

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**S. (No. 3)**

**v.**

**EPO**

**140th Session**

**Judgment No. 5066**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr R. S. against the European Patent Organisation (EPO) on 13 July 2020, the EPO's reply of 27 October 2020, the complainant's rejoinder of 2 December 2020 and the EPO's surrejoinder of 8 March 2021;

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 decision not to grant him an expatriation allowance following his transfer from one directorate to another at the same duty station.

The complainant joined the European Patent Office – the EPO's secretariat – in September 1997 at the Office's branch in The Hague, the Netherlands. At that time, he held Dutch nationality. On 12 December 2002 he acquired Irish nationality and, as a result, ceased to be a Dutch national. In December 2005 he asked the Office to grant him an expatriation allowance with retroactive effect from December 2002. This claim was rejected on the grounds that the complainant did not meet the requirements of Article 72 of the Service Regulations for permanent employees of the Office, which relevantly provided:

**“Article 72**

**Expatriation allowance**

- (1) An expatriation allowance shall be payable to permanent employees who, at the time they take up their duties or are transferred:
  - a) hold the nationality of a country other than the country in which they will be serving, and
  - b) were not permanently resident in the latter country for at least three years, no account being taken of previous service in the administration of the country conferring the said nationality or with international organisations.
- (2) An expatriation allowance shall also be payable to permanent employees not referred to in paragraph 1 a) above and who at the time of taking up their duties have been permanently resident for at least ten years in a country other than the country in which they will be serving, no account being taken of previous service in the administration of the latter country or with international organisations.

[...]”

The rejection of that claim was the subject of the complainant’s first complaint, which the Tribunal dismissed as unfounded in Judgment 2925, delivered in public on 8 July 2010.

With effect from 1 June 2018, the complainant was transferred from Directorate 1111 to Directorate 1105. Both directorates are located in The Hague. On 8 August 2018 he submitted a new request for payment of the expatriation allowance. Having been invited to clarify the reasons for his request, he sent an email to Human Resources (HR) Services explaining that, as result of his transfer, he fulfilled the conditions of Article 72 and his entitlement to the expatriation allowance should therefore be reassessed. By an email of 9 August 2018, HR Services informed the complainant that a transfer, within the meaning of Article 72, referred only to “a transfer between sites”, such as a transfer from The Hague to Munich, Germany, and as the complainant had not been transferred to another site, his request to be paid an expatriation allowance from 1 June 2018 could not be granted.

That same day, the complainant sent another email to HR Services, “to elaborate a little on [his] request”. He argued, in particular, that as the Tribunal had adopted a strict, literal interpretation of the applicable rules in Judgment 2925, a similar approach should be taken in this case,

which could only lead to the conclusion that he had been transferred within the meaning of Article 72(1). In this regard, he pointed out that the Service Regulations carefully distinguished between transfers in general and transfers from one place of employment to another. In closing, he wrote: “I therefore hereby request you in accordance with Art. 109 of the service regulations to review your decision”. On 10 August 2018 HR Services responded that, for the reasons given on 9 August 2018, the decision not to grant the expatriation allowance was “upheld”.

On 9 November 2018 the complainant lodged an appeal challenging the decision of 10 August 2018. A few days later, the secretariat of the Appeals Committee enquired whether he had filed a request for review with the Conflict Resolution Unit and received a “Management Review decision” bearing an official number. The complainant replied that he believed he had followed the correct procedure. Having requested a review of the initial decision denying his claim for the expatriation allowance on 9 August 2018, he had received a decision – albeit without an official number – from “the appointing authority which took the individual decision challenged” on 10 August 2018, which he was entitled to challenge before the Appeals Committee. He added that, even if the decision of 10 August 2018 could not be regarded as a decision under Article 109(4) of the Service Regulations, he would still be entitled to lodge an appeal, because in that case he would not have received a decision on his request for review within the two-month time limit provided for in Article 109(7).

The Appeals Committee issued its opinion on 26 February 2020. A majority of its members considered that the appeal should be dismissed as manifestly irreceivable on the grounds that the complainant had failed to follow the mandatory management review procedure before lodging an appeal. The Committee noted that, in his email of 9 August 2018, the complainant had clearly stated his intention to request a review of the challenged decision, and it deplored the fact that HR Services had not forwarded that email to the competent service, but it considered that this omission “[did] not affect the deficiencies in the appeal”. Notwithstanding its conclusion that the appeal was irreceivable,

the Committee went on to examine the merits of the case and held that the appeal was manifestly unfounded. According to the Committee, the transfers referred to in Article 72(1) of the Service Regulations only included transfers between two different sites of employment, since they implied a change of residence, and it would be contrary to the purpose of the rule to interpret it as covering internal transfers as well.

By a letter of 20 April 2020, the complainant was informed that the President of the Office had decided to follow the recommendation of the majority of the Appeals Committee and hence to reject his appeal as manifestly irreceivable and, in any event, manifestly unfounded. This is the impugned decision.

The complainant asks the Tribunal to quash the challenged decision and to confirm that his appeal was both receivable and well founded. He requests that the expatriation allowance be granted to him with effect from the date of his transfer and that any related entitlements, such as family allowance, dependents allowance and education allowance, be recalculated accordingly. Alternatively, if a decision on his entitlement to the expatriation allowance cannot be taken by the Tribunal itself, he requests that the EPO be ordered to reassess his entitlement as of the date of his transfer. In the event that the Tribunal finds that, for the purposes of Article 72 of the Service Regulations, the word “transfer” should be given an interpretation that is narrower than its “literal meaning”, such as “transfer of duty station” or “transfer to a different host state”, he seeks a review of Judgment 2925 “in light of the then apparent change of attitude by the Tribunal that regulations may be interpreted beyond their literal wording”. The complainant also seeks reimbursement of the internal appeal fee (200 euros) and the costs incurred for postage when filing his complaint (14.30 euros).

The EPO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies and, subsidiarily, as unfounded on the merits.

## CONSIDERATIONS

1. The complainant was, at relevant times, a staff member of the EPO. He was, again at relevant times, living and working in The Hague. The facts preceding and following his claim for payment under Article 72 in 2018 are set out in sufficient detail earlier in this judgment.

2. It is unnecessary to address the question of whether this complaint is receivable, as it is manifestly unfounded.

3. The issue which appears to be raised by the complainant is what is comprehended by the word “transferred” in paragraph 1 of Article 72 of the Service Regulations. At the time when he submitted his 2018 claim, Article 72 relevantly provided:

**“Article 72**

**Expatriation allowance**

- (1) An expatriation allowance shall be payable to permanent employees who, at the time they take up their duties or are transferred:
  - a) hold the nationality of a Contracting State other than that in which they will be serving, and
  - b) were not permanently resident in the latter state for at least three years, no account being taken of previous service in the administration of the state conferring the said nationality or with international organisations.

[...]
- (2) An expatriation allowance shall also be payable to permanent employees not referred to in paragraph 1 a) above and who at the time of taking up their duties have been permanently resident for at least ten years in a country other than the country in which they will be serving, no account being taken of previous service in the administration of the latter country or with international organisations.

[...]”

4. The purpose of Article 72 was discussed by the Tribunal in Judgment 2925 delivered in public in July 2010, which, as it happens, was the product of earlier proceedings brought by the complainant in this matter. In consideration 3, after referring to several earlier cases

also discussing the purpose of the provision, the Tribunal said: “[...] it is, perhaps, more appropriate to identify its purpose in terms of persons who have left their permanent home in one country to take up employment in another”. In the earlier cited cases there is also this notion of working in another country being foundational to the entitlement under the Article.

5. The complainant argues that the word “transferred” would comprehend transfer from one directorate to another, as happened to him in 2018. He relies on the fact that the word is not qualified, as it is elsewhere in the Service Regulations. He refers to his earlier submissions quoted in his pleas, relying on qualifying language in Articles 73, 77 and 80, which do direct attention to transfer between different places of employment, unlike Article 72, which does not. However, in context, there is no warrant for this wide construction of the word “transferred”. Not only is it incompatible with the purpose of the Article as explained in Judgment 2925, but it also fails to pay regard to the ordinary meaning of the word “expatriation”, which, by definition, involves leaving a country. The benefit is directed to a transfer from one country to another country.

6. The complainant was not entitled to the expatriation allowance upon his transfer from one directorate to another while living and working at the same location. His complaint should be dismissed.

7. His ancillary requests, including to review Judgment 2925, must be rejected.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.