

*Registry's translation,  
the French text alone  
being authoritative.*

**111th Session**

**Judgment No. 3013**

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 2846 filed by Mr G.L.N. N. on 16 April 2010, the reply of the European Patent Organisation (EPO) of 4 August, the complainant's rejoinder of 13 September and the Organisation's surrejoinder of 20 December 2010;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Details concerning the complainant's career at the European Patent Office – the EPO's secretariat – may be found under A in Judgments 1590, 2537 and 2846, delivered on his first, second and third complaints respectively.

In Judgment 2846 the Tribunal set aside a decision refusing to grant the complainant the promotion to which he believed he was entitled, and ordered the defendant to promote him to grade A4 with

retroactive effect, to pay him the salary difference due to him and to recalculate his invalidity pension as well as the lump sum which had been paid to him under Article 84(1)(b) of the Service Regulations for Permanent Employees of the European Patent Office. He was also to be paid interest on all those amounts “at the rate of 8 per cent per annum [...] as from the date on which each monthly payment would have fallen due”.

By two letters of 14 and 28 August 2009 the Organisation informed the complainant of the amounts due to him in execution of the aforementioned judgment. On 9 September the complainant asked for details of the method used to calculate some of these amounts. On 30 September he was sent several summary statements. By two letters dated 13 and 30 November 2009 addressed to the President of the Office, he requested monthly capitalisation of the interest, inter alia. He was informed by letter of 14 January 2010 that, in the opinion of the President, Judgment 2846 had been correctly executed. That is the impugned decision.

B. The complainant takes the view that by not capitalising the monthly interest, the Organisation did not properly execute the operative part of Judgment 2846. He sees this “partial execution” as evidence of bad faith on the part of the EPO. He seeks full execution of the judgment in question, payment of 2,500 euros in damages, and 1,000 euros for costs.

C. In its reply the Organisation submits that the application is framed incorrectly because it does not address the non-execution of Judgment 2846, but rather the manner in which that judgment is to be interpreted. It argues that the Tribunal’s “unambiguous” intention was to award simple interest, and that there is no problem of interpretation. It also argues that the application is time-barred, since the complainant had been aware since 14 August and 30 September 2009 that he was to be paid simple interest.

The defendant contends, subsidiarily, that the application is unfounded. The Tribunal’s consistent practice has been to award simple interest; it does not order the payment of compound interest

unless the circumstances warrant it, in which case it deliberately uses the term “compound interest”. The defendant therefore believes it acted properly and diligently. In its view, the allegations of bad faith made by the complainant are inappropriate.

D. In his rejoinder the complainant states that, as the impugned decision was communicated to him by a letter of 14 January 2010, his application is not time-barred.

He states that the issue of interpretation is “fanciful” because the formula “interest at the rate of 8 per cent as from the date on which each monthly payment would have fallen due” is the language regularly used by the Tribunal to refer to compound interest. He claims that the Organisation’s execution of Judgment 2846 was “completely unlawful”, and that the Tribunal, in its case law, has admitted that failure to execute a judgment gives rise to compensation.

E. In its surrejoinder the Organisation repeats its arguments. It states that it is unnecessary to dwell upon the question of the time bar, since the Tribunal’s case law lays down the principle that there are no fixed time limits for submitting an application for interpretation.

#### CONSIDERATIONS

1. Pursuant to Judgment 2846, delivered by the Tribunal on 8 July 2009, the EPO had to promote the complainant to grade A4 with retroactive effect from 1 April 2001. It was consequently ordered to pay him the corresponding difference in salary, the difference between the lump sum which should have been paid to him and the sum actually paid on the basis of Article 84(1)(b) of the Service Regulations, and the difference between the invalidity pension due to him and the pension calculated without promotion to the higher grade.

The amounts owed to him were to be paid inclusive of interest at the rate of 8 per cent per annum, as from the date on which each monthly payment would have fallen due.

In executing the judgment, the defendant calculated the interest on all the monthly payments due without capitalising them, according to the simple interest system which, unlike the compound interest system, does not itself accrue interest.

2. The complainant is asking the Tribunal to order the Organisation to execute Judgment 2846 by paying him “interest [...] at the rate of 8 per cent as from the date on which each monthly payment would have fallen due”.

This is the actual wording of the last sentence of consideration 7 of the judgment, which refers to paragraph 2 of the operative part. The defendant contends that it adhered to this wording by paying only simple interest; the complainant, on the other hand, claims that the Organisation ought to capitalise the interest on each monthly payment, in other words, pay compound interest. The parties therefore differ as to the meaning to be attributed to Judgment 2846.

3. There is neither uncertainty nor ambiguity in the operative part of that judgment, which the complainant argues was only partially executed because it was not interpreted correctly. The Tribunal ordered the payment of interest to run as from the date on which each monthly payment would have fallen due. This means that the monthly payments due to the complainant accrue interest as from their due dates, not that the interest to be paid itself accrues interest when it falls due.

The obligation to pay compound interest is always an exception. According to the Tribunal’s case law, such an obligation must arise from the operative part of its judgments. In this case, to quote the language of consideration 4 of Judgment 802, “if the Tribunal had meant compound interest, [...] it would have used words to that effect”. But it did not do so, and the application for execution must therefore be dismissed, which itself renders the complainant’s criticisms of the defendant void of substance.

DECISION

For the above reasons,  
The application is dismissed.

In witness of this judgment, adopted on 6 May 2011, Mr Seydou Ba, Vice-President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Seydou Ba  
Claude Rouiller  
Patrick Frydman  
Catherine Comtet