

118th Session

Judgment No. 3384

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 2 January 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. Facts relevant to this case are set out in Judgments 3151, 3248 and 3249. On 9 October 2009, the complainant received from the Personnel Department the third version of his staff report for the period 1 January 2002 to 31 January 2003, which had been rewritten following a recommendation of the Internal Appeals Committee (IAC). The complainant considered this version to be flawed as well and returned it with his critical comments. The complainant received a letter dated 17 March 2010 from the Director of Human Resources Line Management Support (HRLMS) which explicitly referred to the above-mentioned (third version) staff report. She noted that the comments he had made at Part VIII of the report had been duly replied to by the reporting and countersigning officers, and attached a copy of

these replies for his information. Stressing that there was no further possibility to initiate the conciliation procedure, the Director asked him to indicate whether he wished to sign Part X of the report, stating that he did not wish to avail himself of that procedure, or whether he wanted the report to be sent directly to the President of the Office for endorsement at Part XI. Having received no response from the complainant, the Director of HRLMS sent him a letter dated 12 July 2010 in which she referred to her previous letter as well as to his staff report. She asked him to notify her by 19 July 2010 of his decision, failing which his staff report would be submitted to the President for final endorsement. Following a meeting with the Director of HRLMS, the complainant sent a letter dated 19 July 2010 to the Director of HRLMS, copied to the President, the Vice-President in charge of Directorate-General 4 and seven other EPO employees, requesting the withdrawal of the letters of 17 March and 12 July 2010.

2. On 13 August 2010 the complainant submitted the third version of his staff report to the Human Resources Manager, explicitly requesting a conciliation procedure. The Principal Director of Human Resources sent a letter to the complainant, dated 8 September 2010, confirming the EPO's position as expressed in the above-mentioned letters (of 17 March and 12 July 2010), and concluding that a copy of his staff report would be forwarded to the President for final endorsement at Part XI, after which if he still disagreed with the content of the report he could file a complaint with the Tribunal, in accordance with Article 109 of the Service Regulations for Permanent Employees of the European Patent Office.

3. On 8 October 2010 the complainant wrote a letter to the President (copied to 11 EPO employees), asking him to approve the requests he made in all his previous letters. On 14 December 2010 the complainant received a letter (misdated 8 March 2010) from the Director of the Employment Law Directorate, which stated in relevant part: "By letter dated 8 October 2010 you initiated the internal appeal proceedings requesting that 'a mediation or conciliation procedure be initiated' with respect to the drafting of your staff report for the period

2002-2003. [...] Further a conciliation procedure was already initiated in 2005 concerning that report. [...] The President of the Office therefore considers, after a first review of your appeal, that the request should be denied. The matter is referred to the Internal Appeals Committee, mentioned in Article 110(4) of the Service Regulations, for opinion. Your appeal was registered under reference number RI/181/10.** According to that letter, the President, having considered that a conciliation procedure was not possible, had forwarded the complainant's letter to the IAC for its opinion; this appeal was filed under reference number RI/181/10.

4. The complainant does not consider the letter from the Director of the Employment Law Directorate to be a properly and officially endorsed decision by the President to forward his appeal to the IAC. Furthermore, he considers that "unofficial forwarding" to refer only to his request for a conciliation procedure. Thus, he filed the present complaint (his fifth) directly with the Tribunal on 12 January 2011. He requests the Tribunal to quash the order to accept and endorse the third version of the contested staff report for the period 1 January 2002 to 31 January 2003 (as notified in the letter dated 12 July 2010), if the Tribunal considers it to have been explicitly endorsed by the President, or alternatively, to quash the order to accept and endorse the third version of the said staff report as well as the decision to reject his request for a conciliation procedure, if the Tribunal does not consider it to have been properly endorsed by the President. He requests an award of moral damages for undue delays regarding internal appeals RI/91/05 and RI/112/05 and for the delay in the finalisation of his staff report for the period 1 January 2002 to 31 January 2003. He also requests payment of costs.

5. The Tribunal is of the opinion that the letter received by the complainant on 14 December 2010 properly and officially informed him of the President's explicit decision to reject his request for a

* Registry's translation. The original French text can be found in the French version of this judgment.

conciliation procedure and to refer the matter to the IAC for opinion. As such that claim is irreceivable for failure to exhaust all internal means of redress. However, the Tribunal notes that the complainant's letter of 8 October 2010, which the President forwarded to the IAC, expressly referred also to the two letters from the Director of HRLMS and consequently, the claims raised in those letters were also forwarded to the IAC. Moreover, the requests contained in the letters of 17 March and 12 July 2010 (to inform her of whether or not he would endorse the report at Part X or if the report should be forwarded to the President for endorsement at Part XI), were intrinsically connected to the rejection of the conciliation procedure request and could not be treated separately. In light of the above, the Tribunal considers that the complainant's claims regarding the quashing of the above-mentioned impugned acts are irreceivable in accordance with Article VII(1) of the Statute of the Tribunal as the complainant did not receive a final decision regarding his grievances. The complainant's claim for an award of moral damages for the delay in the finalisation of his staff report for the period 1 January 2002 to 31 January 2003 is premature as it is tied to the outcome of the internal appeal registered as RI/181/10 and is thus also irreceivable for failure to exhaust all internal means of redress. The claim for an award of moral damages for undue delays regarding internal appeals RI/91/05 and RI/112/05 is irreceivable as these two appeals are not pertinent to the present complaint and have already been dealt with in Judgment 3151 and thus are *res judicata*. Considering the above, the complaint is clearly irreceivable in its entirety and must be dismissed in accordance with the summary procedure provided for in Article 7 of the Rules of the Tribunal. As the complaint fails, the claim for costs is rejected.

DECISION

For the above reasons,
The complaint is summarily dismissed.

In witness of this judgment, adopted on 9 May 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 9 July 2014.

GIUSEPPE BARBAGALLO
MICHAEL F. MOORE
HUGH A. RAWLINS
DRAŽEN PETROVIĆ