

119th Session

Judgment No. 3470

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr R. K. S. against the World Intellectual Property Organization (WIPO) on 1 November 2013;

Considering Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. On 5 June 2009 the complainant signed a separation agreement with his then employer, the World Intellectual Property Organization (WIPO). By letter dated 21 September 2009 he withdrew reservations he had about the agreement thus rendering the agreement fully effective. The complainant unsuccessfully challenged the efficacy of this agreement in proceedings in this Tribunal. Those proceedings resulted in Judgment 3091 delivered in public on 8 February 2012.

2. By a complaint filed on 1 November 2013, the complainant sought “the implementation of” Judgment 3225 to his circumstances. That Judgment was delivered in public on 4 July 2013 and involved a staff member of WIPO. In that judgment the Tribunal granted relief to the staff member in question, who had been employed on short-term contracts over a period of 13 years. It appears the complainant in this matter was employed under a series of short-term contracts between 1999 and 2009.

3. In the present case, the complainant agreed, in the separation agreement, to “renounce any and all claims, appeals, grievances, of whatsoever nature and however arising, against [WIPO] which may

fall under the jurisdiction of [...] the Administrative Tribunal of the International Labour Organization [and] hereby completely releases and forever discharges [WIPO] from any and all past, present or future claims, actions, demands or suits". The Tribunal determined in Judgment 3091 that the "separation agreement [was] not unlawful in any way" and that, in effect, any action against WIPO failed because the complainant had agreed to "renounc[e] any action against" WIPO.

4. There is a fundamental barrier to the course the complainant proposes. Judgment 3091 resolved, conclusively and for all purposes, his complaint against WIPO in which he sought to challenge the efficacy of the separation agreement. While in rare and very confined circumstances, a judgment can be reopened, this is not such a case. The issues the complainant raised in the proceedings that led to Judgment 3091 are *res judicata*. There is no basis on which the Tribunal can lawfully reopen Judgment 3091. Accordingly the separation agreement prevents the complainant from pursuing this complaint and it should be dismissed as clearly irreceivable. The Tribunal adds that, apart from this fundamental difficulty for the complainant, his complaint is almost certainly doomed to fail on a number of other bases but it is unnecessary to discuss them further. This complaint should be summarily dismissed as clearly irreceivable, in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 5 November 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ