

W. (No. 16)

v.

EPO

140th Session

Judgment No. 5081

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixteenth complaint filed by Mr J. M. W. against the European Patent Organisation (EPO) on 20 August 2011 and corrected on 28 September 2011, the EPO's reply of 16 January 2012, the complainant's rejoinder of 31 January 2012, the EPO's surrejoinder of 11 May 2012, the complainant's additional submissions of 31 July 2012, the EPO's comments thereon of 9 November 2012, the complainant's further submissions of 28 November 2018 and the EPO's final comments of 18 December 2018;

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 to increase the employee pension contribution rate.

The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat, who ceased to perform his duties on 1 June 2001, due to invalidity, and retired on 1 January 2011.

On 8 March 2007, the Administrative Council adopted decision CA/D 3/07, which, inter alia, increased the employee pension contribution rate from 8 per cent to 9.1 per cent of basic salary as from 1 April 2007.

The complainant was not immediately affected by this decision because, as the recipient of an invalidity pension, he was not required to pay pension contributions.

In January 2008, however, pursuant to the legal changes introduced by decision CA/D 30/07 of the Administrative Council, which amended the rules governing invalidity pensions in the Organisation, the complainant began receiving an invalidity allowance, subject to pension contributions, in lieu of the invalidity pension he had been receiving since June 2001 due to his invalidity.

In a letter dated 19 January 2009, addressed to the President of the Office, the complainant submitted a “formal application of intervention” in an appeal lodged by several staff members “relat[ing] to the EPO’s decision to increase the pension contributions of staff members [...] with effect from April 2007”. By a letter dated 9 March 2009, the Director of the Employment Law Directorate rejected the complainant’s application on the grounds that interventions were not provided for in the internal appeals procedure. However, the complainant’s letter was treated as an internal appeal against the decision, reflected in his monthly payslips as from January 2008 – when he became subject to pension contributions –, to deduct 9.1 per cent of his invalidity allowance as a contribution to the pension scheme. The Director further noted that, upon initial examination, the President determined the complainant’s appeal to be receivable only for the three-month period preceding its filing date and, in any event, unfounded. Consequently, the complainant’s appeal was referred to the Internal Appeals Committee (IAC).

In its report dated 28 March 2011, the IAC found that, in accordance with the three-month time limit for lodging an appeal provided for in Article 108(2) of the Service Regulations for permanent employees of the Office, the complainant’s appeal could only have a retroactive effect of the same duration. Therefore, his appeal was deemed irreceivable for the period prior to October 2008. Concerning the merits of the case, the IAC found that the appeal was also unfounded, as there was no evidence suggesting that the Administrative Council’s decision was unlawful. Accordingly, the IAC unanimously

recommended to dismiss the appeal as partly irreceivable and as unfounded. By letter dated 30 May 2011, the Director of Regulations and Change Management informed the complainant of his decision, taken by delegation of power from the President, to endorse the IAC's unanimous opinion, and to reject his appeal as partly irreceivable and as entirely unfounded. This is the impugned decision.

The complainant requests the Tribunal to order that “the decision of the [Administrative Council] to increase employee pension contributions from 8 [per cent] to 9.1 [per cent] with effect from [1 April 2007] be either quashed or ruled as inapplicable to former invalidity pensioners”, and to order the reimbursement, with interest, of the amounts deducted from his invalidity allowance resulting from the increase in the pension contributions. He also requests the Tribunal to quash the Administrative Council's decision to follow the actuaries' recommendation to increase pension contributions. In his rejoinder, the complainant requests the Tribunal, in the alternative, to order that “the decision of the Administrative Council and/or of the President to increase [his] pension contributions [...] with effect from [1 January 2008] be either quashed, or ruled as inapplicable to [him]”. The complainant also requests the Tribunal to award him moral damages in the amount of 6,600 euros and costs in the amount of 1,500 euros.

The EPO requests the Tribunal to dismiss the complaint as partly irreceivable and as entirely unfounded.

CONSIDERATIONS

1. In March 2007, the Administrative Council adopted decision CA/D 3/07 increasing the employee pension contribution rate from 8 per cent to 9.1 per cent of basic salary as from 1 April 2007. In December 2007, the Administrative Council adopted decision CA/D 30/07 amending, with effect from 1 January 2008, the rules governing invalidity pensions in the Organisation. As from that date, employees who retired on grounds of invalidity before having reached the statutory retirement age of 65 did not become pensioners immediately but were considered as employees with non-active status. As such, they received

an invalidity allowance instead of an invalidity pension and, except where their invalidity was due to an occupational disease, they continued to contribute to the pension fund. The complainant, who had been receiving an invalidity pension since 1 June 2001, began to receive, as of 1 January 2008, an invalidity allowance from which pension contributions were deducted pursuant to decision CA/D 3/07.

2. In a letter dated 19 January 2009, addressed to the President of the Office, the complainant submitted a “formal application of intervention” in an internal appeal filed by other staff members against “the EPO’s decision to increase the pension contributions of staff members [...] with effect from April 2007”. The complainant indicated that, “[b]eing now liable to pay these increased pension contributions, in [his] case with effect from January 2008, [he] ha[d] a legitimate interest in the outcome of [that] appeal”. On 3 March 2009, the Director of the Employment Law Directorate informed the complainant that “no intervention [was] foreseen in the internal appeals procedure”. However, the complainant’s letter was considered as “an internal appeal lodged against the decision of the President, as reflected in [his] monthly payslips as from January 2008, to deduct 9.1 [per cent] of [his] invalidity allowance as contribution to the pension scheme”. This is correct. There was no procedure for intervention in internal appeals foreseen in the Service Regulations at the relevant time. The matter was subsequently referred to the IAC. In its report, the IAC unanimously recommended to reject the appeal as partly irreceivable insofar as it concerned the period prior to October 2008, and as unfounded. By a letter dated 30 May 2011, which is the decision impugned, the complainant was informed of the decision, taken by delegation of power from the President, to endorse the IAC’s unanimous opinion.

3. The Tribunal will address, *ex officio*, a threshold issue related to the receivability of this complaint (see Judgments 4764, consideration 2, and 4597, consideration 8). Under Article VII, paragraph 1, of the Tribunal’s Statute, “[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under

the applicable Staff Regulations”. In accordance with the Tribunal’s case law, a complainant cannot be treated as having exhausted the internal means of redress available unless the internal appeal was filed in compliance with the formal requirements and within the prescribed time limit (see Judgments 4973, consideration 3, 4929, consideration 4, 4573, consideration 3, and 4103, consideration 1). Therefore, “the fact that an internal appeal is lodged by a complainant out of time renders her or his complaint irreceivable [...]” (see Judgment 4830, consideration 7). Moreover, it is immaterial in this regard that an internal appeals body wrongly entertained an internal appeal that was time-barred (see Judgments 4780, consideration 7, 3754, consideration 12, 3351, consideration 17, 3330, consideration 2, and 2675, consideration 6).

4. Pursuant to Article 108(2) of the Service Regulations, applicable at the relevant time, internal appeals had to be submitted within a period of three months. In accordance with Article 108(3) of the Service Regulations, this time limit “start[ed] to run on the date of publication, display or notification of the act appealed and, in any case, at the latest on the date on which the appellant became aware of it”.

5. In the present case, the complainant sought to challenge, through his appeal, the decision to increase the employee pension contribution rate from 8 per cent to 9.1 per cent as set forth in decision CA/D 3/07. This increased contribution rate was applied to the complainant’s invalidity allowance in January 2008 and was reflected in his payslip for that period. As indicated above, it was from this date that the complainant first became an “invalidity allowance” recipient, subject to pension contributions. The three-month time limit provided for in Article 108(2) of the Service Regulations to challenge the increase decision started to run as of the date of receipt of the January 2008 payslip. However, the complainant lodged his “formal application for intervention” – which was subsequently treated as an internal appeal by the EPO – in January 2009, long after the expiry of the time limit set for submitting an internal appeal. In light of the Tribunal’s case law, the payslips received by the complainant subsequent to the January 2008 payslip did not reopen a new time limit allowing him to challenge the

decision to apply the increased pension contribution rate, as they were simply confirmatory of that decision (see, for example, Judgments 4590, consideration 5, and 4121, consideration 3).

6. Although the IAC found the appeal to be receivable in respect of the three-month period preceding the date on which it was filed, the Tribunal considers that, in light of the sequence of events recalled above, the appeal was irreceivable in its entirety as it was filed outside the applicable time limit. In these circumstances, the complainant has failed to exhaust the internal means of redress available to him, in breach of Article VII, paragraph 1, of the Tribunal's Statute.

7. In light of the above considerations, the complaint must be dismissed as irreceivable, without there being any need to consider the other issues raised by the parties.

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.