

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G. (No. 5) and V. (No. 6)

v.

EPO

141st Session

Judgment No. 5177

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr W. A. G. against the European Patent Organisation (EPO) on 17 October 2017, the EPO's reply of 2 February 2018, Mr G.'s rejoinder of 8 March 2018 and the EPO's surrejoinder of 18 June 2018;

Considering the sixth complaint filed by Ms V. B. A. V. against the EPO on 17 October 2017, the EPO's reply of 2 February 2018, Ms V.'s rejoinder of 8 March 2018 and the EPO's surrejoinder of 18 June 2018;

Considering the application to intervene in Mr G.'s fifth complaint filed by Ms V. on 8 March 2018 and the EPO's letter of 18 June 2018 indicating that it had no comment to make on the application to intervene;

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

Having examined the written submissions;

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

The complainants challenge the deduction of compensation hours from their respective time accounts to cover days when the European Patent Office – the EPO's secretariat – was officially closed.

The complainants are permanent employees of the European Patent Office who work as examiners at its branch in Berlin, Germany. Pursuant to Rule 4(b) of Circular No. 22 (Guidelines for leave), as amended in August 2012, “[t]he President [of the Office] may decide, in the interest of the Office, to close the Office between Christmas and New Year and/or on a Monday or Friday where a public holiday falls on a Tuesday or Thursday respectively”. On these Office closure days, staff are required to take authorised leave, but they are free to choose which type of leave they will use (annual leave, flexitime or compensation hours). If they fail to register any leave for those days, it is deducted from their compensation hours.

In October 2014 the Office published Circular No. 359, containing the list of official holidays for 2015. The Circular also indicated that the Office would be closed on 2 January 2015, and on 28, 29 and 30 December 2015, and that staff members should decide which type of leave they wished to take on those four closure days. In the September 2015 issue of the Human Resources (HR) newsletter “HR matters”, staff were reminded that they had to register leave for the end-of-year office closure days by 18 December 2015, failing which the Office would deduct from their compensation hours the number of hours needed to cover the closure days.

As the complainants did not register any leave for the closure days in December 2015, the Office deducted those days from their compensation hours. On 18 January 2016 Ms V. filed a request for review challenging this deduction of compensation hours. Mr G. filed an identical request for review on 3 February 2016. By letters dated 9 February 2016, the complainants were informed that their requests for review were rejected.

On 18 February 2016 Mr G. lodged an appeal with the Appeals Committee, arguing that neither the European Patent Convention (EPC) nor the Service Regulations for permanent employees of the Office provided a legal basis for the President to order staff to take compulsory leave and to deduct the corresponding hours from their time accounts. Ms V. filed an identical appeal on 19 February 2016. The two appeals were in due course registered together under the same number.

A similar situation occurred at the end of 2016. The Office had announced in Circular No. 369 that the Office would be closed on 27, 28, 29 and 30 December 2016 and that staff should choose which form of leave they would take on those days, but the complainants did not register any leave and, as a result, the Office made a deduction from their compensation hours. Mr G. filed a second request for review, challenging the deduction of compensation hours for the Office closure in December 2016. When this was rejected, he lodged an appeal with the Appeals Committee on 20 March 2017. Ms V. did not challenge the 2016 deductions.

On 1 June 2017 Mr G. sent an email to the secretariat of the Appeals Committee in which, referring to Article 6(2) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, he objected to all members of the Appeals Committee on the grounds of a suspicion of partiality. Ms V. sent an identical email to the Appeals Committee on 7 June 2017.

On 21 June 2017 Mr G. participated in a hearing before the Appeals Committee. The Committee issued an opinion on 26 July 2017 dealing with both of Mr G.'s appeals as well as Ms V.'s appeal. The complainants' objections to the composition of the Committee were rejected as irreceivable by a majority of its members, on the grounds that they were not sufficiently substantiated. On the merits, the Appeals Committee pointed out that it had already dealt with the question of the lawfulness of the deduction of compensation hours for Office closure days in the context of a mass appeal procedure, and that the arguments raised by the complainants were very similar to those put forward in the mass appeal. It saw no reason to depart from its earlier conclusion that the deductions were lawful and unanimously recommended that the appeals be rejected as unfounded.

By letters dated 25 September 2017, the Principal Director of Human Resources, acting by delegation of power from the President, informed the complainants that she had decided to accept the recommendation of the Appeals Committee for the reasons set out in the Committee's opinion and hence to reject their appeals as unfounded. This is the impugned decision in each complaint.

The complainants ask the Tribunal to set aside the decisions to deduct compensation hours in respect of the Office closures (in December 2015 for both complainants and additionally in December 2016 for Mr G.) and to award them 10,000 euros each in moral damages for procedural violations in the internal appeal proceedings. They request that their reinstated compensation hours be deducted from their available working time when they are taken as leave, so that these hours will not affect their productivity twice. Alternatively, they claim 4,000 euros in moral damages to compensate for this effect. They also claim moral damages of 50 euros per month until the deductions have been reinstated, and costs.

The EPO asks the Tribunal to dismiss the complaints as unfounded in their entirety.

CONSIDERATIONS

1. Both Mr G. and Ms V. are permanent staff members of the Office who work as examiners at its branch in Berlin. In 2015 and again in 2016, the EPO closed the Office during year-end periods. Neither complainant registered any leave for those closure days, and consequently the EPO deducted leave from their compensation hours.

2. The complainants impugn before the Tribunal the decision of 25 September 2017 whereby the Principal Director of Human Resources, acting under delegated authority from the President, dismissed their internal appeals and accepted the recommendations of the Appeals Committee, which had found the deductions of compensation hours lawful.

3. As the two complaints arise from substantially identical facts, are grounded on the same legal issues, and the complainants' submissions are indeed identical, it is appropriate to join the two complaints and resolve them by a single judgment.

4. The complainants have applied for oral proceedings. As the written submissions are sufficient to allow the Tribunal to render an informed decision, the Tribunal rejects the requests for oral hearings.

5. The core of the complainants' argument is that the EPO's requirement to take authorised leave on closure days, specifically, the resulting deduction of compensation hours where no leave was registered, exceeded the President's authority under Article 10 of the EPC and contradicted the logic of the compensation hours system. They argue that such deductions altered the nature of compensation hours and conflicted with the Guidelines on arrangements for working hours.

6. These arguments are unconvincing. Article 10(2)(a) of the EPC grants the President broad discretion to "take all necessary steps to ensure the functioning of the European Patent Office, including the adoption of internal administrative instructions and information to the public". This authority clearly encompasses adopting and amending measures on office closures and leave administration. The contested modification of Rule 4 of Circular No. 22, by Communiqué No. 12, falls squarely within the President's discretion to organise the Office's work and regulate administrative arrangements such as compensation hours.

7. Rule 4(b) of Circular No. 22 provides that, in the interest of the Office, the President may close the Office "between Christmas and New Year and/or on a Monday or Friday where a public holiday falls on a Tuesday or Thursday respectively" (the so-called "bridging days"); staff must then take authorised leave on those closure days and may choose the leave type (annual leave, flexitime, or compensation hours). Circulars Nos. 359 and 369 informed staff of the official holidays and the Office closure days for 2015 and 2016, respectively. Subsequent HR communications reminded staff of the need to register leave for the Office closure days and the default mechanism whereby, if no leave was registered by the stated deadline, the absence would be booked to compensation hours. This default mechanism was limited to Office closures and was an administrative tool to ensure the functioning of the

Office. Staff received ample notice and had sufficient opportunity to register their preferred form of leave. The application of a default mechanism in this context is administratively reasonable. The deduction of compensation hours in this context does not violate any EPO provision nor any general principle of law.

8. The complainants also misread the text of Article 5(4) and (6) of the Guidelines on arrangements for working hours. Article 5(4) of the Guidelines on arrangements for working hours states that “[i]n addition to and independently of paragraphs (1) and (2), for each eight hours of presence at work an employee accrues 15 minutes of time credit in a second time account. This calculation is made on the basis of the normal working day. The balance of this time account, known as compensation hours, is calculated by the time administration tool and may not exceed 56 hours at any time.” It establishes a mechanical accrual formula (15 minutes per 8 hours worked) and a ceiling (56 hours). Article 5(6) provides that “[a]ccrued time credit is not considered as overtime according to Article 57 [of the Service Regulations]. It carries no right to remuneration. The balance of the time accounts is not taken into account when assessing the employee’s productivity.” These provisions do not confer on staff members an exclusive right to decide autonomously how and when to use compensation hours, nor do they address their use in the context of Office closure days. The Tribunal therefore concurs with the findings of the Appeals Committee that the Service Regulations contain no provisions on flexitime or compensation hours, that the President had the competence to modify them with an administrative instruction as these types of time credit had originally been introduced by decisions of the President, and that Communiqué No. 12 was lawful and proportionate.

9. The complainants further contend that compulsory deductions adversely affected their productivity calculations and career prospects. The Tribunal is not persuaded by this argument. Staff were duly informed of closure days and given several options and sufficient time to select the form of leave and to register their choice. Only in cases of

inaction within the prescribed timeframe were compensation hours deducted. Any alleged impact on productivity therefore stems from the staff member's own inaction, not from the contested measure.

10. The complainants have no acquired right to the continuation of the previous compensation hours system. According to the Tribunal's consistent case law, for there to be a breach of an acquired right, an amendment must affect a fundamental and essential term of employment (see, for example, Judgment 832, consideration 14). Internal administrative arrangements of this kind do not meet that standard. They are organisational measures subject to amendment by the President in the exercise of his discretion, and changes to them do not infringe acquired rights.

11. The complainants also allege procedural flaws, including rejection of partiality objections, the fact that they were denied the benefit of Article 6(4) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, the presence of registrars in the Appeals Committee's deliberations, references to earlier opinions of an Appeals Committee later found to be unlawful in Judgment 3785, and the participation of Vice-Presidents in the General Advisory Committee (GAC) consulted on Communiqué No. 12.

12. The Tribunal finds that the complainants do not establish any procedural irregularity. The complainants adduce no evidence to prove the partiality of the members of the Appeals Committee. The Tribunal recalls that its settled case law has it that the complainant bears the burden of proving a lack of impartiality on the part of all or some members of an internal appeals body; mere suspicions and allegations unsupported by tangible evidence are insufficient (see, for example, Judgment 4842, consideration 4). The presence of the registrars provided administrative support and did not impair independence. The challenge to the GAC's composition is without purpose in the absence of any case concerning the lawfulness of the content of Communiqué No. 12. Lastly, references to earlier opinions were contextual and did

not affect the validity of the decision. The complainants' arguments are therefore unfounded.

13. For the foregoing reasons, the complaints must be dismissed in their entirety. It follows that Ms V.'s application to intervene in Mr G.'s fifth complaint must likewise be dismissed.

DECISION

For the above reasons,

The complaints are dismissed, as is the application to intervene.

In witness of this judgment, adopted on 22 October 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.