

D. V. (No. 2)

v.

EPO

141st Session

Judgment No. 5175

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr D. D. V. against the European Patent Organisation (EPO) on 16 July 2020 and corrected on 7 September 2020, the EPO's reply of 17 December 2020, the complainant's rejoinder of 31 March 2021 and the EPO's surrejoinder of 22 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 requests the retroactive payment of the dependants' allowance and the related family allowances for his two daughters.

The complainant joined the European Patent Office, the EPO's secretariat, in Munich, Germany, in 1999. He had been married to another permanent employee of the Office, Ms B., with whom he has two children. He divorced on 29 September 2011. Ms B. resigned from the Office with effect from 1 September 2016. Prior to that, she remarried another staff member of the Office, Mr D.M., with whom she has two children and who retired in December 2015.

Prior to his divorce, the complainant – who had a higher salary than his wife – was the recipient of the dependants’ allowance provided for in Article 69 of the Service Regulations for permanent employees of the Office for his two daughters. Since the divorce and until his former spouse’s resignation on 1 September 2016, the dependants’ allowance was paid to Ms B. Since Ms B.’s resignation, the dependants’ allowance is paid to her new husband.

On 23 October 2015, the complainant requested to be granted the childcare allowance for one of his daughters, R., in accordance with Article 70a of the Service Regulations. His request was rejected on 26 October 2015. On 22 December 2015, he submitted a request for review, which was rejected on 9 February 2016 on the basis that, as he did not receive the dependants’ allowance for R., he could not benefit from the provisions governing the childcare allowance.

On 29 March 2016, the complainant submitted a request for the dependants’ allowance for R., alleging that, at that time, he shared custody of R. with his former spouse. As this request remained unanswered, he submitted a request for review on 31 May 2016, which he corrected on 6 June 2016. On 28 July 2016, he was notified of the rejection of his request for review on the basis that the dependants’ allowance was already paid to Ms B.

He lodged a first appeal on 29 September 2016, requesting that he be awarded the dependants’ allowance for his two daughters from the date of his divorce or, alternatively, that he be awarded the dependants’ allowance only for R. from the same date or the childcare allowance for the periods claimed.

On 7 December 2016, following the resignation of Ms B. and her relocation to Belgium, the complainant requested to be granted the dependants’ allowance and the related childcare and household allowances for both of his daughters. His request was rejected on 28 March 2017 on the grounds that his children did not live in his household and that the dependants’ allowance for each child “[was] continuously being paid by the EPO since 1 September 2016”. No further details were given concerning the recipient of the allowance.

On 10 April 2017, the complainant submitted a request for review, which was rejected on 8 June 2017.

The complainant lodged a second appeal on 29 June 2017. He challenged the Office's decision of 8 June 2017 and the criteria it had used, that is the "normal residence" of his daughters, not to award him, as the "natural father of the children involved", the dependants' allowance. He further contested the fact that the allowance was awarded to a third party, Mr D.M., "who [was] neither the adopted father nor the legal custodian of [his] children", and whose household was in Austria whereas the children lived in Belgium with their mother. He alleged that, having proven that he incurred the minimum costs mentioned in Article 69 of the Service Regulations and Rule 2 of Circular No. 82, which set out guidelines for implementing Article 69, with effect from 1 March 2010, he had good reason to believe that he was the only recipient of the dependants' allowance for his daughters. He therefore requested (1) a clarification of the dependency status of his children and acknowledgement of his right to receive the dependants' and related allowances, (2) the payment of the dependants' allowance and other family allowances since 1 September 2016 or, alternatively, the payment of the allowance "as of the Appeals Committee's opinion and compensation for the documented financial loss incurred from 2011 to present, including reimbursement of the childcare allowance for one of [his] children submitted with [his first] appeal [...] and paid entirely by [him]", (3) the award of moral damages, and (4) the reimbursement of costs.

As the two appeals of 29 September 2016 and 29 June 2017 were interrelated, they were consolidated. In its opinion of 12 March 2020, the Appeals Committee considered them to be partly irreceivable insofar as the complainant requested the dependants' allowance as from 1 September 2016. Referring to Article 65(1)(e) of the Service Regulations, which provides that a possible payment of the dependants' allowance could only be granted retroactively for six months preceding the month in which the request was made, the Committee noted that the complainant initially requested the allowance for his daughter R. on 29 March 2016 and for both daughters on 7 September 2016. It concluded

that the request related to R. was only receivable as from September 2015 and the one for his other daughter, A., as from March 2016. As to the merits, the Committee considered that the Office correctly applied its rules. It therefore recommended rejecting the appeals as partly irreceivable and unfounded for the remainder.

By a letter dated 20 April 2020, the complainant was informed of the President of the Office's decision to endorse the Appeals Committee's recommendations and to award him 150 euros by way of moral damages for undue delay in the internal appeal procedure. This is the impugned decision.

The complainant requests the Tribunal to set aside the impugned decision, to grant him the dependants' allowance and related family allowances with retroactive effect as of 1 September 2016 and to reimburse him for the losses incurred from September 2016 onwards, actualised to the scales of 2020, plus interest. He also seeks 50,000 euros in moral damages, including for the excessive length of the internal appeal proceedings, and the award of costs.

The EPO notes that the dispute does not concern the granting of the dependants' allowance as such but to whom it should be paid, Mr D.M. or the complainant. It requests the Tribunal to dismiss the complaint as unfounded to the extent receivable and to order that the complainant bear his costs.

CONSIDERATIONS

1. The central issue raised in this complaint is whether the complainant is entitled to be granted, with retroactive effect from 1 September 2016, the dependants' allowance he claims pursuant to Article 69 of the Service Regulations (then in force) in respect of the two children of his marriage to his former spouse, Ms B. The complainant and his former spouse divorced on 29 September 2011, from which date the dependants' allowance for the children was paid to Ms B. The Office points out that, during the time that marriage subsisted, the allowance was paid to the complainant in accordance with Article 67(3) of the Service Regulations because his basic salary was

higher than that of his former spouse. After Ms B. resigned from the EPO on 1 September 2016, the Office paid the dependants' allowance to her new spouse, Mr D.M., who had retired from the EPO as a pensioner in December 2015.

The complainant's requests to also grant him the childcare allowance (provided for in Article 70a of the Service Regulations) and the household allowance (provided for in Article 68 of the Service Regulations) are incidental to his request for the dependants' allowance. Notably, Article 70a(2)(a) of the Service Regulations expressly provided that the childcare allowance was to be granted to an employee who is in receipt of the dependent child allowance.

2. To resolve the central issue this complaint raises, it is convenient to reproduce Article 69(1) to (4) of the Service Regulations, that was in force at the relevant time and which stated as follows:

- “(1) A dependants' allowance shall be payable, under the conditions laid down in this Article, to an employee who has:
- I. one or more dependent children;
 - [...]
- (2) Not more than one dependants' allowance shall be paid in respect of any dependent child within the meaning of this Article.

I. Dependent children

- (3) For the purposes of these Regulations a dependent child shall be:
- (a) the legitimate, natural or adopted child of an employee, or of his spouse, who is mainly and continuously supported by the employee or his spouse;
 - [...]
 - (c) any other child who is normally resident with and mainly and continuously supported by the employee or his spouse.
- (4) The allowance shall be granted:
- (a) for all children under eighteen years of age;
 - (b) on application by the employee, with supporting evidence, for children who have not reached twenty-six years of age and are receiving educational or vocational training.”

Additionally, Article 67(3) of the Service Regulations stated as follows:

“In cases where a husband and wife employed by the Office are both entitled to family allowances, these shall be payable only to the person whose basic salary is the higher.”

3. Underlying this complaint are two internal appeals the complainant lodged on 29 September 2016 and 29 June 2017, respectively, against decisions which cumulatively rejected his requests for review of the initial decisions denying his claims to be granted the subject dependants’ allowance and the related childcare and household allowances in respect of one of his children and then both.

4. In unanimously concluding that the complainant’s internal appeals were unfounded, the Appeals Committee observed that the complainant considered that he mainly and continuously supported his children within the meaning of Article 69 of the Service Regulations. Having specifically referred to the provisions in Article 69(1) and (3)(a) of the Service Regulations, the Committee then provided the following analysis and conclusion:

“25. As from 1 September 2016, it is undisputed that the [complainant]’s children live with their mother in Belgium and that she has sole custody and that the children no longer reside with the [complainant] on a regular basis. From that moment, the dependants’ allowance for the [complainant]’s children is being paid to the former spouse’s new husband, an Office pensioner.

26. As the Office writes in its position paper, the situation was novel as it was faced with two requests for the dependants’ allowance from two different people. The [complainant], as the children’s legitimate father, is eligible for the dependants’ allowance pursuant to Article 69(3)(a) [of the Service Regulations], as the children are ‘the legitimate ... child[ren] of an employee’. Likewise, the [complainant]’s former spouse’s new husband is also eligible for the dependants’ allowance pursuant to Article 69(3)(a) [of the Service Regulations], as the children are the legitimate children of an employee’s spouse.

27. The [complainant] submitted proof that his children do not reside in the same household as the former spouse’s new husband. However, the Appeals Committee, from the wording of Article 69(3)(a) [of the Service Regulations], does not consider that it is necessary that the new husband resides in the

same household as the [complainant]’s children. According to Article 69(3)(a) [of the Service Regulations] ‘a dependent child shall be ... the legitimate ... child of an [employee’s spouse], who is mainly and continuously supported by the [employee’s spouse]’. As mentioned, it is undisputed that the [complainant]’s former spouse resides with the [complainant]’s children, that she has custody and that she mainly and continuously supports her children. The Office’s decision to pay the dependants’ allowance to the new husband for reasons that the children are supported by their mother, although emotionally burdensome for the [complainant], is legally valid.

28. As the [complainant]’s children are already considered to be dependants of the new husband in accordance with Article 69(3)(a) [of the Service Regulations], Circular No. 82 [setting out guidelines for implementing Article 69] is presently not applicable. From its rationale Circular No. 82 is not applicable in cases in which two employees request the allowance for the same children.

[...]

29. As the [complainant]’s main claim for being granted the dependants’ allowance pursuant to Article 69(3)(a) [of the Service Regulations] fails, so too do his ancillary claims.”

5. The foregoing analysis and conclusion are sound and fairly reflect the application, particularly of Article 69(1) and (3) of the Service Regulations, in light of the available evidence, which the President of the Office endorsed in the impugned decision. The Tribunal discerns no basis on which to hold that there was an error in the foregoing analysis and conclusion, as the complainant submits. His plea in this regard fails.

6. The complainant’s submissions that the President’s decision to reject his internal appeals violated the principle of equal treatment and was taken in bad faith also fail as the complainant provides no evidence to discharge his burden to prove these alleged violations (see, for example, Judgments 4983, consideration 9, and 4277, consideration 21, with regard to the principle of equal treatment, and Judgment 4897, consideration 10, and the case law cited therein, with regard to bad faith).

7. All of the complainant's pleas having been rejected as unfounded, his claim for moral damages on the basis that the decision not to grant him the dependants' allowance and the related family allowances was wrong is also rejected.

8. In light of the foregoing, it is not necessary for the Tribunal to consider the complainant's request for the disclosure of information, to wit, evidence of the payments made by the Office to the new husband of his former spouse and evidence that the new husband actually uses the allowances paid to him for the benefit of the complainant's children. In any event, as the EPO correctly submits, it has a duty to keep personal data concerning (former) staff members strictly confidential and neither the complainant's former spouse nor her husband is party to these proceedings.

9. With regard to the complainant's claim for moral damages "for the unjustified delay in the appeal proceedings" it is recalled that, in the impugned decision, the President stated that the complainant would be awarded 150 euros, in line with the Appeals Committee's recommendation, for the undue delay in those proceedings. The present claim is essentially a request to increase this award. The claim is rejected as the complainant provides no evidence that the prejudice he suffered would warrant a higher amount of moral damages.

10. In the foregoing premises, the complaint will be dismissed in its entirety.

The EPO's submission that the complainant's reliance on the decisions taken by national courts is misplaced as it is not bound by national law is well founded. According to the case law, reliance on national law, which cannot be enforced against the EPO, does not create a legal obstacle to the application of internal rules and regulations (see, for example, Judgments 4800, consideration 6, 4553, consideration 4, and 4401, consideration 6).

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 October 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.