

A. (No. 16)

v.

EPO

120th Session

Judgment No. 3508

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixteenth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 20 April 2011, the EPO's reply of 8 August, the complainant's rejoinder of 31 October 2011 and the EPO's surrejoinder of 7 February 2012;

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

Having examined the written submissions;

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

In his sixteenth complaint before the Tribunal, the complainant is challenging the EPO's alleged failure to take an express decision on his claim for the reimbursement, under Article 80 of the Service Regulations for Permanent Employees of the EPO (hereinafter "the Service Regulations"), of the travel expenses that he incurred in respect of his three children upon leaving the service of the EPO.

The complainant is a former staff member of the EPO. He ceased to perform his duties due to invalidity on 1 December 2005. Upon leaving the service of the EPO, he relocated from the Netherlands to Italy. On 3 July 2006 he requested reimbursement of the travel expenses he had incurred for himself, his wife, his three children and his mother upon relocating to Italy, in line with Article 80 of the

Service Regulations. Further to the Administration's request, he provided additional information on his travel itinerary and he indicated that his children had remained in the Netherlands to pursue their studies and that his mother was still resident in Italy – in 2004 the complainant had declared her as residing in Italy for the purposes of the dependent's allowance under Article 70 of the Service Regulations. In October and November 2006 the EPO reimbursed him for the travel expenses he had incurred for himself and his wife but it refused to reimburse him for the expenses he had incurred for his three children and his mother because, as it explained in a letter of 7 November 2006, it could not confirm his entitlement to reimbursement of travel expenses for his children and his mother.

On 16 November 2006 the complainant wrote to the President requesting a review of this decision and he asked that his letter be treated as an internal appeal in the event that his request was rejected. He claimed full reimbursement of the travel expenses incurred for his children and his dependent mother – calculated under Article 80 of the Service Regulations on the basis of the real distance – with 8 per cent interest, 10,000 euros in moral damages, costs – including for eventual proceedings before the Tribunal – and 200 euros for postage and photocopy costs.

The President rejected this request and referred the matter to the Internal Appeals Committee (IAC). In its opinion of 9 February 2011, the IAC recommended unanimously that the EPO reimburse the complainant for the travel expenses of his three children, as provided for under Article 80 of the Service Regulations, and by a majority that it award him 200 euros in costs. As to the claims for reimbursement of his mother's travel expenses and for moral damages, it recommended that they be rejected. By a letter of 29 March 2011 the Administration notified the complainant of the President's decision to endorse the IAC's recommendation. Nonetheless, on 12 April 2011 the complainant wrote to the President informing him that he considered the EPO's silence as a negative response to the requests made in his internal appeal of 16 November 2006. On 20 April 2011 he filed the present complaint with the Tribunal, indicating on the complaint form that the Organisation

had failed to take an express decision on the claim which he notified to it on 12 April 2011. He thus impugns an implied rejection of his appeal.

CONSIDERATIONS

1. The complainant claims the full reimbursement of the end of appointment travel expenses to Italy incurred for his three children, calculated under Article 80 of the Service Regulations, with 8 per cent interest. He also claims 10,000 euros in moral damages for distress occasioned by the initial decision not to reimburse him for these expenses, as well as moral damages on account of the delay in dealing with the claim, and costs.

2. The EPO asks the Tribunal to reject the complainant's claims in their entirety. It emphasises that the complainant has already been reimbursed for the travel expenses he incurred in respect of his children, with 8 per cent interest, and therefore his claim in this respect is devoid of purpose. Similarly, he has already been awarded 200 euros in costs and the circumstances of the case do not justify the award of additional costs. It invites the Tribunal to order that he bears his costs.

3. The Tribunal holds that the claim for reimbursement of the travel expenses and for the 8 per cent interest thereon is unfounded. It is noted that in his complaint, which was filed in the Tribunal on 20 April 2011, the complainant listed the impugned decision as an implied rejection of his internal appeal which became effective on 12 April 2011. However, by that date he was already aware that the IAC had rendered its report and recommendations on 9 February 2011. The decision to reimburse the travel expenses for his three children, by which the Administration accepted the unanimous recommendation by the IAC, was sent to him in a letter dated 29 March 2011. The relevant sums were actually paid to him during April and May 2011, together with 8 per cent interest and 200 euros costs. The reimbursement claim was thereupon rendered redundant and it was disingenuous for the complainant to state at the end of his rejoinder of 31 October 2011

that he maintained all the claims contained in his complaint form. This claim will accordingly be dismissed.

4. The complainant indicates that he wishes to have oral proceedings. He named no witness. In any event, the Tribunal will not order oral proceedings as no purpose will be served by calling any witnesses in this case, which now turns upon the application of the legal principles that are concerned with the issues of moral damages and costs (see, for example, Judgments 3059, under 9, and 3419, under 5).

5. The complainant raises other issues in his pleadings with respect to the circumstances in which his employment with the EPO ceased. These are separate matters and are not connected to his internal appeal giving rise to the present complaint. In particular, they do not justify an award of moral damages with respect to the matters now in issue. It seems, however, that the complainant mainly bases his claim for moral damages on the contention that the Administration caused him distress by its wrong decision not to have approved the reimbursement of the travel expenses of his children shortly after he left office. The complainant insists that this happened because persons in the Administration acted in bad faith and in abuse of power when they refused to approve the children's travel expenses on the ground that they were still at school in the Netherlands. The claim for moral damages on this ground is unfounded and will be dismissed as it appears to the Tribunal that this was a genuine concern on the part of the Administration. Additionally, there is no evidence that the refusal by the Administration was the result of bad faith or abuse of power as the complainant claims.

6. With respect to the claim for moral damages for delay, this claim is not irreceivable because it was not raised in the internal appeal, as the EPO argues. It is in fact a claim by which the complainant seeks a remedy for inordinate or unreasonable delay in the internal appeal process itself, for which the Tribunal has in many instances awarded moral damages. The complainant filed his internal appeal on 16 November 2006

and that process did not arrive at a conclusion until early 2011. That is an inordinate delay.

7. Taking into consideration the excessive length of the delay in the internal appeal process and the fact that it is not apparent that this delay had a significant adverse impact on the complainant, the Tribunal sees fit to award moral damages in the amount of 800 euros (see Judgment 3160, under 17).

8. Inasmuch as the EPO has already paid to the complainant the travel expenses that he incurred in respect of his three children, together with interest at the rate of 8 per cent, but he still maintained his main claim in this matter, he will not be awarded costs.

DECISION

For the above reasons,

1. The EPO shall pay the complainant 800 euros in moral damages.
2. All other claims are dismissed.

In witness of this judgment, adopted on 15 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ