

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

118th Session

Judgment No. 3336

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr G.L.É. R. against the European Patent Organisation (EPO) on 12 November 2010, the EPO's reply of 24 February 2011, the complainant's rejoinder of 31 March and the EPO's letter of 10 June 2011 in which it informed the Registrar of the Tribunal that it did not wish to file a surrejoinder;

Considering the applications to intervene filed on 29 July 2011 by Messrs T. H., A. K. and P. T. and on 2 August by Mr I. T., and the EPO's comments of 26 September 2011 in which it informed the Registrar that it considered those applications to be irreceivable because the persons concerned were not in a similar situation to that of the complainant;

Considering Article II, paragraph 5, 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 and the pleadings may be summed up as follows:

A. The complainant retired from the EPO on 1 December 2006. In February 2007 the Administration sent him several documents, including his personal particulars form for 2006, which showed the

total retirement pension, allowances and tax adjustment paid to him that year, and a statement of the total payments for the same year, showing, among other things, the annual amount of basic pension and allowances paid to him, after deduction of his contributions to the various insurance schemes.

On 14 March 2007 the complainant requested a new version of these documents showing the amount of the internal tax which, in his view, had been levied on his pension. As his request did not meet with a favourable response, he was informed by a letter of 24 May 2007 that the matter had been referred to the Internal Appeals Committee (IAC). The Director of Regulations and Change Management informed the complainant by a letter of 25 August 2010, which constitutes the impugned decision, that in accordance with the IAC's unanimous opinion – dated 28 June 2010 – it had been decided that his appeal should be rejected as unfounded.

B. The complainant holds that he did not receive the decision of the President of the European Patent Office, the EPO's secretariat, rejecting his internal appeal. In his opinion, if the President did take such a decision, he could hardly have based it on the IAC's opinion, since the latter was in German, a language of which he has no command.

On the merits, the complainant contends that, since every serving employee is informed of the amount of internal tax which has been deducted in his or her annual salary statement, it should also be included in the statement of total payments, especially as the applicable texts do not prohibit the divulging of such information. He explains that this would enable him to find out the amount of the basic salary used to calculate his retirement pension. Since that salary is the amount obtained after the deduction of internal tax from gross salary, he submits that his pension is *de facto* subject to this tax.

The complainant asks the Tribunal to order the EPO to send him a new version of his personal particulars form and/or his total payments statement for 2006 and the following years, showing the amount of internal tax deducted from his retirement pension. Although the

Chairman of the IAC had “promised” to deal with his appeal “as soon as possible”, he submits that the internal appeal proceedings were excessively long and that this caused him moral injury for which he requests compensation. Lastly, he seeks an award of costs.

C. In its reply the EPO states that, in respect of appeals on which the IAC has reached a unanimous opinion, the President of the Office has delegated his power of decision to one of the principal directors who, in turn, has delegated this power to the Director of Regulations and Change Management. As the decision of 25 August 2010 was signed by the latter, it was taken and notified by the competent authority.

The EPO refers to the applicable texts in order to explain that the internal tax is deducted only from the salaries of serving employees and that it is therefore quite logical for it not to be shown on the personal particulars form sent to retirees every year. While it admits that retirement pensions are *de facto* reduced by an amount identical to the internal tax insofar as they are calculated on the basis of net salary, it states that this does not signify that they are subject to this tax.

The EPO acknowledges that the internal appeal proceedings were not conducted within a reasonable period of time and leaves it to the Tribunal to decide on the merits of the complainant’s request for damages under this head.

D. In his rejoinder the complainant maintains his position and explains that he was unaware of the “cascade” of delegations of authority described in the EPO’s reply.

CONSIDERATIONS

1. Pursuant to Article 16(1) of the Protocol on Privileges and Immunities of the EPO, the latter levies a tax on the salaries paid to its employees. These salaries are therefore exempt from national income tax. The arrangements for levying the internal tax, and the persons

liable to taxation, are defined in Articles 2 and 3 of the Regulation on Internal Tax for the Benefit of the EPO.

Articles 3 and 10 of the Pension Scheme Regulations of the European Patent Office set the rate of the retirement pension for employees by reference to the salary for the grade and step last held by an employee for at least one year before retirement, this being understood as the net salary, that is, after deduction at source of the internal tax.

These provisions also make it clear that it is only the gross salary of serving employees which is subject to the internal tax, to the exclusion of retirement pensions, which may therefore be subject to national income tax at the place of residence of the person concerned. Where this is the case, if the person in question entered the service of the Office before 1 January 2009, she or he will be entitled to partial compensation (Decision CA/D 14/08 of the Administrative Council of the EPO).

2. Insofar as its purposes may be discerned, this complaint does not directly call this system into question. The complainant, who retired on 1 December 2006, merely challenges the presentation of two documents drawn up by the EPO on 5 February 2007. The first of these documents is a personal particulars form showing the total amount of the retirement pension, allowances and tax adjustment paid to him in 2006. The second document contains a breakdown of the total pension payments made to the complainant in 2006, i.e. the basic pension and household allowance received in December, less various contributions.

3. The complainant submits, as he did in the internal appeal proceedings, that these documents are incomplete because they make no mention of the internal tax deducted from the basic salary used to calculate his retirement pension. He holds that while this kind of deduction at source does not constitute *de lege* taxation on the pension paid to him, *de facto* it entails a reduction thereof corresponding to the tax. This being so, he contends that he could ascertain the amount of

the basic salary used to determine the rate of his pension only if the internal tax were shown in the disputed documents.

4. The provisions cited above, which are clearly worded, show that a retirement pension is not subject to internal taxation. The two contested documents are merely statements of the amount of pension paid. None of the aforementioned texts provides that these statements must mention the basis for calculating the pension. Moreover, it is not clear why it would be necessary to mention it in the statements in order to protect the rights of the recipient, and why it would therefore be required by the principles governing actions of the Administration. In fact, all information pertaining to the calculation of the retirement pension to which a retiree is entitled must be given to such a person at the time when the amount of his or her pension is fixed. The evidence on file shows that this was done in the instant case.

The complaint is therefore manifestly devoid of merit on this point.

5. The complainant also submits that the decision dismissing his request to have the amount of internal tax shown on the contested documents is tainted with several flaws. This criticism is also groundless. The decision was taken and notified by an authority whose competence to do so is unequivocally established by the regulations produced by the EPO as an annex to its reply. The argument that, at the material time, the President of the Office did not appear to have any command of German, the language in which the opinion of the IAC was written, is immaterial.

The complaint is therefore also unfounded in this respect.

6. The Tribunal notes, however, that almost three and a half years elapsed between the time when the complainant submitted his initial request and that when the impugned decision was rendered. In view of the circumstances of the instant case, this period is excessively long. This decision was not taken within a reasonable length of time and the Organisation did not respect the need for

expeditious proceedings stemming from the duty of care which all organisations owe to their staff. It is firmly established by the Tribunal's case law that a staff member is entitled to an efficient internal means of redress and to expect a decision on an internal appeal to be taken within a reasonable time (see Judgments 2116, under 11, 2851, under 10, 2904, under 14 and 15, and 3168, under 13). While there is no actual proof that the complainant suffered material injury owing to this delay, he is entitled to 1,000 euros in moral damages and 500 euros in costs.

7. The four applications to intervene filed by persons who associate themselves with the complainant's claims are irreceivable, since the applicants are not in the same situation in fact or in law as the complainant (see Judgments 2237, under 10, 2311, under 11, and 2636, under 13).

DECISION

For the above reasons,

1. The EPO shall pay the complainant 1,000 euros in moral damages.
2. It shall also pay him 500 euros in costs.
3. All other claims are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 1 May 2014, Mr Claude Rouiller, Vice-President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

CLAUDE ROUILLER
SEYDOU BA
PATRICK FRYDMAN
DRAŽEN PETROVIĆ