstatement, or, failing that, material damages for loss of opportunity in an amount equivalent to what she would have earned had she not been separated, including salary, emoluments, allowances and benefits for a period of five years from the date of separation. The complainant also claims moral damages of at least 24,000 Swiss francs and costs.

WIPO asks the Tribunal to dismiss the complaint on the merits.

CONSIDERATIONS

1. The complainant impugns the Director General's 30 May 2022 decision to dismiss her appeal against the decision to extend her fixed-term contract for a period of only one year and not to grant her a continuing appointment similar to that which she held prior to her transfer from the UN Secretariat.

2. The complainant bases her complaint on the following main grounds:

- (i) WIPO violated its duty to convert her fixed-term contract to a continuing appointment as required by paragraph 8(c) of the Inter-Organization Agreement. The use of the expression "will [grant] if it is possible to do so" indicates that the receiving organization can only depart from that obligation if it is not possible, under its internal legal framework, to recognize and implement the prior contractual length of a transferred staff member. This principle is reflected in WIPO's internal rules, particularly Staff Regulations 4.14 and 4.18, and paragraphs 7 and 8 of Office Instruction No. 41/2019. A combined reading of these provisions shows that the Director General's discretion to grant continuing appointments under Staff Regulation 4.18 is fettered in the case of a transfer under the Inter-Organization Agreement. She argues that Staff Regulation 4.17(f), which provided that "[a] fixed-term appointment does not carry any expectancy [...] of renewal or conversion, irrespective of the length of service", is superseded by the provisions of the Inter-Organization Agreement.
- (ii) WIPO breached its binding promises. The complainant maintains that she accepted the WIPO position based on assurances regarding a contract conversion given by WIPO during discussions prior to her transfer and again reiterated by the Director of HRMD in May 2020. She argues that WIPO's failure to honour these assurances constitutes a breach of good faith and of its duty of care, adversely affecting her long-term career prospects.

- (iii) WIPO violated the principle of equal treatment by refusing her a continuing appointment while granting it to others under similar circumstances.
- (iv) WIPO breached its duty of care by inducing her to abandon her continuing appointment at the UN through false assurances, withholding critical information about her contract status and the restructuring of her section, and granting only a short extension followed by another fixed-term contract for nine months.
- (v) PDS was discontinued for an improper purpose and should not have been abolished. There was an ongoing need for the functions she performed.

3. It is necessary at this juncture to examine the legal framework applicable to the present case. The Inter-Organization Agreement specified in paragraph 1(b) that “[...] [i]t does not of itself give the staff member rights which are enforceable against an organization. It merely sets out what the organizations will normally do. The agreement can only be enforced to the extent that either the organizations have included appropriate provisions in their administrative rules or the parties have accepted to apply it in the individual case.” It can be inferred from the language in this provision that the Inter-Organization Agreement does not supersede the receiving organization’s internal rules. Instead, obligations arise only from their incorporation by the organization into its administrative rules or from the parties’ agreement in individual cases.

Paragraph 8(c) of the Inter-Organization Agreement provided as follows:

“Subject to satisfactory completion by the staff member of any period of probation which it may require, the receiving organization will, if it is possible to do so in accordance with its normal policies, grant the staff member an appointment of duration not less than that of his or her appointment in the releasing organization.”

WIPO’s Staff Regulation 4.18, entitled “Continuing Appointments”, provided the following:

“(a) [...] A continuing appointment may be granted, under conditions prescribed in an Office Instruction, to a staff member in the Director, Professional, National Professional Officer or General Service categories who has completed five years of continuous service, whose qualifications, performance and conduct have fully demonstrated his or her suitability as an international civil servant and who has shown that he or she meets the standards required under Regulation 4.1.

(b) Continuing appointments shall be granted at the discretion of the Director General.”

Paragraph 7 of Office Instruction No. 41/2019, entitled “Continuing and Permanent Appointments”, further clarified the following:

“Pursuant to Staff Regulation 4.14 (‘Inter-Agency Movements’), and in line with the January 2012 ‘Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances’, in case of a transfer from an organization applying the United Nations common system of salaries and allowances, the length of service of the staff member with the releasing organization shall be taken into account when considering the eligibility for a continuing appointment under Staff Regulation 4.18.”

Paragraph 8 of the said Office Instruction provided that “[a] staff member who held an appointment of indefinite duration with another organization prior to joining WIPO on transfer on a fixed-term appointment shall also be eligible for a continuing appointment, as per the conditions stated above, provided that at least the last two years of service, during the whole of the said five-year period, have been carried out at WIPO and have been rated at least as ‘effective performance’ under the PMSDS [Performance Management and Staff Development System]”.

4. It is appropriate to recall the basic rules of statutory interpretation defined by the Tribunal’s case law, as recently summarised in Judgment 4796, consideration 3: “These [rules] state that words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgments 4639, consideration 3, 4506, consideration 5, 4066, consideration 7, 4031, consideration 5, and 3744, consideration 8).”

5. The complainant correctly points out that paragraph 8(c) of the Inter-Organization Agreement uses the term “will [...] grant” rather than “may”. However, it qualifies the obligation of the receiving organization by referencing the latter’s “normal policies”. This plain language means that paragraph 8(c) only obliges the receiving organization to match the contract duration when consistent with its normal practice in applying its legal framework. This mirrors the wording used in paragraph 1(b), that the Inter-Organization Agreement “merely sets out what the organizations will normally do”, and does not, of itself, give the staff member enforceable rights against the organization.

6. In the present case, WIPO’s Staff Regulation 4.18(b) explicitly confers discretionary authority on the Director General to grant continuing appointments. Office Instruction No. 41/2019 further clarifies the eligibility criteria for continuing appointments under inter-organization transfers, indicating that eligibility does not imply entitlement. This position is further reinforced by the letter of appointment, which states that “[n]o fixed-term appointment or any extension hereof shall carry with it any expectancy of, nor imply any right to, (further) extensions or conversion to a continuing appointment”.

7. It is undisputed that the complainant met the eligibility criteria for a continuing appointment, as she completed her probationary period and satisfied the conditions stated in paragraph 8 of Office Instruction No. 41/2019. However, the final decision lay within the Director General’s discretion in line with WIPO’s rules. In this case, the Director General’s decision was influenced by legitimate operational considerations arising from the Organization’s human resources strategy review, which had posed a risk of abolishing the complainant’s section (PDS). The Tribunal finds no evidence of abuse of discretion or improper conduct. The Director General’s decision aligns with paragraph 8(c) of the Inter-Organization Agreement as well as WIPO’s Staff Regulations. The complainant’s reliance on paragraph 8(c) is therefore misplaced. Her reliance on the report issued in 2019 by the Joint Inspection Unit of the United Nations System, following its “Review of staff exchange

and similar inter-agency mobility measures in United Nations system organizations”, is also unfounded, as the report addresses broader compliance issues that are unrelated to the granting of continuing appointments.

The complainant’s first plea is unfounded.

8. With respect to her second plea, alleging a breach of binding promises, the Tribunal recalls that, according to its case law, an enforceable promise requires the following four elements: (i) a clear and unequivocal commitment, (ii) the authority of the promisor to make such a commitment, (iii) reliance by the promisee resulting in injury, and (iv) the absence of any fundamental change in legal circumstances (see, for example, Judgments 4527, considerations 9 and 10, and 4377, consideration 5). The complainant asserts that binding promises were made by both the Director of HRMD and a Human Resources Assistant. Regarding the complainant’s reliance on statements allegedly made by a Human Resources Assistant, this person would, in any case, not have had the authority to make such a commitment on behalf of the Organization on matters relating to staff appointments. Hence, the alleged statements by the Human Resources Assistant cannot give rise to enforceable promises. Concerning the communications between the complainant and the Director of HRMD, the complainant has not demonstrated that any statements made by the Director of HRMD amounted to a clear and unequivocal commitment regarding the outcome of her appointment. Rather, at best, these exchanges indicate a willingness to examine the complainant’s situation after the period of uncertainty caused by the COVID-19 pandemic had passed. Such statements fall short of constituting a binding commitment, since they provide no guarantee regarding the eventual outcome of this examination.

Therefore, the Tribunal finds no enforceable promise existed. As a result, the complainant’s second plea is unfounded.

9. With respect to her third plea, the complainant contends that WIPO discriminated against her by granting continuing appointments to other staff members between 2020 and 2022, while denying her the

same benefit. She argues that this differential treatment lacked objective justification and violated the principle of equal treatment.

10. The Tribunal recalls that the principle of equal treatment requires staff members in identical or similar situations to be subject to the same rules (see, for example, Judgment 4990, consideration 5). Differential treatment is permissible only if based on objective and legitimate operational distinctions (see, for example, Judgment 4712, consideration 5). In the present case, it is not disputed that 52 staff members were granted a continuing or permanent appointment between January 2020 and December 2022, and that four of them had been transferred to WIPO, like the complainant, under the Inter-Organization Agreement. However, WIPO explains that none of those staff members was working in HRMD and the continuation of their respective functions was not considered to be at risk. The complainant's situation differed significantly due to her section's restructuring under the human resources strategy review and the risk that her post would be abolished. The Tribunal considers that this justified differential treatment and, therefore, no breach of equal treatment occurred. The complainant's third plea is thus unfounded.

11. With respect to her fourth plea, namely that WIPO breached its duty of care, since there was no evidence of a promise, as stated above, the Tribunal finds no inducement, as alleged by the complainant, to relinquish her continuing appointment at the UN. Moreover, WIPO communicated the rationale behind the one-year extension clearly and in a timely manner. The email of 27 April 2021 from the Deputy Director of HRMD shows that, when she met with the complainant on 10 February 2021, she explained the basis for that decision, referring in particular to the ongoing human resources strategy review, the advisory audit review on performance management organized by the Internal Oversight Division and the strong possibility that changes affecting PDS would have to be made in HRMD, as already announced by the Director General. So far as concerns the final extension of the complainant's fixed-term appointment as Head of PDS and her subsequent appointment to the WIPO Academy, these facts have no

bearing on the lawfulness of the earlier decision to grant her a one-year extension of appointment and are beyond the scope of the present complaint. The complainant's fourth plea is therefore unfounded.

12. With respect to her fifth plea, the complainant argues that the discontinuation of PDS was arbitrary, and despite the restructuring, at least part of the functions attached to her position were clearly not going to disappear from the Organization, and her expertise in those areas would still be needed after the end of her contract.

13. The legality of discontinuing PDS is beyond the scope of this case, as it relates to a separate decision taken in December 2021 to restructure HRMD. Furthermore, such an organisational decision falls within the discretionary authority of the Director General and it is not the Tribunal's role to assess its appropriateness. The complainant's fifth plea must therefore also be rejected.

14. As the complaint fails on the merits, it will be dismissed in its entirety, without there being any need to address the receivability issues raised by WIPO.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2025, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.