

EIGHTY-FOURTH SESSION

In re Pary (No. 6)

Judgment 1710

The Administrative Tribunal,

Considering the sixth complaint filed by Mr. Lazaro Pary against the World Intellectual Property Organization (WIPO) on 23 December 1996 and corrected on 10 February 1997, WIPO's reply of 12 March, the complainant's rejoinder of 30 May and the Organization's letter of 9 June 1997 informing the Registrar of the Tribunal that it would not be entering a surrejoinder;

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

Having considered the written submissions and disallowed the complainant's application for hearings;

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

A. Some information about the complainant's career with WIPO appears in Judgments 1179 and 1437 on his first and third complaints. At the time material to this case he was a messenger in the Organization's Conference, Communications and Procurement Section. He left the Organization on 30 September 1996.

He sent the Director General a letter on 18 December 1995 to which he appended a "confidential report" that he had written accusing some of his colleagues of unwarranted criticism of his work, libel and slander, racist insults, physical threats and attempts at assault. He asked the Director General to put a stop to such behaviour on the grounds that it was harming his health. He got no reply.

On 1 May 1996 the Director of the Personnel Division wrote to him on the Director General's behalf offering to end his appointment as from 30 September 1996 "in the interest of both sides" and to pay him, in accordance with Staff Regulation 9.6, a termination indemnity equivalent to eighteen months' "separation remuneration". The offer was subject to his promising not to take any legal action against the Organization or its employees. The complainant signed the letter without any qualification on the same day.

His own doctor gave him a certificate on 26 September 1996 declaring him to be unfit for work for an indefinite period. He sent the Director General a second letter on 27 September to which he appended a memorandum "further to" his report of 18 December 1995. He said that there had been no inquiry into his allegations and he asked for punitive action. Again he got no reply. He has filed this complaint challenging the refusal that he infers from the Director General's silence.

B. The complainant submits that the acts with which he charges other staff members were a grave affront to his dignity and intrusion into his private life and harmed his health. His direct supervisors showed bias against him and indulgence towards the other staff and the Director General has done nothing at all to afford protection from that sort of treatment. Certificates from his doctor and several specialists show a causal link between what he had to put up with at work and his poor health, and the Organization should have found him a "suitable sedentary" job.

He seeks an award of damages for the injury to his health and for the moral injury caused by the "discriminatory and humiliating treatment" he says he suffered at the hands of the other staff members. He wants them to be dismissed. He seeks costs.

C. The Organization replies that the complaint is irreceivable. Not having exhausted his internal remedies, the complainant was not free to go straight to the Tribunal to challenge the implied rejection of his claims. In any case he failed to meet the time limits in Article VII(3) of the Tribunal's Statute: it is his claim of 18 December 1995 that is at issue, not the one of 27 September 1996, which is mere repetition. He promised not

to take any action against WIPO.

In a subsidiary plea the Organization submits that the complainant has not proved his allegations. That is plain from an inquiry made after he wrote his first letter to the Director General.

The complaint being "blatantly vexatious", the Organization asks the Tribunal to award against the complainant the costs it will incur under Article IX(2) of the Annex to the Statute.

D. In his rejoinder the complainant denies any vexatious intent. He rebuts the Organization's arguments on receivability. The absence of a reply from the Director General to his claims blocked the appeal procedure and so deprived him of his internal remedies. The time limit in Article VII(3) of the Statute of the Tribunal did not start on 18 December 1995; his two requests are indistinguishable and show the same cause of action. He alleges that only "under duress" did he sign the letter of 1 May 1996 and that the right to appeal to an international administrative tribunal is inalienable. He did not know that the Organization had held an inquiry and rejects any assertion that runs counter to his own version of the facts.

He asks the Tribunal to order the Director of the United Nations Joint Medical Service to disclose the findings of the reports by his doctors and to declare WIPO's "complicity and failure to assist someone in danger" to be unlawful.

CONSIDERATIONS

1. On 18 December 1995 the complainant wrote to the Director General of WIPO asking him to "order a stop to the aggressive treatment" which he said he was being subjected to and which had "gravely damaged his physical health and emotional well-being". He described what had been going on.

He says that the Organization "paid not the slightest heed". So he wrote again on 27 September 1996 and concluded:

"I trust that WIPO will now do what is needed to stop what has been going on, and I demand properly punitive action."

2. He says that WIPO has done nothing whatever and its silence has left him no choice but to come straight to the Tribunal. In this complaint, which he filed on 23 December 1996, he asks the Tribunal:

"(1) to order the Director General to pay him damages in whatever amount the Tribunal determines for the service-incurred injury to his health;

(2) to award him moral damages, again in an amount it sees fit, for discriminatory and humiliating treatment that has seriously impaired his physical well-being and irredeemably damaged his health;

(3) to order the Director General to dismiss the staff members he accuses of racism, racial discrimination, incitement to hatred, attempts at assault, libel and slander, and so forth;

(4) to award his costs, which no judgment has yet awarded him."

3. The facts he cites in his two letters to the Director General and in the complaint took place before 18 December 1995.

On 1 May 1996 he signed an agreement with the Organization under which he left its employ in return for an indemnity equivalent to 18 months' "salaried remuneration" reckoned under Staff Regulation 9.12bis. He waived the right to take legal action "for any reason whatever, be it against the Organization or any of its staff for matters arising in the performance of their duties, before the Appeal Board, the Administrative Tribunal of the International Labour Organization or any other national or international judicial body".

4. By such waiver he has relinquished any right to pursue his first three claims. They therefore fail.

5. His fourth claim is to costs. The Tribunal ruled on his five earlier complaints in Judgments 1179, 1265, 1437, 1500 and 1545. In four of them, Judgments 1179, 1437, 1500 and 1545, it dismissed his complaint and awarded him no costs. In Judgment 1265 it granted him 5,000 Swiss francs in costs. His fourth claim is *res judicata* and must be dismissed.

6. Although his complaint fails in its entirety, it is nevertheless only right to take note of the allegations he makes in his further memorandum sent on 26 September 1996. They are about what happened in May and June 1996. If they proved true, they would constitute a grave breach of his fundamental rights.

Though the Tribunal will not entertain charges that have prompted no internal appeal or administrative decision, it must draw WIPO's attention to the gravity of the charges.

7. In the circumstances the Tribunal disallows the Organization's counterclaim to an award of costs against the complainant.

DECISION

For the above reasons,

The complaint and WIPO's counterclaim are dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

**Michel Gentot
Julio Barberis
Jean-François Egli**

A.B. Gardner