

**P. (No. 9)**

**v.**

**EPO**

**120th Session**

**Judgment No. 3531**

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr L. P. against the European Patent Organisation (EPO) on 22 July 2011 and corrected on 2 September, the EPO's reply of 22 December 2011, the complainant's rejoinder of 7 March 2012 and the EPO's surrejoinder of 18 June 2012;

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:

In his ninth complaint, the complainant challenges the EPO's refusal to award him moral damages on account of the length of the internal appeal proceedings.

In October 2006 the complainant, amongst others, lodged a request for review against a proposal to increase monthly pension contributions, which was to be presented to the Administrative Council for decision. The complainant argued that the procedure for adoption of this proposal was flawed and asked for its immediate withdrawal. He claimed damages of 1 euro per staff member per day as from the first day of the strike organized in response to this proposal until its withdrawal, as well as

costs in the amount of 1,000 euros. In the event that his request could not be granted, it was to be treated as an internal appeal.

The proposal was adopted in October 2006 by the Administrative Council. However, the President of the European Patent Office, the secretariat of the EPO, decided in December 2006 to cancel that decision and to submit the proposal to a newly composed General Advisory Committee (GAC) in 2007, as the composition of the 2006 GAC had been irregular. The proposal challenged by the complainant was therefore re-submitted to a properly composed GAC in 2007 and was adopted by the Administrative Council in March 2007.

Although the complainant considered that his main claim had thus been satisfied, he maintained his internal appeal with respect to his claims for moral damages and costs. He claimed moral damages in the amount of 109 euros per staff member, as the properly composed GAC had only been consulted on 29 January 2007, that is, 109 days after the first day of strike on 10 October 2006.

The EPO submitted its position paper in December 2009 and a hearing was held on 19 October 2010. During the hearing the complainant maintained his claims and additionally requested an award of damages for the length of the internal appeal proceedings.

In its opinion of 23 March 2011 the Internal Appeals Committee (IAC) expressed doubts as to the receivability of the complainant's main claim, but unanimously recommended that the appeal be rejected as unfounded and that the complainant be awarded 200 euros in damages for the length of the internal appeal proceedings as well as any reasonable legal costs incurred, upon proof of payment.

By a letter of 23 May 2011 the Director of Regulations and Change Management informed the complainant that the Vice-President in charge of Administration (VP4), by delegation of power from the President, had decided to reject the appeal in accordance with the IAC's unanimous opinion and to reimburse the reasonable legal costs incurred during the appeal, upon proof of payment. However, contrary to the unanimous recommendation of the IAC in that regard, the complainant's claim for damages on account of the length of the proceedings was rejected on the grounds that the EPO had not shown

any bad faith throughout the procedure and had repeated the GAC consultation in 2007 in accordance with his main claim. In light of this, and of the complexity of the case, it was decided not to pay any moral damages. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision. He claims moral damages of no less than 1,000 euros for the length of the internal appeal proceedings, as well as costs and any other relief the Tribunal deems appropriate.

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

#### CONSIDERATIONS

1. The complainant impugns the decision communicated to him by a letter dated 23 May 2011 which stated in relevant part that, in accordance with the IAC's unanimous opinion of 23 March 2011, the Vice-President in charge of Administration, by delegation of power from the President, had decided to reject his appeal as unfounded to the extent that his claims had not already been satisfied. The EPO would pay upon receipt of evidence any reasonable legal costs incurred by the complainant during the internal appeal proceedings. However, it had been decided not to follow the IAC's recommendation to pay moral damages in the amount of 200 euros for the long delay in the internal appeal proceedings, as the EPO had not shown any bad faith throughout the procedure and had repeated the GAC consultation already in 2007 in accordance with the complainant's main claim.

2. The complainant grounds his complaint on the fact that four and a half years elapsed between the date when he filed his internal appeal and the date when a final decision was taken with respect to that appeal. He considers that delay to be manifestly excessive, warranting compensation. He asks the Tribunal to award moral damages in line with its jurisprudence for similar delays, and costs for the internal appeal and for the present complaint.

3. It is useful to note that while the IAC had recommended an award of damages for the delay in the internal appeal proceedings, it had also unanimously recommended that his appeal be dismissed as unfounded as the decision contested by the complainant had been cancelled shortly after the appeal was filed, eliminating his cause of action in that regard.

4. The Tribunal has consistently held that international organisations have a duty to ensure that internal appeals are conducted with due diligence and with due regard to the duty of care owed to staff members (see, in particular, Judgment 2522). While the time an appeal might reasonably take will usually depend on the specific circumstances of a given case, in this case the appeal was clearly unfounded. As such, it could not be considered to be particularly complicated and certainly not enough to warrant internal appeal proceedings lasting more than four years. Such a delay is indeed egregious and the complainant is entitled to an award of moral damages. “The amount of compensation for unreasonable delay will ordinarily be influenced by at least two considerations. One is the length of the delay and the other is the effect of the delay. These considerations are interrelated as lengthy delay may have a greater effect. That latter consideration, the effect of the delay, will usually depend on, amongst other things, the subject matter of the appeal. Delay in an internal appeal concerning a matter of limited seriousness in its impact on the appellant would be likely to be less injurious to the appellant than delay in an appeal concerning an issue of fundamental importance and seriousness in its impact on the appellant. For example, an extensive delay in relation to an appeal concerning the dismissal of a staff member could have a profound impact on his or her circumstances. On the other hand, a delay of precisely the same period in relation to an appeal concerning a comparatively trifling issue may have limited or possibly even no impact on the circumstances of the staff member.” (See Judgment 3160, under 17.)

5. The Tribunal considers that the appeal was manifestly unfounded: the decision contested in the complainant’s internal appeal

was annulled shortly after the appeal was filed. Thus, the Tribunal is of the opinion that the complainant could have withdrawn his appeal when it became apparent that it had become moot. The complainant has noted that he was aware of the heavy backlog with the IAC and the consequent delays in the internal appeal proceedings. Under the circumstances, not withdrawing the appeal could perhaps give the impression that the appeal was maintained only because of the likelihood that the IAC would recommend the payment of damages for the delay. Whether the delay was due to the EPO's tardiness or to the malfunctioning of the IAC is simply irrelevant in light of its duty to provide to the members of its staff an efficient internal means of redress (see Judgments 2392, under 6, 2196, under 9, and the case law cited therein). The Tribunal notes that the EPO has in the meantime taken measures to address the backlog of internal appeals.

6. In light of the above, the Tribunal finds that the EPO violated its duty of care by not ensuring efficient internal appeals proceedings within a reasonable time. Thus, considering the excessive length of the proceedings and the lack of negative impact on the complainant, the Tribunal sets the amount of moral damages at 250 euros. As the complaint succeeds in part, the complainant is entitled to an award of costs which the Tribunal sets at 200 euros.

#### DECISION

For the above reasons,

1. The EPO shall pay the complainant moral damages in the amount of 250 euros.
2. It shall pay him costs in the amount of 200 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 19 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Claude Rouiller, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

CLAUDE ROUILLER

DOLORES M. HANSEN

DRAŽEN PETROVIĆ