

E. (No. 3)

v.

EPO

121st Session

Judgment No. 3629

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed against the European Patent Organisation (EPO) by Ms B. E. on 2 April 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complaint arises out of a letter sent to the complainant on 17 September 2012 in order to warn her, in the context of the performance evaluation process, that unless her performance improved before the end of the reporting period, she ran the risk of obtaining a rating less than good in her next staff report. The complainant internally questioned the authority of the person who issued that letter and received, on 19 November 2012, a letter from the Vice-President of Directorate General 4 (hereinafter “the 19 November 2012 letter”) confirming that authority. In her internal appeal, the complainant contended that those two letters constituted workplace harassment and attacks on her dignity. The final decision taken on behalf of the President of the Office rejected the appeal following the recommendations made by a majority of the Internal Appeals Committee (IAC).

2. In her complaint before the Tribunal, the complainant focuses on the letter of 19 November 2012, arguing that her internal appeal was directed against that letter. Apart from being factually wrong, as the internal appeal refers to “the said letters” in the plural, the complainant’s attempt to dissociate the two letters involves a mischaracterisation of the second communication. It was her questioning of the authority of the signatory of the initial warning letter that triggered the clarification provided in the 19 November 2012 letter.

3. The IAC was correct in finding that the appeal against a warning letter issued within the context of a performance evaluation is not receivable, as this type of letter represents only a provisional measure and not a final measure on which a staff member or the Administration can rely. The Tribunal made this clear in Judgment 3198, and both the IAC and the President were correct in referring to that Judgment. The complainant has chosen to ignore that judgment and she challenges before the Tribunal only the 19 November 2012 letter, which is a challenge that the impugned decision dated 19 January 2015 found irreceivable.

4. The Tribunal finds that the 19 November 2012 letter simply explained the legal situation in response to the concerns raised by the complainant. It is therefore not an administrative decision and certainly not a final decision adversely affecting the complainant. Consequently, the internal appeal was irreceivable, as is the complaint before the Tribunal. As the complaint is clearly irreceivable, it will be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 23 October 2015, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 February 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

HUGH A. RAWLINS

DRAŽEN PETROVIĆ