

The Administrative Tribunal,

Considering the third complaint filed by Mr S. G. G. against the World Intellectual Property Organization (WIPO) on 10 January 2006, the Organization's reply of 13 April, the complainant's rejoinder of 5 July and WIPO's surrejoinder of 10 October 2006;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Italian national born in 1948, joined WIPO in 1974 as a messenger-chauffeur at grade G.3. In May 2000 he was transferred to the Division of Protocol and on 29 June 2001 to the Security Coordination Section. He then held grade G.7. He was appointed Head of that section on 22 July 2002 and was promoted to grade P.3 with effect from 1 January 2005.

In a letter of 27 May 2005 addressed to the Executive Director in charge of Administrative Support Services and General Assembly Affairs, who was the complainant's supervisor, the private company which supplies WIPO with security guard services notified its grievances relating to the manner in which the complainant was giving orders to the company's employees, usually orally, without informing their hierarchical superiors, in respect of tasks not included in their list of duties. The letter referred to earlier correspondence on the same matter dated 26 September 2003 and 1 June 2004. The Organization requested clarification from the company in letters of 9 and 16 June 2005. The company confirmed its grievances and set them out in detail in a letter dated 5 September.

In a memorandum of 17 June 2005 addressed to the Director General, the complainant objected to the "renewed and unexpected pressure" and "wall of opposition" he was facing. He asked the Director General "to kindly issue the necessary instructions so that the Administration [would] trouble [him] no further, that those possibly concerned [would] stop trying to settle personal scores, that an end [would] be brought to attempts to intimidate [him] and that could [he] just do [his] job properly". By a letter of 8 August he informed the Director General that the Administration's passive attitude to the actions to which he had objected constituted, in his opinion, a lack of a decision "in fact equivalent to a decision" which disregarded his rights as a member of WIPO's staff. As he wished "to appeal against this lack of a decision", he requested the Director General "to review this decision". He wished to be confirmed in his post as Head of the Security Coordination Section enjoying the trust of the Director General. He also asked that his former supervisor's criticism of him be declared null and void and that an administrative inquiry be opened into this supervisor's actions. Lastly, he requested the transfer of the Security Coordination Section to another division so that it would no longer be "under the management of [his supervisor]". On 15 September the Director of the Human Resources Management Department rejected his request for review on the grounds that he had not specified the administrative decision he was challenging.

The complainant lodged an appeal with the WIPO Appeal Board on 30 September 2005 in which he objected to the harassment and pressure to which he was being subjected and the lack of any action by the Administration despite his repeated requests. On 18 October the Organization submitted a reply drafted in English, which was forwarded to the complainant that same day. In a letter of 20 October his counsel requested the Secretary of the Appeal Board to invite the Administration to translate its submissions into French so that the procedure could be pursued in the official language chosen by the complainant, whose knowledge of English is limited. He also stated that he wished to file a rejoinder. He received no reply. In its report, dated 24 October 2005, the Appeal Board considered that the appeal had been lodged out of time and recommended that it should be dismissed as irreceivable. By a letter of 6 December the Director of the Human Resources Management Department informed the complainant that the Director General had decided to dismiss his appeal. He explained that, since no appealable administrative decision had been taken when the complainant initiated his appeal on 8 August 2005, it was not necessary to express an

opinion on the Appeal Board's findings with respect to time limitations and, accordingly, these findings had not been adopted. That is the impugned decision.

B. The complainant states that that decision constitutes a threefold violation of his rights. Firstly, he submits that, according to the Tribunal's well-established case law, the Director General should have carefully set forth the reasons for his decision because, in the complainant's opinion, he departed from the Appeal Board's recommendations by holding that the appeal had not been lodged out of time, but was irreceivable for want of an appealable decision. Secondly, the complainant alleges that the decision violated his procedural rights because, although in his initial appeal he had expressly reserved the right to make further submissions on the issue of receivability, the Appeal Board issued its report without affording him the possibility to submit a rejoinder to the Organization's reply. For this reason the principle of due process and the right to be heard have been breached. Thirdly, he contends that international civil servants are entitled to have measures taken to protect them from harassment. WIPO's refusal to address this issue is therefore a decision which may be challenged.

Since he is of the view that the above pleas are sufficient to justify the quashing of the impugned decision and referral of the case back to the Organization, the complainant merely provides an "outline of the main pleas" on the merits. He is of the opinion that he is being taken to task for observing, applying and ensuring compliance with the regulations in force at WIPO. He contends that the carping groundless criticisms, the disregard shown for his responsibilities, the pettifoggery he faces at work, the vague requests and absence of support from his supervisors and the Administration, the orchestration of criticism from a sub-contractor, the weight given to any critical remark about him, the constant calling into question of the explanations he furnishes and, lastly, in December 2005, the establishment of an excessively bad periodical report – in stark contrast to all his previous reports – are all factors which, taken together, demonstrate the existence of the harassment to which he is subject. He adds that the behaviour and out-of-place comments of various people – who are trying to settle personal scores and who, in doing so, are guilty of misuse of authority – disturb the day-to-day work of his service and create an intimidating and hostile working atmosphere.

The complainant requests the Tribunal to quash the impugned decision and to refer the case back to the Director General of WIPO "in order that he address the issues raised" and, after the Appeal Board has examined "the requests made" by the complainant in his letter of 8 August 2005, take a decision thereon. He also claims costs for the internal appeal proceedings and for the proceedings before the Tribunal.

C. In its reply the Organization submits that the complaint is irreceivable since, contrary to the requirements of Staff Regulation 11.1 and Staff Rule 11.1.1(b)(1), the complainant has not identified any appealable administrative decision. It taxes the complainant with presenting "outlandish requests", such as those he made in his letter of 8 August 2005, and then basing an appeal on non-compliance with these requests. It adds, however, that the Director General replied to the letter in question on 15 September, that the complainant did not lodge an appeal against this decision within the six-week deadline laid down in the above-mentioned Staff Rule and that any claim deriving from the letter of 8 August is therefore time-barred. In WIPO's opinion, the complainant's appeal is an abuse of procedure.

The Organization replies subsidiarily on the merits. It accuses the complainant of referring to "alleged (unspecified) actions by unnamed persons" in order "to create the impression of widespread conspiracies hatched against [him]" and repeatedly accuses him of not substantiating his allegations, in particular those of harassment. It informs the Tribunal that the complainant has been suspended temporarily awaiting the outcome of a pending inquiry into a number of his actions and dealings, which could lead to disciplinary measures since, in the Organization's opinion, the complainant has abused his authority as Head of the Security Coordination Section. It submits that all of the complainant's claims must be dismissed because they are either premature, or out of time in the case of those concerning his former supervisor, and in any case baseless. It denies any "conspiracy" against the complainant and suspects that he is seeking to obtain a "blank cheque" to silence all criticism concerning him. It states that it has "exhibited extraordinary restraint" in relations with him and considers the allegation that it has done nothing to be unfounded. It adds that, "in virtually all cases", the problems were rooted in his "general inability" to maintain good working relations. Lastly, it regards the complainant's appeal as a "vigorous attempt to anticipate the possible consequences" of the criticisms voiced of him in various reports, or to secure promotion.

D. In his rejoinder the complainant accuses the Organization of not addressing his arguments concerning the failure to state the reasons for the impugned decision and the violation of his right to be heard. He contends that, in accordance with the Tribunal's case law, the lack of an administrative decision may "confer a right of appeal" if

the complainant has put formal claims “plainly stating the nature of his demands”. He believes that he did so in his letter of 8 August 2005 and that “WIPO’s refusal to address the issues raised” may be construed as an appealable decision. He adds that it is the Organization’s duty to entertain complaints of harassment and that he is entitled to a decision by the Administration which is designed to halt such harassment. As for compliance with the deadline for lodging appeals, the complainant submits that the Organization contradicts itself because, in the impugned decision, it expressly stated that the Appeal Board’s findings in this connection had not been adopted.

He observes that “obviously” many of the relevant facts are not recorded in written documents, but that the absence of proof does not permit the assertion made by WIPO that his allegations are baseless. He leaves it to the Appeal Board to determine the truth of his statements. He contends that his services have been entirely satisfactory, as witness his periodical reports up to March 2005 and his promotion to grade P.3. He accuses WIPO of referring to, and even annexing to its reply, documents containing reservations or comments which were subsequently withdrawn. He regards this as a “deceitful method of presentation [...] unworthy of a responsible international organisation” and requests that two annexes to the reply be discarded by the Tribunal. He adds that, since the lodging of his appeal, the harassment has not ceased (extremely bad periodical report, ongoing inquiry, suspension and advertisement of the post he still officially occupies). He categorically denies the “serious” and “unfounded” accusation of abuse of authority.

E. In its surrejoinder WIPO maintains that the complaint is irreceivable. It asserts that the Appeal Board did not inform it that the complainant wished to file a rejoinder and that it cannot therefore be deemed to be at fault in that respect. It adds that, in any case, the complainant has been able to submit his comments to the Tribunal and that he has thus had the possibility of remedying any defect. It considers that referring the case to the Director General on these grounds would be “pointless”.

As to the merits, it notes that the complainant did not complain of harassment until the company which provides WIPO with security guard services notified its grievances relating to his conduct. The Organization takes the view that the allegations of harassment, the substance of which it contests, have been made by the complainant solely in order to protect himself from a predictably negative assessment of his services. Regarding the requests he made in his letter of 8 August 2005, it submits that the first request is vexatious since he already occupies the post in which he wishes to be confirmed, that if his request that his section be transferred to another division were to be accepted it would seriously encroach on the Director General’s discretion to manage the Organization and, lastly, that his request that an administrative inquiry be opened into his former supervisor’s actions shows that he has no evidence. It adds that the mere act of lodging a complaint of harassment does not entitle him to mobilise the whole Administration and all the internal appeal procedures for its examination. WIPO accuses the complainant of trying to reverse the burden of proof which, it asserts, lies with the person alleging harassment. It draws attention to the fact that he would not have been promoted on 1 January 2005 if he were being harassed by the Organization. In this respect it says that this promotion was “an attempt to motivate the complainant” and that “it is clear that, from at least 2002 onwards, none of [his] periodical reports was devoid of diverging opinions or express reservations”. It is opposed to the withdrawal of documents requested by the complainant since the documents in question are part of a “diverging opinion” which has been maintained concerning a periodical report. Lastly, it explains that the vacancy notices to which the complainant refers are connected with the reorganisation of the security activities of the Office of Administrative Support Services and General Assembly Affairs and do not relate to the complainant’s post.

CONSIDERATIONS

1. The complainant, who joined WIPO in 1974 as a messenger-chauffeur, was assigned to the Security Coordination Section as from 29 June 2001. At the material time, he was Head of that section and held grade P.3.
2. Considering that he was being harassed, on 17 June 2005 he first asked the Director General to take action.

After taking various other steps, on 30 September 2005 he lodged an appeal to the WIPO Appeal Board against the Administration’s decision not to respond to a request for review which he had submitted to the Director General on 8 August 2005.

The Appeal Board issued its report on 24 October 2005. It concluded that the appeal was irreceivable as, in its view, it had been filed out of time.

On 6 December 2005 the complainant was informed that the Director General had decided to dismiss the internal appeal on the grounds that it was irreceivable because no appealable administrative decision had been taken.

3. He principally requests the Tribunal to quash that decision and to refer the case back to the Director General in order that he take a decision “on the requests made” in his letter of 8 August 2005, after they have been examined by the Appeal Board.

4. His main pleas are of a procedural nature. He asserts inter alia that his right to be heard has been violated. He submits that the principle of due process has been breached because he was not given the opportunity to express his views on the receivability of his appeal prior to the Director General’s decision. He considers that this plea alone justifies the quashing of the impugned decision and the referral of the case back to the Organization in order that it might adopt a new decision. In his latest submissions the complainant asks the Tribunal to disregard two annexes to the Organization’s reply because these two documents had been withdrawn. The Tribunal considers that this request is justified and will not take these documents into account.

5. The Organization submits that the complaint is irreceivable in its entirety and requests the Tribunal to dismiss it.

6. Having studied the submissions the Tribunal notes that, in the internal appeal he filed on 30 September 2005, the complainant expressly reserved the right to set out his position on the receivability of his appeal in the light of any explanations the Administration might supply in support of its reply; that in that reply the Organization dealt at length with the receivability of the internal appeal; that in his letter of 20 October 2005 the complainant asked to be allowed to submit a rejoinder to the Organization’s reply and to have the said reply, which was in English, translated into French to enable him to “actually find out what it said”; and that the Appeal Board wrote its report four days after this request on which it had not acted.

In view of the above-mentioned circumstances the Tribunal considers that, as the receivability of the appeal was disputed in the Organization’s reply, respect for the principle of due process and the right to be heard required that the complainant be afforded an opportunity to present his point of view.

The Tribunal holds that, although the Appeal Board was not obliged to accede to the complainant’s request concerning translation of the Organization’s reply, it ought to have informed the complainant so that he could, by his own means, “actually find out” what the reply said and, if necessary, submit a rejoinder within a reasonable period of time, as he wished to do.

7. The Tribunal considers that, as a result, the failure to observe the principle of due process deprived the complainant of his right to be heard on the essential issue of the receivability of his appeal.

Consequently, without any need to rule on the other pleas, the Director General’s decision of 6 December 2005 must be quashed and the case referred back to the Organization so that a new decision can be taken in compliance with the rules of procedure.

8. Since he partially succeeds, the complainant is entitled to costs that the Tribunal sets in the amount of 2,000 Swiss francs.

DECISION

For the above reasons,

1. The impugned decision is quashed.
2. The case is referred back to the Organization in order that it may proceed as indicated under 7 above.
3. WIPO shall pay the complainant 2,000 Swiss francs in costs.

In witness of this judgment, adopted on 15 November 2006, Mr Michel Gentot, President of the Tribunal, Mr

Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.