

*Registry's translation,  
the French text alone  
being authoritative.*

## **109th Session**

## **Judgment No. 2948**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr W. A. against the European Patent Organisation (EPO) on 21 April 2009;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

### **CONSIDERATIONS**

1. The complainant, a German national, is a permanent employee of the European Patent Office, the EPO's secretariat, where he works as a patent examiner.

2. In this fourth complaint he seeks to challenge the decision, evidenced by his payslip for September 2008, whereby the Office deducted an amount from his salary for the previous month. The amount in question was deducted from the complainant's remuneration for a two-day period during which the Administration had applied to him, in advance of the effective date indicated in his request, the part-time working hours he had requested following his parental leave.

3. By a letter of 25 October 2008 the complainant filed an internal appeal against that decision based on Article 107, paragraph 1, of the Service Regulations for permanent employees of the Office.

4. By a letter of 12 December 2008 he was informed that the President of the Office, considering that a favourable reply could not be given, had referred the matter to the Internal Appeals Committee for an opinion in accordance with the procedure provided for in Article 109, paragraph 1, of the Service Regulations.

5. On 21 April 2009 the complainant lodged a complaint with the Tribunal challenging the implicit decision to reject his appeal which had occurred, according to him, on 12 February 2009 when a two-month period from the date on which the appeal was filed with the Internal Appeals Committee had expired.

6. Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, complaints are not receivable unless the internal remedies available under the staff regulations of the organisation concerned have been exhausted. It must be concluded that this requirement has not been met in the present case. As the case had been submitted to the Internal Appeals Committee, the President's decision on the complainant's internal appeal should have been taken, pursuant to Article 109, paragraph 1, of the Service Regulations, in the light of the opinion rendered by that body. As no such final decision had been taken, the internal appeal procedure had not been completed when the complaint was filed.

7. The complainant argues that his internal appeal gave rise to an implicit decision of rejection that could be referred to the Tribunal in the same manner as a final decision. He relies in this connection on the provisions of Article 109, paragraph 2, of the Service Regulations, according to which “[i]f the President of the Office has taken no decision within two months from the date on which the internal appeal was lodged, the appeal shall be deemed to have been rejected”. However, apart from the fact that these provisions are not applicable

where the matter has been referred to the Internal Appeals Committee, the receivability of complaints submitted to the Tribunal is, in any case, governed exclusively by the provisions of its own Statute. While Article VII, paragraph 3, of the Statute permits a complainant to have recourse to the Tribunal “[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it”, the Tribunal has consistently held that the forwarding of the claim to the advisory appeal body constitutes a “decision upon [the] claim” within the meaning of these provisions, which is sufficient to forestall an implied rejection (see, for example, Judgments 532, 762, 786 or 2681). As the President in this case referred the matter to the Internal Appeals Committee within the statutory time limit of sixty days, the complainant could not rely on the existence of such an implicit decision.

8. It follows that the complaint is clearly irreceivable and must be dismissed in accordance with the summary procedure provided for in Article 7, paragraph 2, of the Tribunal’s Rules.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 April 2010, Ms Mary G. Gaudron, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2010.

Mary G. Gaudron  
Seydou Ba  
Patrick Frydman  
Catherine Comtet