

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A. (Nos. 77, 86, 92, 93, 94, 98, 99 and 100)

v.

EPO

(Applications for review)

126th Session

Judgment No. 3983

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3508 filed by Mr P. A. on 13 July 2015;

Considering the application for review of Judgment 3628 filed by Mr P. A. on 29 March 2016;

Considering the application for review of Judgment 3710 filed by Mr P. A. on 25 July 2016;

Considering the application for review of Judgment 3711 filed by Mr P. A. on 26 July 2016;

Considering the application for review of Judgment 3712 filed by Mr P. A. on 27 July 2016;

Considering the applications for review of Judgments 3778, 3779 and 3780 filed by Mr P. A. on 17 February 2017;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. Under Article VI of its Statute the Tribunal's judgments are "final and without appeal" and carry *res judicata* authority. They may therefore be reviewed only in exceptional circumstances and on strictly limited grounds. The only admissible grounds for review are failure to take account of material facts, a material error involving no exercise of judgement, an omission to rule on a claim, or the discovery of new facts on which the complainant was unable to rely in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. Pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea, on the other hand, afford no grounds for review (see Judgment 3633, under 3*, and the case law cited therein). The recent explicit recognition in the Tribunal's Statute of the right to apply for a review has not altered the limits established in the Tribunal's case law as to the grounds on which such applications can be admitted.

Complaint No. 77

2. In Judgment 3508 the Tribunal dismissed the complainant's 16th complaint against the European Patent Organisation (EPO), concerning his claim for reimbursement of travel expenses, on the ground that they had already been paid. In his application for review of that judgment, the complainant asserts that this finding was incorrect as the expenses were not reimbursed. In support of this assertion he refers to a document which had been produced by the EPO as an annex to its reply in the proceedings leading to Judgment 3508 and which, according to him, was incorrectly interpreted by the Tribunal. Leaving aside the fact that the Tribunal did not mention that document in Judgment 3508, the plea that the Tribunal misinterpreted the evidence in the file does not constitute an admissible ground for review.

* *Recte*: under 2.

Complaint No. 86

3. In Judgment 3628 the Tribunal dismissed the complainant's 75th complaint in which he impugned the decision to reject his internal appeal challenging a decision of the EPO's Administrative Council (decision CA/D 7/10). The Tribunal found that his internal appeal had rightly been dismissed on the grounds that it was directed against a general decision requiring individual implementation and that his complaint was therefore devoid of merit.

In his application for review, the complainant contends, firstly, that the Tribunal considered only one of his claims. This argument is without merit. Indeed, it is clear from the reference, in consideration 2 of Judgment 3628, to the fact that the complainant "also claimed damages and costs, amongst other relief" (emphasis added), that the Tribunal did in fact take into account his other claims.

Secondly, the complainant submits that, contrary to the Tribunal's finding in consideration 4 of its judgment, he had already been adversely affected by the removal of the 2.4 per cent ceiling on sickness insurance contributions prior to the adoption of decision CA/D 7/10 on 30 June 2010, as the EPO had disregarded the 2.4 per cent ceiling prior to that date. This argument is plainly irrelevant, because even if the EPO had not respected the 2.4 per cent ceiling at some time prior to 30 June 2010 (a matter that need not be determined), this obviously could not have occurred as a result of the decision that he challenged (CA/D 7/10), which had not yet been adopted.

Lastly, the complainant contends that his claim for reimbursement of healthcare contributions cannot be time-barred, because such contributions are paid on a monthly basis and he could therefore claim reimbursement each month. This argument is likewise irrelevant, since the Tribunal's decision in Judgment 3628 was not based on the fact that his claim for reimbursement was time-barred.

Complaint No. 92

4. In Judgment 3710 the Tribunal dismissed six complaints filed by the complainant (Nos. 60 to 65) as clearly irreceivable on the grounds that he had failed to correct his submissions within the stipulated time limits. In his application for review of that judgment, the complainant contends that, as he was abroad and had no internet access, he did not receive the requests for corrections in time to meet the time limits; that these requests should have been sent to him by registered post; and that the Tribunal did not take into account his health condition. Given that these arguments, and the documents which the complainant produces to support them, were before the Tribunal at the time when it adopted Judgment 3710, it is evident that the complainant is simply expressing his disagreement with the Tribunal's assessment of the facts and evidence. In so doing, he does not raise any admissible ground for review.

Complaint No. 93

5. In Judgment 3711 the Tribunal dismissed the complainant's 69th complaint, which he had filed on the basis of Article VII, paragraph 3, of the Statute of the Tribunal. The complainant had indicated on the complaint form that the EPO had failed to take a decision within 60 days on a claim that he had notified to it on 20 November 2014. The Tribunal found that the communication of 20 November 2014 to which he referred could not be construed as containing a "claim", within the meaning of Article VII, paragraph 3, and therefore held that the complaint was devoid of merit. In his application for review, the complainant submits that he indicated the wrong date on the complaint form, and that the claim to which he meant to refer was in fact contained in an email of 4 November 2014. This plea has no bearing on the outcome of the case. Indeed, assuming that the email of 4 November 2014 did contain a "claim" for the purposes of Article VII, paragraph 3, the complaint, which was filed on 27 December 2014 (that is 53 days later), would in any case have been clearly irreceivable because it would have been filed prior to the expiry

of the 60-day period provided for in Article VII, paragraph 3, of the Tribunal's Statute.

Complaint No. 94

6. In Judgment 3712 the Tribunal dismissed the complainant's 82nd complaint, in which he primarily sought to be provided with the opinion of one of the three members of a medical committee. The complainant purported to rely on Article VII, paragraph 3, of the Tribunal's Statute, but as his complaint did not satisfy the requirements of that provision, the Tribunal held that it was clearly irreceivable. The Tribunal also observed that the complaint was devoid of merit, because the complainant did not refer to any rule which would entitle him to receive the individual opinion of a member of a medical committee and because, even if such an opinion existed, it would constitute only a step in the process leading to the drafting of the committee's final report and, as such, could be challenged before the Tribunal "only in the context of a complaint impugning the final administrative decision taken on the basis of that report".

In his application for review, the complainant contends that the opinion that he sought to obtain (Dr Z.'s opinion) was in fact the final report of the medical committee itself; that the Tribunal erred in finding that he did not refer to any provision entitling him to receive the report; and that the Tribunal also erred in finding that he had filed his complaint before the expiry of the 60-day period provided for in Article VII, paragraph 3, of the Statute. In raising these matters, the complainant is in effect alleging that the Tribunal made an incorrect assessment of the facts. Such a plea does not constitute an admissible ground for review. Moreover, the complainant's assertion that, contrary to the Tribunal's finding, more than 60 days elapsed between the date when he submitted his claim to the EPO and the date of filing of his complaint (14 January 2016) is plainly contradicted by the case record, as he indicated on his complaint form that the claim in question was dated 17 December 2016 and he provided a copy of that claim as an annex to his 82nd complaint.

Complaint No. 98

7. In Judgment 3778 the Tribunal dismissed the complainant's 18th complaint, in which he alleged that the EPO had caused him injury by unlawfully disclosing incorrect information concerning his fiscal residence to the Dutch tax authorities, on the grounds that he had presented no evidence to support his claims. In his application for review of that judgment, the complainant does not put forward any clearly identifiable plea, but he lists eleven points from which it may broadly be inferred that, in his view, the Tribunal made an incorrect assessment of the evidence. In so doing he does not raise any admissible ground for review.

Complaints Nos. 99 and 100

8. In Judgments 3779 and 3780, the Tribunal dismissed the complainant's 19th and 20th complaints, respectively, on the grounds that the complainant had failed to exhaust internal remedies. In its reply to each of those complaints, the EPO had stated that two communications had been sent to the complainant informing him that his claims had been rejected and that the matters had been referred to the Internal Appeals Committee. Noting that, in his rejoinders, the complainant did not deny having received those communications, the Tribunal proceeded on the basis that he had received them, which led it to conclude that the complainant had filed his complaints without awaiting the outcome of the internal appeal procedures. In his applications for review of Judgments 3779 and 3780, the complainant denies that he received the above-mentioned communications and argues that the EPO bears the burden of proof in this respect. He also contends that the Tribunal did not take into account his poor state of health. These pleas are tantamount to arguing that the Tribunal made an incorrect assessment of the facts. As such, they do not constitute admissible grounds for review.

9. It may be concluded from the above that the complainant's applications for review of Judgments 3508, 3628, 3710, 3711, 3712, 3778, 3779 and 3780 are clearly devoid of merit and must be summarily

dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The applications for review are dismissed.

In witness of this judgment, adopted on 18 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ