

107th Session

Judgment No. 2827

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr J. A. S. (his fourth), Mr L. G. (his second) and Mr L. P. (his second) against the European Patent Organisation (EPO) on 9 October 2007, the EPO's reply of 4 February 2008, the complainants' rejoinder of 18 February and the Organisation's surrejoinder of 6 June 2008;

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

Having examined the written submissions and decided not to order hearings, for which none of the parties has applied;

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

A. The complainants work in the European Patent Office – the EPO's secretariat – in The Hague. At the material time, Mr G., Mr A. S. and Mr P. were respectively Chairman, Vice-Chairman and Secretary of the local Staff Committee. Mr G. was also Deputy Chairman of the Central Staff Committee. In addition, the complainants were members of the local section of the Staff Union of the European Patent Office:

Mr A. S. was Chairman, Mr G. was Deputy Chairman and Mr P. was Secretary.

Between 2004 and 2007 the Office commissioned a research project, known as “Scenarios for the Future”, the purpose of which was to consider how the patent system was likely to evolve over the next 20 years. External experts drawn from various fields took part in the project which was completed in spring 2007. By an e-mail of 6 June 2007, Mr P., in his capacity as Secretary of the local Staff Committee in The Hague, asked the President of the Office to provide the Staff Committee with information as to the costs of the project. The Head of the President’s Office replied on 26 June that that request amounted to a request for an internal audit on the project, which the President had decided to reject. On 4 July the complainants sent an e-mail to the Head of the President’s Office expressing disappointment at the “curt” reply and reiterating their request for disclosure of information concerning the costs of the project. Referring to Article 34 of the Service Regulations for Permanent Employees of the European Patent Office that sets out the duties of the Staff Committee, they requested an internal audit in the event that the requested information was not available. Moreover, if their request was denied, they asked that their e-mail, which they had signed in their respective capacities as Chairman, Vice-Chairman and Secretary of the Staff Union, be treated as an internal appeal.

The Office did not respond to the e-mail of 4 July, nor did it refer the matter to the Internal Appeals Committee. On 9 October 2007 the complainants filed their complaints with the Tribunal, impugning the implied rejection of their internal appeal.

B. The complainants indicate that, in accordance with Article 36 of the Service Regulations, one of their duties as elected staff representatives is to make suggestions relating to the organisation and working of departments or the collective interests of the whole or part of the staff. In the context of increases in pension contributions, potential cuts in pension benefits and salary negotiations, their request for disclosure of information concerning the costs of the project entitled “Scenarios for the Future” was justified on grounds of

financial transparency. They contend that the Office has failed to comply with its duty of care, which encompasses a duty of transparency.

They submit that the refusal to accede to their request was arbitrary and constituted an abuse of authority as the Office failed to provide proper reasons for that decision. They stress that the Head of the President's Office did not even assert that the information requested was confidential to justify the refusal to disclose information. They point to the disdainful tone of the letter as evidence that the decision to reject their request was motivated by animosity towards them.

The complainants ask the Tribunal to quash the impugned decision, and to order disclosure of the information sought. They also claim moral damages in the amount of one euro per staff member represented, punitive damages and costs.

C. In its reply the EPO submits that the complaints are irreceivable *ratione personae* on the grounds that the complainants filed their internal appeal as representatives of the Staff Union and not as representatives of the Staff Committee. It explains that only the Staff Committee is a statutory body under the Service Regulations; the complainants should consequently have filed their appeal in their capacity as members of the Staff Committee. In its view, the complaints are also irreceivable *ratione materiae* insofar as the complainants contest a decision to reject a request made by them as members of the Staff Union ostensibly exercising rights vested in the Staff Committee. Thus, the contested decision is not an individual decision affecting them adversely. According to the Tribunal's case law, a complaint is receivable only if it concerns an individual official's status as an employee of the organisation, and not the collective interests of trade unionists.

Subsidiarily, the Organisation contends that the complaints are unfounded. It states that the President was fully entitled to launch the project "Scenarios for the Future". Indeed, in accordance with Article 10 of the European Patent Convention, the President is

responsible for the Office's activities to the Administrative Council and is entitled to take all necessary measures to ensure the functioning of the Office. In conformity with Article 49 of the European Patent Convention, the costs of the project were outlined in the draft budgets for the years 2004 to 2007, which were examined by auditors and certified without qualification; the draft budgets were then approved by the Administrative Council. The EPO further asserts that the project was managed in line with applicable provisions and in a financially sound way. It adds that although the General Advisory Committee, which is a joint body composed of staff representatives and representatives of the Administration, is not consulted on draft budgets, members of the staff representation are observers in the meetings of the Budget and Finance Committee and Administrative Council at which the budgets are approved and adopted respectively.

The defendant rejects the allegation of abuse of authority and denies any ill will on its part. It considers that the e-mail of 26 June 2007 was a purely factual reply to the complainants' request and that there were good reasons to refuse to provide the requested information. In addition, it objects to the claim for damages on the grounds that the complainants have not provided evidence of an unlawful act, actual injury and a causal link between act and injury, as required by the case law.

D. In their rejoinder the complainants assert that their complaints are receivable. In their view, it was clear from their initial request dated 6 June 2007 and from the reply of the Head of the President's Office of 26 June that the request for information was put forward in their capacity as members of the Staff Committee. They also consider that their claim for damages is justified. The decision to reject their request was unlawful as it was not substantiated. It adversely affected them insofar as they were unable properly to defend the interests of the staff they represented. They emphasise that the claim for moral damages is symbolic as it is limited to one euro per staff member represented.

E. In its surrejoinder the Organisation maintains its position. It adds that, in its view, the e-mail of 26 June 2007 constituted a properly reasoned reply to the complainants' request.

CONSIDERATIONS

1. The complainants, who are described in their complaints as “elected staff representatives”, were at all relevant times the Chairman, Vice-Chairman and Secretary of the EPO's local Staff Committee in The Hague. On behalf of the Staff Committee, the third complainant sent an e-mail to the President of the Office on 6 June 2007, requesting information as to the cost of a research project known as “Scenarios for the Future”. Information was sought as to the number of staff involved in the project and for what period, as well as travel, consultancy, printing, publishing and event costs. The e-mail was acknowledged but the requested information was not provided. On 4 July 2007 the complainants, writing in their respective capacities as Chairman, Vice-Chairman and Secretary of the local section of the Staff Union and asserting their “prerogatives” under Article 34 of the Service Regulations, again asked for that information. They requested a decision under Article 106 and, if their request was not granted, asked that the letter be treated as an internal appeal under Article 108 of the Service Regulations.

2. The e-mail of 4 July was not answered and on 9 October 2007 the three complaints were filed. Since these complaints were filed together and raise the same issues of fact and law, and seek the same redress, they must be joined to form the subject of a single ruling.

3. The complainants seek the quashing of the implied decision to refuse their request for information, an order for its disclosure, moral and punitive damages, as well as costs. The EPO accepts that the complaints are receivable *ratione temporis*, but not *ratione personae* or *ratione materiae*. The argument that the complaints are not receivable *ratione personae* is based solely on the fact that the

complainants did not describe themselves as members of the Staff Committee, in which capacity they may institute proceedings to ensure observance of the Service Regulations (see Judgments 1147, 1897 and 2649), but as “elected staff representatives”. The argument must be rejected. The complainants are members of the Staff Committee, a fact that was communicated to the EPO in June 2006, shortly after their election. Moreover, they referred in their request of 4 July 2007 to Article 34 of the Service Regulations which sets forth certain duties of the Committee. The EPO does not, and could not credibly claim that it has been prejudiced by the complainants’ failure to state expressly that they are members of the Staff Committee. In these circumstances it is not in the interests of justice to hold the complaints irreceivable by reason of what the EPO, itself, implicitly acknowledges was a “clerical error”.

4. The EPO contends that the complaints are irreceivable *ratione materiae* on the basis that the implied decision refusing to provide the complainants with the requested information is not a “decision relating to a specific individual” for the purposes of Article 106 of the Service Regulations. It was pointed out in Judgment 1542 that:

“a complaint is receivable only if it is about an individual official’s status as an employee of the organisation, not about the collective interests of trade unionists.”

It is well settled that a complaint may concern breach of the Service Regulations (see Judgment 1147) or other guarantees that the EPO is bound to provide to its staff (see Judgment 2649). Those guarantees extend to freedom of association and collective bargaining insofar as they are implicit in the Service Regulations. With respect to collective bargaining, it is sufficient to note that Article 34(1) mandates that the Staff Committee “shall represent the interests of the staff and maintain suitable contacts between the competent administrative authorities and the staff” and that Article 36(1) enables it to “mak[e] [...] suggestions relating to [...] the collective interests of the whole or part of the staff”. However, the rights that are comprehended within the notions of “freedom of association” and “collective bargaining” that may also be

the subject of an internal appeal and, subsequently, of a complaint to the Tribunal are individual rights inhering in individual staff members.

5. The complainants do not point to any provision of the Service Regulations or to any aspect of freedom of association that might support a claim to the provision of the information requested. Rather, they seek to justify the claim by reference to the possibility that pension entitlements and health insurance premiums might be changed and the fact that negotiations were pending with respect to salaries and pensions. Thus, they clearly invoke the right to collective bargaining.

6. It may be accepted for present purposes that there are aspects of the right to collective bargaining that give rise to individual rights and that adverse decisions with respect to those individual rights may be the subject of an internal appeal in accordance with the Service Regulations. However, and whatever those rights may be, they do not extend to the provision of information as to the costs of specific projects undertaken by the organisation. At best, provision of the information requested may have served the collective interests of the staff but, as is clear from Judgment 1542, that is not sufficient to render the implied decision in question a decision affecting an individual official.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 8 May 2009, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Seydou Ba
Mary G. Gaudron
Dolores M. Hansen
Catherine Comtet