

A. (No. 19)

v.

EPO

123rd Session

Judgment No. 3779

THE ADMINISTRATIVE TRIBUNAL,

Considering the nineteenth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 12 September 2011, the EPO's reply of 13 February 2012, the complainant's rejoinder of 21 March and the EPO's surrejoinder of 3 July 2012;

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 decision to dismiss his claim to reimbursement of travel expenses and other related costs.

The complainant is a former staff member of the European Patent Office, the EPO's secretariat, who ceased to perform his duties on grounds of invalidity in 2005. He declared upon his retirement that he would move to Italy as from 30 August 2006 but requested that correspondence from the EPO continue to be sent to his former address in the Netherlands. He later asked that correspondence from the EPO, if sent to his Italian address, be sent by registered mail.

In July 2009 the complainant claimed that he was able to resume his duties at the EPO. He was informed in February 2010 that the Administration had decided to convene a Medical Committee for verification. The Medical Committee was convened in The Hague,

where the complainant was asked to present himself for examinations on six occasions between July 2010 and September 2011.

On 7 July 2011 the complainant sent an e-mail to the President of the Office requesting reimbursement of his travel expenses from Italy to the Netherlands and other costs incurred in attending the appointments with the Medical Committee. He also requested compensation in the form of a daily subsistence allowance for each appointment with the Medical Committee and 5,000 euros in moral damages. In the event that his requests could not be granted, he asked that his e-mail be treated as an internal appeal.

On 9 August the Administration informed the complainant that the EPO was willing to reimburse his travel costs, upon proof that such travel had occurred. The letter stated that as all the correspondence relating to the proceedings with the Medical Committee had been sent, at his request, to his address in the Netherlands, and considering that this correspondence had always been received by the complainant, as shown by his attendance at all the medical appointments, the EPO assumed that for the purposes of the Medical Committee proceedings, his place of residence was in the Netherlands. His request for a daily subsistence allowance could not be granted, nor his claim for moral damages.

By another e-mail of August 2011 the complainant informed the President that since he lived in Italy his presence at the medical appointments was proof enough of his having travelled to attend them.

By registered letter sent on 6 September 2011 to his Italian address the complainant was informed that, as his requests could not be granted, his appeal had been forwarded to the Internal Appeals Committee (IAC) for an opinion.

The IAC acknowledged receipt of the appeal and informed the complainant accordingly on 7 September 2011 by letter sent to his Dutch address.

On 12 September 2011 the complainant filed the present complaint before the Tribunal challenging the alleged implied rejection of the claims made in his e-mail of 7 July 2011. That is the impugned decision.

The complainant asks the Tribunal to order the EPO to reimburse his travel costs and other travel-related expenses incurred in attending examinations and appointments before the Medical Committee. He claims moral damages in the amount of 5,000 euros, as well as costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable as there was an internal appeal on foot when the complainant filed the present complaint. He has therefore failed to exhaust internal remedies. Subsidiarily, the EPO submits that the complaint is unfounded.

CONSIDERATIONS

1. On 12 September 2011, the complainant filed a complaint with the Tribunal. In the complaint form he identified himself as a former official of the EPO. By way of relief, he sought the payment of travel costs and related expenses for attending a Medical Committee meeting or examination in The Hague together with moral damages in the sum of 5,000 euros and also costs.

2. In its reply, the EPO contended, amongst other things, that the complaint was irreceivable. This is a threshold issue that should be addressed at the outset. It is convenient to refer to the factual background but, at this point, only insofar as it relates to the question of receivability.

3. One procedural matter should be noted. In the complaint form the complainant indicated that he wishes to have a hearing under Article 12, paragraph 1, of the Rules. He did not signify that there were witnesses he wished to call in the event that there was such a hearing. In his rejoinder, the complainant addressed the question of whether there should be an oral hearing arguing that to deny him an oral hearing would be to deny him due process. The Tribunal does not accept this argument. Quite plainly the powers conferred on the Tribunal by Article V of its Statute include the power to decide or decline to hold oral proceedings. In the present case, the Tribunal is satisfied on the material before it that the complaint is irreceivable and the factual foundation for this conclusion is not, on the pleas, contentious. These are the reasons for reaching this conclusion.

4. In the complaint form, the complainant identifies himself as an Italian national. He commenced working with the EPO in January 1980. He ceased performing his duties in December 2005 due to invalidity. From January 2008 he was assigned to non-active status on invalidity grounds and started to receive an invalidity allowance. In a form completed in November 2005, the complainant notified the EPO that, in effect, his residential address between December 2005 and August 2006 was an address in the Netherlands and thereafter (from 30 August 2006) his residential address was an address in Italy. However he also indicated, in effect, that his mail address would continue to be the address in the Netherlands notwithstanding his residential relocation to Italy. That this remained the position was confirmed in an e-mail from the complainant to the EPO in August 2011. In that same e-mail the complainant requested that any material sent to him to his home address in Italy should be sent by registered mail to guarantee its receipt by him.

5. For reasons which are detailed in the summary of facts above, a Medical Committee was established in The Hague to determine medical issues concerning the health of the complainant. To that end, the complainant attended several medical examinations in The Hague. On 7 July 2011, the complainant sent an e-mail to the President of the Office and two officials of the EPO requesting to be reimbursed for travel expenses from his “home address (Italy) to the Netherlands, where the appointments took place”, further reimbursement for the time involved and moral damages for “the distress caused to [him] by [the EPO’s] biased/inefficient administration”. In the same e-mail, the complainant said that if those requests could not be met, the e-mail should be considered as an internal appeal.

6. By e-mail dated 9 August 2011, the EPO responded to the complainant’s e-mail of 7 July 2011. In relation to the claim for reimbursement of travel costs, the EPO indicated that upon proof that the complainant, in fact, travelled from Italy to The Hague it would reimburse travel costs. The claim for a daily subsistence allowance was rejected on the footing that the complainant had a residence in the Netherlands. The claim for moral damages was also rejected. The complainant

responded in an e-mail dated 10 August 2011 effectively challenging what he had been told in the e-mail the previous day. The complainant did not expressly provide proof that he had travelled from Italy to The Hague. By registered letter dated 5 September 2011 addressed to the complainant's Italian address, the complainant was informed that the President "considers that he cannot allow" the internal appeal adverted to in the e-mail of 7 July 2011 following the failure of the EPO to satisfy each of the three requests made in that e-mail. He was advised in the letter dated 5 September 2011 that it had been registered as an internal appeal and forwarded to the IAC. On 7 September 2011 the Chairman of the IAC wrote to the complainant at his address in the Netherlands advising him that it had received "a copy of [his] appeal dated 7 July 2011" and advising the appeal would be dealt with as soon as possible. He was also advised that when the IAC had received a dossier on the case, he would be sent a copy and invited to present his comments.

7. In his rejoinder the complainant did not contend that, as a matter of fact, he had not received the letters of 5 September 2011 and 7 September 2011. Thus the status of the complaint filed by him before this Tribunal on 12 September 2011 should be determined by reference to the fact that an internal appeal was on foot challenging the failure of the EPO to meet the three requests he had made in the e-mail of 7 July 2011. As at 12 September 2011, the complainant had not exhausted his internal means of redress. Accordingly, having regard to Article VII, paragraph 1, of the Tribunal's Statute this complaint is irreceivable. On that basis it must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 19 October 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ