

L. (No. 2)

v.

EMBL

128th Session

Judgment No. 4145

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr V. L. against the European Molecular Biology Laboratory (EMBL) on 3 July 2017 and corrected on 3 August, EMBL's reply of 13 November 2017, the complainant's rejoinder of 16 March 2018, EMBL's surrejoinder of 22 June, the complainant's additional submissions of 10 August and EMBL's final comments thereon of 12 October 2018;

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:

The complainant challenges the decision to transfer one of his subordinates to another team.

At the material time, the complainant was working as a project coordinator at EMBL's outstation in Hamburg, Germany. On 21 December 2016 he was informed that, as from 1 January 2017, one of his subordinates would be reassigned to the Head of the EMBL Hamburg Unit, that her duty station would be the University of Potsdam and that her supervision would be seconded to another EMBL staff member.

On 18 January 2017 the complainant lodged an appeal against that “reassignment/transfer” decision, requesting that it be reversed. He also claimed that this decision was the last example of the harassment he had suffered and requested that an investigation be conducted.

Later that month the complainant was informed that an investigation into his harassment allegations would be initiated. In April 2017 the Director-General informed the complainant that in the course of the investigation, three staff members had made allegations of harassment against him, including the staff member who had been reassigned. The Director-General notified the complainant that he had decided to initiate a separate disciplinary procedure in order to investigate those allegations.

The Joint Advisory Appeals Board (JAAB) issued its report on 4 April. It concluded that, as the decision at stake did not concern the complainant personally within the meaning of Staff Rule 6 1.01, the appeal was clearly and manifestly irreceivable. It therefore recommended dismissing the appeal. By a letter dated 12 April 2017, the Director-General informed the complainant that he had decided to endorse the JAAB’s recommendation and to dismiss his appeal as irreceivable. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to award him material and moral damages, as well as costs.

EMBL requests the Tribunal to dismiss the complaint in its entirety as irreceivable and unfounded.

CONSIDERATIONS

1. On 21 December 2016, the Head of Human Resources informed the complainant of the decision to grant one of his subordinates, Ms H., a post-doctoral fellow in the complainant’s research group, a new extension of her contract effective 1 January 2017. The terms of the contract provided that Ms H. would be assigned to the Head of the EMBL Hamburg Unit, her duty station would be at the University of Potsdam and her supervision would be seconded to Professor D. The complainant lodged an internal appeal against this decision. The JAAB

found that the challenged decision did not concern the complainant personally as contemplated in Staff Rule 6 1.01. For this reason, the JAAB concluded that the appeal was manifestly irreceivable and recommended that the appeal be dismissed. In his 12 April 2017 impugned decision, the Director-General accepted the recommendation and dismissed the appeal.

2. Staff Rule 6 1.01 provides that “[i]n respect of matters that concern him personally, every member of the personnel or former member of the personnel shall have the right to appeal against any decision by the Director-General or those to whom he has delegated authority”. The complainant submits that the JAAB erred in concluding that the decision at issue did not concern him personally as provided in the Staff Rule. The complainant submits that although the phrase “concern him personally” is not defined, having regard to the principles of statutory interpretation it can reasonably be interpreted to mean that the decision “must involve the terms of appointment, including the functions and duties, of the staff member, whether directly or indirectly”. The complainant acknowledges that this interpretation is broader than the Tribunal’s test for standing. However, he maintains that the impugned decision concerned him personally within the meaning of Staff Rule 6 1.01.

3. In support of his position, the complainant notes that he was entirely responsible for the scientific research and development work of his research group and its members. Thus, any actions or decisions involving his subordinates, including the decision to transfer Ms H., concerned him personally in his function as manager of one of EMBL’s research groups. The complainant also points out that prior to the transfer decision there were ongoing discussions to resolve issues arising from Ms H.’s allegations directed at him personally and their professional relationship. The complainant contends that as the allegations led to the decision to transfer Ms H., the decision concerned him personally as provided in Staff Rule 6 1.01.

4. The complainant's interpretation of Staff Rule 6 1.01 is fundamentally flawed as it is based solely on the meaning of the phrase "concern him personally". The principles of statutory interpretation are well settled in the case law. The primary rule is that words are to be given their obvious and ordinary meaning (see, for example, Judgments 3310, consideration 7, and 2276, consideration 4). Additionally, as the Tribunal stated in Judgment 3734, consideration 4, "[i]t is the obvious and ordinary meaning of the words in the provision that must be discerned and not just a phrase taken in isolation".

Read in its entirety, the obvious and ordinary meaning of the provision is that a staff member or former staff member has the right to appeal an administrative decision that concerns her or him personally. That is, it is the content of the decision itself that must concern the staff member personally for there to be a right of appeal against the decision. The decision the complainant impugns granted Ms H. a final extension of her post-doctoral fellowship contract with new terms and conditions that included a transfer to a different team, a change in duty station and a secondment to a different supervisor. It cannot be said that the decision itself in any way directly affected or had legal consequences for the complainant personally. It follows that the JAAB and, in turn, the Director-General did not err in concluding that the challenged decision did not concern the complainant personally.

5. The complainant's assertion that as the decision "directly adversely affected" him and caused him injury, he has the requisite standing as stated in the case law to bring the present complaint is also unfounded. Article II of the Tribunal's Statute has been interpreted to require that for a complaint to be receivable the staff member must have a cause of action and the impugned decision must be one that, by its nature, is subject to challenge. As the Tribunal explained in Judgment 3426, consideration 16, in addition to the requirement that the complainant must be an official of the defendant organization or other person as provided in paragraph 6 of the Article, paragraph 5 requires that a complaint "must relate to [a] decision involving the terms of a staff member's appointment or the provisions of the Staff Regulations". In Judgment 4048, consideration 5, the Tribunal elaborated that "to invoke the Tribunal's

jurisdiction, it must be a decision adversely affecting the complainant concerning either rights, privileges, obligations or duties arising under the provisions of staff regulations or the complainant's terms of appointment" and that "[t]he complaint must allege non-observance of either or both (see Article II of the Tribunal's Statute)". As the complaint does not relate to a decision involving the complainant's terms of appointment or the provisions of the EMBL's Staff Rules and Regulations, it does not disclose a cause of action and is irreceivable. Accordingly, the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

YVES KREINS

DRAŽEN PETROVIĆ