

B. (No. 18)

v.

EPO

128th Session

Judgment No. 4203

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighteenth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 29 October 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, 3986 and 4128. 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. In the present complaint, the complainant asks the Tribunal to:

- (a) quash the President's implied decision to refuse to pay him any income after 21 December 2017;
- (b) quash the President's implied decision to reject the 18 July 2018 request for review;

- (c) quash the implied decision of the Chairman of the Internal Appeals Committee (IAC) of 27 September 2018 to refuse to register his internal appeal;
- (d) cancel, *ex tunc et ab initio*, all “possibly detrimental consequences” for him resulting from the above “impugned decisions”;
- (e) reinstate him to his former post, as held on 29 July 2013, with all related conditions;
- (f) quash the 26 January 2018 decision of the International Service for Remunerations and Pensions (ISRP) of the Organisation for Economic Co-operation and Development (OECD) to “stop and cut entirely all the payments of [his] pension”;
- (g) order the EPO to pay him all due salaries and allowances as ordered by the Tribunal in Judgment 3887, plus accrued compound interest;
- (h) order the EPO to pay him “a minimal, adequate and provisional income” in the interim period until full execution of Judgment 3887; and
- (i) award him material and moral damages and costs.

3. The complainant submits that the present complaint is a repetition of a previous, nearly identical complaint; the difference being that the current complaint is directed towards the new EPO President, while the previous complaint was directed towards the former (now retired) EPO President. The current complaint also raises a new claim (see claim (f), as listed above) against a decision of the ISRP of the OECD, but no such decision is included in or annexed to the complaint.

4. In Judgment 3986, under 6, regarding the complainant’s application for execution of Judgment 3887, the Tribunal recalled that Judgment 3887 contained no order of reinstatement and that, “[a]ccordingly, the complainant at the present time has ceased being an EPO employee and his request to be reinstated, raised in his application for execution, is rejected”. The Tribunal, in response to the EPO’s request for clarification on how to execute Judgment 3887, stated in Judgment 3986, under 7, that “[t]he medical assessment of the

complainant must be ordered by the Disciplinary Committee as specified in Judgment 3887, under 13”. It noted in consideration 8 of Judgment 3986 that “[i]f the complainant refuses to undergo the medical examination as required and scheduled by the Disciplinary Committee, the medical assessment will be carried out by a medical expert [...] only on the basis of documents”. In consideration 9 of Judgment 3986, the Tribunal stated “the Disciplinary Committee will issue its opinion, in accordance with its competence provided by the rules in force at the time of execution of the judgment, therefore the Disciplinary Committee may only consider the issue of misconduct if Administrative Council decision CA/D 7/17 is applicable at that time. It will be up to the President to make the final decision, taking into account the opinion of the Disciplinary Committee, the provisions in force at the time of the new decision and the duty of care. The parties must work together in good faith to execute the judgment.” In Judgment 3986, the Tribunal dismissed the complainant’s request for material and moral damages and did not award costs.

5. The complaint is irreceivable as it is essentially repeating a previously filed complaint. The complainant also requests reinstatement, which has already been rejected by the Tribunal in Judgments 3887, 3986 and 4128. The question of reinstatement is *res judicata* and requests for further salaries past the complainant’s separation date will not be entertained. The complainant asserts that the difference between this complaint and the previously filed one lies in the fact that it is directed to the present rather than the former President of the EPO. Complaints filed against a final decision are made against the Organisation and not against the particular person who took the decision. Therefore, the change in President from time to time has no effect on the decisions taken prior to the change or on any judgments which regarded such decisions. Further, the claims regarding the alleged decision of the ISRP of the OECD and the IAC’s alleged refusal to accept the complainant’s internal appeal for failure to file the mandatory request for review and to make the subsequent payment of the filing fee in accordance with the proper procedure, are irreceivable for failure to exhaust all internal means of redress. Accordingly, 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 24 May 2019, 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 3 July 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ