

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 14)

v.

EPO

123rd Session

Judgment No. 3807

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourteenth complaint filed by Mr H. S. against the European Patent Organisation (EPO) on 2 May 2016;

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

Having examined the written submissions;

CONSIDERATIONS

1. On 29 June 2007 the EPO's Administrative Council adopted decision CA/D 25/07, abolishing Implementing Rule 42/6 to the Pension Scheme Regulations. This had the effect of transferring the obligation to fund the tax adjustment paid to EPO pensioners from the EPO Member States to the EPO. That same day, the Administrative Council also adopted decision CA/D 18/07, which eliminated the tax adjustment provided for under Article 42 of the Pension Scheme Regulations for employees joining the EPO after 1 January 2009.

2. In September 2007 the complainant and three other EPO officials filed an internal appeal with both the President of the Office and the Administrative Council challenging the decision to shift the

financial burden of the tax adjustment from the Member States to the EPO. Two of the other appellants subsequently filed complaints with the Tribunal impugning the implied decision to dismiss their appeals and asking the Tribunal to annul decisions CA/D 25/07 and CA/D 18/07. Their complaints were dealt with by the Tribunal in Judgment 3426, delivered in public on 11 February 2015.

3. In that judgment, the Tribunal found, firstly, that there was nothing in the internal appeals that could reasonably be construed as an appeal against decision CA/D 18/07, and that the complaints were therefore irreceivable to the extent that they were directed against that decision, the complainants having failed to exhaust the internal means of redress as required by Article VII of the Tribunal's Statute.

Secondly, the Tribunal dismissed the complainants' claims concerning decision CA/D 25/07, after having found that:

“[T]he complainants have not shown that decision CA/D 25/07 has caused them or is liable to cause them any injury. The effect of the decision was budgetary only. The shift of the financial responsibility for the tax adjustment did not in any way adversely affect either of the complainants and will not have any adverse effect in the future. The alleged negative impact due to loss of the right of recourse to the relevant Member State is without merit. The contractual responsibility for the payment of the tax adjustment has always rested with the EPO and not with the Member States. The complainants did not have a right of recourse to the Member States at any time. The allegation that the payment of their pensions may be less secure given the additional financial burden on the EPO is without any evidentiary foundation and amounts to no more than conjecture. Finally, the alleged risk to continued employment is purely speculative and, more importantly, assumes bad faith on the part of the EPO that is unsubstantiated.”

4. The Appeals Committee's opinion, which was endorsed in the impugned decision in the present case, made a specific reference to Judgment 3426. The complainant, however, totally ignores this in his complaint and, instead of contesting the impugned decision, raises arguments on the cause of action that go against the above findings of the Tribunal. This is particularly evidenced by the relief claimed that is formulated as “quashing of CA/D 25/07 of 29.06.2007 [...]”. Therefore, the complaint is no more than a collateral attack on Judgment 3426.

This is simply unacceptable and the complaint, which is clearly devoid of merit, must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

5. The Tribunal will, however, briefly address a central argument of the complainant, namely that the impugned decision is tainted with a substantial procedural flaw in that the Appeals Committee “of the President” dealt with the appeal that he had lodged with the Administrative Council. In the complainant’s view, this shows an incorrect interpretation of Article 108(1) of the Service Regulations, as it was the Administrative Council that adopted decision CA/D 25/07. The Tribunal finds that the complainant’s interpretation is wrong. This was explained in considerations 11 to 13 of Judgment 3700, delivered in public on 6 July 2016. Although the complainant could not have been aware of that Judgment at the date when he filed the present complaint, there is nothing in his submissions that would lead the Tribunal to take a different view on this argument.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ