

B.
v.
EPO

126th Session

Judgment No. 4041

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. R. B. against the European Patent Organisation (EPO) on 17 July 2012 and corrected on 31 July, the EPO's reply of 19 November 2012, the complainant's rejoinder of 25 January 2013 and the EPO's surrejoinder of 6 May 2013;

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:

As a former employee, the complainant challenges the decision to ban her from entering the EPO's premises without prior authorisation.

The complainant, who had worked for the EPO as an interpreter under a series of short-term contracts, left the Organisation in 2009. During her employment, her situation was governed by the Conditions of employment for interpreters at the EPO, which incorporated by reference some of the provisions of the European Patent Convention, particularly regarding appeals. Under Article 13 of the European Patent Convention, "[e]mployees and former employees" may apply to the Tribunal in the case of disputes with the Organisation, in accordance with the Tribunal's Statute and within the limits and subject to the conditions arising from their conditions of employment.

On 28 February 2012 the complainant tried to enter the EPO's premises to attend an oral proceeding open to the public, but was denied access to the building. On 22 March she wrote to the President of the European Patent Office, the EPO's secretariat, requesting inter alia the lifting of the "house-ban" which had been imposed on her and free access, as a member of the public, to all rooms which were accessible to the general public during oral proceedings. She claimed that she had become aware of the house-ban only on 28 February and asked him to refer the matter to the Internal Appeals Committee if her requests were rejected.

On 23 April 2012 the Administration pointed out to her that she was no longer a staff member, that the subject-matter of her requests did not arise from the terms of her employment and that, in any case, she had been informed by letter of 7 December 2011 that her access to the EPO's premises would be denied because of incidents involving her in the summer of 2011, namely the fact that she had accessed interpreting booths and disturbed interpreters during their work and that she had not complied with the request to return her badge. The Administration therefore invited the complainant to withdraw her request to lodge an appeal, but she maintained it.

By a letter of 24 May 2012, which constitutes the impugned decision, the complainant was informed that the President of the Office had decided to dismiss her requests to lift the house-ban imposed on her and to grant her free access to all rooms during oral proceedings. She was also advised that her appeal could not be registered and forwarded to the Internal Appeals Committee and that, in the event that she filed a complaint with the Tribunal, the EPO would challenge its receivability *ratione materiae* "because the impugned decision is not arising from the Conditions of employment for interpreters".

In her complaint the complainant seeks the quashing of the impugned decision, the lifting of the house-ban imposed on her, a finding that she is entitled to attend oral proceedings as a member of the public, unless that it is prohibited by the provisions of the European Patent Convention, and an award of costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable *ratione personae, materiae* and *temporis* and, subsidiarily, as unfounded in its entirety.

CONSIDERATIONS

1. The complainant was employed with the EPO as an interpreter between February 1984 and 11 March 2009. She states that since this latter date she worked “as a professional conference interpreter [...] as well as a qualified and sworn interpreter and translator” and that she “works, in particular, in the field of patent law, i.e. as a translator and interpreter in patent proceedings before courts and patent offices”. She complains that she was barred when she attempted to attend, as an observer, oral proceedings in an appeal matter which was scheduled to be heard in a room at an EPO building in Munich (Germany) on 28 February 2012. She states that she was, in effect, banned from entering any of the EPO’s buildings. She seeks, among other things, an order lifting the house-ban.

2. By letter of 22 March 2012 to the President, the complainant requested, among other things, that the house-ban be lifted, failing which her letter was to be treated as an internal appeal. By letter dated 23 April 2012 the Administration informed her that the request was dismissed. That letter relevantly stated that, as she was no longer a staff member of the EPO, “the possibility to file an internal appeal under Article 107 [of the Service Regulations] [was] not open to her”. That letter further stated that Article 13 of the Conditions of employment for interpreters, providing for the application of Article 13 of the European Patent Convention, was not relevant either and that “[t]he application of the house rules against a member of the public, which is [the complainant’s] present status vis-à-vis the [Organisation], is not a matter arising from the conditions of employment and therefore outside the Tribunal’s competence”. The complainant was therefore invited to withdraw her request to lodge an internal appeal with the Internal Appeals Committee.

3. The letter dated 24 May 2012, which the complainant identifies as the impugned decision, informed the complainant that the President dismissed the requests to lift the house-ban imposed on her and to grant her free access to all rooms during oral proceedings, essentially for the reasons stated in the letter of 23 April. It also noted the complainant's stated intention to file a complaint before the Tribunal in the event that the matter was not referred to the Internal Appeals Committee.

4. The complainant argues, in particular, that the decision to ban her from entering the EPO's premises is contrary to the laws of the Federal Republic of Germany, the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the United Nations Universal Declaration of Human Rights and the European Charter of Fundamental Rights.

5. The complaint will be dismissed as the Tribunal has no competence to hear it. Article II, paragraph 5, of the Tribunal's Statute relevantly provides that the Tribunal shall be competent "to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations". The present complaint does not fall within the ambit of this provision as it does not allege non-observance of the terms of an appointment which the complainant held with the EPO. Given this decision, the request for a hearing is redundant and is dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2018, 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 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ