

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M. S. (No. 2)

v.

EPO

141st Session

Judgment No. 5181

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms I. M. S. against the European Patent Organisation (EPO) on 22 October 2020 and corrected on 19 November 2020, the EPO's reply of 26 April 2021, the complainant's rejoinder of 26 July 2021, the EPO's surrejoinder of 6 November 2021, the complainant's additional submissions of 4 March 2022 and the EPO's further comments of 7 June 2022;

Considering the documents provided by the EPO on 27 July 2022 at the request of the Vice-President of the Tribunal, acting by delegation of authority from the President, the complainant's additional submissions of 19 September 2022, the EPO's further comments of 14 December 2022, the complainant's submission of further evidence on 8 July 2025 and the EPO's final comments thereon of 29 July 2025;

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 decision to withdraw the authorisation to work part-time at 50 per cent, and the consequences on her leave entitlements.

The complainant joined the European Patent Office, the EPO's secretariat, in 2009 as a full-time employee. Early July 2013, she submitted a request for authorisation to work part-time in order to look after her newborn child. In accordance with Article 56(1) of the Service Regulations for permanent employees of the Office, read in conjunction with Article 3(2) of Circular No. 34, her request was granted with effect from 10 September 2013 for a fixed period of six months that was then extended until 31 May 2018 for six months each time. At the material time, she was a patent examiner.

In October 2017, the complainant wrote to her line manager indicating her proposed productivity targets for 2018 based on the system for assessing examiners' productivity ("PAX"). The parties communicated regularly, in writing or orally, regarding possible adjustments to the proposed PAX and her working arrangement but could not agree. On 26 April 2018, she was placed on certified sick leave by the Occupational Health Physician until 6 May 2018 and then she was placed on reduced working hours from 7 May until 20 May 2018.

The complainant's line manager informed her, on 30 April 2018, that in light of the increased operational needs of the Directorate-General 1 and the fact that she was not flexible regarding the part-time working arrangement, he had withdrawn the authorisation for part-time work as of 1 June 2018. He explained that the conditions under which the authorisation had been granted had changed considerably and it was no longer compatible with the smooth functioning of the service. He added that she could file a new request for part-time work under the applicable rules indicating a percentage that took into account the Office's needs, that is to say part-time increased to 60 per cent working time to compensate for the leave planned in the summer and to arrive at a minimum of 100 days search and examination capacity. On that same day, the complainant asked the Administration the legal basis for the unilateral withdrawal of the part-time work authorisation, and a confirmation that the authorisation was indeed cancelled. She also asked to be transferred to another directorate keeping her part-time authorisation unchanged. She reiterated, on 4 May 2018, her request for confirmation of the legal basis for the withdrawal decision. In addition,

she asked that the withdrawal decision be suspended, and if refused, to be granted unpaid leave, or subsidiarily parental leave.

The complainant wrote to the Administration on 5 June 2018 indicating that she had been “notified” that the decision to withdraw her part-time work arrangement had not been made on 1 June 2018. She sought a “final administrative decision” regarding the withdrawal of the part-time work arrangement, an explanation as to why her request for parental leave had not been granted in full and a final decision on her request to be transferred. On 13 June 2018, the Office replied that her request for parental leave had been granted in full, and therefore her request for unpaid leave was rejected as obsolete. It added that her transfer to another directorate had been approved but the directorate had not yet been determined. In addition, her administrative status remained as working at 50 per cent while on full-time parental leave.

On 24 July 2018, the complainant wrote to the President of the Office requesting a review of the decision of 30 April 2018 to withdraw the 50 per cent part-time work authorisation. She also asked that the authorisation to work at 50 per cent be reinstated with retroactive effect, that she be considered as having worked part-time at 50 per cent during the period of “forced parental leave”, and that her salary, pension contributions, and any other entitlements that she would have accrued during this time, including the re-crediting of parental leave, be granted. She also claimed moral damages, reimbursement of legal expenses and interest. Her request was rejected on 21 September 2018.

On 31 October 2018, while she was on parental leave, she was notified that due to her transfer to another directorate as of 1 November 2018, her “normal 50 [per cent] part-time working schedule [would] again apply”.

In December 2018, the complainant filed an internal appeal against the decision to reject her request for review alleging that the 30 April 2018 decision to withdraw her part-time authorisation was tainted by an error of law, breached her acquired rights and legitimate expectations, the EPO’s duty of care and duty to act in good faith, as well as the principle of equal treatment. The contested decision was also in breach of the established practice, constituted abuse of power, and amounted

to unjust enrichment. She argued that the Office enriched itself of 25 per cent of her basic salary as it did not have to pay that portion while she was on “forced” parental leave. She stressed that she indicated that she preferred being placed on unpaid leave if the withdrawal of the part-time authorisation was not granted because as a mother of two in “all likelihood” she would need to take parental leave in the future to take care of her children. She therefore asked the EPO to set aside the 30 April 2018 decision, to reinstate her authorisation to work part-time at 50 per cent retroactively, and to consider that she worked during the period of her parental leave. She further sought compensation for all salary, pension contributions, and any other entitlements that she would have accrued during that time (including regarding the parental leave and annual leave that were forfeited as a consequence of her being placed on parental leave). She also sought moral damages, costs and interest.

In its opinion of 25 June 2020, the Appeals Committee recommended by a majority to dismiss the appeal as unfounded on the grounds that the decision to withdraw the authorisation to work part-time at 50 per cent complied with applicable rules and allowed a fair balance of the parties’ interests. It noted in particular that, according to Article 56(1) of the Service Regulations and to Circular No. 34, part-time work was an exceptional working arrangement which may be authorised by the President. Furthermore, the authorisation to work part-time was temporary and was reassessed every six months if renewal was sought. Therefore, the Appeals Committee concluded, unanimously, that there was no right to work part-time and hence no acquired right or violation of legitimate expectations. The majority also found that the reasons for the contested decision complied with the Office’s general management strategy stressing that the strategy was within the Office’s discretionary authority. The majority also noted that the complainant did not adopt a “reasonable behaviour” when she negotiated with the Office. It rejected her allegations of discrimination as a woman and mother as unsubstantiated, and the allegation of violation of the principle of equal treatment unfounded as she referred to colleagues in a different situation. It also concluded that she had not proved an established practice that upon transfer part-time work arrangements were automatically upheld, and

rejected her argument that she had been wrongly told that her part-time arrangement would need to be “renegotiated”. That matter was of no importance, according to the majority, as her part-time arrangement was maintained when she was transferred. The evidence she provided to support her argument of abuse of power was not “reliable” as she referred merely to her own minutes of the meetings. She also failed to demonstrate her allegation of unjust enrichment. Indeed, she did not demonstrate how the Office could have enriched itself unjustly while she was on parental leave. The minority concurred with the majority regarding acquired rights and legitimate expectations, established practice, and unjust enrichment.

By a letter of 24 July 2020, the Vice-President of Directorate-General 4, by delegation of power from the President, notified the complainant that she had decided to follow the majority’s recommendation of the Appeals Committee and to reject her appeal as unfounded for the reasons stated by the majority. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, and to order that her parental leave between 4 June 2018 and 1 November 2018 be “recredit[ed]” with full restitution of salary, pension contributions, and any other entitlements that she would have accrued during this time, including annual leave, that were forfeited as a consequence of the use of parental leave. She also seeks “actual damages” for the intense psychological injury occasioned by the EPO’s “unlawful and tortious behavio[u]r”, and moral damages for abuse of authority, breach of the duty of care and of the duty to act in good faith. She further seeks exemplary damages for the manifestly unsubstantiated justifications given by the Office, which showed misleading and malicious intent, and for the failure to consult with the General Consultative Committee before altering her conditions of employment. In addition, she claims reimbursement of her legal expenses, including the registration fee of 200 euros for filing her internal appeal, and interest at the rate of 5 per cent per annum on all sums granted by the Tribunal from the date of the impugned decision until the awarded sums are paid in full. Lastly, she seeks such other relief as the Tribunal deems necessary, just and fair.

The EPO asks the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The complainant signifies in the complaint form that she applies for oral proceedings. The EPO observed that she has not listed either the witnesses to be called or the issues she wants to be addressed in the oral proceedings. The Tribunal notes that she has not set out in her brief the grounds for the application indicated in the complaint form. Her request for oral proceedings is therefore rejected, as, in any event, and as the EPO submits, the Tribunal considers that the parties have presented sufficient submissions and documents to allow it to be properly informed to resolve the issues raised in this complaint.

2. Regarding the request for disclosure of information made by the complainant, the Tribunal notes that this was granted in part on 30 June 2022 by the Vice-President of the Tribunal, acting on delegation of authority from the President, who issued an order, pursuant to Article 9, paragraph 6, of the Tribunal's Rules. The parties have made further submissions by reference to that order.

3. Regarding the applicable rules, Article 56 of the Service Regulations conferred discretion on the President of the Office to authorise a permanent employee to work on a part-time basis. It relevantly stated as follows:

“(1) Exceptionally, the President of the Office may, upon application setting out the reasons therefor, authorise a permanent employee to work part-time, if he considers that this would also be in the interests of the Office.

A permanent employee authorised to work part-time shall in each month work at least half the normal working time.

(2) The authorisation shall be granted on application by the permanent employee for a fixed, renewable period, in accordance with the provisions defined by the President of the Office.

[...]

(3) If the reasons for which the authorisation was granted no longer apply, the President of the Office may withdraw the authorisation before expiry of the period for which it was granted, giving one month's notice.

The President of the Office may likewise, on application by the employee concerned, withdraw the authorisation before expiry of the period for which it was granted.

[...]"

Additionally, Circular No. 34 entitled "Guidelines for applying Article 56(2) of the Service Regulations for permanent employees of the European Patent Office" relevantly stated as follows:

**"Article 1
Reasons**

Authorisation to work part-time may be granted in the following cases:

- (a) in order to look after at least one child below the age of 16;
- [...]

**Article 2
Authorisation**

- (1) Authorisation to work part-time is conditional upon:
 - (a) such part-time working being deemed compatible with the smooth functioning of the service, and
 - (b) the permanent employee's appointment being confirmed on expiry of his/her probationary period (Article 13 [of the Service Regulations]).
- (2) Every effort will be made to accommodate the wishes of individual permanent employees concerning a reduction in their working hours.
- (3) In principle, any figure of or above 50 [per cent] of the normal 40-hour working week may be granted.
- (4) The spread of working hours over the working week must be indicated together with the request for authorisation to work part-time. This spread may be changed by agreement with the immediate superior." (Emphasis added.)

4. The complainant challenges the impugned decision on grounds which the Tribunal summarises as follows:

- (i) The Vice-President of Directorate-General 4 erred by not finding that, contrary to the EPO's own rules, the decision to withdraw her part-time work authorisation violated Article 56 of the Service Regulations and Circular No. 34.
- (ii) She erred by not finding that the decision to withdraw her part-time work authorisation breached her acquired right and legitimate expectations.
- (iii) She erred by not finding that the decision to withdraw her part-time work authorisation violated the EPO's duty of care and its obligation to act in good faith.
- (iv) She erred by not finding that the decision to withdraw her part-time work authorisation was discriminatory and violated the principle of equality.
- (v) She erred by not finding that requiring her to renegotiate her part-time working arrangement breached the EPO's established practice not to renegotiate the part-time work authorisation and to retain that authorisation upon transfer to another department.
- (vi) She erred by not finding that her line manager's conduct constituted misuse of power insofar as he provided no "consistent, verifiable grounds" for his decision to withdraw the part-time work authorisation.
- (vii) She erred by not finding that the EPO breached the principle against unjust enrichment when it refused to grant her unpaid leave and forced her to take parental leave.

5. The facts disclose that the complainant's request for a 50 per cent part-time work authorisation was granted with effect from 10 September 2013 and had been renewed on various occasions. They also disclose the reasons that her line manager gave for the decision (he informed her accordingly on 30 April 2018) for the withdrawal of her part-time work authorisation as of 1 June 2018. They also disclose the complainant's subsequent requests on that same date, including her request to be transferred to another directorate, and her requests on 4 May 2018, including for the confirmation of the legal basis for the

decision to withdraw the authorisation and for the suspension of the withdrawal decision. She also requested to be granted unpaid leave, or, subsidiarily, parental leave. On 13 June 2018, the Human Resources (HR) partner informed the complainant, among other things, that her 50 per cent part-time work arrangement had not been changed since she was on parental leave. Referring, in her statement of appeal of 7 December 2018 to this aspect of the HR partner's communication, the complainant stated that she (the HR partner) stated that "part-time arrangement had not been altered in the system so [she] was administratively still on a 50 [per cent] working schedule but on full time parental leave; [...] and [t]he part-time authorization would need to be agreed on by the new line manager as per usual practice when transferring". She also outlined the various meetings which followed aimed at resolving the matter.

6. As it transpired, when on 24 July 2018 the complainant contested the 30 April 2018 decision, by way of a request for review, her request for parental leave had been granted and she had been informed that her request for transfer had been approved, although the directorate to which she would have been transferred had not yet been determined. As indicated above, she had also been informed that she remained in the "system" at 50 per cent while on full-time parental leave. On 31 October 2018, the complainant was notified that due to her transfer to another directorate (which was to take effect from 1 November 2018) her normal 50 per cent part-time working schedule "w[ould] again apply". Notably, in her statement of appeal, the complainant stated she "was reassigned to [the] new directorate working under the original part-time arrangement". The complainant lodged her internal appeal to the Appeals Committee against the rejection of her request for review on 7 December 2018. Yet it was clear at that time that the 30 April 2018 decision had not been implemented (meaning that her part-time work authorisation was never actually withdrawn) and the complainant retained her normal 50 per cent part-time working schedule. Notably, the Appeals Committee stated that de facto, the 30 April 2018 decision had no effect on the complainant's working arrangement.

In effect, the decision to withdraw her part-time work authorisation was no longer a live controversy at that time. It was certainly not a live issue when she filed the present complaint with the Tribunal. Consequently, the complaint is moot to the extent that the complainant contests the decision to withdraw her part-time work authorisation (see, for example, Judgments 4879, consideration 4, and 4060, consideration 3). It follows from the foregoing that claims made on the basis of grounds 1, 2, 4, 5 and 6 set out in consideration 4 of this judgment are moot.

7. Ground 3 concerning alleged breach of the EPO's duty of care and to act in good faith and ground 7 concerning alleged unjust enrichment on the part of the EPO raise live issues concerning the manner in which the Office handled the matter. The complainant's case on these grounds, as the Tribunal understands it, is that she suffered injury and financial loss, in effect, because of the Office's prevarication as to whether her part-time work authorisation had been actually withdrawn. This in turn forced her to take parental leave with loss of salary and related benefits. The facts bear this out. The complainant contends that the Office thereby breached its duty of care and good faith and unjustly enriched itself. Relatedly, the complainant requests an order that those related benefits between 4 June 2018 and 1 November 2018 be "recredit[ed]" with full restitution of salary, pension contributions, and any other entitlements that she would have accrued during this time, including of annual leave forfeited as a consequence of the use of parental leave.

8. The complainant's contention in ground 7 is unfounded and the law of unjust enrichment has no role to play in a case such as this. The Tribunal's case law, stated, for example, in consideration 20 of Judgment 2097, makes clear that "the existence of a valid contract between the parties, covering the very matters which are the subject of the claim, excludes any claim of unjust enrichment". The complainant's part-time work authorisation was the subject of the complainant's contract of employment with the EPO, and the provisions governing the withdrawal of that authorisation were integral to that contract.

9. The complainant's plea of bad faith in ground 3 is also unfounded, as the majority of the Appeals Committee, whose opinion the Vice-President of Directorate-General 4 accepted in the impugned decision, concluded. The complainant does not provide evidence of the nature that convinces the Tribunal (as she also did not convince the Appeals Committee) that the decision of 30 April 2018 and the related events were motivated by improper purpose, as against being motivated by the Office's desire to ensure its operational needs. The evidence shows that it was for this reason the EPO had imposed higher work production targets for 2018. Neither has the complainant provided convincing evidence (as the majority of the Appeals Committee concluded) that the Office's decision to increase the 50 per cent part-time working percentage to 60 per cent of working at the material time, which set in train the chain of events leading to the 30 April 2018 decision, was arbitrary or was taken in abuse of authority, as she submits, rather than that it was intended to increase productivity in the directorate, as the EPO submits. Consequently, the complainant's claim for exemplary damages is also unfounded.

10. The Tribunal finds that the Office's communications with the complainant concerning the status of her part-time work authorisation at the material time lacked clarity and were confusing. This is what occasioned her request of 30 April 2018 asking the Office to confirm that her part-time work authorisation had in fact been "cancelled", and to transfer her to another directorate. It also occasioned her requests on 4 May 2018, including for the suspension of the decision to withdraw the 30 April 2018 decision and to be granted unpaid leave, or, subsidiarily, parental leave. The facts disclose the various occasions on which the complainant sought clarity on the status of her part-time work authorisation. The Office breached its duty of care towards the complainant in this regard. She is therefore entitled to be paid moral damages resulting from this breach of the EPO's duty of care, as she has provided evidence of the injury caused thereby, and, particularly in light of her physical condition at the material time. For this, the EPO will be ordered to pay her 15,000 euros. The Tribunal however notes that the complainant acknowledges that, on 1 June 2018, she became

aware that the decision to withdraw the part-time arrangements had not been implemented. While requesting a final decision in that respect and seeking confirmation with the Administration, she did not request her parental leave to cease; consequently, her claim to be recredited parental leave for the period between 4 June 2018 and 1 November 2018 is rejected.

11. As the complainant succeeds in part, the EPO will also be ordered to pay the complainant costs in the amount of 5,000 euros.

12. The complainant's claim for an order to reimburse her registration fee for filing her internal appeal is unfounded. The case law states that such costs may only be awarded under exceptional circumstances (see, for example, Judgment 4867, consideration 8), which are not present in this case.

DECISION

For the above reasons,

1. The EPO shall pay the complainant 15,000 euros in moral damages.
2. The EPO shall also pay the complainant 5,000 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 17 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.