

**B. (No. 16)**

*v.*

**EPO**

**127th Session**

**Judgment No. 4128**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixteenth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 21 June 2018 and corrected on 4 July 2018;

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. Facts relevant to this case are to be found in Judgments 3887 and 3986. For present purposes, it is sufficient to recall that the complainant is a former staff member of the European Patent Office, the secretariat of the EPO, who was dismissed for misconduct by a decision of 6 September 2013 which was confirmed by the President of the Office on 21 November 2013.

2. On 21 February 2018 the complainant wrote to the President requesting the payment of his full salary from July 2017 onwards. As this request went unanswered, he reiterated it on 12 March, 17 March, 13 April, 20 April, 24 April, 2 May and 20 May. On 21 June 2018 he filed the present complaint, relying on Article VII, paragraph 3, of the

Statute of the Tribunal. He indicated on the complaint form that the EPO had failed to take an express decision within the sixty-day period mentioned in that provision on the claim he had notified to the EPO on 21 February 2018.

3. On receiving the complaint, the Registrar of the Tribunal brought to the complainant's attention the fact that Judgment 3986, which had been delivered in public on 26 June 2018, was of direct relevance for his request and for the new complaint filed, since it confirmed, in consideration 6, that the complainant had not been reinstated by virtue of Judgment 3887. The complainant, however, considered that Judgment 3986 was not relevant and maintained his sixteenth complaint with the Tribunal.

4. As stated in consideration 13 of Judgment 3887, the case of the complainant was sent back to the EPO because "neither the President, nor the Disciplinary Committee could have made a proper assessment of the allegations without taking into account whether the complainant acted intentionally, and in control of his faculties, or if the complainant suffered from a mental illness that prevented him from behaving in accordance with his obligations as a permanent employee". Accordingly, the decision of 21 November 2013 was set aside only "in the part regarding confirmation of dismissal for misconduct in accordance with Article 93 of the Service Regulations, as [was] the same part of the decision of 6 September 2013".

5. Following Judgments 3887 and 3986, the determination that the complainant was not reinstated and that consequently he has no right to the payment of salary as from July 2017 is *res judicata*. The EPO had no reason to reopen the case. It follows that the 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 9 November 2018,  
Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores  
M. Hansen, Judge, and Mr Yves Kreins, Judge, sign below, as do I,  
Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

YVES KREINS

DRAŽEN PETROVIĆ