

SEVENTY-FOURTH SESSION

In re BLUSKE (No. 2)

(Application for execution)

Judgment 1242

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 1154 filed by Mr. Guillermo Carlos Bluske on 11 May 1992, the reply of 20 July from the World Intellectual Property Organization (WIPO), the complainant's rejoinder of 1 September and the Organization's surrejoinder of 7 October 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS:

1. The complainant is impugning a decision by the Director General of WIPO which the Legal Counsel of the Organization notified to his counsel in a letter dated 10 February 1992. The decision was, "with reference to Judgment No. 1154", not to extend the complainant's appointment and to pay him instead the sum of 130,156.45 Swiss francs, over and above an amount to cover costs. The complainant submits that that decision has given only partial effect to Judgment 1154.

2. The Tribunal held in that judgment, under 8:

"The conclusion is that the Organization must do its utmost to reinstate the complainant by granting him an extension of appointment as from 16 June 1991. Only if that proved impossible should the Organization pay him damages equivalent to one year's salary and allowances to cover all forms of injury."

The Tribunal quashed the decision impugned in the original complaint, namely the Director General's decision of 31 July 1991 confirming the non-renewal of his appointment beyond 15 June 1991. It further decided:

"2. The Organization shall reinstate the complainant by extending his appointment as from 16 June 1991.

3. If it cannot do so it shall pay him the equivalent of one year's salary and allowances in damages for all forms of injury he has sustained."

In the complainant's submission the Organization did not "do its utmost" to reinstate him, and so he asks the Tribunal to order it either to reinstate him as from 16 June 1991 or to award him damages for the material and moral injury caused by its failure to execute Judgment 1154 in full. He also claims a further award of costs.

The defendant replies that it did give proper effect to the judgment: there was no possibility of reinstating the complainant because there was no post available for which he was qualified.

3. According to the judgment the Organization was under the obligation of reinstating the complainant as from 16 June 1991 and to discharge that obligation must "do its utmost" to find him a suitable position. Only if every effort at reinstatement had failed was it then open to the Organization to pay damages instead.

From the parties' pleadings it appears that both accept that interpretation. It forms the basis of the complainant's case, and, for its part, the Organization states in its reply:

"Having concluded that reinstatement was not possible it could do no other than to inform the Complainant that his appointment would not be extended and that, consequently, the Organization was paying the damages decreed by the Tribunal."

4. The material issue is therefore whether by the time the Organization sent its letter of 10 February 1992 it had

done its utmost to reinstate the complainant.

The letter does not substantiate the contention that it had. It simply conveys the Director General's decision "not to extend Mr. Bluske's appointment". It says nothing of any attempts to find him a suitable position and thereby discharge its primary obligation under Judgment 1154. Indeed it gives the strong impression that the decision was taken to pay damages without any prior serious consideration of the possibility of reinstatement.

Five days earlier, on 5 February 1992, WIPO announced a competition for a post that the complainant himself had once held. It could have so informed him and thus let him decide whether to apply. It is true, as the Organization argues, that in 1991 the Appointment and Promotion Board did not think him suitable for the post, but his being refused once did not necessarily mean that he would fail a second time.

5. In any event the Director General had the duty to justify his decision by explaining why it was impossible to reinstate the complainant, particularly since in an urgent communication of 6 February 1992 his counsel had told the Director General that he was entirely willing to go back. The letter of 10 February 1992 merely notifies the decision and fails to offer any such explanation. Only in its reply to this complaint does the Organization maintain that "there was no possibility of reinstating the complainant since there was no suitable post to which he could be appointed given his qualifications".

6. The case is again sent back to the Organization for a new decision in execution of Judgment 1154. It must, for that purpose, "do its utmost to reinstate the complainant by granting him an extension of appointment as from 16 June 1991".

Moreover, he is in any event entitled to a further award of damages for its failure to execute Judgment 1154, and the Tribunal sets the amount at the equivalent of one year's salary and allowances. It also awards the complainant costs.

DECISION:

1. The Director General's decision of 10 February 1992 is set aside insofar as it refuses to reinstate the complainant as from 16 June 1991.
2. The case is sent back to the Organization for a new decision on the reinstatement of the complainant.
3. The Organization shall pay the complainant the equivalent of one further year's salary and allowances in damages for all forms of injury he has sustained because of its failure to execute Judgment 1154.
4. It shall pay him 10,000 French francs in costs.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner