

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M. (Nos. 1 and 2)

v.

WIPO

136th Session

Judgment No. 4653

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Mr A. M. against the World Intellectual Property Organization (WIPO) on 4 September 2018 and corrected on 11 and 29 October, WIPO's reply of 28 January 2019, the complainant's rejoinder of 17 June 2019 and WIPO's surrejoinder of 1 October 2019;

Considering the second complaint filed by Mr A. M. against WIPO on 8 April 2019, WIPO's reply of 11 July 2019, the complainant's rejoinder of 16 November 2019 and WIPO's surrejoinder of 19 February 2020;

Considering Articles II, paragraphs 5 and 6, and VII of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant filed two complaints with the Tribunal. In the first one, he challenged his performance evaluation for 2015 and claimed damages. In his second complaint, the complainant challenged a decision to deny his request for protection against retaliation and again claimed damages.

2. In both cases the written proceedings were completed and the cases were ready to be examined by the Tribunal. On 21 November 2019, a letter was sent to the parties to inform them that the first complaint had been placed on a provisional list of cases for the Tribunal's next session commencing in April 2020.

3. On 6 March 2020, however, WIPO informed the Tribunal that the complainant had passed away on 2 March 2020. The Organization also informed the Tribunal that two family members were mentioned in the complainant's personal file, namely his wife and a daughter, and it provided the latter's contact details.

4. Any person on whom the official's rights have devolved on her or his death has the right to initiate or pursue a complaint before the Tribunal on the basis of Article II, paragraph 6, of its Statute. In the present case, as no such person came forward seeking to exercise that right, the Registrar of the Tribunal contacted the complainant's daughter by email on 23 November 2022 in order to discuss how to proceed with the two pending cases. In response, the complainant's daughter only asked to be provided with a copy of any judgment that might be rendered by the Tribunal on the complaints filed by her father. No further steps have been taken by her or any other person to whom the complainant's rights have devolved on his death on the basis of the abovementioned Article II, paragraph 6, of the Statute.

5. Although the factual background to these complaints is not the same, they raise the same issue of law at this juncture and it is convenient that they be joined to form the subject of a single judgment.

6. In the circumstances described above, having regard to the subject matter of the disputes, the present absence in the proceedings of a person to whom the complainant's rights have devolved on his death and the interest of the Tribunal in bringing these cases to a close, the Tribunal will make orders balancing these considerations.

DECISION

For the above reasons,

1. Any person lawfully representing the interests of the deceased complainant may file with the Registry within 90 days from the public delivery of this judgment a document establishing that they lawfully represent the interests of the deceased complainant and indicating that they wish to pursue one or both of the complaints.
2. In the event that no document of the type referred to in the preceding order is filed, the complaints are dismissed.

In witness of this judgment, adopted on 25 May 2023, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HONGYU SHEN

DRAŽEN PETROVIĆ