

T. (No. 48)

v.

EPO

140th Session

Judgment No. 5087

THE ADMINISTRATIVE TRIBUNAL,

Considering the forty-eighth complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 3 June 2020 and corrected on 13 and 23 June 2020, the EPO's reply of 30 October 2020, the complainant's rejoinder of 3 March 2021 and the EPO's surrejoinder of 4 June 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 case may be summed up as follows:

The complainant challenges the decision to remove the name of Mr T., a permanent employee at grade A4(2), from the list of grade A5 nominees to the Disciplinary Committee for 2013.

On 13 December 2012, the President of the European Patent Office, the EPO's secretariat, published the names of permanent employees nominated as members of the Disciplinary Committee for 2013. Among the names of grade A5 members nominated by the Central Staff Committee (CSC) was that of Mr T., a permanent employee at grade A4(2) at the time. In an email of 29 January 2013 to the CSC, the Administration pointed out that the published list had to be corrected to ensure the proper composition of the Disciplinary Committee – as

Mr T. was listed among the A5 grade nominees while holding A4(2) grade – and invited the CSC to either nominate, in Mr T.’s place, an employee holding A5 grade or to remove Mr T. from the list without replacement, if no replacement was available.

On 31 January 2013, the complainant responded in his capacity as the Chairperson of the Munich Staff Committee and a member of the CSC. Relying on Article 98(4) of the Service Regulations for permanent employees of the Office in force at the time of Mr T.’s promotion to grade A4(2), and Administrative Council decision CA/D 8/02 amending Article 3(3) of the Service Regulations to the effect that “Grades A5 and A4(2) [were] both regarded as immediately above grade A4 for the purposes of the [Service] Regulations”, the complainant argued that A4(2) grade employees were de jure at the same rank as A5 grade employees promoted before July 2006 and, therefore, Mr T.’s nomination should be deemed lawful.

In a letter of 14 March 2013, the Administration disagreed with the complainant’s position, maintaining that A4(2) grade could not be considered equivalent to A5 grade and inviting, once again, the CSC to either replace or remove Mr T. from the nominee list by 31 March 2013 at the latest. The CSC refrained from doing so and, ultimately, the Office proceeded to remove Mr T.’s name from the list.

Acting in his capacity as a member of the CSC, the complainant submitted a request for a management review of the 14 March 2013 decision. Further to the rejection of this request, he lodged an internal appeal on 8 August 2013, requesting that Mr T.’s original nomination to the Disciplinary Committee for 2013 be restored and that the Appeals Committee recommend amendments to Administrative Council decision CA/D 34/07 to reverse the retroactive de facto demotion of A4(2) grade permanent employees. Following a review by the Appeals Committee, the Administration rejected the complainant’s appeal in a decision taken by delegation of authority from the President on 17 October 2016. The complainant impugned this decision in his thirty-eighth complaint, filed with the Tribunal on 5 December 2016.

Following the public delivery of Judgments 3694 and 3785 on 6 July and 30 November 2016 respectively, in which the Tribunal found that the Appeals Committee was improperly composed when it issued its opinion, the President of the Office decided to withdraw the 17 October 2016 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 thirty-eighth complaint on the basis that it had become moot, but he chose to maintain it.

Ultimately, along with several other complaints, the complainant's thirty-eighth 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 17 October 2016 decision. In that same judgment, the Tribunal encouraged the EPO to consider in the resumed internal appeal proceedings any costs the complainant might 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 for consideration to a properly constituted Appeals Committee. The complainant refrained from participating in the new internal appeal procedure on the basis that it had been initiated without his approval. The reconstituted Appeals Committee submitted its opinion on 27 January 2020, unanimously recommending that the appeal be rejected as irreceivable in part and unfounded in the remainder, and that the complainant be awarded 800 euros in moral damages for the "unreasonable duration of the appeal proceedings".

On 3 March 2020, the complainant wrote to the President requesting payment of the costs he had incurred in filing the original complaint (his thirty-eighth) with the Tribunal and a new internal appeal procedure.

By a letter of 31 March 2020, attaching a copy of the Appeals Committee's opinion, the Vice-President of Directorate-General 4 informed the complainant of his decision, taken by delegation of authority from the President, to reject his appeal in line with the Appeals

Committee's recommendation. As regards the recommendation for the award of moral damages for the length of the appeal procedure, the Vice-President noted that, as individuals acting in a staff representative capacity were not entitled to moral damages, he had decided to pay 800 euros, on that count, to the staff representation as a whole. This is the impugned decision.

The complainant asks the Tribunal: (1) to set aside the impugned decision; (2) to award him 3,000 euros in costs for the proceedings before the Tribunal in his original complaint (his thirty-eighth); (3) to award him another 3,000 euros for the proceedings before the Tribunal in the present complaint; (4) to award him 10,000 euros in moral damages for the implicit rejection of his request that the EPO resubmit his original internal appeal to a lawfully constituted Appeals Committee before he was forced to file his thirty-eighth complaint to avoid a loss of right; (5) to declare that the EPO's refusal to accept Mr T.'s nomination to the Disciplinary Committee was unlawful and contrary to the spirit of the Service Regulations; (6) to declare that the EPO's refusal to recognise Mr T.'s rank as being above the rank of grade A1/A4 officials was a de facto *ultra vires* downgrading of Mr T. and of all other officials in the same position; (7) to set aside Administrative Council decision CA/D 34/07, upon which the EPO relied to refuse the nomination of Mr T.; (8) to award him 20,000 euros in moral damages for the EPO's discriminatory treatment of grade A4(2) employees, including Mr T. and himself, who are deprived of their right to have an employee of their rank in the Disciplinary Committee; (9) to award him 10,000 euros in moral damages for the Appeals Committee's failure to hear him prior to issuing its opinion on his appeal; (10) to order the EPO to disclose a number of documents listed in the complaint brief to which he no longer has access as a retired staff member.

The EPO asks the Tribunal to dismiss the complaint as irreceivable and, on a subsidiary basis, to dismiss it as unfounded in its entirety. As regards, in particular, the complainant's claim for moral damages for the length of the internal appeal process, the EPO notes that a compensation in the amount of 800 euros was credited to the staff representation as a whole.

CONSIDERATIONS

1. The complainant is a former member of the staff of the EPO. He left the Organisation in March 2019. This complaint was filed with the Tribunal on 3 June 2020. It is convenient to deal with the complaint by reference to the relief sought rather than delving into the complex mosaic of all the complainant's pleas on the merits and the responsive pleas of the EPO. None of the relief sought can or, alternatively, should be granted and accordingly the complaint should be dismissed.

2. The complainant's first four claims are that the Tribunal:

- (i) Set aside the impugned decision;
- (ii) Award him 3,000 euros in costs for the proceedings before the Tribunal in his original complaint (his thirty-eighth);
- (iii) Award him another 3,000 euros for the proceedings before the Tribunal in the present complaint; and
- (iv) Award him 10,000 euros in moral damages for the implicit rejection of his request that the EPO resubmit his original internal appeal to a lawfully constituted Appeals Committee before he was forced to file his thirty-eighth complaint to avoid a loss of right.

3. No credible basis is established for setting aside the decision of 31 March 2020. It was the product of a procedure sanctioned by the Tribunal in Judgment 4256. That judgment is, in this respect, final and binding. Consequently, the first order should not be made.

Insofar as the complainant challenges the failure to award him costs for prosecuting his original grievance, a possibility contemplated by consideration 9 of Judgment 4256, he points to no reviewable error of substance in the resolution of this question. It results that the second order should not be made.

As to the third order, no order for costs in these proceedings should be made as the present complaint will be dismissed.

Concerning the fourth order, it should not be made. Firstly, it does not concern the impugned decision and secondly, and subsidiarily, the complainant does not establish any moral injury founding an award of moral damages.

4. The complainant's next four claims, which concern what he describes as the "principal material issue", are that the Tribunal:

- (v) Declare that the EPO's refusal to accept Mr T.'s nomination to the Disciplinary Committee was unlawful and contrary to the spirit of the Service Regulations;
- (vi) Declare that the EPO's refusal to recognise Mr T.'s rank as being above the rank of grade A1/M officials was a de facto *ultra vires* downgrading of Mr T. and of all other officials in the same position;
- (vii) Set aside Administrative Council decision CA/D 34/07, upon which the EPO relied to refuse the nomination of Mr T.; and
- (viii) Award him 20,000 euros in moral damages for the EPO's discriminatory treatment of grade A4(2) employees, including Mr T. and himself, who are deprived of their right to have an employee of their rank in the Disciplinary Committee.

5. The premise underlying these claims is that the complainant had a justiciable right, at the time he filed his complaint on 3 June 2020, to challenge the lawfulness of the treatment of another staff member in the consideration of his possible appointment as a member of a Disciplinary Committee. He did not. It is not a matter of the type comprehended by Article II of the Tribunal's Statute, which concerns alleged violation of the rights of the complainant, not of other staff members (see, for example, Judgment 4120, consideration 6). Accordingly, none of these orders would be made in these proceedings.

6. The complainant's final claim, apart from the request for documents, is that the Tribunal:

- (ix) Award him 10,000 euros in moral damages for the Appeals Committee's failure to hear him prior to issuing its opinion on his appeal.

7. It is neither rational nor reasonable, at least in this case, to criticize an appeal body for deciding a case without having heard a complainant in circumstances where the complainant had declared he would not participate in the proceedings before that body. In any event, and subsidiarily, no moral injury is established that would warrant an award of moral damages. This order should not be made.

8. The request for documents is refused as the requested documents would serve no legitimate forensic purpose in these proceedings.

9. The complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 30 April 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.