

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

P. (No. 5)

v.

EPO

120th Session

Judgment No. 3528

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr A. P. against the European Patent Organisation (EPO) on 23 July 2011 and corrected on 22 August, the EPO's reply of 24 November 2011, the complainant's rejoinder of 28 February 2012 and the EPO's surrejoinder of 6 June 2012;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

In his fifth complaint, the complainant challenges the EPO's refusal to award him moral damages on account of the length of the internal appeal proceedings.

In June 2006 the complainant filed a request for review against the setting of an objective for his productivity factor for the year 2006. He requested that the decision be set aside, that the objective be reduced and claimed 2,000 euros in moral damages.

On 18 August 2006 the complainant was informed that the President of the EPO considered that the relevant rules had been applied correctly. Consequently, his appeal had been referred to the Internal Appeals Committee (IAC) for an opinion. The European Patent Office,

the secretariat of the EPO, submitted its position paper in September 2008 and a hearing was held on 19 October 2010. During the hearing the complainant modified his claims and additionally requested an award of 1,000 euros for the length of the proceedings, as well as costs.

In its opinion of February 2011 a majority of the IAC recommended that the appeal be rejected as irreceivable, on the ground that the communication challenged by the complainant did not constitute a final decision and that he could not have reasonably interpreted it as such. The majority also recommended that the complainant be awarded moral damages in the amount of 500 euros for the length of the internal appeal proceedings. On the contrary, the minority recommended that the communication in dispute be cancelled and that the complainant be awarded 2,000 euros in damages for the stress created, 1,000 euros for the excessive delay, as well as costs.

By a letter of 26 April 2011 the Director of Regulations and Change Management informed the complainant that the Vice-President in charge of Administration (VP4), by delegation of power from the President, had decided to reject the appeal in accordance with the IAC majority opinion. The claim for damages on account of the length of the internal appeal proceedings was also rejected, as there was no bad faith on the part of the EPO and as no evidence of distress or any other moral injury had been given in the course of the internal appeal proceedings. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. He claims moral damages in the amount of no less than 1,000 euros for the length of the internal appeal proceedings, costs, and further relief as the Tribunal deems appropriate.

The EPO rejects the complainant's claims as partly irreceivable and entirely unfounded and asks the Tribunal to order that the complainant bear his costs.

CONSIDERATIONS

1. The complainant impugns the decision of 26 April 2011 by which the Director of Regulations and Change Management informed

the complainant that the Vice-President in charge of Administration, by delegation of power from the President, had decided to reject his appeal, insofar as it did not adopt the IAC's recommendations to award either 500 euros in accordance with the majority opinion, or 1,000 euros in accordance with the minority opinion, for the length of the internal appeal proceedings. The complainant bases his complaint on the fact that almost five years elapsed between the date when he filed his internal appeal on 21 June 2006 and the date when the final decision was communicated to him in the letter of 26 April 2011, which constitutes an egregious delay warranting an award of damages.

2. It is useful to note that while the IAC had recommended an award of damages for the delay in the internal appeal proceedings, the IAC had also recommended, by a majority, that his appeal be rejected as irreceivable on the ground that the communication disputed by the complainant did not constitute a final decision adversely affecting him.

3. The Tribunal has consistently held that international organisations have a duty to ensure that internal appeals are conducted with due diligence and with due regard to the duty of care owed to staff members (see, in particular, Judgment 2522). While the time an appeal might reasonably take will usually depend on the specific circumstances of a given case, in this case the internal appeal was clearly irreceivable as it challenged a decision which was not final. As such, it could not be considered to be particularly complicated and certainly not enough to warrant internal appeal proceedings lasting almost five years. Such a delay is indeed egregious and the complainant is entitled to an award of moral damages. "The amount of compensation for unreasonable delay will ordinarily be influenced by at least two considerations. One is the length of the delay and the other is the effect of the delay. These considerations are interrelated as lengthy delay may have a greater effect. That latter consideration, the effect of the delay, will usually depend on, amongst other things, the subject matter of the appeal. Delay in an internal appeal concerning a matter of limited seriousness in its impact on the appellant would

be likely to be less injurious to the appellant than delay in an appeal concerning an issue of fundamental importance and seriousness in its impact on the appellant. For example, an extensive delay in relation to an appeal concerning the dismissal of a staff member could have a profound impact on his or her circumstances. On the other hand, a delay of precisely the same period in relation to an appeal concerning a comparatively trifling issue may have limited or possibly even no impact on the circumstances of the staff member.” (See Judgment 3160, under 17.)

4. The Tribunal considers that the appeal was clearly irreceivable: the decision contested in his internal appeal did not adversely affect the complainant. Thus, the Tribunal is of the opinion that the complainant could have withdrawn his appeal when it became apparent that it would fail. The complainant has noted that he was aware of the heavy backlog facing the IAC and the consequent delays in the internal appeal proceedings. Under the circumstances, not withdrawing the appeal could perhaps give the impression that the appeal was maintained only because of the likelihood that the IAC would recommend the payment of damages for the delay. Whether the delay was due to the EPO’s tardiness or to the malfunctioning of the IAC is simply irrelevant in light of its duty to provide to the members of its staff an efficient internal means of redress (see Judgments 2392, under 6, 2196, under 9, and the case law cited therein). The Tribunal notes that the EPO has in the meantime taken measures to address the backlog of internal appeals.

5. In light of the above, the Tribunal finds that the EPO violated its duty of care by failing to ensure efficient internal appeal proceedings within a reasonable time. Thus, considering the excessive length of the proceedings and the lack of negative impact on the complainant, the Tribunal sets the amount of moral damages at 250 euros. As the complaint succeeds in part, the complainant is entitled to an award of costs which the Tribunal sets at 200 euros.

DECISION

For the above reasons,

1. The EPO shall pay the complainant moral damages in the amount of 250 euros.
2. It shall pay him costs in the amount of 200 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 19 May 2015, Mr Giuseppe Barbaglio, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

CLAUDE ROUILLER

DOLORES M. HANSEN

DRAŽEN PETROVIĆ