P. (Nos. 13, 14 and 15)

v.

EPO

140th Session **Judgment No. 5079**

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirteenth, fourteenth and fifteenth complaints filed by Mr R. P. against the European Patent Organisation (EPO) on 4 March 2020, the EPO's single reply of 8 September 2020, the complainant's single rejoinder of 3 November 2020 and the EPO's single surrejoinder of 29 January 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 cases may be summed up as follows:

The complainant contests Administrative Council decision CA/D 7/10, by which the EPO amended Article 83 of the Service Regulations for permanent employees of the European Patent Office, the secretariat of the EPO, abolishing the ceiling of 2.4 per cent of the basic salary on employees' healthcare insurance contributions.

By decision CA/D 7/10 of 30 June 2010, the Administrative Council introduced, effective 1 January 2011, an amendment to Article 83 of the Service Regulations abolishing the ceiling of 2.4 per cent of the basic salary on employees' healthcare insurance contributions. Prior to the entry into force of decision CA/D 7/10, Article 83 relevantly provided that an employee's contribution to the

EPO's sickness insurance would not exceed 2.4 per cent of her or his basic salary. As a result of decision CA/D 7/10, the 2.4 per cent ceiling was eliminated, although Article 4 of the decision provided, as a transitional measure, that employees' contributions would be maintained at 2.4 per cent for 2011, 2012 and 2013. It was not until 1 January 2014 that the EPO introduced a contribution rate exceeding the 2.4 per cent ceiling. Specifically, by Circular No. 350 of 20 December 2013, the EPO set the employees' contribution rate for 2014 at 2.64 per cent. Subsequently, by Circular No. 363 of 16 January 2015, the EPO set the employees' contribution rate for 2015 at 2.904 per cent, and by Circular No. 370 of 23 December 2015, it set the employees' contribution rate for 2016 at 2.75 per cent.

On 28 February 2014, 13 April 2015, and 29 February 2016, the complainant submitted requests for review of decision CA/D 7/10, notably the amendment of Article 83 of the Service Regulations abolishing the 2.4 per cent ceiling on employees' contributions, and of Circulars Nos. 350, 363 and 370 respectively. He challenged the increase in his healthcare contributions through his January 2014, January 2015, and January 2016 payslips, alleging a violation of his acquired rights. The President of the Office rejected the complainant's requests for review by decisions made respectively on 28 April 2014, 27 May 2015, and 28 April 2016. The complainant contested these decisions by internal appeals filed respectively on 7 July 2014 (internal appeal RI/2014/095b), 5 August 2015 (internal appeal RI/2015/091), and 23 May 2016 (internal appeal RI/2016/062).

Having held hearings, the Appeals Committee issued a separate opinion on each appeal. On the question of receivability, the Committee unanimously considered the appeals to be receivable only to the extent that the complainant contested through his payslips the increase of his healthcare contributions in excess of the 2.4 per cent ceiling applicable prior to the amendment of Article 83. On the merits, the majority of the Appeals Committee considered that the amendment to Article 83 of the Service Regulations and Circulars Nos. 350, 363, and 370 were lawful and it recommended that the appeals be rejected. In a dissenting opinion, one Committee member considered that the amendment to

Article 83 and Circulars Nos. 350, 363, and 370 were unlawful and recommended quashing decision CA/D 7/10 and related circulars, refunding the complainant the health insurance contributions deducted from his salary in excess of the 2.4 per cent ceiling, and paying him the sum of 1,500 euros in moral damages and costs. Lastly, the Appeals Committee unanimously considered the length of the internal appeal procedure unreasonable and recommended awarding the complainant moral damages on that count in the sum of 900 euros (450 euros in internal appeal RI/2014/095b, 300 euros in internal appeal RI/2015/091, and 150 euros in internal appeal RI/2016/062).

By three separate letters of 11 December 2019, the Vice-President of Directorate-General 4 informed the complainant of her decisions, taken by delegation of authority from the President, to reject his appeals as partly irreceivable and entirely unfounded, and to award him moral damages for the length of the appeal proceedings in accordance with the unanimous recommendation of the Appeals Committee. On 4 March 2020, the complainant filed his thirteenth, fourteenth and fifteenth complaints with the Tribunal respectively impugning the Vice-President's decisions in internal appeals RI/2014/095b, RI/2015/091, and RI/2016/062.

The complainant asks the Tribunal to set aside the impugned decisions and to find that (i) the amendment to the Service Regulations introduced by decision CA/D 7/10, namely to abolish the ceiling of 2.4 per cent of the basic salary on employees' healthcare insurance contributions was unlawful; (ii) Circulars Nos. 350 of 2014, 363 of 2015, and 370 of 2016, which set rates on staff healthcare contributions exceeding 2.4 per cent of the basic salary were also unlawful. He further asks the Tribunal to order the EPO to refund, with interest, the healthcare contributions paid by him in excess of the 2.4 per cent of his basic salary.

The EPO asks the Tribunal to dismiss all three complaints as unfounded and to reject all of the complainant's claims.

CONSIDERATIONS

1. The complainant requests the joinder of his thirteenth, fourteenth and fifteenth complaints on the basis that they address the same question. The EPO has raised no objection to the joinder. As the complaints are based on the same facts and address the same issue, the Tribunal finds it appropriate and efficient to join them and to rule on them in a single judgment.

2. In addition to seeking a refund from the EPO of "all his contributions paid for healthcare exceeding 2.4 [per cent] of his basic salary", the complainant requests that the Tribunal find that decision CA/D 7/10 and Circulars Nos. 350, 363, and 370 are unlawful.

3. It is unnecessary to deal with the EPO's objections to receivability as, for the reasons explained below, the complaints will be dismissed on the merits.

4. The complainant mainly contends that the EPO's decision to abolish the 2.4 per cent ceiling on staff contributions to the healthcare insurance scheme violated his acquired rights. This argument is misplaced. The abolition of the 2.4 per cent ceiling was part of a broader reform transforming the EPO's health insurance from a pay-as-you-go scheme to a funded scheme, due to financial reasons. Article 33 of the European Patent Convention, entitled "Competence of the Administrative Council in certain cases", provided, at the material time, that "(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend: [...] (b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature of any supplementary benefits and the rules for granting them". Given that the 2.4 per cent ceiling was specified in the Service Regulations, the Administrative Council retained authority to amend it.

5. The Tribunal has held that international civil servants are not entitled to have all the conditions of employment or retirement laid down in the provisions of the staff rules and regulations in force at the time of their recruitment applied to them throughout their career and retirement. Most of those conditions can be altered though depending on the nature and importance of the provision in question, staff may have an acquired right to their continued application. For there to be a breach of an acquired right, the amendment to the applicable text must relate to a fundamental and essential term of employment (see, for example, Judgments 4711, consideration 8, 4028, consideration 13, and Judgments 3909, 3135, 2986, 2682, and 2089).

6. Judgment 832, consideration 14, details a three-part test for determining whether the altered term is fundamental and essential. The test is as follows:

(i) The nature of the altered term. "It may be in the contract or in the Staff Regulations or Staff Rules or in a decision, and whereas the contract or a decision may give rise to acquired rights the regulations and rules do not necessarily do so."

(ii) The reason for the change. "It is material that the terms of appointment may often have to be adapted to circumstances, and there will ordinarily be no acquired right when a rule or a clause depends on variables such as the cost-of-living index or the value of the currency. Nor can the finances of the body that applies the terms of appointment be discounted."

(iii) The consequence of recognising an acquired right. "What effect will the change have on staff pay and benefits? And how do those who plead an acquired right fare as against others?"

7. Applying this three-part test, the Tribunal observes that the 2.4 per cent ceiling specifically concerned the maximum employee contribution rate, not the fundamental and essential term regarding the entitlement to healthcare insurance. The shift to a funded system aimed to establish a sustainable financial reserve for future healthcare costs. The reasons are as follows.

8. Prior to the amendment, Article 83(1)(b) of the Service Regulations provided that:

> "One third of the contribution, calculated by reference to the basic salary of the employee, which is required to meet such insurance shall be charged to the employee, but so that the amount charged to him shall not exceed 2.4% of his basic salary."

Following the amendment, Article 83(1)(b), in the version applicable as of 1 January 2011, provided that:

> "The total contribution required to meet reimbursements under such insurance, calculated by reference to the basic salary, shall be set by the President of the Office, on the basis of an actuarial study. One third of such contribution shall be charged to the employee."

9. Regarding the nature of the amendment, the Tribunal's case law has drawn a distinction between the right to receive a benefit, such as healthcare and pension, which is a key condition of employment, and the obligation to contribute financially to that benefit, which is ancillary and may change in rate or amount. In Judgment 4028, consideration 13, the Tribunal found that "the change to another health insurance scheme does not affect the staff's actual right to membership of a social security scheme, but concerns solely the terms and conditions for giving effect to this right". By analogy, there is no vested right for the employees to a particular method of funding insurance benefits. Moreover, in Judgment 4195, consideration 9, concerning the EPO's decision to increase sickness insurance contributions for employees' spouses, the Tribunal found that the EPO was entitled to adjust the contribution rates within reasonable limits if there were compelling reasons. The abolition of the 2.4 per cent ceiling in the present case potentially involved an increase in employees' healthcare contributions, which represented only a part of the terms and conditions of the complainant's right to health insurance and did not affect his fundamental rights and the entitlement to health insurance.

10. Regarding the reasons for the amendment, the complainant argues that (i) the legislator intended that the EPO would cover any shortfall in overall health insurance contributions resulting from the 2.4 per cent ceiling, assuming the EPO's financial position would allow

it to do so; (ii) the amendment abolishing the ceiling was not properly motivated; (iii) Judgment 4028, relied upon by the EPO, concerns a situation involving an organisation's declining income, while the EPO has had increasing income and profits; and (iv) the abolition of the ceiling did not ensure a fair distribution of burden and benefited the EPO more than its employees.

It is true that a ceiling on staff healthcare contributions can protect staff in a pay-as-you-go scheme, given the inherent risk of volatile cost fluctuations. However, the EPO is entitled to take the view that the shift from a pay-as-you-go scheme to a funded scheme was necessary because the former was no longer sustainable based on (i) the anticipated demographic shift in the workforce and pensioners; and (ii) the noticeable trend showing an increase in healthcare costs with age. The EPO further explains that with a fixed ceiling (like 2.4 per cent), as costs rise, the share covered by employee contributions decreases, forcing the EPO to bear a larger portion. The EPO has consistently subsidized staff healthcare contributions, as various Board of Auditors reports show. The Actuarial Advisory Group confirmed that the current pay-as-you-go system does not account for future cost increases and recommended establishing a fund. It also proposed a new rate of 9.4 per cent based on basic salaries or pensions. The move to a funded system to ensure the scheme's future sustainability through actuarial soundness was legally valid. The removal of the 2.4 per cent ceiling, as a part of the funded scheme, was obviously interlinked with the introduction of the new scheme and new rate, as recommended by the experts. The Administrative Council was justified in following this recommendation and determining how the scheme is financed. The complainant's reliance on the permanence of the 2.4 per cent ceiling, however sincerely held, cannot override the EPO's properly motivated decision, an adaptation to evolving financial realities aimed at ensuring actuarial stability.

11. Concerning the consequences of the amendment, the Tribunal observes that the new legal framework included safeguards limiting annual contribution increases to 10 per cent of the previous year's rate, thereby providing protection against abrupt financial burdens. It also allowed the President to make changes to the rate of contributions if a

subsequent actuarial evaluation showed that the total contribution no longer corresponded to that which is necessary to finance the benefits payable based on revised actuarial assumptions. Transitional measures temporarily froze the rate of contributions at 2.4 per cent in the three years following its entry into force, which mitigated the possible immediate financial impacts. While removing the ceiling of 2.4 per cent increased contribution rates mildly, namely 2.64 per cent for 2014, 2.904 per cent for 2015 and 2.75 per cent for 2016, it should not be viewed as an unlawful increase to the detriment of employees. Under the new scheme, the EPO continued to fund two-thirds of the overall contribution, and only the remaining one-third was borne by the employee.

12. The complainant does not challenge the transition to the funded system, nor did he challenge the correctness of the actuarial calculations. However, he maintains that a ceiling of 2.4 per cent on employee contributions was fully compatible with a funded system. As stated above, the removal of the ceiling of 2.4 per cent was intended to contribute to a long-term stable, cost-conscious and sustainable healthcare insurance scheme. The EPO was entitled to pursue that aim.

13. In conclusion, the abolition of the 2.4 per cent ceiling on employee contributions has not altered a fundamental and essential term of employment affecting the complainant's acquired rights. It has not resulted in any adverse effect on the balance of contractual obligations either. It follows that the complainant's plea alleging a violation of his acquired rights is unfounded.

14. Considering the foregoing, the complainant's claims seeking the setting aside of the impugned decisions and "a refund of all his contributions paid for healthcare exceeding 2.4 [per cent] of his basic salary" must be dismissed.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 29 April 2025, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.