

113th Session

Judgment No. 3109

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 2972 filed by the European Patent Organisation (EPO) on 6 April 2011 and the reply by Mr R. B. and Mr D. B. (the complainants in that judgment) of 25 June 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

CONSIDERATIONS

1. The EPO has applied for interpretation of Judgment 2972 in which the Tribunal ruled that, on the basis of its duty of care, it was obliged to pay each of the complainants the “difference between that actual amount of the Van Benthem allowance as at 31 December 2005 (1,206.32 euros in the case of the first complainant and 1,354.54 euros in the case of the second) and the shift allowance payable in accordance with Article 58(2) of the Service Regulations until such time as the shift allowance should equal or exceed the actual amount of the Van Benthem allowance paid on 31 December 2005”.

2. The Organisation contends that the judgment requires clarification in two respects. It first asks whether “the difference between the actual amount of the ‘Van Benthem allowance’ and the shift allowance [...] could be covered solely with the use of a (variable) shift allowance and, if this is lower, with an additional (variable) transitional payment”. It elaborates this question by explaining its understanding that “the requested amount should be paid only with allowances and without taking into account any increases of the basic salary which have taken place since 2005”. As is clear from Judgment 2972, in consideration 10, each of the complainants is entitled to his full “basic salary as adjusted from time to time”. Additionally, as each works outside normal working hours, each is to be paid a shift allowance calculated in accordance with Article 58(2) of the Service Regulations for Permanent Employees of the European Patent Office which, as noted in consideration 2 of the judgment, is calculated by reference to a percentage of annual basic salary. Accordingly, as is recognised in the judgment, the amount of the shift allowance payable under Article 58(2) will increase with any increase in basic salary. Judgment 2972 entitles each complainant to such sum of money by way of compensatory allowance which, when added to the Article 58(2) shift allowance, will ensure that, over and above his basic salary as adjusted from time to time, he receives the same amount of money as he received by way of the Van Benthem allowance on 31 December 2005. If the amount payable under Article 58(2) increases, the amount of the compensatory allowance will decrease by the corresponding amount.

3. The second aspect on which the EPO claims to require clarification concerns the period for which the compensatory allowance must be paid. Again, there is no lack of clarity. The Organisation correctly notes that the Tribunal stressed that payment should be made “to each complainant for so long as he works shifts outside normal working hours”. However, it contends that if “the complainants cease to perform night shifts, it follows that no payment

will be made as a substitute for the Van Benthem allowance”. In support of this contention, it refers to the Tribunal’s ruling that the complainants had no acquired right to work night shifts and no acquired right to the actual amount of the Van Benthem allowance or any particular method of reckoning it. It is clear from its terms that Judgment 2972 was not based on acquired rights or the working of night shifts, but on the Organisation’s “duty of care to ensure that the new arrangements did not cause financial hardship to [the complainants]”. Accordingly, as clearly indicated in consideration 10, the compensatory allowance must be paid “to each complainant for so long as he works shifts outside normal working hours”.

4. The application for interpretation must be dismissed. Each of the complainants is entitled to costs in the amount of 150 euros.

DECISION

For the above reasons,

1. The EPO shall pay each complainant costs in the amount of 150 euros.
2. The application is dismissed.

In witness of this judgment, adopted on 4 May 2012, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2012.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet