

M. R. (No. 2) and B. J. (No. 4)

v.

EPO

123rd Session

Judgment No. 3812

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms C. M. R. (her second) and Mr R. B. J. (his fourth) against the European Patent Organisation (EPO) on 4 March 2016;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainants are serving officials of the European Patent Office, the secretariat of the EPO, and challenge the decision to eliminate the ceiling on employees' contributions to sickness insurance.

2. The complainants seek the same relief on the basis of the same submissions. The Tribunal therefore finds it convenient to join the complaints and to rule on them by a single judgment.

3. On 30 June 2010 the EPO's Administrative Council adopted decision CA/D 7/10, modifying Article 83 of the Service Regulations for permanent employees of the European Patent Office. Prior to the entry into force of this decision, Article 83 relevantly provided that an

employee's contribution to the Organisation's sickness insurance would not exceed 2.4 per cent of her or his basic salary. As a result of decision CA/D 7/10, this 2.4 per cent ceiling was eliminated, although Article 4 of the decision provided that the employees' contribution would be maintained at 2.4 per cent of basic salary for 2011, 2012 and 2013.

4. On 24 and 27 September 2010 the complainants each submitted appeals to both the President of the Office and the Administrative Council challenging decision CA/D 7/10 insofar as it removed the 2.4 per cent ceiling. They contended, in particular, that this decision violated the acquired rights of serving staff members and that relevant facts had been overlooked. Similar appeals were filed by more than a thousand other EPO employees. The appeals filed with the Administrative Council were re-directed to the President of the Office, who referred them, together with the appeals that had been filed with him, to the Internal Appeals Committee (IAC). In an opinion dated 3 July 2015, the IAC unanimously recommended that the appeals be dismissed as irreceivable in light of the Tribunal's decision in Judgment 3291 concerning challenges to general normative decisions.

5. By a letter of 7 December 2015 the complainants were informed that their appeal was rejected as manifestly irreceivable in accordance with the opinion of the IAC. That is the impugned decision.

6. The complainants submit, without relying on any judgments of the Tribunal, that they are entitled to challenge decision CA/D 7/10 directly, because it had an immediate and direct effect on them through the removal of a "long-standing guarantee" incorporated into the Service Regulations which are part of their employment contract. They argue that the existence of a ceiling protected staff from excessive contribution rates and assert that the finding of irreceivability of the internal appeals meant that the substance of their appeals was not examined. They also contend that there was insufficient consultation with the General Advisory Committee prior to the adoption of CA/D 7/10 and that the proceedings before the IAC were subject to lengthy delays.

7. The complainants essentially argue that decision CA/D 7/10 had direct and immediate adverse effects on them and that the EPO was wrong in rejecting their appeal against that general decision. By doing this, they directly contradict the Tribunal's specific finding that decision CA/D 7/10 is a general decision requiring further individual implementation and that it can be challenged only through impugning an individual decision (considerations 2(h) and 8 of Judgment 3291). Any change in an employee's contribution will be reflected in a salary or pension payslip which may demonstrate individual implementation.

8. Furthermore, in Judgment 3628, which was delivered in public on 3 February 2016, prior to the filing of the present complaints, the Tribunal dismissed a similar complaint challenging decision CA/D 7/10 on the grounds that it was directed against a general decision which, at the time when the complaint was filed, had not been applied to the complainant individually and had not affected him in any way.

9. In the present cases, the complainants acknowledge in their submissions that it was not until 1 January 2014 that a contribution rate exceeding 2.4 per cent of the employees' basic salary was set by the EPO. Accordingly, the general decision was not individually implemented prior to that date.

10. None of the arguments put forward by the complainants in this case would lead the Tribunal to depart from its findings in Judgments 3291 and 3628.

As the main issue has already been dealt with by the Tribunal, arguments about the consultation process and the delay of proceedings before the IAC are irrelevant.

The complaints are therefore clearly devoid of merit, which makes them irreceivable, and they must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaints are 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