

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

C. (No. 4)

v.

EPO

125th Session

Judgment No. 3959

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr P. C. against the European Patent Organisation (EPO) on 12 May 2016, the EPO's reply of 15 September, the complainant's rejoinder of 23 December 2016 and the EPO's surrejoinder of 18 April 2017;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant, a member of an EPO Board of Appeal, impugns the Administrative Council's implied rejection of his request to instruct the President of the Office to ensure the immediate return to him of his USB memory stick seized by the EPO Investigative Unit on 3 December 2014.

Facts relevant to this case are to be found in Judgment 3958. Suffice it to recall that on 3 December 2014, while the complainant was using a computer located in a room in the publicly accessible area of the EPO headquarters building, members of the Investigative Unit approached him to inform him that he was under investigation for alleged misconduct and subject to a "house ban", and that his User ID would be blocked. The members of the Investigative Unit also

confiscated the USB memory stick that he had inserted into the computer he was using.

On 11 December 2014 the Administrative Council adopted decision CA/D 12/14 in which it decided, inter alia, to suspend the complainant on full pay with immediate effect until 31 March 2015, to maintain the house ban and the blocking of his User ID, to request him to hand over all EPO property in his possession and to designate the Investigative Unit as the competent body to carry out an investigation into his alleged misconduct.

On 22 January 2015 the complainant filed a request for review of decision CA/D 12/14. He put forward several grounds for review, including the unlawful confiscation of his private property by the Investigative Unit. By a letter of 10 April 2015, he was informed that the Administrative Council had unanimously decided to reject his request for review as partly irreceivable and unfounded for the remainder. That is the impugned decision in the complainant's third complaint to the Tribunal.

By a letter of 8 June 2015, the complainant asked the Administrative Council to instruct the President to take all necessary measures to ensure the immediate return to him of his USB memory stick, which had been unlawfully confiscated by the Investigative Unit. In that letter, the complainant referred to his request for review of decision CA/D 12/14, filed on 22 January 2015, and recalled that one of the grounds for that request was the "unlawful confiscation of private property by the [Investigative Unit]".

Having received no response, on 4 November 2015 he filed a request for review against the Administrative Council's implied rejection of his 8 June 2015 request regarding the return of his USB memory stick. This request for review went unanswered and, on 12 May 2016, he filed the present complaint with the Tribunal impugning the Council's implied rejection of his 4 November 2015 request for review.

The complainant asks the Tribunal: (i) to set aside the impugned decision, that is, the Administrative Council's implied rejection on 16 February 2016 of his 4 November 2015 request for review; (ii) to likewise set aside the originally contested decision, that is, the Council's

implied rejection on 26 August 2015 of his request of 8 June 2015; (iii) to order the Council to take appropriate corrective action in the matter; (iv) to instruct the President to take all necessary measures to ensure the immediate return of the USB device that was seized; (v) to award him moral and exemplary damages in the amount of at least three months gross salary for the injury resulting from the unlawful confiscation of his private property and the EPO's failure to take appropriate action; (vi) to reimburse him for all duly invoiced legal fees and costs; (vii) to award him interest on all amounts at the rate of 5 per cent per annum from the date of his illegal suspension through the date that all amounts awarded are fully and completely paid; and (viii) to award him such other relief as the Tribunal deems just, necessary, appropriate and equitable.

The EPO asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. A preliminary internal investigation into an anonymous campaign of defamation against the EPO, its President and other EPO officials, uncovered evidence showing that some of the activity was linked to an internal IP address connected to a particular publicly accessible computer in the Munich office and a specific USB memory stick. On 3 December 2014 relevant electronic activity was detected on the monitored computer, and the Investigative Unit discovered the complainant at the computer in question, using the specific USB memory stick (connected to the computer). The USB stick was confiscated by the Investigative Unit and the complainant was placed under a house ban by the President. By decision CA/D 12/14 of 11 December 2014, the Administrative Council, based on the President's proposal contained in document CA/C 8/14, decided to suspend the complainant with full pay with immediate effect until 31 March 2015. The complainant requested a review of that decision in a letter dated 22 January 2015. In that request for review, the complainant also contested the confiscation of the USB memory stick. The complainant was notified

of the Administrative Council's rejection of his request for review in a letter dated 10 April 2015.

2. On 8 June 2015 the complainant requested the return of the USB memory stick, asserting that it was his private property and that it had therefore been unlawfully confiscated. Having not received a response from the Administrative Council within the time limits stipulated in Article 109 of the Service Regulations, on 4 November 2015 the complainant filed a request for review of the implied rejection of his 8 June 2015 request. Having again received no response, this time to his 4 November 2015 request, on 12 May 2016 he filed the present complaint with the Tribunal, his fourth, against the Administrative Council's implied rejection of his request for review which, as he claims, occurred on 16 February 2016. That is the impugned decision.

3. The grounds for review are as follows:

- the review procedure was grievously deficient. By ignoring the complainant's 8 June and 4 November 2015 requests, the EPO essentially denied the complainant access to the internal means of redress, breached his right to due process, and violated his right to be heard, including because it did not allow oral hearings. The complainant asserts that the Administrative Council's failure to act is indicative of bias and prejudice against him;
- the confiscation of the complainant's USB memory stick was unlawful and violated Article 1 of Protocol 1 to the European Convention on Human Rights. The confiscated memory stick was his personal property and, as such, the EPO had no authority to seize it;
- the unlawful confiscation of his USB memory stick was based on false and misleading claims concerning its ownership, as the Investigative Unit believed the USB stick to be property of the EPO.

4. The complainant asks the Tribunal to quash the impugned decision, that is, the Administrative Council's implied rejection of his 4 November 2015 request for review, as well as the implied rejection

of his initial request of 8 June 2015; to order the Administrative Council to “take appropriate corrective action in the matter”; to order the Council to instruct the President to take all necessary measures to ensure the immediate return of his USB memory stick, which was confiscated by the Investigative Unit on 3 December 2014; to award him moral and exemplary damages, as well as costs, and interest on all amounts at the rate of 5 per cent per annum from the date of his suspension until the date of full payment; and to award him such other relief as it deems appropriate.

5. The complainant also asks the Tribunal to order oral proceedings. As the written submissions are sufficient to reach a reasoned decision on the complaint, his request for oral proceedings is denied.

6. The complaint is irreceivable. The complainant’s USB memory stick was confiscated by the Investigative Unit on 3 December 2014. The complainant raised, *inter alia*, the issue of the confiscation of the USB memory stick in his 22 January 2015 request for review of the Administrative Council’s decision to suspend him, pending the internal investigation (decision CA/D 12/14). He received a final decision from the Administrative Council on his request for review on 10 April 2015 in which, by reference to the President’s opinion contained in document CA/C 6/15, among other things, his claim against the confiscation of the USB memory stick was rejected as irreceivable. The complainant contested the 10 April 2015 decision, as well as decision CA/D 12/14, in his third complaint with the Tribunal. In that complaint, he also raised the question of the confiscation of the USB memory stick. In Judgment 3958, delivered on that complaint, the Tribunal found that all of the complainant’s claims related to the investigation into his alleged misconduct were irreceivable. It relevantly stated that “[t]he complainant’s requests regarding Circular No. 342, Article 12 of the Data Protection Guidelines, and the investigative procedure are irreceivable, as they all either fall under proceedings which are still pending and for which there is no final decision, or are general decisions which can only be impugned with the final individual decision taken to implement them. According to the Tribunal’s case law, ‘[o]rdinarily, the

process of decision-making involves a series of steps or findings which lead to a final decision. Those steps or findings do not constitute a decision, much less a final decision. They may be attacked as part of a challenge to the final decision but they themselves, cannot be the subject of a complaint to the Tribunal.” (See Judgment 3958, under 15.) Accordingly, the claim against the confiscation of the USB memory stick may be raised by the complainant eventually as part of a challenge before the Tribunal to a final decision. The seizure of the USB stick was a step taken to secure and preserve basic evidence.

7. In the present complaint, the complainant impugns the implied rejection of his requests, as detailed above, but the Tribunal finds that there was no need for the Administrative Council to respond to the said requests as it had, in effect, already responded in the letter of 10 April 2015. The implied rejections impugned in the present complaint were, in fact, mere implied confirmations of the 10 April 2015 decision, which the complainant has already impugned in his third complaint before the Tribunal. Thus, the present complaint is irreceivable and must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 26 October 2017,
Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I,
Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ