J. (No. 11)

v.

EPO

140th Session **Judgment No. 5067**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr P. J. against the European Patent Organisation (EPO) on 18 April 2020 and corrected on 26 June 2020 and 15 August 2020, the EPO's reply of 16 April 2021, the complainant's rejoinder of 25 May 2021 and the EPO's surrejoinder of 6 September 2021;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for oral proceedings;

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

The complainant contests the EPO's decision to reject his request to receive the dependants' allowance in respect of his former wife and the household allowance in respect of his current partner.

The complainant joined the European Patent Office, the EPO's secretariat, on 1 March 1990. At the material time, he was a permanent employee of the Office.

On 15 January 2012, he requested that the EPO pay him (i) the dependants' allowance for his former wife with retroactive effect from the date of their divorce on 12 October 2009, pursuant to Article 70 of the Service Regulations for permanent employees of the European Patent Office; and (ii) the household allowance for his new partner with

whom he shared the same household, pursuant to Article 68(2)(c) of the Service Regulations. In support of his request, the complainant submitted copies of the Dutch Court's order that he pay maintenance to his former wife, the cohabitation agreement signed with his new partner, and the latter's monthly payslip.

On 13 March 2012, the Office denied the complainant's request on the ground that the conditions set out in the Service Regulations for the payment of the allowances were not met in the complainant's case. On 6 June 2012, the complainant reiterated his 15 January 2012 request. Regarding the dependants' allowance, he argued that his former wife should be considered his dependant within the meaning of Article 70 of the Service Regulations, as he had been married to her for nearly 25 years, he was related to her via their children, and she was financially dependent on his monthly maintenance payments. Regarding the household allowance, he relied on the principle of equal treatment arguing that he and his new partner should be treated like a married couple, as they contributed proportionally to their shared household costs. Further to the rejection of his request on 6 August 2012, the matter was referred to the Appeals Committee which, in its opinion of 2 February 2015, unanimously recommended the rejection of the appeal as irreceivable in part and unfounded in its entirety (appeal RI/2012/090). Endorsing the Appeals Committee's recommendation, the Administration rejected the complainant's appeal in a decision dated 16 March 2015.

The complainant impugned this decision in his third complaint filed with the Tribunal on 12 June 2015. Following the public delivery of Judgments 3694 and 3785 in July and November 2016 respectively, in which the Tribunal found that the Appeals Committee was improperly composed at the time of its opinion of 2 February 2015, the President of the Office decided to withdraw the 16 March 2015 decision and to remit the complainant's case to a properly constituted Appeals Committee for a fresh consideration. The complainant was relevantly informed by a letter of 1 March 2017 and was invited to withdraw his third complaint on the basis it had become moot, but he chose to maintain it.

Ultimately, along with several other complaints, the complainant's third complaint was dismissed by the Tribunal in Judgment 4256, delivered in public on 10 February 2020, on the ground that it had become without object as a result of the withdrawal of the 16 March 2015 decision. In that same judgment, the Tribunal encouraged the EPO to consider in the resumed internal appeal proceedings any costs the complainant may have incurred in filing a complaint against a decision which was presented to him as a final decision that could be impugned before the Tribunal.

In the meantime, the complainant's appeal was referred to a properly constituted Appeals Committee for reconsideration and the complainant was relevantly informed by a letter of 23 January 2019. The newly constituted Appeals Committee submitted its opinion on 21 November 2019, unanimously recommending that the appeal be rejected as unfounded and that the complainant be awarded 750 euros in moral damages for the length of the internal appeals procedure.

By a letter of 21 January 2020, to which the opinion of the Appeals Committee was attached, the Chief Corporate Policies Officer informed the complainant of her decision, taken by delegation of authority from the President, to follow the Appeals Committee's unanimous recommendation. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to pay him the dependants' allowance in respect of his former wife, with retroactive effect from the date of their divorce, and to also pay him the household allowance in respect of his partner with whom he lives in the same household. He claims 5,000 euros in moral damages for the excessive delay in dealing with his appeal and a further 5,000 euros for the EPO's "abusive procedural conduct" towards him. He also claims costs for the internal appeal and the proceedings before the Tribunal, including the full cost of external legal advice as from 2012.

The EPO asks the Tribunal to dismiss the complaint and all of the complainant's claims. As regards, in particular, the complainant's claim for moral damages for the length of the internal appeal process, the EPO notes that the complainant has already been awarded 750 euros on that count.

CONSIDERATIONS

1. The complainant, a staff member of the EPO, challenges a final decision of 21 January 2020 of the Chief Corporate Policies Officer acting on delegated power from the President, dismissing an appeal from a decision denying a request by the complainant for payment of a household allowance and a dependants' allowance. This is the impugned decision.

2. The EPO raises, as a threshold issue, whether the complaint should be dismissed without consideration of its merits, because of the failure of the complainant to set out his case in his pleas in the way contemplated by the Tribunal's Rules and case law. The EPO invites the Tribunal to dismiss the complaint. This is an issue of substance in this case and should be addressed at the outset.

3. The EPO argues that the complainant's "pleas on the merits of his complaint only consist in referring the Tribunal to his written submissions filed in [earlier proceedings]", which he provides as annexes to the present complaint, viz., annexes 19 and 26. It further argues that the Tribunal does not accept such a way of presenting arguments and disregards any pleas incorporated by reference to previous submissions.

4. In his rejoinder, the complainant meets this argument by saying he "has indicated in his claim that in Annex 25, brief part 2, which needs to be regarded as included in [his] brief dated April 17, 2020, he formulates why he does not agree to [sic] the [impugned] decision" (original emphasis). He adds that he "also made his reasons clear in Annex 12 being part of his response send [sic] by email on June 26, 2020 to the Tribunal". The reference to "Annex 25, brief part 2", is confusing. Annex 25 is an instrument appointing a lawyer. Annex 26 appears only to be an opinion of a lawyer of 21 July 2015, as listed in the complaint form's list of supporting documents, which contains legal arguments or analysis of at least some of the relevant provisions in the Service Regulations.

5. In Judgment 3920, consideration 5, the Tribunal had to consider the status of a document furnished as part of the complainant's brief, namely a Statement of Appeal in her internal appeal to the Headquarters Board of Appeal (HBA), containing the pleas advanced in her appeal. The complainant sought to rely on the Statement. The Tribunal said:

> "The Tribunal has stated on a number of occasions, and recently with increasing frequency, that it is inappropriate to effectively incorporate by reference into the pleas before the Tribunal arguments, contentions and pleas found in other documents, often a document created for the purposes of internal review and appeal (see, for example, Judgments 3842, consideration 4, 3692, consideration 4, and 3434, consideration 5). In this matter, the Tribunal will only have regard to pleas in the complainant's brief and rejoinder and will disregard any additional, supplementary or other pleas in the Statement of Appeal before the HBA."

6. There are numerous more recent cases to the same effect (see, for example, Judgments 4856, consideration 2, and 4015, consideration 6). A declaration by a party, as occurred in the present case, that a document containing pleas is to be treated as incorporated by reference into the brief is ineffective to achieve that result (see Judgment 4051, consideration 3).

7. Thus, annexes 12, 19 and 25, or 26, are to be disregarded to the extent that they are relied upon as articulating the arguments the complainant would wish to advance in support of his case. This conclusion is not the manifestation of undue formalism. The procedures of the Tribunal are clearly structured in its Rules to ensure each party is aware of the pleas of the other parties. They require the articulation of the arguments in specified documents, namely in the brief (Article 6(1)(b)) and, by necessary implication, in the reply (Article 8), the rejoinder and the surrejoinder (Article 9). Moreover, there are now page limits on the length of the pleas (see Annex 1 to the Rules of the Tribunal). A party should not be burdened with the task of sifting through one or a number of annexes, potentially painstakingly and possibly of very lengthy documents, to identify what the opposing party's arguments are. Nor should the page limits be circumvented by

allowing the incorporation by reference of other documents, potentially lengthy, into the pleas. This is clearly reinforced by the case law referred to above, which draws on the Rules of the Tribunal and earlier case law.

8. If, as should be the case, annexes 12, 19 and 25, or 26, are to be disregarded to the extent that they are relied upon as articulating the arguments of the complainant, there is nothing of substance left explaining why the complainant was, as a mixed question of fact and of law, entitled to the household and the dependants' allowances and why the impugned decision was erroneous when dismissing the appeal from the original decision of the EPO to refuse to pay those benefits. In any event, the Tribunal notes that in its opinion of 21 November 2019, the Appeals Committee, in a thoughtful and considered opinion, unanimously recommended the appeal be rejected as without merit.

9. The complainant claims 5,000 euros in moral damages for the "extremely excessive delays in dealing with [his] matter as of 2012". However, the Tribunal notes that the complainant has already been awarded compensation in the amount of 750 euros for the length of the procedure. As the Tribunal finds this to be a fair and adequate compensation, his claim in this respect will be dismissed.

10. The complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, 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

HONGYU SHEN

RENÉ M. VARGAS M.