

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

v. B.

v.

EPO

127th Session

Judgment No. 4121

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr H. v. B. against the European Patent Organisation (EPO) on 4 April 2013 and corrected on 25 June, the EPO's reply dated 8 October 2013, the complainant's rejoinder dated 15 January 2014 and the EPO's surrejoinder of 11 April 2014;

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 challenges the alleged failure to implement a decision to grant him three years' seniority.

The complainant, who was a permanent employee of the European Patent Office, the secretariat of the EPO, was promoted to grade A2 with effect from 1 September 2000. By a letter of 10 January 2005 he was informed that there had been inconsistencies in the calculation of seniority with respect to promotions granted between January 2000 and June 2002. Consequently, the Administration had decided to credit all those concerned with 3 years' seniority. In his case, this meant "adding three years to [his] seniority at [grade] A2".

By a letter of 16 October 2006 the complainant was informed that he was promoted to grade A3 with effect from 1 September 2006; the

calculation of his incremental step on promotion was attached to that letter. On 31 October 2008 he wrote to the Administration stating that he had verified his payslips and noticed that the measure announced in the letter of 10 January 2005 concerning his seniority had not been implemented. He requested that the three years referred to in the letter be added to his seniority and that he be paid, with retroactive effect, the resulting difference in salary.

Following an exchange of correspondence, the Administration replied in early February 2009 that the rules had been properly applied. On 16 March 2009 the complainant filed a request for review of that decision. On 18 May 2009 he was informed that his request was considered time-barred as he was challenging the date of his promotion to grade A3, which had occurred in 2006. The matter was referred to the Internal Appeals Committee (IAC) for an opinion.

In its opinion of 23 October 2012 the majority of the IAC recommended rejecting the complainant's appeal as time-barred and irreceivable. The majority found that the letter of 16 October 2006 was the last decision made with respect to his promotion to grade A3 and that he should have contested that decision within three months of its notification. The majority further held that payslips did not constitute new, independently appealable decisions with respect to his promotion.

Having regard to the Tribunal's case law on payslips and in particular Judgment 2951, the minority found that the appeal was receivable with respect to the period starting on 31 July 2008, that is to say three months before he made the request of 31 October 2008. The minority also considered that the reason given by the complainant for not initiating the internal appeal proceedings in due time was serious and that, on "humane grounds", the appeal should therefore be considered receivable as of 1 September 2006. The minority recommended modifying the date of his promotion to grade A3 to 1 September 2003, or at least a date prior to 1 September 2004, and paying him salary arrears as of the new date of promotion, or at the very least 31 July 2008.

By a letter of 21 December 2012 the Vice-President of Directorate-General 4 informed the complainant that he had decided, in accordance

with the majority opinion, to reject his appeal as irreceivable *ratione temporis*. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, to re-evaluate his career status and to award him damages and costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable *ratione temporis*. It otherwise asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. Until the end of 2012, the complainant was a member of the staff of the EPO. He retired on 1 January 2013. On 4 April 2013 he filed a complaint with the Tribunal. In the complaint form, he identifies the impugned decision as a decision dated 21 December 2012. That is a reference to a letter of that date from the Vice-President of Directorate-General 4 to the complainant dismissing his internal appeal as irreceivable. The EPO continues to argue that this is correct and, accordingly, argues that the complaint to the Tribunal is also irreceivable. As this is a threshold issue, it is convenient to address it at the outset.

2. Centrally, the complainant's grievance concerns his promotion in October 2006 to grade A3, effective 1 September 2006. On 16 March 2009 the complainant wrote to the Administration seeking a review of that promotion and indicating that his seniority had then not been properly taken into account. He also indicated that the letter could be treated as an appeal if the Administration did not endorse his views. The resultant internal appeal was considered by the IAC, whose members were divided on the question of whether the appeal was receivable. The majority, correctly, was of the opinion that the appeal was time-barred and irreceivable. The minority, seemingly relying on principles developed by the Tribunal concerning payslips, was of the view that the appeal was receivable. As noted earlier, by letter dated 21 December 2012, the Vice-President of Directorate-General 4 rejected the internal appeal as irreceivable.

3. The decision to promote the complainant was made in 2006. It was at that point in time that time-limits to challenge that decision began to run. The Tribunal's case law concerning payslips does not entitle a complainant to belatedly challenge a decision out of time if the payslip is simply confirmatory of that decision (see, for example, Judgment 2823, consideration 10). This is what the complainant seeks to do in these proceedings. The complainant has not exhausted internal means of redress in conformity with the Service Regulations for permanent employees of the European Patent Office. Accordingly his complaint to this Tribunal is irreceivable and should be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 30 October 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 6 February 2019.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ