

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 12)

v.

EPO

123rd Session

Judgment No. 3806

THE ADMINISTRATIVE TRIBUNAL,

Considering the twelfth complaint filed by Mr M. S. against the European Patent Organisation (EPO) on 21 June 2016;

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 challenges the decision to reject his appeal against a warning letter concerning his performance and the subsequent confirmation of that warning.

2. On 11 August 2011 the complainant's supervisor sent him a letter entitled "Formal warning under Circular N° 246" to advise him that unless he improved his productivity before the end of the reporting period, he ran the risk of obtaining a box marking of less than "good" for productivity in his next staff report. As the supervisor had omitted to sign that letter, on 6 September 2011 he sent a second letter to the complainant, containing essentially the same warning and bearing his signature.

3. Following an exchange of correspondence with his supervisor concerning the productivity level he would need to attain in order to obtain a box marking of “good”, the complainant filed two appeals challenging the first and second warning letters. He contended *inter alia* that they had had a “negative impact” on him, leading him to consult a doctor and take medication. The appeals were referred to the Appeals Committee, which decided to join them. Having heard the complainant, the Appeals Committee issued an opinion in which it found that there was no evidence of a causal link between the warning letters and the complainant’s state of health, and unanimously recommended that the appeals be dismissed as irreceivable in light of the Tribunal’s ruling in Judgment 3198.

4. By a letter of 15 March 2016, the Principal Director of Human Resources informed the complainant that she had decided, by delegation of power from the President of the Office, to reject his appeals as manifestly irreceivable in accordance with the opinion of the Appeals Committee. That is the impugned decision.

5. In his complaint, the complainant states that he is aware of the Tribunal’s case law concerning warning letters issued under Circular No. 246. However, he contends that that case law is not applicable to the present case because, according to him, the two successive warning letters and the subsequent communication from his supervisor constituted harassment. He also alleges that the internal appeal procedure was tainted with various irregularities.

6. It is firmly established by the Tribunal’s case law that a warning letter under Circular No. 246 is merely a step in the procedure that leads to the drafting of a staff report and that, as such, it cannot be the subject of a complaint to the Tribunal nor be taken into account to the detriment of the employee (see, for example, Judgments 3697, 3629, 3512 and 3433). The complainant considers that this case law should not apply to his complaint because the warnings at issue involved harassment. However, as the Tribunal recalled in Judgment 3233, under 6, an allegation of harassment must be borne out by specific acts, the burden of proof

being on the person who pleads it. In the present case, the Tribunal is bound to observe that the complainant's allegations of harassment are entirely unsubstantiated and amount to mere assertions. Accordingly, the Tribunal sees no reason to depart from the case law mentioned above concerning warnings issued under Circular No. 246.

7. It follows that the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal, without there being any need to examine the complainant's pleas concerning the lawfulness of the internal appeal procedure.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 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