Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B. H.

v.

WIPO

136th Session **Judgment No. 4654**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. B. H. against the World Intellectual Property Organization (WIPO) on 9 November 2018 and corrected on 14 December 2018, WIPO's reply of 24 April 2019, the complainant's rejoinder of 2 September 2019 and WIPO's surrejoinder of 17 December 2019;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant seeks a redefinition of his employment relationship and the setting aside of the decision not to renew his employment contract.

The complainant joined WIPO in 2002 on a short-term contract, which was renewed several times. By internal memorandum of 27 March 2012, he was informed that 156 posts would be created over a five-year period with the aim of regularising the contractual situation of "long-serving temporary employees" who were performing continuing functions within the Organization. The memorandum stated that the Organization defined "long-serving" temporary employees as those who had completed at least five years of "continuous and satisfactory

service" as at 1 January 2012, that the complainant's name appeared, in principle, on the list of long-serving temporary employees but that his inclusion in that list did not automatically entitle him to have his functions regularised, as they had firstly to be assessed by the Organization as being continuing in nature for a post to be assigned to them and advertised.

In November 2012 the complainant was offered a temporary appointment[**] which he accepted unreservedly and which was subsequently extended several times. At the material time, he was employed as a statistician in the Human Resources Management Department (HRMD).

On 12 August 2016 the Director of HRMD informed the complainant by an internal memorandum entitled "Renewal of your temporary contract" that his temporary appointment, due to end on 8 September 2016, would be renewed for a period of one year. However, she added the following: "the Human Resources Management Department (HRMD) will not need a full-time statistician in the future. Your job description, which dates back to 2008, no longer corresponds to current requirements, in particular because IT systems have changed significantly. The projects in the [...] portfolio to which you have mainly contributed in recent years are finishing at the end of June 2017, and unfortunately your qualifications do not match any other positions that HRMD may require."[*] She stated that the complainant was "strongly encouraged to apply for other posts, both at WIPO and externally"[*] and he was advised to consult his colleagues in the Performance and Development Section for assistance in his job search. She concluded the memorandum by saying: "For its part, HRMD will increase its efforts to identify a position that matches your qualifications."[*]

By letter of 16 September 2016, the complainant, who took the view that WIPO had misused short-term appointments to employ him, applied to the Director General for a reconstruction of his career on the basis of Judgments 3090 and 3225 of the Tribunal. In his letter, the

[**] The category of temporary appointments, which are concluded for a period of between one and 12 months, was created in January 2012.

[*] Registry's translation.

complainant also stated that he did not understand the meaning of the memorandum of 12 August 2016 and asked: "Does this mean that a decision has been taken to abolish my post and terminate my appointment?"* On 15 November 2016 WIPO's Legal Counsel informed the complainant that the Director General had decided to reject his request for a reconstruction of his career and that, with regard to the memorandum of 12 August 2016, unless a job opportunity arose within WIPO before his temporary appointment ended on 8 September 2017, the Organization would not be able to continue to employ him, but that, in the meantime, HRMD was prepared to make every effort to find him a position and to assist him in his job search.

On 23 January 2017 the complainant submitted a request for review, in which he asked the Director General to reconsider his decision of 15 November 2016 not to grant his request for a career reconstruction. He added: "Reading the letter of 15 November 2016, I am still unable to determine whether you have taken the decisions to abolish my post and terminate my appointment or whether you are simply informing me of a change to my post and a possible termination of appointment. If these are decisions, I challenge them. I would therefore be grateful if you could inform me clearly whether decisions have been taken to abolish my post and terminate my appointment."* By letter of 23 March 2017, the Legal Counsel informed the complainant that the Director General had decided not to grant his request for a career reconstruction and had also considered it to be irreceivable. The letter further stated that the Director General took the view that the memorandum of 12 August 2016 and the letter of 15 November 2016 had informed the complainant of the decision not to renew his temporary appointment after 8 September 2017 and that his request for a review of that decision had been made after the applicable time limit for appeal.

The complainant referred the matter to the Appeal Board on 21 June 2017. In its findings delivered on 4 July 2018, the Board found the appeal receivable but without merit in respect of the non-renewal of

* Registry's translation.

the complainant's appointment. In respect of the complainant's request for a career reconstruction, the Board found the appeal irreceivable. It therefore recommended that the appeal be dismissed in its entirety.

By a letter of 31 August 2018, which constitutes the impugned decision, the Director General informed the complainant that he had decided to follow the Appeal Board's recommendation. The Director General also stated that he had decided to leave open the question of whether his appeal against the decision not to renew his temporary appointment was receivable and that the Organization retained the right to raise any arguments on this matter before the Tribunal. However, in line with a suggestion made by the Appeal Board, he awarded the complainant compensation of 500 Swiss francs for the Board's delay in delivering its findings.

The complainant asks the Tribunal to set aside the impugned decision and the decisions of 15 November 2016 and 23 March 2017, to redefine his employment relationship as if he had held fixed-term contracts at least since 30 October 2002 and a permanent appointment since October 2009, and, in redress for the material injury he considers he has suffered, to order WIPO to reconstruct his career and to draw all the legal consequences therefrom, including the payment, with 5 per cent interest, of the additional remuneration and financial advantages of any kind that he ought to have received on the basis of a classification in grade and step corresponding to the level of his duties and taking account of his good performance, and the payment of termination indemnities. He also requests reinstatement or, alternatively, payment of compensation equivalent to the salaries and allowances of all kinds that he would have received if his appointment had continued for five years from 9 September 2017, as well as the equivalent of contributions to the United Nations Joint Staff Pension Fund (UNJSPF) and the social insurance scheme during that period. The complainant further claims 50,000 euros in compensation for the moral injury which he considers he has suffered and an award of costs. Lastly, he requests the Tribunal that an amount corresponding to the fees and taxes which he has undertaken to pay to his legal representative be deducted from any

monetary awards made to him and that such amount be paid to that representative.

WIPO contends that the complaint is time-barred and, subsidiarily, unfounded.

CONSIDERATIONS

1. The complainant, who was employed by WIPO from September 2002 to November 2012, that is for more than ten years, under a short-term contract renewed several times, was granted a temporary appointment from 19 November 2012, which was repeatedly extended. In 2016 he was informed that the post that he then held as a statistician in the Human Resources Management Department (HRMD) would soon be abolished. As he was not appointed to one of the advertised posts for which he had applied, he eventually had to leave the Organization on 8 September 2017 because his contract had not been renewed. Having requested a redefinition of his employment relationship with WIPO since his recruitment, he impugns before the Tribunal the decision of 31 August 2018 whereby the Director General dismissed his appeal against the decision of 23 March 2017 confirming, on review, the rejection of this request and upheld the decision not to renew his temporary appointment.

2. The origin of this complaint lies in the practice which became widespread at WIPO – and indeed in other international organisations, in similar forms – during the 1990s and early 2000s, consisting of employing some of the staff under short-term contracts which were renewed several times. One of the consequences of this practice, which was boosted by the large expansion in WIPO's activities at a time when the Organization was not in a position to incorporate all the posts corresponding to its needs in its ordinary budget, was that the employees concerned, commonly referred to as "long-serving temporary employees", often pursued a career within the Organization for many years without acquiring the status of staff members or enjoying the related benefits.

3. In Judgment 3090, delivered in public on 8 February 2012, an enlarged panel of judges of the Tribunal found that the long succession of short-term contracts given to the complainant in that case had given rise to a legal relationship between the complainant and WIPO which was equivalent to that on which permanent officials of an international organisation may rely. It therefore held that WIPO, in considering that the complainant belonged to the category of temporary employees, had failed to recognise the real nature of its legal relationship with her and that, in so doing, it had committed an error of law and had misused the rules governing short-term contracts.

In Judgment 3225, delivered in public on 4 July 2013, which dealt with a similar case, the Tribunal confirmed this precedent by taking to its logical conclusion, as far as compensation for material injury was concerned, the notion of redefinition of the contractual relationship underlying such injury. On this basis, it ordered WIPO to pay to the complainant in this second case damages corresponding to the loss of remuneration and other financial benefits resulting from the fact that the complainant had not been regarded, during her career, as holding a fixed-term appointment.

It is the claim to have this case law applied to his own situation which forms the main basis for the complainant's claims regarding the redefinition of his employment relationship.

4. However, the file shows that, prior to the judgments, WIPO had already initiated a process to regularise the contractual situation of long-serving temporary employees. In creating many additional budget posts for this purpose, the Organization thus adopted a reform enabling the recruitment of staff members on temporary appointments, in accordance with a recommendation of the International Civil Service Commission (ICSC).

Pursuant to a revision of the Staff Regulations which came into force on 1 January 2012, amending Regulation 4.14 (on types of appointment) in this regard, a Regulation 4.14bis (subsequently Regulation 4.16) was incorporated into the Staff Regulations in order to establish legal provisions governing temporary appointments, which were for a maximum

period of 12 months but could be extended several times up to a limit originally set at five years.

Pursuant to Regulation 4.14bis, the rules governing this new type of appointment were set forth in Office Instruction No. 53/2012 (Corr.) of 5 November 2012 and its related annexes.

5. Under this reform, the holders of temporary appointments were given the status of WIPO staff members, which had not been the case previously for persons on short-term contracts. Thus, although they were entitled to only some of the allowances and benefits granted to other staff members, they otherwise enjoyed the rights recognised by the WIPO Staff Regulations and Rules, which enabled them, for example, to make use of the ordinary internal means of redress provided therein.

Pursuant to Regulation 4.14bis(f), "special transitional measures", defined in Annex II to the Office Instruction of 5 November 2012, were established for persons previously holding short-term contracts with five or more years of continuous service on 1 January 2012 (as was the case for the complainant). In particular, it was stipulated in this respect that the above-mentioned five-year maximum period set for temporary appointments would not be applicable to them.

6. In Judgments 4159 and 4160, delivered in public on 3 July 2019, the Tribunal ruled on complaints seeking redefinition of the employment relationships of two WIPO staff members who had been employed from 2002 to 2012 under short-term contracts renewed several times before being awarded temporary contracts and then, in the case of one of them, a fixed-term contract.

In these judgments, the Tribunal dismissed the complaints on the grounds that the complainants' internal appeals in both cases were time-barred since they had not challenged the decisions to appoint them under temporary contracts within the applicable time limit. The Tribunal held that, in view of the modification of the legal relationships between the parties resulting from the grant of these contracts, which were of a fundamentally different nature from the short-term contracts

which had preceded them, and given that the conclusion of these contracts also regularised the complainants' contractual situation, the absence of any challenge to these decisions within the time limit for filing appeals necessarily barred the complainants from requesting the redefinition of their previous employment relationships. The Tribunal also found that the complainants' situation in law and in fact differed radically from that of the complainants in the cases leading to Judgments 3090 and 3225, since the latter were still employed under short-term contracts at the time that they requested the redefinition of their employment relationships (see Judgments 4159, consideration 8, and 4160, consideration 8).

7. As WIPO rightly points out, the case law thus established by Judgments 4159 and 4160 is fully applicable to the case of the complainant in the present proceedings, and accordingly the Organization's objection to the receivability of the complaint based on the late submission of the internal appeal is well founded.

Indeed, it is clear that the complainant did not challenge, within the eight-week period available to him for this purpose under Staff Rule 11.1.1(b)(1), in the version applicable at the time, the decision of 19 November 2012 whereby he was granted the temporary appointment which he held from that date. Moreover, examination of that contract shows that the complainant signed it on 23 November 2012, explicitly stating that he "accept[ed] without reservation the temporary appointment offered to [him]". The request for redefinition of his employment relationship that he subsequently submitted on 16 September 2016 with the aim of having his career reconstructed was therefore time-barred.

Furthermore, the Tribunal observes that, while the complainant requested that the contractual redefinition apply not only to the period during which he was employed under short-term contracts but also, subsidiarily, to the subsequent period, his claims on this point must also fail in light of this case law. Firstly, the period during which the complainant was employed under a temporary appointment did not in itself necessitate a redefinition, since he was lawfully employed during that period. Secondly, since the request for redefinition of his initial

employment relationship in the form of short-term contracts is irreceivable, that request, even if well founded, could not in any event give rise to an entitlement to redefinition concerning the subsequent period.

8. In an attempt to avoid his claims for the redefinition of his employment relationship being found irreceivable, the complainant nevertheless puts forward various arguments which it is appropriate to examine here.

9. In the first place, the complainant does not accept that the fact that he was granted a temporary appointment upon the expiry of the renewals of his short-term contract has a bearing on the receivability of his request for redefinition. He submits that "[t]he temporary appointment was [...] not fundamentally different in nature from the short-term contract, but a continuation of his precarious employment under a different name"[*]. Accordingly, the grant of a temporary appointment did not represent a real change in his legal relationship with WIPO or regularise his contractual situation. However, that line of argument, which seeks to challenge head-on the approach adopted in aforementioned Judgments 4159 and 4160, cannot be accepted since the Tribunal finds no reason in the submissions to depart from the case law recently adopted in full knowledge of the facts on the grounds set out above.

10. In the second place, the complainant maintains that the request for redefinition of his employment relationship cannot be considered as time-barred because it is "an action involving compensation"[*], its sole purpose being "to obtain redress for the injury caused"[*] by "the fault committed by the Organization in applying the rules governing insecure and non-standard contracts in an abusive, aberrant manner"[*] and that actions of this type are not, as such, subject to a time limit specified in WIPO's rules. However, the Tribunal considers this manner of presenting the case contrived, because in a dispute involving a challenge to an individual decision, as here, compensation for injury arising from the

[*] Registry's translation.

alleged unlawfulness of that decision could only be granted as a consequence of it being set aside, which presupposes by definition that it has been challenged within the applicable time limit. Furthermore, endorsing this argument – which would, once again, involve departing from the approach taken in aforementioned Judgments 4159 and 4160 – would have the effect of authorising the Organization's staff members in practice to evade the effects of the rules on time limits for filing appeals by allowing them to seek compensation at any time for injury caused to them by an individual decision, even though they did not challenge that decision in due time. Such a situation would scarcely be permissible having regard to the requirement of stability of legal relations which, as the Tribunal regularly points out in its case law, is the very justification for a time bar (see, for example, Judgment 3406, consideration 12, and the case law cited therein).

11. In the third place, the complainant maintains that his appeal cannot be considered time-barred since, in his view, it could not be lodged within the applicable time limit owing to unlawful acts by WIPO. In this regard, he refers to the Tribunal's case law under which an exception may be made to time-bar rules where, because there is an obscurity in an organisation's rules or dealings or because an organisation has generally misled a staff member, she or he has been denied the opportunity to exercise the right of appeal, in breach of the principle of good faith (see, for example, Judgments 3405, consideration 17, and 1734, consideration 3, and the case law cited therein).

However, neither reason given by the complainant for that case law to apply, which will be examined below, appear well founded to the Tribunal.

(a) The complainant firstly contends that he was misled by WIPO as to the substance of his rights on account of the very nature and content of the short-term contracts under which he was initially employed. However, although the finding that WIPO misused such contracts in the past might have resulted in this case law being applied to the award of such contracts, this argument is of no avail here. As stated above, it was the complainant's failure to challenge

in due time the decision that subsequently granted him a temporary appointment that obstructs his claims. The reasons advanced do not support a finding that the complainant was unduly deprived of the possibility to file an appeal against that decision within the applicable time limit (see on this point Judgments 4160, consideration 10, and 4159, consideration 10).

(b) Secondly, the complainant submits that he was misled as to the exercise of his right of appeal by an internal memorandum sent to him by HRMD on 27 March 2012, which announced the launch of a campaign to regularise the contractual situation of long-serving temporary employees from which he might benefit. He argues that this memorandum gave him the impression that he might eventually be awarded a fixed-term contract. As a result, when he was notified in the meantime of the decision granting him a temporary contract, he could, in his view, reasonably suppose that the question of how to regularise his situation was still under consideration. He infers that, in the circumstances, his challenge to that decision cannot be dismissed as time-barred as that would be tantamount to leading him into a "procedural trap". However, the Tribunal finds that while it is true that the memorandum envisaged that the complainant could subsequently be assigned to a newly-created post that would be advertised, which implicitly involved the award of a fixed-term contract, the complainant could not reasonably fail to understand that the temporary contract offered to him in the meantime was another means of regularising his contractual situation, irrespective of the opportunity that remained open to him to obtain a fixed-term contract subsequently through a competitive recruitment procedure. He cannot therefore be considered to have been misled as to the need to exercise his right of appeal at that point if he felt it necessary to challenge the terms on which that regularisation took place.

12. Accordingly, none of the complainant's arguments contesting the time bar on his internal appeal based on the precedent set by aforementioned Judgments 4159 and 4160 can be accepted.

13. According to the Tribunal's firm precedent based on the provisions of Article VII, paragraph 1, of its Statute, the fact that the complainant's appeal was lodged out of time renders the claim in question irreceivable for failure to exhaust the internal means of redress available to the Organization's staff members, which cannot be deemed to have been exhausted unless recourse has been had to them in compliance with the formal requirements and within the prescribed time limit (see Judgments 4160, consideration 13, and 4159, consideration 11, as well as, for example, Judgments 2888, consideration 9, 2326, consideration 6, and 2010, consideration 8).

14. It follows from the foregoing that the complainant's claim for the redefinition of his employment relationship must be dismissed.

15. In support of his claim against the decision not to renew his temporary appointment, which will be dealt with below, the complainant firstly raises an argument based on a challenge to the very nature of that decision. Taking the view that, as a result of the redefinition of the employment relationship that he sought, he should have received a permanent appointment from 2009, he submits that the decision to terminate his appointment should therefore be treated as a dismissal of a staff member employed in that form, and not as a non-renewal of a temporary contract that had expired. He infers that the decision is unlawful as it was not adopted according to the rules applicable to such a termination of appointment. However, in view of the findings made above in respect of the complainant's claim for the redefinition in question, this argument must be rejected (see, for the rejection of a similar line of argument, Judgment 4159, consideration 14(a)).

16. As the decision in question must therefore be treated as a non-renewal of a temporary appointment, the Tribunal considers it useful to clarify several aspects of the legal framework applicable to such a decision and to the review of its lawfulness.

(a) It must be recalled that the Tribunal has consistently held that a decision not to renew the appointment of a staff member of an international organisation lies within the discretion of its executive

head and is therefore subject to only limited review. It may be set aside only if it was taken without authority, or in breach of a rule of form or of procedure, or was based on a mistake of fact or of law, or if some essential fact was overlooked, or if clearly mistaken conclusions were drawn from the facts, or if there was abuse of authority (see, for example, Judgments 4172, consideration 5, 2148, consideration 23, and 1052, consideration 4).

(b) Under Staff Regulation 4.16(e), "[n]o initial temporary appointment or any extension thereof shall carry with it any expectancy of, nor imply any right to, further extension". Thus, while a staff member employed under a temporary appointment is not entitled to have her or his contract renewed upon expiry, the fact remains that, under the Tribunal's case law applicable to contractual relationships generally, a decision not to renew such a contract must be based on objective, valid reasons, and not on arbitrary or irrational ones (see, in particular, Judgments 4495, consideration 15, 3769, consideration 7, 3353, consideration 15, and 1128, consideration 2).

(c) In the present case, the decision to separate the complainant from service was taken by WIPO on the grounds that, in its view, most of the requirements which the complainant's employment had met had gradually disappeared, so there was no reason to renew his contract. While, as the Organization correctly observes, staff members with temporary appointments do not hold budget posts, the Tribunal considers that the disappearance of the functions performed by the holder of such an appointment is still an abolition of post within the meaning of the applicable case law, in any event in the case of functions that have been performed on a continuous basis. It follows that, although WIPO was not under an obligation to redeploy the complainant, it was nevertheless required, in view of the length of his employment relationship with the Organization, to explore with him other employment options prior to his separation, even though the measure at issue was not a termination of a current appointment (see, for comparable situations, Judgments 3159, consideration 20, and 2902, consideration 14).

17. The complainant submits that the decision not to renew his temporary appointment was taken without authority in that it was not taken by the Director General. He points out that the internal memorandum of 12 August 2016, which the Organization regards as having informed him of that decision, was from the Director of HRMD and that the letter of 15 November 2016, which was subsequently sent to him in response to a request for clarification of the meaning of that memorandum, was signed by the Legal Counsel.

However, the Organization has produced as an annex to its surrejoinder an attestation dated 16 December 2019 from the then Director General in which he certifies that he himself took the decision not to renew the complainant's temporary appointment and from which it is apparent that the task entrusted in this instance to the Director of HRMD was confined to informing the complainant of that decision. Furthermore, while the Tribunal agrees with the Appeal Board that the memorandum of 12 August 2016 from the Director of HRMD did not in fact communicate the content of that decision to the complainant in a completely explicit manner, the aforementioned letter of 15 November 2016, which did contain a clear notification of that decision, expressly stated that the Legal Counsel was merely conveying the Director General's decision. However, the Tribunal's case law recognises that the decision of the executive head of an organisation may in fact be notified to the official concerned in a letter signed by another senior official, as is common practice (see, for example, Judgments 4291, consideration 17, 4139, consideration 6, 3352, consideration 7, and 2924, consideration 5).

This plea will therefore be dismissed as unfounded, without there being any need to rule on WIPO's objection to its receivability.

18. The complainant next submits that the decision not to renew his appointment is unlawful because proper notice and reasons were not given for the decision to abolish his post, on which the non-renewal decision must necessarily have been based.

However, while it is true that the Tribunal's case law requires that a decision to abolish a post satisfy these conditions (see in particular Judgment 3041, consideration 8), they were indeed satisfied in this case. The letter from the Legal Counsel of 15 November 2016 stated, with reference to the memorandum from the Director of HRMD of 12 August 2016, that "significant changes in information technology systems [had] led to the gradual disappearance of a large part of [his] temporary functions, and that [his] qualifications unfortunately did not correspond to other positions for which there could be a need in HRMD". The letter went on to discuss his prospects of redeployment and concluded that "unless another job opportunity present[ed] itself in WIPO on or before the expiry of [his] current temporary employment contract on September 8, 2017, the Organization regret[ted] that it [would] not be in a position to engage [his] services further". These statements made it clear that the non-renewal of the complainant's appointment stemmed from the decision to abolish his post when his contract ended, and he was therefore notified of that decision in the same letter. Moreover, the reasons for abolishing that post were also set out in the letter and had already been communicated to the complainant in detail in the memorandum of 12 August 2016. Accordingly, proper reasons were given for that decision.

The plea therefore fails.

19. The complainant submits that the reasons given by WIPO, as set out in the aforementioned memorandum of 12 August 2016 and letter of 15 November 2016, are not sufficient to justify the decision to abolish his post and the subsequent decision to terminate his appointment.

However, the Tribunal cannot accept this line of argument. It is clear from the submissions that the functions of statistician that he performed in HRMD no longer met that department's requirements at the time when the decisions were taken. The IT projects on which the complainant mostly worked – namely those in the "ERP portfolio" – were due to finish in June 2017. Furthermore, new applications meant that WIPO's various administrative units could now compile their own human resources statistics rather than needing as a matter of course to

consult a specialist in this field employed within HRMD, with the result that HRMD no longer needed to have a full-time statistician. Contrary to what the complainant submits, the job description for his post, as drawn up in 2008, had been rendered obsolete, given that the content of a document of this type does not confer an entitlement to the continued existence of the post to which it relates.

It thus appears that sufficient reasons underlay the abolition of the complainant's post to justify that decision and accordingly that the disputed decision not to renew his appointment was itself based on valid, objective reasons, in compliance with the requirement recalled in consideration 16(b) above.

20. The complainant also submits that WIPO did not provide him with sufficient assistance to allow him to be redeployed in a new post after his contract ended.

As stated in consideration 16(c) above, the Tribunal considers that the Organization was required to explore other employment options with the complainant before terminating his appointment. However, the submissions show that WIPO was aware of this duty and made every effort to comply with it. In the aforementioned memorandum of 27 March 2012, HRMD "encourage[d] [the complainant] to submit [his] application for all the vacancy notices already published or to be published which interest[ed] [him] and for which [he] consider[ed] that [he had] the necessary qualifications", bearing in mind that the only legal way for the complainant to obtain a post filled by a fixed-term appointment was to be successful in a recruitment competition. A pressing invitation to apply for vacant posts – this time including posts that might be offered by employers other than WIPO – was again sent to the complainant in the memorandum of 12 August 2016, which also stated that "HRMD [would] increase its efforts to identify a post matching [his] qualifications". That advice was repeated in the letter from the Legal Counsel of 15 November 2016. The complainant did in fact apply for 12 competitions to fill posts at WIPO between 2011 and 2016 and, although none of his applications proved successful, the Organization cannot be held responsible, especially as it had enabled

him to receive individual support from HRMD's Performance and Development Section and a training designed to facilitate his career transition.

In light of these various findings, the Tribunal considers that the plea that WIPO was negligent in this respect cannot be accepted (see, for a comparable situation, aforementioned Judgment 3159, considerations 21 to 23).

21. Similarly, the complainant criticises WIPO for not having notified him before August 2016 that his post was likely to be abolished, even though it had become clear as early as 2014, at the end of the campaign to regularise the contractual situation of long-serving temporary employees announced in the memorandum of 27 March 2012, that his functions would not lead to the creation of a budget post as they had not been assessed as continuing. He submits that, by failing to provide this information to him earlier, the Organization breached its obligation to act in good faith and its duty of care, with the result that "it led him to believe [...] that he could wait without worrying about finding another job opportunity", thereby potentially impairing his prospects of redeployment. However, this argument cannot in any event be accepted since, as just pointed out, the complainant had been encouraged to apply for any available job matching his qualifications as early as 2012 by the aforementioned memorandum itself and the submissions also show that the above-mentioned training to facilitate his career transition had been planned as from 2015.

22. Lastly, the complainant submits that the real purpose of the decision not to renew his appointment was to enable WIPO to avoid being held responsible for the insecure terms on which he was employed. He argues that the Organization sought to "eliminate [this] problem and the risk thereby posed to it"[*] by "using a change in the department's requirements as a pretext for terminating his appointment"[*]. This argument may be seen as an allegation of an abuse of authority.

[*] Registry's translation.

However, as the Tribunal has repeatedly stated, abuse of authority may not be presumed and the burden of proof is on the party that pleads it (see, for example, Judgments 4283, consideration 9, 4081, consideration 19, 3543, consideration 20, and 2116, consideration 4(a)). It must be noted that the complainant has not produced any evidence to corroborate his allegations, while, as stated above, the impugned decision was warranted by valid, objective considerations.

This last plea will therefore also be dismissed.

23. It follows from the foregoing that the complainant's claims against the decision not to renew his temporary contract must be dismissed, without there being any need to rule on WIPO's objection to receivability based on supposed late filing nor accordingly on the complainant's own argument that WIPO is itself not entitled to enter an objection to receivability on that ground before the Tribunal.

24. The complainant requests that WIPO be ordered to pay him moral damages for the inordinate delay in the internal appeal procedure. Although the Organization has already awarded him compensation of 500 Swiss francs under this head pursuant to the impugned decision itself, he submits that this sum is insufficient to compensate him for the injury caused by the delay.

Under the Tribunal's case law, the amount of compensation that may be granted for a failure to comply with the requirement to deal with an internal appeal in a reasonable time ordinarily depends on two essential considerations, namely the length of the delay and the effect of the delay on the employee concerned (see, for example, Judgments 4635, consideration 8, 4178, consideration 15, 4100, consideration 7, and 3160, consideration 17).

In this case, around 14 months elapsed between the complainant's submission of his internal appeal on 21 June 2017 and the adoption of the decision of 31 August 2018 that determined it. That length of time is admittedly inordinate in absolute terms, bearing in mind that the delay mainly owed to the fact – noted by the Director General in that decision – that the Appeal Board exceeded by five months the time limit

ordinarily granted to it to deliver its report pursuant to Staff Rule 11.5.3(k), that is 60 calendar days from the close of the written procedure before it.

However, the delay was still moderate overall, and the complainant does not prove that it caused him injury warranting compensation greater than the above-mentioned amount that has already been awarded to him on this account. The claim for compensation under this head will therefore be dismissed.

25. It follows from all the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

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

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ