

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. V.

v.

EPO

123rd Session

Judgment No. 3803

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs M. J. L. V. against the European Patent Organisation (EPO) on 19 October 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 complainant filed a complaint impugning the final decision of the EPO Administrative Council rejecting her request for review of the Administrative Council decision CA/D 10/14. In the complaint form the complainant indicated that she had received this decision on 15 July 2015.

2. The complaint was filed on 19 October 2015, i.e. 96 days following the notification of the decision impugned.

3. The complainant did not address this issue in her brief, which is a model used by many other complainants challenging decision CA/D 10/14, but provided a non-numbered annex with a medical

certificate and a statement that she could not send the complaint earlier due to illness.

Article VII, paragraph 2, of the Tribunal's Statute provides that "[t]o be receivable, a complaint must [...] have been filed within ninety days after the complainant was notified of the decision impugned". As the Tribunal has repeatedly stated, for example in Judgments 602, 1106, 1466, 2463 and 2722, time limits are an objective matter of fact and it should not entertain a complaint filed out of time, because any other conclusion, even if founded on considerations of equity, would impair the necessary stability of the parties' legal relations, which is the very justification for a time bar. However, as stated in Judgment 3687, in consideration 10:

"The case law also recognizes that in very limited circumstances an exception may be made to the rule of strict adherence to the relevant time limit. The circumstances identified in the case law are: 'where the complainant has been prevented by *vis major* from learning of the impugned decision in good time or where the organisation, by misleading the complainant or concealing some paper from him or her so as to do him or her harm, has deprived that person of the possibility of exercising his or her right of appeal, in breach of the principle of good faith' (see Judgment 3405, under 17; citations omitted); and 'where some new and unforeseeable fact of decisive importance has occurred since the decision was taken, or where [the staff member concerned by that decision] is relying on facts or evidence of decisive importance of which he or she was not and could not have been aware before the decision was taken' (see Judgment 3140, under 4; citations omitted)."

This is not the case in the present complaint.

4. Furthermore, the medical certificate provided by the complainant does not indicate that the medical condition for which she required urgent treatment was of a nature that would have prevented the complainant's filing the complaint within the time limit set forth by the Statute of the Tribunal.

5. Accordingly, the complaint filed on 19 October 2015 is time-barred and clearly irreceivable and must therefore 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 18 October 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ