

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 22)

v.

EPO

140th Session

Judgment No. 5082

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-second complaint filed by Mr C.O. D. L. against the European Patent Organisation (EPO) on 23 March 2020 and corrected on 29 April 2020, the EPO's reply of 29 September 2020, the complainant's rejoinder of 11 January 2021, the EPO's surrejoinder of 19 April 2021, the complainant's additional submissions of 17 May 2023 and the EPO's final comments of 4 October 2023;

Considering the letter of 12 January 2023 by which the EPO informed the Registry of the Tribunal that it had paid 100 euros in moral damages to the complainant for the irregular composition of the Appeals Committee, as was done in Judgment 4550;

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

Having examined the written submissions;

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

The complainant challenges the increase in employees' contribution rate to the healthcare insurance scheme.

At the material time, the complainant was working as an examiner at the European Patent Office, the secretariat of the EPO, in Vienna, Austria, at grade A4.

On 30 June 2010, the Administrative Council adopted decision CA/D 7/10. That decision amended Article 83 of the Service Regulations for permanent employees of the Office concerning the financing of the healthcare insurance scheme. In particular, decision CA/D 7/10 abolished the ceiling on employees' contributions, which was set at 2.4 per cent of the basic salary, pension or invalidity allowance, and gave the President of the Office the task of setting annual contribution rates based on actuarial studies. Decision CA/D 7/10 nevertheless included transitional measures that maintained employees' contribution rate at 2.4 per cent during the years 2011, 2012 and 2013.

On 20 December 2013, the President adopted Circular No. 350, setting the contribution rate to the healthcare insurance scheme applicable as from 1 January 2014. The employees' contribution rate for 2014 was set at 2.64 per cent of the basic salary, pension or invalidity allowance.

On 18 April 2014, the complainant filed a request for review directed against his January 2014 payslip and the increase in staff contributions from 2.4 to 2.64 per cent. The complainant's request for review was rejected on 18 June 2014.

On 16 January 2015, the President adopted Circular No. 363, setting the contribution rate to the healthcare insurance scheme applicable as from 1 January 2015. The employees' contribution rate for 2015 was set at 2.904 per cent of the basic salary, pension or invalidity allowance.

On 25 March 2015, the complainant filed another request for review, challenging the increase in employees' contribution rate for 2015. The complainant's second request for review was rejected on 22 May 2015.

The complainant filed a first internal appeal on 17 September 2014 and a second internal appeal on 11 August 2015, which the Appeals Committee decided to consider jointly.

As of 1 May 2015, the complainant was placed on non-active status for reasons of invalidity.

On 17 October 2019, the Appeals Committee delivered its opinion on the complainant's internal appeals. The Appeals Committee concluded, by a majority, that the contested payslips, the amendment to Article 83 of the Service Regulations, as well as Circulars Nos. 350 and 363 were lawful and recommended the rejection of the internal appeals. In a dissenting opinion, one member considered that the decision by the EPO to abolish the ceiling on employees' contributions violated the complainant's acquired rights and that the EPO should refund excessive deductions, with interest, and pay the complainant moral damages and costs in the amount of 500 euros. The Appeals Committee unanimously recommended awarding the complainant compensation for moral injury resulting from an undue delay in the internal appeal proceedings.

On 11 December 2019, the Vice-President of Directorate-General 4 (DG4) decided, by delegation of authority from the President of the Office, to reject the complainant's internal appeals as partly irreceivable and entirely unfounded and to award the complainant 450 euros in moral damages for the undue delay in the internal appeal process. This is the impugned decision.

In his complaint form, the complainant asks the Tribunal to set aside the impugned decision, all of his monthly payslips, invalidity allowance slips and invalidity pension slips since 1 January 2014, as well as decision CA/D 7/10 and Circulars Nos. 350 and 363. He also requests the Tribunal to order back-payments of his contributions exceeding 2.4 per cent of his monthly basic salary, invalidity allowance and invalidity pension, with interest. Additionally, he asks the Tribunal to "acknowledge that [his] rights regard[ing] the internal appeals proceedings have been unacceptably violated" and to restore his rights by quashing a series of general decisions setting the rules applicable to internal proceedings. He further seeks 5,000 euros in moral damages for what he considers to be the EPO "interfering" with the Appeals Committee, as well as an additional 6,250 euros for what he considers to be a delay in the internal appeal process. He also claims costs.

The complainant makes several additional claims in his further submissions. First, he asks that the case be remitted to the EPO to be considered by a newly composed Appeals Committee. Second, he

claims 420,000 euros in moral damages for “loss of enjoyment of life”. Third, regarding his previous claim for moral damages for the delay in the internal appeal process presented in his complaint form, he now seeks the payment of 100 euros per month between the date of the filing of his internal appeal and when the final payment is made, minus a grace period of two years and minus amounts already paid by the EPO. Lastly, he requests compensation for his printing expenses.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable and unfounded for the remainder.

CONSIDERATIONS

1. The complainant impugns the 11 December 2019 decision made by the Vice-President of DG4, by delegation of authority from the President of the Office, rejecting the complainant’s internal appeals as partly irreceivable and entirely unfounded, and awarding 450 euros in moral damages for undue delay in the internal appeal process.

2. The Tribunal will address two procedural issues raised by the complainant. First, the complainant requests oral proceedings. As the submissions and documents produced by the parties are sufficient to enable the Tribunal to reach an informed decision, the request is rejected. Second, the complainant requests the disclosure of an internal working document – a legal study prepared for the Appeals Committee. The request is also rejected as it is based on speculation that something might be found in the document to further his case (see, for example, Judgment 3419, consideration 6).

3. The complainant mainly contends that the removal of the 2.4 per cent ceiling on staff contributions to the healthcare insurance scheme violated an acquired right. Specifically, he argues that this ceiling was one of the factors that caused him to accept to enter the service of the EPO – the Organisation’s intention in setting the ceiling on staff contributions was to protect the staff against unforeseeable risks and adverse changes in their employment conditions – and its removal

has resulted in a reduction in his net income. He further refers to hypothetical scenarios that could cause significant increases in deductions and cites internal EPO statements allegedly acknowledging this acquired right. He contends that the EPO could have reformed the healthcare insurance scheme in a manner less cumbersome to its staff, including by leaving the 2.4 per cent ceiling.

4. The complainant's reliance on his acquired rights 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 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, rather than in the complainant's employment contract, 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.

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.”

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, including budgetary reasons. The abolition of the ceiling in the present case only involves a potential increase in employees' contributions, a part of the terms and conditions regarding the complainant's right to health insurance and does not affect the complainant's fundamental rights and the entitlement to health insurance.

Regarding the reasons for the amendment, the Tribunal discerns no evidentiary support for the complainant's assertions of bad faith or "exploitation" by the EPO. According to the Tribunal's settled case law, bad faith cannot be presumed and must be proven by the evidence (see, for example, Judgments 4675, consideration 6, 4333, consideration 15, 4161, consideration 9, 3902, consideration 11, and 2800, consideration 21). To the contrary, the Tribunal is satisfied that the EPO's decision was reasonable and objectively justified. The EPO acted on expert recommendations indicating the pay-as-you-go scheme was no longer financially sustainable and necessitated a transition to a funded healthcare insurance scheme.

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

subsequent actuarial evaluation shows that the total contribution no longer corresponds 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 continues to fund two-thirds of the overall contributions, and only the remaining one-third is borne by the employee.

The complainant maintains that a ceiling of 2.4 per cent on employee contributions is 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 is entitled to pursue that aim.

Consequently, the removal 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 follows that the complainant's plea alleging a violation of his acquired rights is unfounded.

8. Regarding the complainant's assertion that the deduction rates exceeded those announced in the Circulars, the Tribunal notes that the complainant's calculations were based on incorrect assumptions regarding his basic salary, specifically reductions due to extended sick leave. The actual deductions correctly applied the established contribution rate to his full basic salary.

9. The complainant criticizes aspects of the internal appeal procedure, particularly regarding the composition of the Appeals Committee and the alleged "interference" of the EPO. The Tribunal has determined that there is no need to address these pleas, taking note that the EPO has already paid 100 euros in moral damages to the complainant,

following Judgment 4550 (see, for example, Judgment 4799, consideration 5). The complainant's claim for additional moral damages in this respect is rejected, as well as his claim seeking the quashing of a series of decisions applicable to the internal appeal process.

10. The complainant also claims moral damages for excessive delay in the internal appeal process. He was already awarded 450 euros on this account in the impugned decision and does not articulate the reasons for further compensation (see, for example, Judgment 4555, consideration 12). Accordingly, his claim will be dismissed.

11. As the complaint fails on the merits, it is unnecessary to deal with the objections to receivability raised by the EPO.

12. In light of the foregoing, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is 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.