

T. (No. 29)

v.

EPO

130th Session

Judgment No. 4323

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-ninth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 6 May 2015, the EPO's reply of 25 September, the complainant's rejoinder of 27 November 2015 and the EPO's surrejoinder of 23 February 2016;

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;

CONSIDERATIONS

1. In 2008 the complainant asked the EPO to review the date of his annual salary step in light of an earlier decision that had been taken concerning his reckonable professional experience for promotion purposes. Following an initial rejection of his request, he lodged an appeal with the Internal Appeals Committee (IAC), which recommended in an opinion of 15 December 2014 that the appeal be dismissed as time-barred. In the present complaint, the complainant impugns the decision of 9 February 2015 by which the Vice-President of Directorate-General 4, acting on behalf of the President of the EPO, dismissed the appeal as time-barred, in accordance with the IAC's recommendation.

2. After the filing of this complaint, the Tribunal adopted two judgments in which it addressed an issue that is relevant to this case,

namely the lawfulness of the composition of the Appeals Committee which issued the recommendation on which the impugned decision is based. In Judgments 3694 and 3785, delivered in public on 6 July and 30 November 2016, respectively, the Tribunal found that the Appeals Committee was not composed in accordance with the applicable rules. The decisions impugned in those cases were set aside and the cases sent back to the EPO for the Appeals Committee, composed in accordance with the applicable rules, to examine the appeals.

3. Following the public delivery of those judgments, the EPO reviewed a number of other cases which had been examined by the Appeals Committee during the same period and concluded that the internal appeal proceedings were tainted with the same flaw concerning the composition of the Appeals Committee. The President of the Office therefore decided to withdraw the final decisions he had taken at the end of those internal appeal proceedings and to refer the appeals back to a newly constituted Appeals Committee.

4. Some of the decisions in question, including the decision impugned in this case, were already the subject of complaints before the Tribunal. The President of the Office considered that the complaints pending before the Tribunal were rendered moot by the withdrawal of his final decisions, and he invited the complainants to withdraw them. The EPO informed the Tribunal of this development in writing, providing a list of the complaints concerned. The present complaint was on that list.

5. In Judgment 4256, delivered in public on 10 February 2020, the Tribunal ruled on numerous complaints filed by serving or former EPO officials who did not withdraw their complaints after having been notified that the impugned decisions had been withdrawn. The complainant's 30th, 35th, 36th, 37th, 38th and 39th complaints were amongst those that were dealt with in that judgment. The Tribunal found that, as a result of the withdrawal of the impugned decisions, the complaints were without object and dismissed them.

6. On 22 June 2020 the Registrar wrote to Mr T. and, having drawn his attention to the Tribunal's ruling in Judgment 4256, enquired whether he now wished to withdraw his 29th complaint, given that it was obviously similar to the complaints that were the

subject of Judgment 4256. Mr T. refused to do so and proposed other procedural steps which, in his view, would preserve his rights.

7. The Tribunal, however, sees no reason to adopt a different decision in this case from that which it adopted in Judgment 4256. For the reasons stated in that judgment, the complaint must therefore be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 13 July 2020, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 24 July 2020 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ