Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

R. (No. 20) and H. (No. 30)

v.

EPO

139th Session **Judgment No. 4989**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr L. R. (his twentieth) and Mr W. H. H. (his thirtieth) against the European Patent Organisation (EPO) on 1 July 2019 and corrected on 16 August 2019, and the EPO's single reply of 8 January 2020;

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 none of the parties has applied;

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

The complainants challenge in their capacity as members of the General Advisory Committee (GAC) the implementation of the concept of "area of competence" in the Berlin sub-office.

In 2008, the EPO discussed the restructuring of Directorate-General 1 and the future direction of its Berlin sub-office. It developed the concept of "area of competence", which referred to the concentration of all work relating to a technical field with a single group of examiners working on one site of employment where the Directorate-General 1 was active. In November 2008, a few months after the Management Advisory Committee had endorsed the concept of area of competence, a document on the restructuring was submitted to the GAC for consultation. It described the implementation process and the related

topics, which would be initiated as from January 2009 within the Directorate-General.

In May and July 2009, the Berlin Steering Committee issued progress reports on the restructuring project and an implementation plan. The complainants, who were staff members of the European Patent Office, the EPO's secretariat, wrote to the President of the Office on 7 August 2009 requesting that the implementation plan be stopped immediately and submitted to the GAC for consultation. Their request was rejected on the ground that the new area of competence was simply a technical step for the implementation of the decision taken earlier and for which the GAC had been consulted in December 2008. The matter was referred to the Appeals Committee. The Principal Director of Human Resources, acting by delegation of power from the President, informed each complainant on 15 March 2016 that she had decided to reject their appeals. The complainants impugned that decision before the Tribunal.

Pursuant to Judgment 3785, in which the Tribunal ruled on the composition of the Appeals Committee, the President withdrew the decision of 15 March 2016 and remitted the matter to the Appeals Committee for a new examination, and so informed the complainants in March 2017. In July 2018, the complainants were informed that the Appeals Committee had been notified of the President's decision to refer the appeal back for a new examination in accordance with Articles 106 to 113 of the Service Regulations for permanent employees of the Office and the corresponding Implementing Rules as amended by decision CA/D 7/17.

In its opinion of 15 February 2019, the Appeals Committee, which composition had been contested, indicated that its members were appointed pursuant to the rules as modified by decision CA/D 7/17 and that their independence and impartiality was guaranteed by the Service Regulations. The majority recommended rejecting the appeal as partly irreceivable on the ground that the contested decisions were general decisions not adversely affecting them. Thus, they were receivable only insofar as they alleged failure to consult the GAC because they were GAC members. However, they were irreceivable insofar as they

requested that further documents be submitted to the GAC given that the GAC had issued an opinion, which meant that the majority of its members considered they had received sufficient information. It concluded that the GAC consultation that took place was sufficient, and that it was not necessary to consult the GAC on the implementing decisions as they constituted operative measures. However, one member considered that, between 2009 and 2011, the GAC was not consulted on the implementation plan. Concerning the alleged lack of information given to the GAC as from July 2011, that member noted that half of the GAC members had implicitly considered that they had received sufficient information; consequently, the request that the contested decisions be annulled on that ground was irreceivable. That member recommended setting aside the contested decisions and awarding the complainants moral damages and costs. The Appeals Committee unanimously recommended awarding the complainants moral damages for undue delay in the procedure.

By a letter of 15 April 2019, the Vice-President of Directorate-General 4, acting on delegation of authority from the President, informed the complainants of her decision to endorse the recommendation of the majority of the Appeals Committee for the reasons it stated, except for the conclusion that the contested decisions were of a general nature. In the Office’s view, the contested decisions were managerial decisions that were not open to challenge. Regarding the award of moral damages, she indicated that, in accordance with the Tribunal’s case law that individual staff representatives acting in that capacity were not entitled to moral damages, the awarded moral damages would be credited to the budgetary line of the staff committees related to training and duty travel. The complainants impugn that decision before the Tribunal.

The complainants ask the Tribunal to quash the decision of 15 March 2016, and the decision setting up the area of competence. They seek an award of moral damages for the length of the internal appeal procedure in addition to the awarded 1,000 euros each, which amount was clearly inadequate. The moral damages shall be paid to “staff”, not to the EPO’s own budget. They seek further moral damages on the ground

that their complaints are well founded. In addition, they claim an award of costs.

In their brief, they submit that if the Tribunal agrees that the internal appeal procedure was flawed, then it shall either decide that the EPO is to blame for the design of the appeals system, and thus the Tribunal should decide the case on the merits, or the Tribunal shall send the case back to the EPO ordering that a “proper internal procedure in which the litigant can have confidence” is carried out.

The EPO asks the Tribunal to dismiss the complaints as irreceivable for lack of a cause of action, and subsidiarily unfounded.

CONSIDERATIONS

1. On 1 July 2019, Mr R. filed his twentieth complaint with the Tribunal. On the same day, Mr H. filed his thirtieth complaint with the Tribunal. They raise the same issue in the same factual context and advance common pleas in the one brief. Accordingly, the two complaints will be joined so that one judgment can be rendered. The general background is set out earlier in this judgment and need not be repeated. Suffice it to note that they challenge the implementation of the concept of “area of competence” at the Berlin sub-office and do so in their capacity as members of the General Advisory Committee (GAC).

2. At the time the complaints were filed, neither of the complainants were members of the GAC. The EPO makes the point that the complaints are irreceivable because the complainants have no cause of action to represent the GAC having regard to their status on 1 July 2019, that is, when the complaints were filed. No rejoinder was filed. The EPO’s argument is correct having regard to the Tribunal’s case law (see Judgment 4194, consideration 8).

3. Accordingly, the complaints are irreceivable and should be dismissed.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 5 November 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

JACQUES JAUMOTTE

ROSANNA DE NICTOLIS

MIRKA DREGER