

D. M. (No. 11)

v.

EPO

(Application for execution)

126th Session

Judgment No. 4044

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3695 filed by Mr P. D. M. on 20 March 2017, the EPO's reply of 28 June and the complainant's email of 13 July 2017 informing the Registrar of the Tribunal that he did not wish to submit a rejoinder;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat. He has prosecuted several complaints before the Tribunal. One of these complaints resulted in Judgment 3695 decided substantially in his favour. In these proceedings he seeks, in substance, the execution of that judgment.

2. It is desirable to set out some of the background though in a summary way. The complainant had a grievance that involved claims of harassment against two more senior officers of the EPO. He first took formal steps to ventilate that grievance in 2008. His claims of harassment ultimately came to be addressed by the Ombudsman. Following a report of

the Ombudsman, the President of the Office, by letter dated 20 November 2009, rejected the complaint of harassment. The complainant appealed against the President's decision and that appeal and a related appeal (RI/35/10 and RI/145/09 respectively) were the subject of an opinion issued by the Internal Appeals Committee (IAC) on 2 August 2011.

3. The IAC recommended unanimously that both the Ombudsman's report and the President's decision be revoked. The latter was based on the former and, so the IAC concluded, the procedures adopted by the Ombudsman had been seriously flawed and, it appears, tainted by ostensible bias. The majority recommended payment of 6,000 euros moral damages for a breach of the EPO's duty to properly investigate the allegations of harassment, a further 1,000 euros moral damages for breach of the duty of confidentiality and, lastly, 3,000 euros moral damages for the loss of the opportunity to have the complainant's allegations investigated properly. The minority made similar recommendations though the amounts were larger, namely 10,000 euros for the lack of an appropriate investigation into his allegations, 3,000 euros for the breach of confidentiality and 12,000 euros for the loss of the opportunity to have the complaint of harassment handled in an appropriate manner.

4. The President issued a final decision on the appeal on 11 October 2012 rejecting the recommendations of the IAC. As the Tribunal observed in Judgment 3695, the reasons of the President singularly failed to come to grips with the reasoning of the IAC and failed to explain, in any satisfactory and persuasive way, why the recommendations of the IAC, whether the majority or the minority, should be rejected. In the result, the Tribunal made the following orders:

- “1. The impugned decision of 11 October 2012 is set aside.
2. The matter is remitted to the President of the European Patent Office to make a decision in relation to internal appeal RI/35/10 in accordance with considerations 9 to 11 [...].
3. The EPO shall pay the complainant 2,000 euros in costs.”

5. In consequence of these orders the EPO paid the complainant's costs in August 2016. In December 2016, the EPO paid the complainant 10,000 euros reflecting the aggregate amount by way of damages recommended by the majority of the IAC. The complainant was informed of this latter payment by letter dated 20 December 2016. In that letter the Vice-President of Directorate General 4, acting on delegation of power from the President, said that the decision he had taken was "to mostly allow [the complainant's] appeal in accordance with the opinion of the Committee".

6. The issue in these proceedings is the question of whether the payment of the costs and damages and the allowance of the appeal constitute compliance with the orders of the Tribunal in Judgment 3695. Foundational to the Tribunal's reasoning in considerations 9 to 11 of that judgment was the duty of an executive head of an organisation to substantiate a final decision departing from the recommendations of an appeal committee. In that regard, the Tribunal referred to Judgments 2339, 2699 and 3208.

7. However, for the purpose of the present application for execution, the applicable principle was discussed by the Tribunal in Judgment 2092, consideration 10. The Tribunal said a departure from a recommendation of an appeal committee must be explained, but also said: "[w]hen the executive head of an organisation accepts and adopts the recommendations of an internal appeal body he [or she] is under no obligation to give any further reasons than those given by the appeal body itself" (see also, for example, Judgments 2577 and 2611). Thus, in the present case, by mostly allowing the appeal and awarding the damages recommended by the majority of the IAC, the Vice-President was not obliged to explain why he followed this course.

8. In one respect, the Vice-President did not follow a recommendation of the IAC. That is to say, he did not follow a unanimous recommendation that the complainant be reimbursed for the procedural costs incurred by him. He said that a decision to do so was exceptional by nature and there were no grounds to justify it in the

present case. While no reference was made to the provision, Article 8(9) of the Implementing Rules for Articles 106 to 113 of the Service Regulations for permanent employees of the Office has a bias towards the appellant bearing the costs of an internal appeal. The reasons given by the Vice-President were adequate, though they could have been more fulsomely expressed.

9. In the result, the EPO has complied with the orders made by the Tribunal in Judgment 3695 and no further orders are warranted. The application for execution should be dismissed.

DECISION

For the above reasons,

The application for execution is dismissed.

In witness of this judgment, adopted on 11 May 2018, 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 26 June 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ