

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**C. (No. 6)**

**v.**

**EPO**

**124th Session**

**Judgment No. 3890**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr T. C. against the European Patent Organisation (EPO) on 14 October 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 impugns the decision of 18 July 2016 by which the Principal Director Human Resources, acting by delegation of power from the President of the Office, rejected the complainant's appeal filed on 17 March 2015. The final decision was based on an opinion of the Appeals Committee, which considered the appeal to be manifestly irreceivable.

2. In his internal appeal, the complainant claimed moral damages on the grounds that he had not been credited with one point in the PAX (Productivity Assessment for Examiners) system for an action that he had completed in processing a file in 2013. He considered that the decision not to reward this action was a departure from previous practice which should have been subject to prior discussion with him.

Furthermore, he considered that this created a situation in which he was uncertain whether he could reach the expected productivity target, which “incurred stress and pressure on [him]”. However, the complainant also states in his complaint before the Tribunal that he did not challenge the staff report containing the final assessment of his productivity for 2013.

3. In his submissions the complainant dwells at length on the issue of the composition of the Appeals Committee, which he considers was unlawful. In support of his arguments he refers to Judgment 3694, concerning his third complaint, in which the Tribunal found that the Appeals Committee was not properly composed. After the filing of the present complaint, the Tribunal delivered Judgment 3785, which is even more relevant to this case in view of the composition of the Appeals Committee that dealt with the underlying internal appeal. In light of these judgments, the complainant is correct in considering that the Appeals Committee which issued an opinion on his appeal was not composed properly, which renders the final decision of the Principal Director Human Resources based on that opinion unlawful.

4. Ordinarily, this finding would lead the Tribunal to remit the matter to the EPO so that the complainant’s internal appeal could be examined by an Appeals Committee composed in accordance with the applicable rules. In this case, however, the Tribunal will not proceed in that manner. As the complaint is clearly devoid of merit, no useful purpose would be served by sending the case back to the EPO.

5. In its opinion, the Appeals Committee correctly pointed out that, according to the Tribunal’s case law, a complainant cannot challenge a measure which is only a step in the process of evaluating the performance of employees. It is firmly established by the case law that a measure of this kind can only be challenged in the context of an appeal against the final decision taken at the end of the process in question (see, for example, Judgments 2366, consideration 16, and 3198, consideration 13). The Tribunal re-affirmed this approach recently in Judgment 3713, in consideration 3. As noted above, the complainant

did not challenge his staff report for 2012-2013, which constituted the final decision on the evaluation of his performance for that period. He therefore cannot now challenge a measure that led to its adoption. Furthermore, his assertion that the failure to reward his action with one point in the PAX system affected him directly is entirely unsubstantiated and hence cannot be considered by the Tribunal.

6. In these circumstances, no different result for the complainant could be obtained by renewing the consultation process before the Appeals Committee and no interest of justice would be served by sending the case back to the EPO.

7. As the complaint is clearly devoid of merit and hence irreceivable, it 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 complaint is dismissed.

In witness of this judgment, adopted on 16 May 2017, 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 28 June 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ