

The Administrative Tribunal,

Considering the seventh complaint filed by Mr S.G. G. against the World Intellectual Property Organization (WIPO) on 22 November 2006 and corrected on 22 December 2006, the Organization's reply of 18 April 2007, the complainant's rejoinder of 25 May, WIPO's surrejoinder of 23 August, the complainant's additional submissions of 26 September and the Organization's observations thereon of 12 October 2007;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, an Italian national born in 1948, joined WIPO in 1974 as a messenger-chauffeur at grade G.3. In May 2000 he was transferred to the Division of Protocol and on 29 June 2001 to the Security Coordination Section. He then held grade G.7. He was appointed Head of that section on 22 July 2002 and promoted to grade P.3 with effect from 1 January 2005.

The complainant was informed by a letter of 7 March 2006 from the Director of the Human Resources Management Department that the Organization had decided to investigate eight charges of serious misconduct on his part. During this investigation he would be temporarily suspended from duty, with immediate effect and with pay, pursuant to Staff Rule 10.1.2. On 17 March the complainant wrote to the Director General, asking him to annul this decision and to order either his reinstatement throughout the investigation, or the granting of special leave with full pay under Staff Regulation 5.2(a). By a letter of 2 May 2006 the Director of the Human Resources Management Department informed him that the Director General had dismissed his appeal, having concluded that his temporary suspension was justified.

On 23 May 2006 the complainant lodged an appeal with the Appeal Board, in which he sought the same redress but reserved the right to claim moral damages at a later stage. In its report dated 2 August the Board concluded that the appeal was without merit, but recommended that the Director General should conclude the investigation with all due speed and, if justified, initiate disciplinary proceedings against the appellant or, conversely, allow him to return to work. On 28 September 2006 the complainant was notified that the Director General had decided to dismiss his appeal against his suspension. That is the impugned decision.

B. The complainant takes the Organization to task for its overt display of overall hostility towards him. He expresses "deep shock" at the decision to suspend him, which was taken while he was on sick leave, and he claims that the seriousness of this decision and its impact on his career demonstrate the "clear determination" of certain people within the Organization to get rid of him. The complainant argues that the decision to support him was groundless, since it does not rest on any specific accusation and none of the documents produced provides a valid justification for it. He considers that the Organization's decision is therefore tainted with bias. He also contends that the decision was arbitrary, because he was not allowed to express his opinion on it beforehand. He asserts that until December 2005 the ratings in his periodical reports were entirely favourable; as a matter of fact he has challenged his periodical report of December 2005. According to him, it is only because he has denounced the harassment to which he has been subjected since May 2005 – when a contractor, a private security firm, complained about him – that the Organization has tried to get rid of him by pushing him to resign, or by trying to find reasons to justify his dismissal. He considers that these manoeuvres constitute misuse of authority.

He takes the Organization to task for reacting to only some of the Appeal Board's findings and recommendations almost two months after they were issued, despite a reminder sent by him and the "urgency" of the situation. He submits that every day which passes stigmatizes him still further in the eyes of his peers, especially as the measure of suspension, unlike special leave with pay, is viewed by everyone as a sign of his guilt, so that the principle of the presumption of innocence is violated. In addition, the fact that his suspension is for an unspecified period leaves

him in “total uncertainty”. He stresses that he was interviewed by the external investigators and submits that they have issued a report entirely in his favour. He observes that, despite several requests sent to the Organization, he has been unable to obtain a copy of it.

The complainant asks the Tribunal to order the Organization, by way of interim relief, to produce the external investigators’ report immediately and to conclude the investigation rapidly. He primarily seeks the setting aside of the Director General’s decision of 28 September 2006 and his immediate reinstatement in his post regardless of any extension of the current investigation. Subsidiarily, he asks the Tribunal to order the Organization to grant him special leave with full pay until the end of the investigation. He claims moral damages in the amount of 400,000 United States dollars and the reimbursement of all of his costs, i.e. 15,000 dollars.

C. In its reply WIPO, relying on the Tribunal’s case law, asserts that the Director General was quite right to order the complainant’s temporary suspension in order to permit the holding of an investigation, without prejudice to his right to be heard should disciplinary proceedings be initiated at the end of the investigation. It submits that conclusive evidence is not required in order to open an investigation since the very purpose of such investigation is to gather evidence. It argues that it would in fact have failed in its duty if it had not examined the accusations levelled against the complainant, bearing in mind the information at its disposal and, in particular, the sensitive nature of the complainant’s duties as Head of the Security Coordination Section. The Organization responds in detail to each of the claims made in the letter of 7 March 2006 and produces evidence to show that the conditions for both holding the investigation and suspending the complainant were met. It rebuts the complainant’s arguments by stressing that, contrary to his submissions, none of his periodical reports had been good after his promotion to a professional category post in January 2005 and that all the incidents giving rise to the investigation took place in 2005. It contends that the submissions in the complaint are an attempt to create a distraction and are without merit. In addition, some of them are the subject of other appeals.

The Organization explains that the purpose of the external investigation was merely to establish the facts, check the allegations and gather evidence, and that its findings were meant for use in the wider investigation process being conducted by WIPO, the conclusions of which likewise could not be disclosed to the complainant until the process had been completed. The Organization submits that it had no particular interest in maintaining the complainant’s suspension, given the financial impact of such a measure, and it considers that he did not suffer financially since he received his full salary.

D. The complainant presses his pleas in his rejoinder. He submits that since the investigation has lasted for about a year it infringes international civil service “standards”. He is surprised that the Organization does not mention the findings of the external investigation in its reply. He refutes the evidence submitted by the Organization and states that “the main, if not sole, source” of the accusations against him lies in the allegations made by the private security firm. He further submits that the case law cited by the Organization is irrelevant, because it relates to facts of a completely different nature to those of the present case.

The complainant likewise claims that the Organization’s determination to get rid of him is demonstrated by the sequence of the decisions of 12 October 2006 to transfer him to another service and of 28 February 2007 to terminate his appointment following the review and restructuring of security duties within the Organization.

E. In its surrejoinder the Organization maintains its position. It explains that the complainant’s suspension – a measure which was not widely publicised – ended on 28 February 2007 when his appointment terminated for reasons unrelated to his suspension. The Organization adds that since the Internal Audit and Oversight Division, which was responsible for the final investigation report, had found that five of the eight charges were supported by the evidence gathered, the complainant had no reason to contend that the opening of an investigation was unwarranted. It acknowledges that the investigation took longer than expected owing to unforeseen delays, but states that the findings were sent to the complainant by a letter of 9 August 2007, a copy of which is annexed to the surrejoinder, and that the Director General is waiting to receive the complainant’s comments before issuing final conclusions.

The Organization also emphasises that the complainant’s transfer, his dismissal and an internal complaint concerning a periodical report which he mentions should not be commented upon within the framework of the present complaint. It explains that the examination of the complainant’s dismissal is pending before the Appeal Board and that his internal complaint concerning a periodical report has been submitted to the Tribunal in another complaint.

F. In his additional submissions the complainant objects to the fact that WIPO has produced the reports of the external investigators and the Internal Audit and Oversight Division on the grounds that this has destroyed “the equality of arms between the parties”. He also draws attention to the fact that the external investigators’ report of 28 April 2006 and the Internal Audit and Oversight Division’s report of 30 April 2007 were not forwarded to him until 9 August 2007. He disputes all the findings of the latter report and produces a letter of 31 August 2007 to the Organization, which contains his comments on it.

G. In its final observations the Organization asserts that it has fully complied with the complainant’s request to be provided with a copy of the external investigators’ report, since on 5 October 2007 it sent him two letters asking for clarification in respect of the external investigators’ report of 28 April, as well as the supplementary report of 30 December 2006. It denies the allegations contained in the complainant’s letter of 31 August 2007, but explains that it will not reply to it because no official decision has yet been taken on the final report of the investigation. The Organization emphasises that it forwarded the report to the complainant, in order to give him a chance to respond, and also to the Tribunal, for the latter “might wish to learn of the outcome of the investigation”.

CONSIDERATIONS

1. The complainant joined WIPO in 1974. At the material time he held grade P.3 and was the Head of the Security Coordination Section.

2. By a letter of 7 March 2006 from the Director of the Human Resources Management Department, which the complainant received while he was on sick leave, the latter was notified of a number of serious charges against him which would form the subject of an investigation. He was informed that the Director General had decided under Staff Rule 10.1.2 to suspend him from duty with pay until the end of the investigation, at which point a decision would be taken as to whether proceedings for serious misconduct were to be initiated. On 14 March 2006 the complainant was interviewed by external investigators appointed by the Organization to this end.

3. On 17 March he asked the Director General to review the decision to suspend him. By a letter of 2 May the Director of the Human Resources Management Department replied that his request for review had been denied.

4. On 23 May the complainant submitted an internal appeal to the Appeal Board against the decision of 7 March 2006. In a report dated 2 August the Board rejected the appeal as being without merit, but recommended that the Director General should ensure that the Administration concluded the investigation into the allegations against the complainant with all due speed, if it was not yet concluded, and that, if justified, it should initiate disciplinary proceedings against him or, conversely, terminate his suspension and allow him to return to work. In its discussion of the merits of the appeal, the Board expressed the view that the investigation should in any case not continue much beyond the date of the submission of its report, namely the first week of August.

On 28 September 2006 the complainant was informed that the Director General had decided to endorse the Appeal Board’s unanimous view that his appeal was without merit and that it was accordingly dismissed. It must be noted that no mention was made in that decision of the recommendation concerning the length of the investigation.

5. In his complaint the complainant submits that the suspension ordered on 7 March 2006 was completely groundless, since the Administration has produced no evidence to support the accusations against him. He states that his suspension was based exclusively on the Administration’s “prejudgement” and is therefore tainted with bias. He considers that the decision to suspend him was taken in a completely arbitrary manner and that he was not given any opportunity beforehand to express an opinion on it; that, being “stigmatising”, it violates the principle of the presumption of innocence; and that it constitutes misuse of authority.

6. The Organization replies that the Director General had a clear legal basis for ordering the complainant’s suspension and that he was perfectly entitled to take this temporary measure in order to permit the holding of an investigation, without prejudice to the staff member’s right to be heard in the event that disciplinary proceedings were initiated at the end of the investigation.

It submits that in view of the information at its disposal, especially the nature of the allegations and their source (i.e. reports from a private security firm and a detailed report from the Head of WIPO’s Procurement and Contracts Service dated 13 October 2005), and given the sensitive nature of the complainant’s position as Head of the

Security Coordination Section, the Director General had good reason to decide temporarily to suspend the complainant with pay.

7. The Tribunal first considers that the complainant's preliminary request that certain documents be forwarded to him has become redundant in the course of these proceedings because by letters of 9 August and 5 October 2007 the Organization sent him the requested reports.

Furthermore, the Tribunal concurs with the Organization that the allegations made by the complainant in his additional submissions cannot be entertained in these proceedings, insofar as they are based on objections to the contents of a report which has not yet given rise to a final administrative decision.

8. The Tribunal notes that the complaint is directed against the decision of 28 September 2006 by which the Director General dismissed the appeal against the complainant's suspension as from 7 March 2006, and that the main claim in the complaint is for the setting aside of the decision of 28 September 2006 inasmuch as it followed the Appeal Board's recommendation of 2 August 2006 that the appeal against the refusal to review this decision should be rejected. The question is therefore whether the complainant's suspension complied with the existing texts and the relevant case law, it being understood that facts occurring after this suspension, which were mentioned by the parties in their additional submissions, cannot be considered in these proceedings.

9. Staff Rule 10.1.2 reads as follows:

“When a charge of serious misconduct is made against a staff member and if the Director General considers that the charge is well founded and that the staff member's continuance in office pending the results of an investigation might be prejudicial to the service, the Director General may suspend that staff member from duty, with or without pay, until the end of the investigation, without prejudice to his rights.”

According to the case law, suspension is an interim measure which need not necessarily be followed by a substantive decision to impose a disciplinary sanction (see Judgments 1927, under 5, and 2365, under 4(a)). Nevertheless, since it imposes a constraint on the staff member, suspension must be legally founded, justified by the requirements of the organisation and in accordance with the principle of proportionality. A measure of suspension will not be ordered except in cases of serious misconduct. Such a decision lies at the discretion of the Director General. It can therefore be reviewed by the Tribunal only on limited grounds, that is to say if it was taken without authority, or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the evidence (see Judgment 2365, under 4(a)).

10. In the present case it is necessary to decide whether the conditions for suspending the complainant from duty were met when the Director General ordered this measure and whether the decision taken was tainted with any flaw which might justify its being set aside by the Tribunal in accordance with above-mentioned case law.

11. In essence the complainant contends that the impugned decision imposed a suspension which was unfounded, disproportionately long, arbitrary and tainted with misuse of authority. He submits that the Administration had not proved any specific charge against him supporting a presumption that the accusations against him were well founded. He asserts that none of the documents produced could justify the measure of suspension, which therefore appears to rest solely on prejudgement and is thus tainted with bias.

However, the Tribunal finds that the evidence on file shows that the Director General was relying on reports and information available to the Administration when he considered that there were “indications which merited further scrutiny in the context of disciplinary proceedings” or “indications of irregularities justifying the initiation of disciplinary proceedings in the course of which the person charged must be allowed all admissible means of defence” and that, in view of the sensitive nature of the post held by the complainant, he had grounds for ordering his temporary suspension with full pay.

There is no need at this stage to prove that the accusations are well founded, since the measure of suspension constitutes, as pointed out above, an interim measure which in no way prejudices the decision on the merits regarding a possible disciplinary measure, but which is designed to safeguard the interests of the Organization pending the outcome of an investigation to ascertain whether the accusations have any substance or not. It therefore appears that, in ordering the complainant's suspension with pay, the Director General did not abuse his discretion,

but intended to safeguard the Organization's interests in the light of the various charges listed in his letter of 7 March 2006 and of the sensitive nature of the post held by the complainant. Consequently, it cannot be said that the measure taken rested on prejudgement and was tainted with bias.

12. The complainant finds it hard to understand the gravity of the accusations levelled at him, bearing in mind that he had always been held in high esteem by the Administration, as his periodical reports until March 2005 prove, and he considers that the purpose of his suspension was simply to push him out of his job and was merely an illustration of the harassment to which he had been subjected for over a year. He submits that his suspension was ordered in a purely arbitrary manner and clearly infringed his rights insofar as the Administration did not specify its duration and thus set a time limit to it. He claims that this suspension measure was dictated by purely personal considerations, was aimed "exclusively at banishing [him] from sight of persons in whose way he g[ot]" and constitutes misuse of authority.

The Tribunal finds that the complainant's assertions are not supported by evidence proving the alleged misuse of authority.

It may therefore be concluded from the foregoing that the measure of suspension complied with the conditions laid down by Staff Rule 10.1.2 and that it did not deprive the complainant of his right to present his defence and to produce relevant evidence in any subsequent disciplinary proceedings. The Director General was therefore correct in endorsing the Appeal Board's opinion concerning a review of the complainant's suspension.

13. The Director General did not, however, implement the Appeal Board's recommendation that he should conclude with all due speed the investigation into the allegations of serious misconduct against the complainant and should take a decision within a reasonable time. In fact he did not conduct the investigation with the dispatch required by the Tribunal's case law and by the circumstances of the case, and he thus caused an unjustified delay in the handling of the case. The explanations given by the Organization in its submissions are irrelevant, particularly because they do not indicate that the completion of the investigation was delayed through any fault on the part of the complainant.

14. By prolonging an essentially temporary measure beyond a reasonable time, without any valid grounds, thereby placing the complainant in a situation of uncertainty as to his further career, the Organization caused him moral injury which must be redressed by awarding him the amount of 10,000 United States dollars.

15. In view of the fact that the complainant's appointment terminated on 28 February 2007 for other reasons, the Tribunal will not rule on his other claims.

16. Since the complainant partially succeeds he is entitled to 2,000 dollars in costs.

DECISION

For the above reasons,

1. The Organization shall pay the complainant 10,000 United States dollars in compensation for the moral injury suffered.
2. It shall also pay him 2,000 dollars in costs.
3. All other claims are dismissed, subject to what is said in consideration 15.

In witness of this judgment, adopted on 9 November 2007, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 February 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

Updated by SD. Approved by CC. Last update: 27 February 2008.