

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L.
v.
EPO

128th Session

Judgment No. 4196

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R. F. L. against the European Patent Organisation (EPO) on 5 October 2012 and corrected on 7 November 2012, the EPO's reply of 11 February 2013, the complainant's rejoinder of 27 February and the EPO's surrejoinder of 2 April 2013;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to reject as time-barred his application for an inward transfer into the EPO's pension scheme of pension rights previously accrued under a German pension scheme.

The complainant is a German citizen who joined the European Patent Office – the EPO's secretariat – as a member of the contract staff on 1 June 1993. On 8 December 1995 the EPO and the Federal Republic of Germany entered into an Agreement on the Implementation of Article 12 of the Pension Scheme Regulations of the European Patent Office (hereinafter the "Transfer Agreement"), which came into force on 21 September 1996. According to the Transfer Agreement, pension

rights previously acquired under a German pension scheme could be transferred to the EPO's pension scheme and applications for such transfers were to be made no later than six months after the entry into force of the Transfer Agreement. After that period, applications could be submitted within six months from the appointment of the employee on a permanent basis.

On 24 March 1998 the complainant was appointed as a permanent employee with effect from 1 December 1997. By e-mail sent to the Administration on 19 June 2009, he inquired about the possibility to transfer his pension rights notwithstanding the expiration of the deadline for applying for such a transfer. He asked that his case be considered in the light of Judgment 2768 where the Tribunal had concluded that the EPO had failed to duly inform the complainant in that case of her right to have her pension entitlements transferred.

On 8 March 2010 the Administration informed the complainant that his request was time-barred and could not be satisfied as he had not observed the prescribed six-month time limit. The Administration further noted that based on the principle of legal certainty, Judgment 2768 only applied to the parties to that dispute and could not therefore be applied to the complainant's case.

By a letter dated 28 April 2010 the complainant lodged an internal appeal in which he alleged that upon recruitment as a permanent employee he had not received information on the possibility of transferring his pension rights.

On 4 June 2012 the Internal Appeals Committee (IAC) unanimously considered the internal appeal as receivable but unfounded and recommended that it be rejected. The IAC concluded that the complainant had failed to respect the six-month deadline provided for in Rule 12.1/1(v)(a) of the Implementing Rules to the Pension Scheme Regulations (in the version applicable before 1 July 2004) and that the Office had duly fulfilled its duty to provide the relevant information. It added that the complainant's case was not comparable to the case in dispute in Judgment 2768 but suggested that the Office should explicitly inform contract staff members who became permanent employees

about the possibility to apply for such transfers of pension rights in order to avoid future conflicts.

By letter of 30 July 2012 the President of the Office endorsed the opinion of the IAC and dismissed the internal appeal as unfounded. That is the impugned decision.

The complainant asks the Tribunal to order the transfer of his pension rights accrued under a German pension scheme into the EPO's pension scheme.

The EPO requests the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant impugns the 30 July 2012 decision, taken by the President of the Office, to reject his 28 April 2010 internal appeal as unfounded, in accordance with the 4 June 2012 unanimous opinion of the IAC.

2. The complainant had appealed against the decision to reject as time-barred his request to retroactively transfer his previously acquired pension rights to the EPO's pension scheme. The complainant based his internal appeal on the assertion that the EPO had violated its duty of care in not explicitly informing him personally of the possibility to transfer his pension rights when he was appointed as a permanent employee with effect from 1 December 1997.

3. The IAC found that the complainant had "clearly missed the six-month time limit in which to request a transfer under [Rule 12.1/1(v)(a) of the Implementing Rules to the Pension Scheme Regulations]" as he did not request an assessment of his transfer option until 19 June 2009 and the six-month time limit had begun to run on 24 March 1998. The IAC noted the complainant's reference to the Tribunal's Judgment 2768, but did not consider his case to be comparable to that one. It also noted that the Organisation had published detailed information in 1996 and 1997 on the possibilities for transferring

pension rights accrued under a German pension scheme in relation to the Transfer Agreement, which entered into force on 21 September 1996. Thus, the Tribunal finds that the Organisation had fulfilled its duty to inform and did not breach its duty of care.

4. The complaint is unfounded. As noted by the IAC, the complainant first requested information regarding his pension entitlements only in 2009, long after the time limit had passed for transferring his previously acquired pension rights into the EPO's pension scheme. The evidence shows that the Organisation had duly informed staff of the changes brought following the adoption of the Transfer Agreement and the complainant stated that he was aware of the "publicity campaign" at the time. Consistent case law has it that "[t]he principle of good faith and the concomitant duty of care demand that international organisations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform employees in advance of any action that may imperil their rights or harm their rightful interests" (see Judgment 2768, under 4, and the case law cited therein). It is clear that the Organisation fulfilled that duty in the present case. The Tribunal notes that its case law also holds that staff members have a duty to inform themselves; i.e. they are expected to know their rights and responsibilities or to ask for clarifications when there is any doubt (see, for example, Judgments 3878, under 12 and 17, and 4032, under 6). As the complainant has not put forth any valid mitigating circumstances for his failure to inform himself of the details regarding any potential transfer of his pension rights at the pertinent time, his 2009 request to do so was clearly time-barred and the decision to reject his request was lawful.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 May 2019, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

YVES KREINS

DRAŽEN PETROVIĆ