

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**117th Session**

**Judgment No. 3319**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr A. R. against the European Patent Organisation (EPO) on 30 July 2010, the EPO's reply of 16 February 2011, the complainant's rejoinder of 23 March and the EPO's surrejoinder of 28 June 2011;

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 and the pleadings may be summed up as follows:

A. The complainant entered the service of the European Patent Office – the EPO's Secretariat – in 1991. At the material time, he was working in Munich.

In a note dated 28 June 2007, the Vice-President of Directorate-General 4 informed all staff that a total ban on smoking in all EPO premises would be introduced on 1 January 2008. On 23 July 2007 the complainant wrote to the President of the Office challenging this decision. He requested that the staff should be allowed to smoke "at least" in the cafeterias. As an alternative, he asked that there should be cafeterias reserved for smokers. In a letter dated 18 September 2007,

the complainant was informed that the President had decided not to grant his requests and had therefore referred the matter to the Internal Appeals Committee for an opinion. In its opinion of 10 February 2010, the Committee unanimously recommended the appeal should be dismissed as unfounded, and the Director of Regulations and Change Management informed the complainant in a letter of 1 April 2010 that his appeal had been dismissed in accordance with the Committee's opinion.

On 6 May the complainant asked the President to review this decision, considering that it had not been taken in accordance with the provisions of Article 109(1) of the Service Regulations, under which, according to him, the President was the only authority competent to take a final decision on an internal appeal. He added that if his request was rejected, it should be treated as an internal appeal. In a letter of 14 June 2010, received by the complainant on 5 July 2010, the Director of the above-mentioned service explained that his request of 6 May was rejected, given that he had acted through a delegation of the President's authority when he had informed him of the decision of 1 April 2010. He also told him that he could not file an internal appeal against this decision, but that he could challenge it before the Tribunal.

B. The complainant contends that there are no valid grounds for the "decision" of 14 June 2010 and that it was therefore an "act of arbitrary authority". He states that the decision to ban smoking in EPO premises was a "flagrant breach" of Article 26b of the Service Regulations, entitled "Occupational health, safety and ergonomics", and that it contravenes the principle of equality of treatment insofar as non-smoking officials now have rest areas reserved for them, whereas no such areas have been provided for smokers. He adds that the decision infringes his right to be treated with dignity, particularly because he is now obliged to go outside the EPO premises to smoke and is thus exposed to bad weather, which he alleges is worse for his health than smoking. Finally, he attempts to demonstrate that the decision is contrary to European Community Council Directive 89/654/EEC which, according to him, stipulates that separate rest areas should be provided for smokers and non-smokers at the workplace.

The complainant asks that rest areas designated for smokers should be introduced in the EPO premises in Munich. He claims 3,000 euros as compensation for the material and moral injuries he considers he has sustained. He also requests an oral hearing.

C. According to the EPO, the argument that there are no valid grounds for “the decision” in the letter of 14 June 2010 is unfounded. In accordance with the case law, it submits that the complainant was informed on 1 April 2010 that his appeal had been dismissed for “the reasons stated in the opinion” of the Internal Appeals Committee, and that he was subsequently informed of the scope of this decision in a letter dated 14 June 2010.

Referring to Article 10, paragraph (2)(a) of the European Patent Convention, which states that the President shall take all necessary steps to ensure its functioning, and Article 26b of the Service Regulations, according to which the President shall take appropriate measures to protect the health and safety of permanent employees in all aspects related to work on the Office’s premises, the EPO argues that the decision to ban smoking on its premises was within the ambit of the President’s discretionary authority and that she was “entitled and even obliged”, by virtue of her duty of care, to take account of the findings of scientific studies demonstrating the health dangers of smoking and to adopt measures to protect non-smoking officials. The EPO dismisses the allegation that the principle of equality of treatment has been infringed, stating that the ban on smoking on its premises now ensures equal health protection for all officials. It argues that this ban in no way injured the complainant’s dignity and that Directive 89/654/EEC is inapplicable in this case, given that the EPO is an international organization with its own legal personality. The EPO is opposed to an oral hearing and requests the Tribunal to order that the complainant should bear his own costs.

D. In his rejoinder the complainant presses his pleas. He submits that the EPO’s request for him to bear his costs is “unacceptable”. He calls for the Organisation to be ordered to pay all the costs of the proceedings. Lastly, he explains that he asked for an oral hearing so that he could

present additional audiovisual documents to the Tribunal. He is now claiming, as compensation for the material and moral injuries he alleges to have suffered, that the sum of 3,000 euros per year should be paid to him, starting from 1 January 2008. He also asks for the introduction of smokers' rest areas in all EPO buildings.

E. In its surrejoinder the EPO maintains its position in its entirety. It specifies that in asking for the complainant to be ordered to bear his own costs, it was in fact requesting the Tribunal not to award him any costs.

#### CONSIDERATIONS

1. In a note dated 28 June 2007, the Vice-President of General Directorate 4 informed the EPO staff of various measures adopted to combat smoking, including a total ban on smoking in all the Organisation's premises. In a letter dated 23 July 2007, the complainant, a patent examiner at A4 level, asked the President of the Office to reconsider this decision, so that the staff might be authorized to smoke in the cafeterias or that cafeterias for smokers might be introduced. On 18 September 2007 the President considered that she could not accede to this request, and she decided to refer the matter to the Internal Appeals Committee for an opinion. On 10 February 2010 the Committee unanimously recommended the dismissal of the appeal. On 1 April 2010 the Director of Regulations and Change Management informed the complainant that his appeal had been dismissed for the reasons set out in the said opinion.

On 6 May 2010 the complainant asked the President of the Office to review this decision, claiming that it had been taken by someone who lacked authority, and to treat his request as a new internal appeal if it was rejected. On 14 June 2010 the Director of Regulations and Change Management replied that he had been duly delegated the authority to rule on appeals for cases in which, as in this case, there was a unanimous opinion on the part of the Internal Appeals Committee. His request could not therefore be granted. Nor could it be treated as a

new internal appeal, given the final nature of the decision at issue. It was therefore incumbent upon the complainant to bring the matter, if he so wished, before the Tribunal. This letter was sent to the complainant on 5 July 2010.

2. The complainant asks for an oral hearing. This request must be rejected, as the written submissions contain all the facts enabling the Tribunal to rule objectively on the issues brought before it.

3. The ban on smoking on the EPO premises is a general policy measure, which the Organisation was free to adopt if it considered it in conformity with its interests and those of its staff. It is not up to the Tribunal to determine the expediency of this measure.

4. The plea that there were no valid grounds for the decision, which moreover is solely directed at the letter of 14 June 2010, is immaterial. The decision at issue, of 1 April 2010, contained sufficient grounds as it specifically referred to the arguments presented by the Administration to the Internal Appeals Committee, as reproduced in the Committee's opinion.

5. Under Article II, paragraph 5, of its Statute, the Tribunal is 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 of the organization employing them. The complainant's plea of a breach of Directive 89/654/EEC is therefore in vain, because the provisions of that Directive are in no way incorporated in his contract or in the EPO Service Regulations.

6. The ban on smoking adopted by the EPO is in accordance with Article 26b of the Service Regulations, which requires the President of the Office to take all appropriate measures to protect the health and safety of officials working on the EPO premises. Contrary to the complainant's assertions, neither this provision nor the principles to which he refers, such as the duty of care, the principle of equality of treatment and the right to be treated with dignity, require the Organisation

to make specific areas available to smokers. The complainant's argument that the health risks faced by officials who wish to smoke during the working day and who go outside the EPO premises to smoke (thus being exposed to bad weather or the cold of winter) are as great as those resulting from active or passive smoking is clearly irrelevant.

7. This restriction on the freedom of smokers in no way infringes the principle of proportionality, as indeed is demonstrated by the fact that it applies under the same conditions on public transport and in establishments open to the public throughout a large part of Europe.

8. In view of the above, the complaint must be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

CLAUDE ROUILLER  
SEYDOU BA  
PATRICK FRYDMAN  
DRAŽEN PETROVIĆ