

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C.
v.
EPO

123rd Session

Judgment No. 3784

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. C. against the European Patent Organisation (EPO) on 17 January 2012 and corrected on 23 February, the EPO's reply of 1 June, the complainant's rejoinder of 7 September and the EPO's surrejoinder of 11 December 2012;

Considering Articles II, paragraph 5, and VII 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 may be summed up as follows:

The complainant contests the calculation of his reckonable previous experience upon recruitment.

The complainant joined the European Patent Office, the secretariat of the EPO, with effect from 1 March 2007. In an amended job offer of 8 December 2006 he was informed that he would be placed in grade A1, step 1, with one month in step. He had been awarded a National Certificate in Computing by the Limerick College of Art, Commerce and Technology on 17 July 1987 and a Bachelor of Science (BSc) (Honours) Open degree by the Open University on 30 September 2006, and held both qualifications prior to his entering into service with the EPO.

By an e-mail of 5 November 2007 to a member of the Administration (Mr V.d.Z.), the complainant requested that his grading upon recruitment be reviewed in light of the considerable reckonable work experience he had attained in the years prior to the award of his BSc degree. He asked that his situation be evaluated in light of Section II(A) of Circular No. 271 of 12 June 2002. In an e-mail of 9 November he was informed by Mr V.d.Z. that the latter had discussed the matter with the Director of Personnel and it had been decided that the complainant's case could not be viewed as an exceptional case under Circular No. 271.

On 7 December 2007 the complainant met with his Director and the Director of Personnel to discuss the matter further. By a letter of 26 February 2008 the Director of Personnel notified the complainant that he considered that the conditions set out in Section II(A) of Circular No. 271 had not been met. Although he appreciated the quality and extent of the complainant's professional experience prior to his recruitment, which was an important reason why he had been offered employment, the EPO followed a strict policy as regards the application of the rule set out in Circular No. 271. The Director of Personnel requested that the complainant confirm receipt of the letter by signing and returning the enclosed copy of that letter to Mr V.d.Z.

On 16 April 2008 the complainant lodged an internal appeal in which he challenged the decision contained in the letter of 26 February. By a letter of 12 June he was informed that the President of the Office had referred the case to the Internal Appeals Committee (IAC) for an opinion.

Having held an oral hearing at which the complainant was represented, a majority of the IAC members recommended in an opinion of 26 August 2011 that the President reject the appeal as not admissible and unfounded on the merits. They considered that the adverse decision the complainant ought to have challenged was that contained in the e-mail of 9 November 2007 and that his appeal was therefore out of time. A minority of the IAC issued a contrary opinion, both on admissibility and on the merits. By a letter of 25 October 2011 the complainant was informed that the Vice-President of Directorate-General 4, acting with delegation of authority from the President of the Office, had decided, in accordance with the majority opinion of the IAC, to reject his appeal as irreceivable

and unfounded. The letter stated that the decision of 9 November 2007 had been taken by the Director of Personnel (who had the requisite authority to do so) and Mr V.d.Z. had merely communicated that decision to the complainant, and that the letter of 26 February 2008 did not constitute a new decision but was merely a confirmation of the decision of 9 November 2007. Thus, as the complainant had lodged his appeal on 16 April 2008, more than three months after notification of the EPO's decision, his appeal was irreceivable *ratione temporis*. Additionally, on the merits, the impugned decision was a discretionary one which, according to the Tribunal's case law, could only be set aside on limited grounds. It also indicated that the Certificate that the complainant had been awarded from the Limerick College of Art, Commerce and Technology did not correspond to the minimum qualifications for an administrator's post and could not be considered a basis for the calculation of reckonable experience and that the circumstances of his case did not justify a review of his grade on equitable grounds. It stated that there was no evidence that any of the complainant's colleagues who had been assigned a higher grade upon recruitment had benefited from an exception. The decision contained in the letter of 25 October 2011 is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision. He seeks a re-evaluation of his personal file in order to determine whether or not he could be placed in a higher grade in view of his professional experience. He claims costs in accordance with Judgment 2418, and further and other relief as appropriate.

The EPO requests the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded. It further asks the Tribunal to reject all of the complainant's claims.

CONSIDERATIONS

1. The complainant challenges the decision to assign him to grade A1, step 1 when he joined the EPO as an administrator on 1 March 2007. An initial job offer, dated 7 November 2006, had in fact informed him that his post was in category A, grade 3, that he would occupy step 7 within that grade, and that he would take up his duties with effect from

2 April 2007. However, the calculation of reckonable experience enclosed with that offer showed that the post was a category A, grade 1 post and that step 1 was his entry step. An “Amended Job Offer” dated 8 December 2006 confirmed that the complainant’s grade upon entry would be grade A1, step 1, and that he would assume duties on 1 March 2007. By a letter dated 17 December 2006, the complainant accepted this amended offer.

2. At the material time the grade and step given to an EPO staff member upon recruitment was determined by the EPO pursuant to Section II(A) of Circular No. 271. The Section provided that no minimum reckonable previous experience was required for grade A1 posts, but that the entry step in that grade would depend upon the number of years prior experience that was credited to the staff member. Section II(A) also relevantly provided as follows:

“In exceptional cases and having regard to the opinion of the selection board, the President may decide that a candidate’s qualifications justify a more favourable grading, subject to the minimum criteria laid down in the job description and in the most rapid career available to EPO staff.”

3. The complainant insists that the EPO erred in that it did not consider that his case was an exceptional one pursuant to the aforementioned provision and accordingly did not recognize eighteen years of prior working experience which was relevant to the duties which he performed as an administrator at the EPO. He states that he acquired that experience before his BSc degree was awarded.

4. The EPO raises receivability as a threshold issue. It asks the Tribunal to note that the version of Article 108 of the Service Regulations then in force required an internal appeal to be lodged within three months from the date on which an appellant became aware of the decision appealed against. The Tribunal has consistently stated that time limits which are provided for lodging internal appeals must be strictly adhered to because they serve the important purposes of ensuring that disputes are dealt with in a timely way so that the rights of parties are known to be settled at a particular point of time efficaciously. In addition, flexibility about time limits should not intrude into the Tribunal’s decision-making

even if it might be thought to be equitable or fair in a particular case to allow some flexibility. To do otherwise would “impair the necessary stability of the parties’ legal relations”. However, there are exceptions to this general approach. One is that if the question of receivability was not raised by the organisation in the internal appeal then it cannot be raised in the Tribunal. Another is if the defendant organisation has misled the complainant or concealed some paper from the complainant and thus deprived the complainant of the possibility of exercising her or his right of appeal, in breach of the principle of good faith (see, for example, Judgments 2722, consideration 3, and 3311, considerations 5 and 6).

5. The complainant’s grade and step upon recruitment were determined prior to his commencement of work with the EPO, and the Tribunal finds that the time from which he could appeal his grade crystalized on the date he took up his duties, that is, on 1 March 2007. Any challenge to the decision had to be made within three months of that date or by 1 June 2007. The complainant’s request for review of his grade and step upon recruitment was out of time when he made it on 5 November 2007. This was not cured by the communication dated 9 November 2007, which informed him that his case could not have been reviewed because it was not considered an exceptional case under Section II(A) of Circular No. 271, nor by the subsequent letter of 26 February 2008 from the Director of Personnel. None of the exceptions regarding time limits referred to in consideration 4 of this Judgment is operable in this case. Accordingly, the complaint is irreceivable, under Article VII, paragraph 1, of the Statute of the Tribunal, as the complainant did not exhaust the internal means of redress because he failed to lodge his internal appeal within the time limit provided for in Article 108 of the Service Regulations.

6. In any event, the complaint is unfounded on its merits. Section II(A) of Circular No. 271 confers discretion on the President, having regard to the opinion of the selection board, to decide that a candidate’s qualifications justify a more favourable grading, subject to the minimum criteria laid down in the job description. Given this discretion, the impugned decision is subject to only limited review. The Tribunal

will only set it aside if that decision was taken without authority or in breach of a rule of form or of procedure, or if it was based on a mistake of fact or of law, or if some material fact was overlooked, or if there was abuse of authority, or if a clearly wrong conclusion was drawn from the evidence. The complainant has not proved that the impugned decision is flawed on any of these grounds.

7. In the foregoing premises the complaint will be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 25 October 2016, Mr Giuseppe Barbagallo, Vice-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 8 February 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ