

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

COORDINATION COMMITTEE

Thirty-Third Session (25th Ordinary)
Geneva, September 26 to October 4, 1994

STAFF MATTERS

(FIRST SUPPLEMENT TO DOCUMENT WO/CC/XXXIII/2)

Memorandum of the Director General

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I. AMENDMENT TO STAFF RULE UNDER STAFF REGULATION 12.2

Compensation for Overtime for Staff Members in the General Service Category - Staff Rule 3.9.3(c)

1. Present Rule 3.9.3(c) provides that "In the calculation of daily overtime, periods of less than 15 minutes shall be disregarded. The total overtime shall be calculated each week in hours and half-hours, periods of less than 30 minutes being disregarded." Recent improvements in the system which by computer keeps records of overtime make such roundings unnecessary since the improved system keeps records in units of minutes.

2. With effect from October 1, 1994, Rule 3.9.3(c) will be canceled.

3. It is to be noted that actual payment of overtime will be made for complete hours and/or once the minutes total one hour.

4. The WIPO Coordination Committee is invited to note the suppression of Staff Rule 3.9.3(c) reported in paragraphs 1 to 3, above.

II. ADVICE ON AN APPOINTMENT TO A POST OF GRADE D.1

5. Staff Regulation 4.8(a) provides that "staff members shall be appointed by the Director General; however, appointments to posts in the Special category (grades D.1 and D.2) shall be made taking into account the advice of the Coordination Committee."

6. The Director General will, if the WIPO Coordination Committee agrees, promote Mr. Giovanni Tagnani, a national of Italy, to grade D.1. Mr. Tagnani joined the Organization on March 1, 1978, and his present position is that of Head, Buildings Section, General Administrative Services. In view of the increasing responsibility given to that Section, in particular with the growing need of working spaces and the planned erection and/or renting of new premises for WIPO, as mentioned in document AB/XXV/5, this section will become a division. Grade D.1 is in line with the level of the duties of the head of a division.

7. The WIPO Coordination Committee is invited to advise the Director General in respect of the intended promotion referred to in paragraph 6, above.

III. ADVICE ON SEPARATION FROM SERVICE OF A STAFF MEMBER HOLDING A FIXED-TERM APPOINTMENT

8. Staff Regulations 4.14 and 4.15 provide that staff members in the professional category shall be granted either a fixed-term or a permanent appointment, that all initial appointments shall be for a fixed-term which shall be for a period of not less than one year and not more than five years,

that such appointments may, at the discretion of the Director General, be extended one or several times for periods not exceeding five years and that no initial fixed-term appointment or any extension shall carry with it any expectancy of, nor imply any right to, (further) extension or conversion to a permanent appointment. In addition, Staff Regulation 9.9(a) provides that a fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

9. Mr. Guillermo Bluske, a citizen of Argentina born in 1952, was employed from 1975 to 1986 by the United Nations Development Program (UNDP) and from 1986 to 1989 in the public service of his own country. He joined WIPO on June 16, 1989, under a two-year fixed-term appointment to end on June 15, 1991. His initial assignment was to the post of Senior Program Officer in the Development Cooperation and External Relations Bureau for Latin America and the Caribbean at grade P.4. On October 1, 1990, the Director General informed Mr. Bluske of his transfer to the Development Cooperation Program Support Unit with the same title and grade. That transfer was made in view of the fact that the Head of that Unit, who held grade P.5, had been appointed to the post of Director of the Personnel Division and until a new Head of the Support Unit was appointed, the duties of that Head were to be carried out partly by Mr. Bluske and partly by another staff member in that Unit. On October 12, 1990, Mr. Bluske stated that he wished to remain in the Latin American and the Caribbean Bureau but on December 10, 1990, the Director General replied that the Support Unit needed him at once and expressed the hope that Mr. Bluske would cooperate. Soon after the notice of vacancy for the post of Head of the Development Cooperation Support Unit was issued on November 16, 1990, Mr. Bluske applied for the post.

10. On March 8, 1991, Mr. Bluske was informed by the Director of the Personnel Division that his fixed-term appointment would expire on June 15, 1991. In subsequent meetings in March and April 1991, with the Director of the Personnel Division and with the Director General, Mr. Bluske was informed of the following (which was also confirmed subsequently in writing): that his application for the post of Head of the Support Unit had not been successful in that he had not been included in the list of the three candidates proposed by the Appointment and Promotion Board for consideration by the Director General; that a decision had been taken in respect of the competition for that post which had not been in his favor (another staff member, in service since March 1985 having been appointed to the post); that the post in the Latin American and Caribbean Bureau to which he had previously been assigned was no longer available because it had been opened for competition (on December 21, 1990); that his fixed-term appointment carried no expectancy of, nor implied any right to, an extension; that the memorandum of March 8, 1991, informing him of the expiration of his appointment had been made without prejudice to the outcome of the competition for the post of Head of the Support Unit; that there was no obligation on the part of the Organization to state any reasons for the decision not to renew his appointment; that, as requested on April 5, 1991, his application for that vacant post as well as for another vacant post in the Latin American and Caribbean Bureau would be considered, but that his appointment to the staff carried no right to keep the post assigned at recruitment. Pursuant to a recommendation of the Appointment and Promotion Board, the Director General decided on May 9, 1991, to fill the said posts by the appointment of two external candidates, whose appointments took effect on June 4 and 15, 1991, respectively.

11. Following a review by the Director General, the latter confirmed to Mr. Bluske that his appointment would end on June 15, 1991. Thereafter, Mr. Bluske appealed to the WIPO Appeal Board which met in May 1991 and recommended to the Director General that Mr. Bluske be offered an extension of his appointment or be paid proper compensation. Mr. Bluske was offered, through his counsel, a sum, which he turned down. He thereupon filed a complaint with the Administrative Tribunal of the International Labour Organization, which ultimately resulted in four judgments being rendered on the matter.

12. In its first judgment (rendered on January 29, 1992), the Administrative Tribunal concluded that the Organization must do its utmost to reinstate Mr. Bluske by extending his appointment as from June 16, 1991, and that if it could not do so, the Organization should pay him damages equivalent to one year's salary and allowances to cover all forms of injury that he had sustained. In addition, the Administrative Tribunal decided that the Organization should pay him 20,000 French francs in costs.

13. Following upon that judgment, the counsel of Mr. Bluske was informed in writing on February 10, 1992, that his appointment would not be extended and that, consequently, checks for the amounts referred to in that judgment were being handed over. Those checks (one in the amount of 130,156.45 Swiss francs representing one year's salary and allowances and the other in the amount of 20,000 French francs for costs) were cashed on behalf of Mr. Bluske by his counsel.

14. On the basis of an application filed by Mr. Bluske for execution of the first judgment, the Administrative Tribunal concluded, in its second judgment (rendered on February 10, 1993), that, even though the Organization in its reply had stated that there was no possibility of reinstating Mr. Bluske since there was no suitable post to which he could be appointed given his qualifications, the Organization had not done its utmost to reinstate Mr. Bluske. The Administrative Tribunal also decided that the Organization should make a new decision on reinstatement, that it should pay Mr. Bluske the equivalent to one further year's salary and allowances in damages for all forms of injury that he had sustained because of its failure to execute the first judgment. In addition, the Administrative Tribunal decided that Mr. Bluske should be paid 10,000 French francs in costs.

15. In its third judgment (rendered on January 31, 1994), the Administrative Tribunal decided that the Organization should pay compound interest reckoned as from March 24, 1993, at the rate of 10 per cent a year on the amount of one further year's salary and allowance and also on the amount of the costs that had been awarded by the second judgment, as well as 10,000 French francs in costs.

16. In its fourth judgment (rendered on July 13, 1994), the Administrative Tribunal concluded that the Organization was right as a matter of principle to refuse Mr. Bluske's claim to damages for loss of a full career in that "the two consecutive awards of one year's salary afford sufficient redress to someone who had a rightful expectation of renewal for no more than two years." The Administrative Tribunal also decided that the Organization "shall, within thirty days of the date of delivery of this [i.e., the fourth judgment]," give to Mr. Bluske "an express and properly substantiated decision on reinstatement," and that if the Organization "fails to do so within thirty

days it shall pay the complainant the sum of 10,000 Swiss francs by way of penalty for each further month of delay." Further, the Administrative Tribunal decided that the Organization should pay Mr. Bluske compound interest reckoned as from January 31, 1994, at the rate of 10 per cent a year on the amount of the costs awarded in the third judgment. The Administrative Tribunal also decided that the Organization should pay Mr. Bluske a further sum of 10,000 French francs in costs for the complaint that was the subject of the fourth judgment.

17. It is to be noted that not only before the expiration of Mr. Bluske's fixed-term appointment but also thereafter during the period of the various proceedings leading up to the fourth judgment of the Administrative Tribunal, the Organization has attempted in contacts made directly and through outside counsel with the counsel of Mr. Bluske to reach an amicable settlement on the matter, but without the least cooperation on his part.

18. The Director General was of the view and is still of the view that there was and continues to be no post in the Organization that is suitable for Mr. Bluske, given his lack of legal or technical qualifications in the fields of intellectual property and given the absence of any need for additional staff in the administrative and support services of the Organization, that Mr. Bluske has been informed both orally, in writing and in the pleadings filed by the Organization of these grounds and that no particular purpose is served by repeating those grounds, especially since it is not in the interest of the Organization to do so given the contentious and belligerent attitude of Mr. Bluske and his counsel. Furthermore, the Director General continues to be of the view that there is no legal basis for any claim of Mr. Bluske arising out of the decision not to renew his fixed-term appointment and that, in any event, Mr. Bluske has been more than amply compensated by the payment of one year's salary and allowances (130,156.45 Swiss francs) and costs (20,000 French francs), awarded in the first judgment (see paragraph 13, above). Therefore, the Director General does not intend to act any further on the matter, in particular, no further decision will be taken concerning the reinstatement of Mr. Bluske and no other payments (see paragraphs 14 to 16, above) will be made to him.

19. The Coordination Committee is invited to note the information set forth in paragraphs 8 to 18, above, and to approve the course of action indicated in the last sentence of paragraph 18, above.

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