

119th Session

Judgment No. 3454

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms L. A. M., Ms E. A. A. P. V. H., Ms C. H. (her second) and Ms P. T. S. –B. on 28 June 2013 against the European Patent Organisation (EPO);

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

Having examined the written submissions;

CONSIDERATIONS

1. The four complainants, who are employees of the EPO, filed their complaints with the Tribunal on 28 June 2013. The complaints are, in substance, in identical terms and it is therefore convenient that they be joined to form the subject of a single judgment. Each identifies the impugned decision as an implied decision rejecting a claim notified to the EPO on 8 March 2013.

In December 2012 the Administrative Council of the EPO adopted decision CA/D 17/12. The decision was to the effect that permanent or contract employees who were in active service during 2011 would be paid a collective reward which, for any given individual was (subject to certain conditions) an amount of 4,000 euros. The scheme was, somewhat simplified, that the full payment was to be made to individuals who had worked full time in 2011 but pro rata to individuals who had worked part-time. Annual or home leave taken in 2011 was not to be considered as absence from work. Otherwise, absences from work diminished, pro rata, the amount payable.

However it appears that employees on maternity leave during 2011 were considered to have been absent from work while on that leave, which impacted on their entitlement to the collective reward. The four complainants appear to have been on maternity leave during 2011. They seek to challenge decision CA/D 17/12 on the grounds that it discriminates against them. It is unnecessary to detail the precise grounds of the challenge.

2. It is possible, though not established by any evidence produced by the complainants, that each complainant was either not paid any amount pursuant to CA/D 17/12 or not paid the full amount of 4,000 euros. They sought a review of decision CA/D 17/12 itself under Article 109 of the Service Regulations for permanent employees of the EPO. Each request for review was dated 8 March 2013 and addressed to Mr K., the Chairman of the Administrative Council. Each complainant asserts that within 60 days of the request for review the “EPO ha[d] not given any arguments”. Having regard to the complaint forms lodged with this Tribunal, the complainants thereupon proceeded on the basis that there had been a negative decision on their requests for review that they could then challenge in this Tribunal.

3. There is a difficulty for these complainants which stands in the way of their complaints being considered on the merits. They are challenging, directly, the decision of the Administrative Council and not its implementation as it might have applied to them (see, for example, Judgment 2822, under 6, and Judgment 3291, under 8). For that reason, the complaints are irreceivable and should be dismissed in accordance with the summary procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 14 November 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 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ