

## **EIGHTY-FIRST SESSION**

### ***In re* BLUSKE (No. 5)**

#### **(Application for execution)**

#### **Judgment 1522**

#### **THE ADMINISTRATIVE TRIBUNAL,**

Considering the application filed by Mr. Guillermo Carlos Bluske on 20 January 1995 and corrected on 26 June for the execution of Judgments 1154, 1242, 1328 and 1362, the reply of 3 October 1995 from the World Intellectual Property Organization (WIPO), the complainant's rejoinder of 26 January 1996 and WIPO's surrejoinder of 1 March 1996;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

#### **CONSIDERATIONS:**

1. This application is Mr. Bluske's fifth complaint against the World Intellectual Property Organization. In his submission it has not yet executed the Tribunal's judgments on his case. In particular it has failed to grant him full redress for the Director General's decision of 20 October 1994 not to reinstate him in its employ. He wants it to pay him the one year's salary and allowances that the Tribunal awarded him in Judgment 1242 on his second complaint, the costs awarded in Judgments 1328 and 1362 on his third and fourth complaints, the amounts payable by way of penalty under Judgment 1362, and compound interest on all the sums due.
2. The complainant joined WIPO on 16 June 1989 under an appointment for two years. The Director General declined to renew it and he lodged his first complaint. In Judgment 1154 of 29 January 1992 the Tribunal set the decision aside and ordered the Organization either to reinstate him by extending his appointment or, if that proved impossible, to pay him one year's salary and allowances in damages for all forms of injury he had sustained. It awarded him costs.
3. On 10 February 1992 the Director General decided not to reinstate him but offered to pay him instead 130,156.45 Swiss francs and the award of costs. He lodged his second complaint, which the Tribunal ruled on in Judgment 1242. It set aside the decision against reinstatement on the grounds that the Organization had not done its utmost to find him a job. It sent his case back to the Organization for a new decision and awarded him another year's salary and allowances in damages and further costs.
4. WIPO having failed to discharge the two obligations laid on it by Judgment 1242, the complainant had to come to the Tribunal a third time. Judgment 1328 allowed his claim to the payment of compound interest on the sums not yet paid at the rate of 10 per cent a year as from 24 March 1993. It sent the case back again for the Organization to take at the earliest possible date an express and properly substantiated decision. It again awarded him costs but dismissed his other claims.
5. Still he failed to get either the amounts awarded or an express decision on reinstatement. He filed an application which was his fourth complaint. In Judgment 1362, delivered on 13 July 1994, the Tribunal held that the two consecutive awards of one year's pay afforded him sufficient redress since he had a rightful expectation of renewal for no more than two years. But since WIPO had not discharged its duty to take a proper decision on his claim, the Tribunal ordered it to do so and to pay him 10,000 Swiss francs by way of penalty for each further month of delay. It ordered payment of compound interest on the costs awarded in Judgment 1328 and made a further award of costs for his fourth complaint.
6. That was how things stood until 20 October 1994, when the Director General wrote him two letters. The first set

out in great detail the reasons for not reinstating him in any of the posts that had become vacant since the date of Judgment 1154. In the second letter the Director General offered to pay him the amounts awarded - 183,000 Swiss francs and 33,000 French francs - provided that he surrendered the right to file suit with this or any other tribunal. The complainant refused. He contests the Director General's reply to his claim to reinstatement and seeks payment of the sums set out above.

7. WIPO raises several objections to receivability. All fail. As was said in Judgments 1328 and 1362, when in difficulty over the execution of a judgment a complainant is free to come straight to the Tribunal and need not first go through the internal appeal procedure; that would merely prolong a dispute of which the material issues are not in doubt. WIPO's taking a "new decision" on the case does not warrant its ignoring what is self-evident: the issue is its execution of the earlier judgments. Nor is there any merit in its plea that the form that the complainant filed on 20 January 1995 made no express claim to the quashing of the decision of 20 October 1994 not to reinstate him. He has stated his claims quite plainly, and they include the grant of

"full redress in law for the failure to execute Judgments 1154 and 1242, as upheld in 1328 and 1362, in particular in the Director General's decision of 20 October 1994 against reinstatement."

That he set out his pleas in a brief entered several months later, after due extension of the time limit granted for the purpose, has no bearing on receivability. As was held in Judgment 1305 (in re Sharapov) under 16 - to which the Tribunal draws the Organization's attention - the Registrar may as such take any action he sees fit to safeguard due process.

8. Though receivable, the application is devoid of merit. Contrary to what the complainant makes out, the Organization has this time discharged its duty to take an express decision duly giving its reasons for not reinstating him. Its decision of 20 October 1994 takes seriatim all the posts he might have been appointed to. It explains the reasons of fact or law why it came to the view that his training, experience or grasp of languages or the need for special skills disqualified him for some posts. The reasons why he was not appointed to others had to do with the budget, some posts being "frozen". Or else the reasons were administrative: for example the Appointment and Promotion Board was not in favour, or the Organization gave priority to a permanent employee. At all events the complainant adduces no specific evidence to suggest any mistake of law or fact in the refusal to reinstate him.

9. As for his claims to payment, the Organization has not withdrawn its offer of 20 October 1994 to pay him another year's salary and allowances, plus compound interest; the sums reckoned by way of penalty for the delay from 12 August to 20 October 1994; interest on the costs awarded in Judgments 1242 and 1328; and the costs awarded in Judgment 1362. Acceptance of that offer, provided that it is made unconditionally, will ensure proper execution of the earlier judgments. If the Organization pays him the sums due within 60 days of the date of delivery of this judgment, the dispute may be treated as at an end. The Tribunal will therefore dismiss his further claims, including the payment of compound interest on the sums due by way of penalty and on the costs awarded under Judgment 1362.

10. Since his other claims fail so does his claim to costs.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas  
Michel Gentot  
Egli  
A.B. Gardner

