

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**B. (No. 2)**

*v.*

**EPO**

**125th Session**

**Judgment No. 3974**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr J. G. B. against the European Patent Organisation (EPO) on 4 July 2017;

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. In 2015 the complainant, an official of the European Patent Office, the EPO's secretariat, submitted to the Chairman of the Administrative Council a request for review of the decision of the Administrative Council CA/D 10/14. At its 144<sup>th</sup> meeting on 24 and 25 June 2015, the Administrative Council decided to dismiss this request for review as manifestly irreceivable.

2. In Judgments 3700 and 3796 delivered in public on 6 July 2016 and 30 November 2016, the Tribunal stated that the Administrative Council was not the "competent authority", within the meaning of Title VIII of the Service Regulations concerning settlement

of disputes, to examine a request for review filed by a staff member appointed by the President.

3. On 13 February 2017 the complainant was informed that the decision which the Administrative Council had taken at its 144<sup>th</sup> meeting was withdrawn, as it fell under the scope of Judgments 3700 and 3796. Therefore, his request for review of decision CA/D 10/14 was referred for consideration to the President, who was the competent appointing authority.

4. By a letter dated 12 April 2017, which, according to him, he received on 27 April 2017, the complainant was informed that the President had decided to reject his request for review as manifestly irreceivable and, in any event, unfounded.

5. On 4 July 2017 the complainant filed his second complaint. He considers that there has been an implied decision to reject his request for review and he bases his complaint on Article VII, paragraph 3, of the Statute of the Tribunal. He claims that, for the purpose of the receivability of his complaint, the decision of 12 April 2017 must be “disregarded” as he received it nine days after the expiry of the sixty-day time limit – which started to run on 13 February 2017 – provided for in Article VII, paragraph 3, of the Statute of the Tribunal.

6. The complainant’s approach is mistaken. The possibility of filing a complaint against an implied rejection is governed solely by the provisions of Article VII, paragraph 3, of the Statute, which states that an official may file such a complaint “[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it”. However, firm precedent has it that when an organisation forwards a claim before the expiry of the prescribed period of sixty days to the competent authority, this step in itself constitutes “a decision upon [the] claim” within the meaning of these provisions, which forestalls an implied rejection which could be referred to the Tribunal (see, on these points, Judgments 532, 762, 786, 2681 or 3034).

Given that the decision which the Administrative Council had taken on the complainant's request for review was withdrawn and that the complainant was informed on 13 February 2017 that the said request for review had been referred to the President, he cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his request for review has been implicitly rejected.

7. Furthermore, the Tribunal notes that the letter of 12 April 2017, by which the complainant was informed that his request for review was rejected, stated that, if the complainant wanted to challenge that decision, he could file an internal appeal with the Appeals Committee within a period of three months pursuant to Article 110 of the Service Regulations for permanent employees of the Office.

8. As the complainant has not exhausted the internal remedies available to him as required by Article VII, paragraph 1, of the Tribunal's Statute, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

9. In the circumstances, the complainant's request to join the present complaint with his first complaint is rejected.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ