

A. (No. 17)

v.

EPO

120th Session

Judgment No. 3509

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventeenth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 3 June 2011 and the EPO's reply of 17 February 2014;

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:

The complainant challenges the EPO's refusal to send his mail to an address in the Netherlands, which is not the declared residence address in his last retirement questionnaire.

The complainant, an Italian national, is a former official who ceased to perform his functions on 1 December 2005 due to invalidity. In November 2005 he filled in the retirement questionnaire by which a retiree indicates whether he would like to opt, in case his country of residence changes, for a pension paid on the basis of a scale other than that applicable to the country of his last posting. This possibility is provided for under Article 33(2) of the Pension Scheme Regulations of the European Patent Office (hereinafter "the Pension Scheme Regulations"). The complainant indicated that his residence address would remain in the Netherlands until 30 August 2006, and that his

fiscal address would be in Italy as from 30 August 2006. As he did not ask to change the country scale on the basis of which his pension was to be calculated, the Dutch scale was initially applied.

In July 2006 the complainant informed the EPO that, as from 24 July 2006, his residence address would be in Italy and he requested that the Italian scale be applied to his pension from 1 August 2006 onwards. However, he indicated that he would nevertheless prefer to continue receiving his mail from the EPO at his address in the Netherlands. He further indicated that in 2006 he would remain fiscally resident in the Netherlands and that the tax adjustment should therefore be based on the Dutch rate, but that as from 1 January 2007 he would be fiscally resident in Italy, so that the tax adjustment should then be based on the Italian rate.

By an e-mail of 25 August 2006 the complainant was informed of the new calculation of his pension from that month onwards. According to his request, his fiscal residence was considered to be located in the Netherlands until the end of 2006 and in Italy from January 2007 onwards. The complainant then reiterated his request to receive his pension slips at his address in the Netherlands and asked the Administration to provide him with scanned pension and allowances slips for August 2006.

By an e-mail of 1 September 2006 the EPO informed him that it was not possible to send his mail to the address in the Netherlands as he had moved to Italy and had declared his residence address to be in that country. It pointed out that the complainant could choose the Italian scale for his pension, which is more favourable than the Dutch scale, only because he had declared his residence to be there. In subsequent correspondence, the EPO reiterated that his mail would be automatically sent to his residence address in Italy and that his request could not be met.

On 31 October 2006 the complainant informed the EPO that he had not received his pension payslips and other relevant documents. He requested that a copy of his October pension payslip be sent by e-mail and that his future pension payslips be sent by registered post to his residence address in Italy or to his address in the Netherlands.

He also asked for a copy of the documents to be sent by e-mail. In November the complainant reiterated his request to receive his pension payslips for September, October and November by e-mail.

On 29 November 2006 the complainant was informed that his pension payslips were sent to his residence address in Italy via regular mail and that this corresponded to an automatic procedure. The Administration explained that it was not possible to send the pension payslips via e-mail, and that it was the complainant's responsibility to take the appropriate measures in order for his mail to be forwarded to his address in the Netherlands. As an exceptional measure, the Administration nevertheless scanned the requested pension payslips and sent them via e-mail. On the same day the complainant replied that this proposal was not satisfactory and requested that his mail be sent by registered post. He also informed the EPO of his new Italian address for tax purposes, valid as from 10 December 2006. On 30 November the EPO acknowledged receipt of the complainant's new address and informed him that mail would be sent to it.

By a letter of 4 December 2006 the complainant challenged the EPO's refusal to send his mail to his address in the Netherlands or to his address in Italy via registered post. He requested that his mail be sent to his address in the Netherlands via registered post and that copies of the "missing" payslips be sent to him via e-mail. Alternatively, he asked that his mail be sent by registered post to his address in Italy. He also asked for a waiver of the time limit for lodging future internal appeals, in case correspondence from the EPO did not reach him on time. The complainant claimed 10,000 euros in moral damages for the distress caused, as well as costs. In the event that his requests could not be met, his letter was to be considered as an internal appeal.

By a letter of 19 January 2007 the complainant was informed that, as his requests were not allowed, his appeal had been referred to the Internal Appeals Committee (IAC) for an opinion. The President considered that the EPO had respected its obligations towards him by sending the documents to his residential address and that the complainant's approach was abusive. On that ground, the EPO reserved its right to claim damages.

The EPO submitted its position paper to the IAC in March 2010. In its report of 28 March 2011 the IAC unanimously recommended that the complainant's appeal be rejected as irreceivable in part: the request to have his mail sent to his address in the Netherlands was time-barred and the request for a waiver of the time limit in future appeals was premature. As for the complainant's remaining claims, the IAC recommended that they be rejected as entirely unfounded, because the EPO had fulfilled its duty of care and the complainant had failed to establish that, for reasons beyond his control or for "important reasons", he had to be in the Netherlands for a certain amount of time. In the proceedings before the Tribunal the complainant impugns the decision of 27 May 2011 accepting the IAC's recommendations.

The complainant asks the Tribunal to quash the impugned decision and to order the EPO to send "important/relevant" mail by registered post and to provide him with the list of "probable relevant mail sent by normal mail via internet (for example)". He seeks moral damages in the amount of 10,000 euros for the distress caused, additional moral damages for the delay in the appeal proceedings, and costs.

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

CONSIDERATIONS

1. In the present complaint, the complainant impugns the decision dated 27 May 2011, by which the Principal Director, Human Resources, by delegation of power, decided to endorse the IAC's unanimous recommendation to reject his internal appeal as irreceivable in part and unfounded in its entirety. The complainant asks the Tribunal to order the EPO to send his mail by registered post and to send by e-mail a list of the relevant or important mail already sent by the EPO via regular mail to his residence address in Italy. He claims moral damages for the distress caused and for the delay in the internal appeal proceedings, and an award of costs.

2. The complainant has applied for oral proceedings, but has given no justification for his application and, in fact, does not even mention it in his complaint brief. As the facts are fully documented and uncontested and the case turns on a question of law, the application for oral proceedings is rejected (see, for example, Judgment 3058, under 2).

3. The complaint is well founded only as regards the complainant's claim for moral damages for the delay in the internal appeal procedure. In the remainder it is unfounded on the merits, thus the Tribunal need not rule on the receivability of the complainant's other claims.

The main point of contention is whether or not the EPO properly decided not to deviate from its normal practice of sending correspondence to a pensioner's residence address (as indicated by the pensioner). Specifically, the complainant notified the EPO that, as from 24 July 2006, his residence would be in Italy and that he wished to opt for the Italian scale for the calculation of his pension from 1 August 2006 onwards, in accordance with Article 33(2) of the Pension Scheme Regulations. Nevertheless, he repeatedly requested that all his mail, including his pension slips, be sent to him in the Netherlands.

4. The EPO denied the complainant's requests to have his payslips sent to his address in the Netherlands for three reasons. The first was that this went against the normal practice of sending correspondence to a pensioner's declared residence address. As stated in the EPO's e-mail dated 1 September 2006, it was possible to enter two different addresses in the administration system, namely a residence address and a fiscal address, but mail was automatically routed to the residence address where the pensioner claimed to live. This information was reiterated in subsequent e-mails. The second reason was that the complainant's situation did not fit the criteria for an exception to the usual practice, such as having to be temporarily away from his residence for reasons beyond his control. In its reply to the present complaint, the EPO also points out that its third reason for denying the complainant's requests was that his request to receive his mail in the Netherlands suggested that he might not actually be

living in Italy as he had declared, which would call into question his entitlement to the Italian scale and which, if true, would have fiscal consequences in that he would be living in a country – the Netherlands – in which he would not have paid taxes. Thus, if his mail had been sent to an address other than his declared residence, the Dutch tax authorities might consider that the EPO had knowingly facilitated a case of tax evasion.

5. The Tribunal finds that the EPO properly exercised its discretion in deciding not to accede to the complainant's request to have his mail sent to his address in the Netherlands after having declared his residence as being in Italy. The EPO did not breach its duty of care towards him in refusing this request. The complainant did not show that his situation could justify an exception to the normal practice and the EPO was under no obligation to make such an exception. Furthermore, the EPO was correct to consider its duty to ensure the efficiency and impartiality of its administration as well as the need to maintain good relations with the host country when deciding on this specific request.

6. The claim for moral damages for the excessive delay in the internal appeal procedure is well founded. The complainant lodged his appeal by the letter dated 4 December 2006 but the EPO did not file its position paper until 3 March 2010 and has given no justification for the delay. The IAC published its opinion on 28 March 2011 and the final decision was notified to the complainant in a letter dated 27 May 2011. The unjustified delay of over three years between the filing of the appeal and the submission of the EPO's position constitutes in itself an egregious delay which merits an award of damages. Taking into consideration both the excessive length of the delay 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).

7. As the complainant succeeds in part, he would normally be entitled to costs. In the present case, the Tribunal considers the

following issues with regard to costs: the complainant did not file a proper complaint brief detailing his grievance, instead referring only to his internal appeal; his complaint brief mainly discusses issues which have already been ruled upon by the Tribunal in several previous judgments; and the complaint contains unacceptable, offensive and unjustified statements against the EPO as a whole. In light of these matters, the Tribunal will not award him costs.

8. The EPO requests, as a counterclaim, that the complainant be ordered to pay part of the costs that it has incurred in these proceedings on the grounds that his complaint constitutes an abuse of procedure. But the very fact that the complainant has succeeded in part is sufficient to demonstrate that the complaint was not abusive and that this claim must therefore be rejected (see Judgments 3423, under 17, 3424, under 16, and 3425, under 11).

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