Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T. (No. 3)

v.

EPO

125th Session   **Judgment No. 3957**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr M. T. against the European Patent Organisation (EPO) on 28 June 2017;

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.   In 2015 the complainant, an official of the European Patent Office, the EPO's secretariat, submitted to the Chairman of the Administrative Council a request for review of the decision of the Administrative Council CA/D 10/14. At its 144th meeting on 24 and 25 June 2015, the Administrative Council decided to dismiss this request for review as manifestly irreceivable.

2.   In Judgment 3796, delivered in public on 30 November 2016, the Tribunal stated that the Administrative Council was not the "competent authority", within the meaning of Title VIII of the Service Regulations concerning settlement of disputes, to examine a request for review filed by a staff member appointed by the President.

3.   On 22 February 2017 the complainant was informed that the decision which the Administrative Council had taken at its 144th meeting had been withdrawn, as it fell under the scope of Judgment 3796. Therefore, his request for review of decision CA/D 10/14 had been referred for consideration to the President, who was the competent appointing authority. He was also informed that the Administration acknowledged receipt of his request for review on 13 February 2017.

4.   On 28 June 2017 the complainant filed his third complaint. Under point 3(b) of the complaint form, he indicated that no express decision had been taken within the time limit set forth in Article VII, paragraph 3, of the Statute of the Tribunal, on the claim which was notified to the EPO on 13 February 2017.

5.   The complainant's approach is mistaken. The Tribunal's case law makes it clear that where the Administration takes any action to deal with a claim, by forwarding it to the competent authority for example, this step in itself constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3428, consideration 18, and 3146, consideration 12). Given that the decision which the Administrative Council had taken on the complainant's request for review was withdrawn and that the said request for review had been referred to the President on 13 February 2017, he cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his request for review has been implicitly rejected.

6.   Furthermore, the Tribunal notes that, by a letter dated 12 April 2017, the complainant was informed that the President had decided to reject his request for review as manifestly irreceivable and, in any event, unfounded. That letter mentioned that, if the complainant wanted to challenge that decision, he could file an internal appeal with the Appeals Committee within a period of three months pursuant to Article 110 of the Service Regulations for permanent employees of the Office.

7.   As the complainant has not exhausted the internal remedies available to him as required by Article VII, paragraph 1, of the Tribunal's Statute, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ