

H. (No. 25)

v.

EPO

141st Session

Judgment No. 5178

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-fifth complaint filed by Mr W. H. H. against the European Patent Organisation (EPO) on 11 May 2018, the EPO's reply of 20 August 2018, the complainant's rejoinder of 12 November 2018, corrected on 28 November 2018, and the EPO's surrejoinder of 7 March 2019;

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 installation of speed lanes and video cameras pending a proper consultation process.

On 28 March 2014, the Administrative Council adopted decision CA/D 2/14 amending the consultation process. The General Advisory Committee (GAC) was replaced by the General Consultative Committee (GCC), whereas the Local Advisory Committees (LACs) were substituted by the Local Staff Committees (LSCs). Their competence, functioning and composition were redefined.

On 15 December 2016, the Administrative Council adopted decision CA/D 18/16 amending from 1 January 2017 to the end of June 2017, Article 36(2)(a) of the Service Regulations for permanent employees of

the European Patent Office, the secretariat of the EPO, so as to ensure the proper functioning of the Appeals Committee by allowing volunteers and/or drawing of lots when the Central Staff Committee (CSC) fails to make its mandatory appointments to the Appeals Committee. On 29 June 2017, it adopted decision CA/D 7/17 amending, among other things, Articles 36 and 107 to 113 of the Service Regulations and the Implementing Rules for Articles 106 to 113 of those Regulations. The peer review balanced composition of the Appeals Committee was maintained.

At material times, the complainant was an employee of the Office in Munich, Germany, and held grade G13. He was not an elected staff representative and was thus not a member of any statutory consultation body.

By an email of 11 August 2016 addressed to the President of the Office, the complainant indicated that he had noticed that speed lanes were being installed in one of the EPO's buildings in Munich ("the P. building") and that a consultation of the LAC was initially planned. He requested to be informed "as to which statutory consultation body was consulted, when and with what outcome before the work started in the [P. building]". Furthermore, alleging that "it [was] generally accepted that such documents [were] public (since they clearly affect[ed] staff)", he asked where he could find the documents setting out the P. building speed lane concept on the Intranet. In the event no consultation had taken place and the documents could not be provided, he requested that the installation of speed lanes be stopped "pending full and proper consultation with staff or their representatives".

By another email of 7 September 2016 also addressed to the President, the complainant indicated that he had noticed that security video cameras were also being installed in the P. building and pointed out that it breached the EPO House Rules for all Munich buildings. He further indicated that a consultation of the GAC was initially planned and made the same requests he had formulated for the speed lanes with regard to the video surveillance devices.

By a letter dated 11 October 2016, the complainant was informed of the President's responses to his queries. Specifically, he was advised that (1) not all documents were public and that the disclosure of documents containing sensitive information, such as security measures, was limited to employees who legitimately needed access thereof because of their duties, (2) although it was initially planned to submit the speed lane and the video surveillance concepts to consultation of the LAC and GAC respectively, the relevant documentation was not ready in early 2014, and, in any event, following the implementation of decision CA/D 2/14, a statutory consultation was no longer required under the provisions of Article 38 of the Service Regulations, and (3) the speed lane concept for the P. building had been submitted on 3 June 2016 to the Occupational Health, Safety and Ergonomics Committee in Munich (LOHSEC Munich) for information purposes and the relevant document could be accessed via the LOHSEC database.

On 26 October 2016, the complainant filed a request for review of the 11 October 2016 letter. He contended that the LOHSEC should have been mandated to deliver a reasoned opinion under Article 38a(4) of the Service Regulations and alleged that staff members had an acquired right to be consulted on a measure that affected them. His request for review was rejected as manifestly irreceivable on 19 December 2016 on the grounds that the 11 October 2016 letter was "purely informative and answered [his] requests for information of 11.08.2016 and 07.09.2016", that he had failed to demonstrate that he was in any way adversely affected by the information provided, and that he had no cause of action to directly challenge an alleged lack of consultation since he was not a member of any statutory consultation body. On a subsidiary basis, the request for review was rejected as unfounded.

On 23 January 2017, the complainant lodged an internal appeal against the 19 December 2016 rejection of his request for review, seeking removal of the speed lanes and video cameras "pending proper consultation", moral damages and costs. On 20 February 2017, he was informed that the Chair of the Appeals Committee had the appeal put

on the agenda for a decision of the Committee for a possible treatment in summary proceedings.

In its opinion of 14 December 2017, the Appeals Committee's majority recommended rejecting the appeal as manifestly irreceivable following a summary procedure under Article 9(2)(b) of the Implementing Rules for Articles 106 to 113 of the Service Regulations. The grounds for rejection were the same as those formulated in the 19 December 2016 letter. Two members issued a dissenting opinion.

By a letter dated 14 February 2018, which constitutes the impugned decision in the present proceedings, the complainant was informed of the decision of the President of the Office to accept the Appeals Committee's majority opinion.

The complainant asks the Tribunal to set aside the impugned decision and to order the removal of speed lanes and video cameras "pending a proper consultation". He also seeks moral damages as the Tribunal deems appropriate, and costs. In the alternative, he requests that the case be remitted to the EPO "for reconsideration according to a proper procedure and [before] a properly constituted [A]ppeals [C]ommittee", together with moral damages and costs.

The EPO notes that the complaint is irreceivable for lack of cause of action since the complainant was neither an elected staff representative nor a member of any statutory consultation body at the material time. It also argues that the 11 October 2016 letter, which was purely informative, could not be construed as an individual appealable decision, and considers that some claims amount to injunctions, which are outside the Tribunal's competence. Consequently, the Organisation asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. At material times, the complainant was a member of staff of the EPO working at its premises in Munich. In 2016, he took exception to the installation of speed lanes and security video cameras in part of

the premises all the more so because there had been no consultation with any representative body of the staff about their installation.

2. The EPO raises, as a threshold issue, whether the complaint is receivable. It argues, correctly, it is not. The Tribunal's reasons will be expressed briefly.

3. Insofar as the complainant prosecutes a case that there had been no consultation with any representative body, he cannot do so because, at material times, he was neither an elected staff representative nor a member of any statutory consultation body. He thus had no cause of action in this specific respect (see Judgment 4797, consideration 5, and, *a contrario*, Judgments 4551, consideration 4, 3671, consideration 3, and 3546, consideration 6).

4. More generally, the foundation of his grievance was two emails he sent to the President in 2016, one in August (relating to speed lanes) and the other in September (relating to video cameras) and the response contained in a letter dated 11 October 2016 from the Principal Director of Human Resources, acting on behalf of the President. The complainant characterized this letter as a "decision" in respect of which he sought a review. By a letter dated 19 December 2016 from the Vice-President of Directorate-General 4 (DG4), the complainant was informed that his request for review was rejected as manifestly irreceivable. A subsequent appeal to the Appeals Committee was rejected by the Vice-President of DG4, acting by delegation of power from the President, as manifestly irreceivable in a final decision dated 14 February 2018.

5. The Tribunal's case law clearly establishes that a complainant must have a cause of action in order for a complaint to be receivable (see, for example, Judgment 4881, consideration 3, and the case law cited therein). Moreover, for there to be a cause of action rendering a complaint receivable, the complainant must demonstrate that the contested administrative decision caused injury to the complainant's health, finances or otherwise or that it is liable to cause injury (see, for example, Judgments 5036, consideration 4, and 3168, consideration 9).

The letter of 11 October 2016, assuming that it can be treated as an administrative decision, which does not appear to be the case, did not have these attributes. Thus, the complainant has no cause of action.

6. In the foregoing premises, the complaint is irreceivable and should be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 14 October 2025, Mr Michael F. Moore, 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 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.