

FIFTIETH ORDINARY SESSION

In re SIMPSON

Judgment No. 549

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the World Intellectual Property Organization (WIPO) by Mr. David Simpson on 12 May 1982, the WIPO's reply of 28 July, the complainant's rejoinder of 29 November 1982 and WIPO's surrejoinder of 23 December 1982;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Chapter IX and Regulations 4.18 and 11.1 of the Staff Regulations and Staff Rules of the International Bureau of WIPO, the Secretariat of the Organization;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the material facts of the case are as follows:

A. The complainant, a Canadian citizen born in 1935, was employed for some two years at the International Computing Centre in Geneva, where he dealt with WIPO business. On 1 January 1978 he joined the International Bureau of WIPO at grade P.2 on a short-term contract as a programmer of computers in the data-processing section. He had several such contracts and rose to P.3. He was granted a fixed-term appointment for two years expiring on 31 January 1982. On 30 October 1981 the head of the Administrative Division, Mr. Keefer, sent him a memorandum informing him that his appointment would not be renewed. On 9 November he appealed under Regulation 11.1. By a letter of 27 November the Director General upheld the decision and on 11 January 1982 the complainant appealed to the Appeal Board. In its report of 4 February the Board held that although he was a competent official and had done good work his appeal should be rejected. The Director General informed him by a letter of 9 February 1982, which was notified to him on 12 February and is the challenged decision, that his appeal was rejected.

B. The complainant observes that his record was good: the Appeal Board said so, and it is clear from his performance reports for 1980 and 1981. According to Regulation 4.18, however, he should have received the 1981 report by the end of the year. In fact it was not approved until 29 January 1982, after the decision not to renew, and there was therefore a breach of procedure and disregard of essential facts. In late 1980 and early 1981 the complainant and others informed the head of the Administrative Division of their view that their supervisor was incompetent. He was encouraged to enlarge on his views and did so. At no time was he taken to task for this, and indeed his supervisor has since left WIPO. The budget for 1982-83, drafted well in advance, provided for abolishing a P.1 or P.2 post for a programmer early in 1982 because trade mark registration would be fully computerised by then. But the complainant held a P.3 post and did not work on trade mark registration. Thus the change in the post and the functions to be abolished came just when he was criticising his supervisor, and he believes that this was the real reason for non-renewal. Since it was not one WIPO could avow, another was trumped up. The work he was doing, which he describes, goes on. He cites several Tribunal judgments in support of his plea that there was abuse of the Director General's discretion. Clearly mistaken conclusions were drawn from the facts. By giving a false reason for non-renewal WIPO prevented him from defending his interests, and there was therefore a breach of due process. He describes his difficulties in finding other employment and the harm done to his health and his wife's and submits that WIPO could and should have done more to place him in the Bureau or elsewhere. He seeks the quashing of the decision and the offer of "a contract at his level with appropriate duties" for at least two years or 125,000 Swiss francs in damages, interest on damages, and costs.

C. In its reply WIPO argues that the complaint is irreceivable, its main plea being that the ninety-day time limit was not respected: the final decision was notified to the complainant's counsel on 9 February 1982, but the complaint was not filed until 12 May. As to the merits, WIPO submits that it fully respected the terms of the complainant's appointment and of the Staff Regulations and Staff Rules. The appointment simply expired, and it had no obligation to renew or even to notify non-renewal. The rules did not require that his report for 1981 be issued before notification of non-renewal, and even if it had been it would have given no new information. There is no

need to give a reason for non-renewal. In fact, on 30 October 1981 the complainant was told the reason orally by Mr. Keefer: because of changes in data-processing work he was redundant. That was indeed the advice given on 29 October 1981 by a "task force" on data-processing in WIPO, as is clear from the minutes of its meeting, which WIPO appends. It was the true and the only reason. From a detailed analysis of the case law WIPO concludes that the exercise of the Director General's discretion in this case shows no defect which would warrant quashing his decision. Besides, the complainant's claims are unjustified. His reinstatement would run counter to WIPO's policy of contracting out data-processing work; there is no such work for which anyone of his grade and skills is needed; and he is not qualified for other work in the organization. Any award of damages should be reduced by sums he might have earned had he made reasonable attempts to find other employment and in any event should not include compensation for any injury to his wife.

D. The complainant rejoins that the final decision was not notified to him until 12 February 1982 and so his complaint was filed on the eighty-ninth day. As to the merits, he refers to the minutes of the meeting of 29 October 1981 and observes that Mr. Keefer, a member of the task force, told him of the non-renewal the very next day. The Director General was not in Geneva at the time, and there is no evidence to suggest that he was even consulted, let alone that he fully considered the facts, as the Appeal Board found. Nor do the minutes reveal any conclusion on needs for data-processing. The real purpose was to get rid of the complainant for being "over-zealous" and the meeting was so timed that he could be given the usual three months' notice. The conclusion that the work he was engaged in would be finished by early 1982 has been distorted into a recommendation about needs for data-processing in 1982 and 1983. The work he was doing was not finished when he left, and WIPO has recruited someone with similar skills to do it, despite the alleged policy of contracting out.

E. In its surrejoinder WIPO maintains that the complaint is irreceivable. The ninety days run from the date on which the complainant's counsel, not the complainant, receives the decision - in this case, not 12, but 11 February 1982. Otherwise counsel could gain time unfairly by failing to pass the decision on to his client. The complaint is also devoid of merit. The task force's conclusion that the complainant's services would not be needed appeared in the minutes of its meeting of 29 October 1981 and was brought to the Appeal Board's attention. The Board's recommendation and the Director General's decision thus took account of all the material facts. The Director General gave full consideration to the complainant's case and himself took all the decisions. The sole reason for non-renewal was the one stated, namely that the complainant's services were no longer needed. No computer programmer has been recruited since he left, although someone has been recruited at a higher grade to supervise operations now contracted out to commercial firms.

CONSIDERATIONS:

1. The principles on which the Tribunal exercises a limited power of review of decisions of the Director General not to renew a fixed-term contract are now established in the Tribunal's jurisprudence and are not in any material point in this case in dispute. It is therefore unnecessary to restate them in general terms. The complainant's main contention is that the reason given by the Director General for the non-renewal (which, if genuine, is admittedly sufficient) is not the true one, his real reason being one which would be an abuse of power. If this contention is right, the decision is unlawful and must be quashed.

2. At a meeting of the Advisory Task Force on 29 October 1981 it was recommended inter alia that the complainant's contract should not be renewed because by the end of the contract period, that is, by 31 January 1982, he would have completed the tasks on which he was then working. On the following day the complainant was given written notice that his appointment would not be renewed. The Tribunal accepts the finding of the Appeal Board that the complainant was told orally that a review of the Organization's requirements for the next few years had shown that his services would not be required. The Board accepted this as the reason and the Director General in his letter of 9 February 1982, which contains the decision impugned, accepted the conclusions of the Board.

3. The complainant on the other hand says that the true reason for the non-renewal was what he calls "over-zealousness" on his part. The complainant considered his immediate superior to be incompetent and in or about June 1981 so advised officers higher in the hierarchy. He says that he was later told that the Director General "was not happy" with the official in question. It appears that the contract of this official, which ended on the same date as the complainant's, was also not renewed. The complainant did not mention this matter at the hearing before the Appeal Board. The Organization in its argument addressed to the Tribunal neither admits nor denies the incident, submitting that there is in any event no evidence that it affected the Director General's decision. Certainly there is

no direct evidence that it did. It would call for further investigation only if there was something so implausible about the recommendation of the Advisory Task Force as to instigate a search for some other reason for non-renewal. There is, however, nothing to arouse suspicion. The details of the reorganisation are given in the dossier and the decision to transfer much of the computer work to outside bodies was well within the discretion of the Director General. It is alleged in the rejoinder that the Organization has hired a new official "with qualifications and expertise very similar to those of the complainant". The Organization replies that this appointment, which was made over a year after the complainant's termination, was of an officer at a higher grade than the complainant's, not as an analyst programmer but with the duty of planning and supervising the work of outside firms. The Tribunal rejects the contention that the Director General has given a false reason for his decision.

4. It is unnecessary to deal with the complainant's allegations of procedural defects in the rendering of appraisal reports. They could not affect the reason given for non-renewal: there has never been any criticism of the complainant's work. It is true that, as the complainant points out, one of the objects of the report is stated in Regulation 4.18 as being "the possibility of using his services in a more appropriate manner". It is true also that the ending of the work on which an officer is engaged is not in all circumstances a conclusive justification of non-renewal; the possibility of using his services in other ways is also a factor to be considered. In the present case, however, the Organization rightly contends that the complainant's qualifications as an analyst programmer were so specialised as to make it useless to consider posts in other departments.

5. The Tribunal, having reached the conclusion on the merits that the decision impugned was a lawful exercise of the Director General's discretion, finds it unnecessary to consider the issue of the receivability of the complaint.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 30 March 1983.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner