

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**K. (Nos. 5 and 6)**

*v.*

**EPO**

**120th Session**

**Judgment No. 3558**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth and sixth complaints filed by Mr T. K. against the European Patent Organisation (EPO) on 21 May 2014;

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

Having examined the written submissions;

**CONSIDERATIONS**

1. The Tribunal joins these two complaints in this single judgment given that they involve the same parties and raise the same issues at this juncture.

2. By way of background, on 5 April 2012 the complainant submitted a request for review challenging the new version of his staff report for 2006-2007, which he had received on 3 April 2012. He considered that the new report was tainted by the same flaws as the original one, which had been set aside following a conciliation procedure. He was informed on 8 June 2012 that the matter had been referred to the Internal Appeals Committee (IAC) under the reference RI/58/12.

3. On 18 April 2012 the complainant filed another request for review, challenging the decision to nominate Mr W. and Mr C. as his reporting and countersigning officers for 2010-2011, of which he had been notified on 31 January 2012. He was informed on 18 June 2012 that this matter had been referred to the IAC under reference RI/64/12.

4. In July 2012 the IAC issued an opinion on several other appeals filed by the complainant. The IAC recommended, inter alia, that the classification of his post in the B5/1 grade group should be reviewed, as there appeared to be similar posts in the A-category. The President accepted this recommendation in September 2012 and instructed the Controlling Office to conduct the classification review. As the outcome of this review was likely to affect the complainant's staff reports for 2006-2007 and 2010-2011, the Administration asked the IAC to extend the time for submitting its replies to appeals RI/58/12 and RI/64/12. An extension until 3 May 2013 was granted.

5. In April 2013 the Controlling Office concluded that, although the post should not be in the A-category, it may belong to the B6/4 grade group. This issue would have had to be examined by the Job Grade Evaluation Panel. On 2 May 2013 the complainant was informed that the matter had been referred to the Panel for further evaluation.

6. On 3 May 2013 the Administration submitted its position papers concerning both appeals to the IAC and invited the IAC to join them. The Administration also asked the IAC to suspend the internal appeal proceedings pending a decision by the Job Grade Evaluation Panel. The complainant's counsel objected. The complainant states that the Panel completed its evaluation in October 2013 and he disagrees with the outcome.

7. It was against this background that the complainant filed his fifth complaint on 21 May 2014 in the Tribunal impugning the decision of 31 January 2012 assigning his reporting and countersigning officers for 2010-2011 (the decision challenged in appeal RI/64/12). On 24 May 2014 he filed his sixth complaint in the Tribunal impugning the decision

which he received on 3 April 2012 (the decision challenged in appeal RI/58/12).

8. It is clear from the foregoing factual background that the IAC proceedings were still pending when these complaints were filed, although it is not clear whether the IAC had granted a suspension of them that the EPO requested. The complainant states that the IAC did not respond after his counsel objected to the request. In February 2014, however, the Head of the new Conflict Resolution Unit contacted the complainant with a view to discussions to facilitate an amicable settlement of all of his outstanding appeals. Apparently, this initiative was unsuccessful.

9. The clear and consistent authority of the Tribunal is that a complaint filed directly with the Tribunal is irreceivable unless a complainant shows that the requirement to exhaust the internal remedies has had the effect of paralysing the exercise of her or his rights. It is only then that she or he is permitted to come directly to the Tribunal where the competent bodies are not able to determine an internal appeal within a reasonable time, depending on the circumstances. A complainant can make use of this possibility only where he has done his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a decision within a reasonable time (see, for example, Judgments 1486, under 11, 1674, under 6(b), and 2039, under 4 and 6(b), and the cases cited therein).

10. The delay in the internal appeal procedure is regrettable and may in due course justify an award of damages against the EPO. However, in the circumstances of these cases that delay is not such as to warrant an exception to the requirement that internal remedies be exhausted before a complaint is filed in the Tribunal. In the premises, the complaints are clearly irreceivable under Article VII, paragraph 1, of the Tribunal's Statute. They must therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Tribunal's Rules.

DECISION

For the above reasons,  
The complaints are dismissed.

In witness of this judgment, adopted on 15 May 2015, 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 30 June 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ