

H. (No. 29)

v.

EPO

140th Session

Judgment No. 5076

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-ninth complaint filed by Mr W. H. H. against the European Patent Organisation (EPO) on 27 June 2019, the EPO's reply of 10 October 2019, the complainant's rejoinder of 18 January 2020 and the EPO's surrejoinder of 27 April 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 neither party has applied;

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

The complainant challenges the method for making payments into the healthcare insurance fund.

On 30 June 2010, the Administrative Council adopted decision CA/D 7/10 amending Article 83 of the Service Regulations for permanent employees of the European Patent Office, the secretariat of the EPO, and introducing an actuarially funded system to finance the healthcare insurance scheme with effect as of 1 January 2011. On 15 December 2010, based on this decision, the Council adopted decision CA/D 13/10 setting up a reserve fund of the Office and thereby enlarging the Reserve Fund for Pensions and Social Security of the European Patent Organisation (RFPSS), which had been created by the

previous decision CA/D 14/09. Decision CA/D 13/10 also entered into force on 1 January 2011.

According to decisions CA/D 7/10 and CA/D 13/10, Circular No. 336, entitled “Method for payments into the RFPSS for the healthcare insurance scheme”, was adopted on 18 January 2012. Section 2 described the general method to be applied from 2014 onwards according to decision CA/D 13/10, Section 3 described the transitional method for 2011-2013 according to decision CA/D 7/10 and Section 4 described the practical aspects of its implementation.

At the material time, the complainant was an employee of the Office and held grade G13.

On 26 January 2012, the complainant lodged an internal appeal against Circular No. 336 challenging its Section 2. He alleged that the Circular wrongly set out the manner for financing the 9.2 per cent total contribution rate for the healthcare insurance scheme, and that the application of this incorrect calculation method was detrimental to staff. He asked the Office to withdraw the provisions in Circular No. 336 covering the period starting on 1 January 2014 and to replace them with “a correct calculation”, in which the Office would pay approximately 0.09 per cent of payroll more and staff and pensioners would pay approximately the same amount less.

In its opinion of 14 April 2016, the Appeals Committee considered the appeal to be manifestly irreceivable and thus dealt with it in a summary procedure pursuant to Article 9(2) of the Implementing Rules for Articles 106 to 113 of the Service Regulations. The reason for rejecting the appeal was that the complainant had challenged a general decision that had not been individually and adversely applied to him. By a letter dated 6 June 2016, the complainant was informed of the decision of the President of the Office to accept the Committee’s recommendation. That was the impugned decision in the complainant’s twenty-second complaint.

Following the delivery of Judgments 3785 and 3694, in which the Tribunal held that the composition of the Appeals Committee was unlawful, the President decided to withdraw several decisions he had taken on internal appeals that were affected by the same flaw. The

complainant was informed on 1 March 2017 that the above-mentioned decision of 6 June 2016 had been withdrawn and that his appeal had been remitted to an Appeals Committee composed in accordance with the applicable rules.

On 30 November 2018, the complainant was informed that the presiding member of the chamber of the newly constituted Appeals Committee considered that his appeal could be dealt with in a summary procedure pursuant to Article 9(2) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, and that the matter would be reviewed based on the submissions he had made previously, unless new relevant facts had occurred for which he could submit further comments.

On 15 March 2019, the Appeals Committee issued its new opinion unanimously recommending rejecting the appeal as manifestly “unfounded” on the basis that the complainant had not shown any adverse effect of Circular No. 336 on his own situation. Nevertheless, it recommended awarding him 675 euros in moral damages for the undue delay in the internal appeal procedure.

By a letter dated 15 May 2019, which constitutes the impugned decision in the present proceedings, the complainant was informed of the decision of the Vice-President of Directorate-General 4 (DG4), taken by delegation of power from the President of the Office, to accept the 15 March 2019 recommendations. He was also invited to withdraw his twenty-second complaint, but he chose not to do so. That complaint was subsequently dismissed by the Tribunal in Judgment 4256, delivered in public on 10 February 2020, on the grounds that it was now without object.

The complainant asks the Tribunal to set aside the impugned decision and to “se[t] [his] insurance premium retroactively as calculated in [his complaint] brief with reimbursement of excess premiums paid with interest”. In the alternative, he requests that the case be remitted to the EPO for “a new, correct, internal appeal procedure”. He also seeks moral damages in the amount of 5,000 euros, including for the length of the procedure, and costs.

The EPO notes that the complaint is irreceivable as it is not directed against a challengeable decision – Circular No. 336 being a “general and impersonal regulatory decision that does not give rise to any direct effects” – and that, in any event, is premature as the individual application of the 9.2 per cent contribution rate was only due to occur in January 2014, whereas the complainant lodged his appeal on 26 January 2012. It also considers some claims as irreceivable for failure to exhaust internal remedies. Consequently, the EPO asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant impugns the 15 May 2019 decision taken by the Vice-President of DG4, acting by delegation of power from the President of the Office. Endorsing the recommendations of the Appeals Committee, the Vice-President of DG4 rejected the complainant’s appeal against Circular No. 336, Section 2, as manifestly irreceivable and manifestly unfounded. She, however, awarded him 675 euros as moral damages for the length of the procedure.

2. The complainant seems to request the joinder of the present complaint with his twenty-second complaint. The request is moot as his twenty-second complaint has already been decided in Judgment 4256.

3. At the outset, the Tribunal will address the receivability issues raised by the EPO, alleging that the complainant challenged a general decision that did not directly affect him and was not yet in force at the time the internal appeal was lodged.

According to the Tribunal’s case law, complainants can impugn general decisions only if they directly affect them and cannot impugn a general decision unless and until it is applied to them in a prejudicial manner. However, they are not prevented from challenging the lawfulness of a general decision when impugning the implementing decision that generated their cause of action. Moreover, a general

decision can be challenged immediately when it does not require an implementing decision and it immediately and adversely affects individual rights (see, for example, Judgments 4898, consideration 2, and 4563, consideration 7).

In the present case, the complainant lodged an internal appeal against Circular No. 336, Section 2, on 26 January 2012, when that Section of the Circular was not yet in force in relevant respects. Indeed, Section 2 of the said Circular described the general method to be applied from 2014 onwards. Moreover, the complainant has not demonstrated that his situation fell within the scope of Section 2 of the Circular, which concerns staff whose spouses are in gainful employment, but without their own medical insurance. There is no evidence in the record that the complainant was paying insurance contributions for a spouse at the time when he lodged his internal appeal (see Judgment 4899, consideration 5). Thus, the complainant has not established that Circular No. 336 was directly and immediately applicable to him, to his detriment. In conclusion, the complaint is irreceivable in its entirety.

4. As the complaint fails, the complainant is not entitled to costs for the present proceedings.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 16 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.