

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

P. (No. 7)

v.

EPO

141st Session

Judgment No. 5182

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr G. P. P. against the European Patent Organisation (EPO) on 17 July 2020, the EPO's reply of 21 December 2020, the complainant's rejoinder of 3 May 2021 and the EPO's surrejoinder of 16 August 2021;

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 suspend him from service in the context of a disciplinary procedure.

The complainant is a permanent employee of the European Patent Office, the EPO's secretariat. Facts relevant to this complaint can be found in Judgment 4051, delivered on 26 June 2018, concerning the complainant's third and fourth complaints, in which he challenged the decision to dismiss him for misconduct. Suffice it to recall that in February 2014, as the complainant had been on sick leave for more than 250 days during the previous three years, a medical committee was convened in order to determine whether he was still unable to perform his duties and, if so, whether he fulfilled the conditions for invalidity. The Medical Committee met on 20 February and extended his sick leave until 31 December 2014. No decision on the question of invalidity

was then taken, but a follow-up meeting was scheduled for 4 June 2014. In the event, this meeting had to be cancelled and over the next few months the procedure before the Medical Committee made little progress. In October 2014 the Office informed the complainant that, in view of his “obstructive attitude in different procedures aimed at establishing [his] medical condition since 2013” and “the absence of any substantive medical information in [his] file”, the Medical Committee proceedings were discontinued.

In January 2015 the Office required the complainant to undergo a medical examination, as provided for in Article 62(13) of the Service Regulations for permanent employees of the Office, in order to verify whether his absence on grounds of incapacity was claimed for *bona fide* reasons. When the complainant failed to appear, the Office notified him that he was considered to be on unauthorised absence as from 12 January 2015 and until such time as he made himself available to undergo a medical examination or returned to work.

By a letter of 12 February 2015 the Principal Director of Human Resources informed the complainant that he was suspended from service with immediate effect, as the Office intended to initiate disciplinary proceedings against him for misconduct. This letter further indicated that, during the period of suspension, he should not come to work or enter any EPO premises, that his “User ID” would be deactivated and that he should immediately return his official badge, his keys and any other Office property in his possession. If he wished to access EPO premises, he would have to submit a reasoned request in advance.

Shortly afterwards, the complainant was charged with several counts of misconduct, as detailed in Judgment 4051. The Disciplinary Committee issued a report in March 2015 in which it found that six charges were well founded and that the disciplinary sanction of dismissal would, under normal circumstances, have been appropriate. However, noting that the complainant’s medical condition might be a mitigating circumstance, it recommended that an assessment by a doctor be obtained before a final decision was taken.

By a letter of 7 May 2015 the President of the Office informed the complainant that, in light of the Disciplinary Committee's recommendation, he had decided to suspend the disciplinary procedure and to order a medical examination by a medical practitioner chosen by the Office, "to examine [the complainant's] fitness to work and to be accountable for [his] actions". He emphasised that the complainant was expected to cooperate fully with the medical practitioner and that the Office reserved its right "to resume the disciplinary proceedings at any time and take a final decision [...] without awaiting the result of the medical examination".

After having examined the complainant on 19 May 2015, the medical expert, Dr M., submitted a detailed report on 24 June 2015, one of the main conclusions of which was that the complainant had a serious medical condition and was not accountable for his actions. Dr M. therefore considered that any disciplinary sanction would be inappropriate. In light of Dr M.'s report, the complainant was again placed on sick leave. However, a few months later the disciplinary proceedings against him were resumed and, by a decision of 23 June 2016, the President dismissed him for misconduct. This decision was challenged by the complainant in his third and fourth complaints.

In the meantime, on 11 May 2015, the complainant had submitted a request for review of the decision of 12 February 2015 to suspend him from service. This request was rejected as unfounded by a decision of 6 July 2015 and the complainant then lodged an appeal with the Appeals Committee. On 27 October 2016 the complainant's lawyer was notified that the Appeals Committee had submitted its opinion to the President for decision. On 27 March 2017, having not yet received a final decision on his appeal, the complainant filed a fifth complaint with the Tribunal, impugning what he regarded as an implied decision to reject the appeal. That same day, the Office sent a letter to the complainant to inform him that his appeal was to be remitted to the Appeals Committee for a new opinion, because the Tribunal had recently ruled, in Judgment 3785, that the composition of the Appeals Committee during the period when his appeal was examined was unlawful.

The complainant's fifth complaint was summarily dismissed by the Tribunal in Judgment 3894, delivered on 28 June 2017, on the grounds that it was clearly irreceivable for failure to exhaust the available internal remedies. On 26 June 2018, the Tribunal delivered Judgment 4051, in which it set aside the decision to dismiss the complainant for misconduct and ordered his reinstatement, amongst other things. Pursuant to Judgment 4051, the complainant was reinstated on 23 July 2018 with retroactive effect from the date of his dismissal.

The complainant's appeal against his suspension was re-examined by the Appeals Committee in a different composition. The parties were informed on 4 December 2018 that the presiding member proposed to treat the appeal by a summary procedure and that it would be examined on the basis of the existing case file. However, the parties were invited to submit further comments insofar as they considered that new relevant facts had occurred. Comments were submitted by the Office on 9 January 2019 and by the complainant's lawyer on 17 January 2019. In addition to raising doubts as to the independence and impartiality of the presiding member of the Appeals Committee, he submitted two new claims for relief. Firstly, he sought the reimbursement of costs incurred by the complainant in pursuing his fifth complaint before the Tribunal, which had been summarily dismissed. In this regard, the lawyer asserted that he would not have advised the complainant to pursue that complaint had he been informed in due time that the appeal was being remitted to the Appeals Committee for a fresh examination. Secondly, he claimed moral damages for the excessive duration of the appeal procedure. Having been invited by the Appeals Committee to comment on these new claims, the Office submitted additional comments on 25 July 2019, which were forwarded to the complainant's lawyer for information. The latter's request to respond to these final comments was rejected by the Appeals Committee.

In its opinion dated 20 February 2020, the Appeals Committee decided, by a majority, to treat the appeal by a summary procedure on the basis that it was manifestly irreceivable. The majority held that, as a result of the complainant's dismissal, and particularly following his reinstatement, the appeal had become moot. According to them, the

suspension decision, and likewise the obligation to reside at the place of employment and to seek permission if he wished to travel away from the duty station, had ceased to have any legal effect as from the time of his dismissal. As the complainant neither requested that the suspension decision be retrospectively declared unlawful nor claimed any damages, there was no basis for the Committee to evaluate the suspension decision. Concerning the complainant's claim for costs relating to his fifth complaint, the same majority held that there was no reason to grant this request. Regardless of whether or not the complainant had provided his lawyer with the letter of 27 March 2017 informing him of the remittal of his appeal, the lawyer was aware of the fact that the appeal had been examined by the Appeals Committee, and he should therefore have enquired about the status of the appeal before filing a complaint on the assumption that the appeal had been dismissed. Lastly, concerning the claim for moral damages for the duration of the appeal procedure, the majority considered that an award of 2,000 euros in moral damages would be appropriate.

By a letter of 20 April 2020, the Vice-President of Directorate-General 4 informed the complainant that she had decided, by delegation of power from the President, to reject his appeal as manifestly irreceivable, in accordance with the recommendation of the majority of the Appeals Committee, and to award him 2,000 euros in moral damages for the procedural delay. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, as well as the initial suspension decision of 12 February 2015 and the confirmatory decision of 6 July 2015 taken following his request for review. He claims moral damages in the amount of 10,000 euros for the suspension decision, the associated ban on entering EPO premises and the restrictions concerning his place of residence and travel away from the duty station. He also claims additional moral damages of 10,000 euros for delay in the internal appeal proceedings and moral damages of 10,000 euros for breach of the adversarial principle and the right to be heard. Lastly, the complainant claims costs for the internal appeal procedure (1,874.25 euros), the present proceedings before the

Tribunal (7,000 euros) and the proceedings leading to Judgment 3894 on his fifth complaint (1,071 euros).

The EPO asks the Tribunal to dismiss the complaint as moot and hence irreceivable.

CONSIDERATIONS

1. The complainant impugns the decision of 20 April 2020 by which the Vice-President of Directorate-General 4 rejected his internal appeal against the decision of 12 February 2015 to suspend him from service, while awarding him 2,000 euros for delay in the internal proceedings.

2. The EPO raises an objection to receivability on two grounds. First, it argues that some claims in the complainant's present complaint, namely his claims for the annulment of the suspension decision of 12 February 2015 and for moral damages, were not submitted in the internal appeal proceedings, and he therefore failed to exhaust internal remedies as required by Article VII, paragraph 1, of the Tribunal's Statute. Second, the EPO maintains that the complaint is moot because, as the Appeals Committee noted, the suspension decision ceased to have any legal effect upon the complainant's dismissal, and likewise the obligation to continue to reside at the place of employment and to obtain permission for travel outside the duty station became moot as a result of the dismissal decision. The EPO stresses that, given that there is no rationale for reversing a suspension decision that no longer applies, and as the complainant did not claim any moral damages in his internal appeal in relation to the suspension, the complaint has been moot from the outset and should be dismissed as irreceivable for want of a cause of action.

3. The Tribunal recalls that, according to its consistent case law concerning the receivability of new claims, claims not raised in the internal appeal are, as a rule, irreceivable before the Tribunal for failure to exhaust internal remedies and will not be considered (see, for

example, Judgments 5085, consideration 4, and 5042, consideration 17). However, the Tribunal's case law recognises limited exceptions to this rule in respect of ancillary claims, as stated in Judgment 5003, consideration 2:

“[...] Although [...] new claims before the Tribunal, are, as a rule, irreceivable, the case law allows exceptions to this rule, with regard to ancillary claims, such as claims for costs incurred during the proceedings before the Tribunal (see Judgments 4020, consideration 4, 3945, consideration 5, 3421, consideration 2, 2457, consideration 4, and 475, consideration 1), claims for damages resulting directly from the internal appeal proceedings themselves, for example for the delay in the internal appeal process (see Judgment 4074, consideration 17), and possibly claims for moral damages (see Judgments 4020, consideration 4, and 3080, consideration 25).”

The Tribunal emphasises that not all claims for moral damages can be characterised as claims for consequential relief that can be granted in all circumstances. Where a claim for moral damages rests on a new factual or legal grievance not raised internally (for example, harassment or retaliation), it is irreceivable (see, for example, Judgment 4997, consideration 7, *in fine*). The Tribunal's case law draws a distinction between ancillary moral damage claims, those that flow directly from the contested decision or from procedural defects in the internal proceedings, and claims for moral damages resting on a fresh allegation, whereby a complainant seeks to litigate a new and distinct grievance, while the underlying factual basis of the claim had never been submitted to the internal appeal body.

4. In the present case, the complainant's request for moral damages is ancillary to the impugned suspension decision and to the delay in the internal proceedings that was recognised by the Appeals Committee itself. It thus falls within the category of consequential relief which the Tribunal has the power to grant even if not expressly raised in the internal appeal procedure. As for the complainant's claim for the annulment of the suspension decision, the Tribunal finds that this claim was raised by the complainant in his internal appeal, in which he requested, amongst other things, that the decision of 12 February 2015

be “reversed”. The EPO’s argument that this is a new claim which, as such, is irreceivable in these proceedings, is therefore rejected.

5. Turning to mootness, the EPO contends that the suspension decision ceased to have legal effects when the complainant was dismissed from service. According to the case law, a claim is moot when there is no longer a live controversy, which is a matter to be determined by the Tribunal (see, for example, Judgments 4886, consideration 3, and 4060, consideration 3). The complainant does not allege any residual adverse impact on his legal position flowing from the suspension other than his claim for moral damages. Accordingly, his claim to set aside the suspension decision is moot.

However, it does not follow that the complaint itself is moot, as the EPO contends. Indeed, for the limited purpose of assessing consequential relief (moral damages), the Tribunal may consider the lawfulness and proportionality of the suspension at the material time.

6. Before turning to the merits, one procedural issue needs to be addressed. The complainant requests that the Tribunal hold oral proceedings and summon witnesses, including a medical expert. In the present case, the Tribunal finds the written submissions to be sufficient to reach a reasoned decision, and the complainant’s request is therefore rejected.

7. The complainant alleges that the adversarial principle was breached in the proceedings before the Appeals Committee because he was not given an opportunity to comment on the EPO’s submissions of 9 January 2019 and 25 July 2019. The EPO replies that on 2 August 2019 the Secretariat of the Appeals Committee sent the complainant a complete copy of the appeal file, indicating that the full file was attached; while the covering note specifically mentioned only the Office’s comments of 25 July 2019, the attachment also contained the Office’s submission of 9 January 2019. The EPO further explains that, following remittal, the parties were told the case would be examined on the basis of the existing file, with an invitation to submit additional comments only in the event that new relevant facts had occurred. Its submission

of 9 January 2019 merely stated objective new facts known to the complainant, namely Judgment 4051 and the complainant's reinstatement, whereas the complainant's 17 January 2019 submission advanced new claims that prompted the Appeals Committee to invite the Office to respond, which it did on 25 July 2019.

8. The adversarial principle requires that the parties be informed of submissions and evidence introduced in the proceedings and be afforded an opportunity to comment where such material may influence the outcome. On the record, the complainant received the complete file including both the 9 January and 25 July submissions on 2 August 2019, and had previously filed his 17 January 2019 observations. Given the limited scope of the remittal and the Appeals Committee's decision to use the summary procedure, declining a further round of pleadings did not breach the adversarial principle.

9. The complainant further challenges the Appeals Committee's decision to apply the summary procedure and its reasoning on receivability. On the latter point, the complainant contends that the Appeals Committee mischaracterized his claims, because he did in substance seek a declaration that the challenged decision was unlawful, including as regards the residence and travel constraints, and that the measures had material effects well beyond June 2016. In its reply and also in its surrejoinder, the EPO points to Article 9 of the Implementing Rules for Articles 106 to 113 of the Service Regulations, which permits a summary procedure where an appeal is manifestly irreceivable, and maintains that the complainant had no cause of action because the suspension ceased to have any legal effect when he was dismissed.

10. The Tribunal reiterates that the decision to apply the summary procedure lies within the internal appeals body's discretion (see Judgment 4318, consideration 8). In the present case, as explained in consideration 5 above, the Committee's reasoning on mootness was too restrictive, as it failed to appreciate that, although the complainant's claim to "reverse" the challenged suspension decision may have been moot, a claim for ancillary relief, particularly moral damages, could still

subsist. However, the Committee's decision to resort to the summary procedure, based on undisputed objective facts (the complainant's dismissal and later reinstatement), did not, in itself, constitute a procedural flaw capable of vitiating the internal process.

11. The complainant also alleges that the composition of the Appeals Committee was unbalanced. The Tribunal has already examined similar challenges in earlier cases involving the EPO. While the composition of a previous Committee was indeed found defective in certain respects, remittals were ordered and subsequent reforms were implemented. The Tribunal's case law recognises that rules may be amended and that a newly constituted Committee, appointed in accordance with the applicable provisions, is not *per se* unlawful merely because of such amendments (see, for example, Judgment 3895, consideration 4). In the present case, the complainant has identified no specific conduct indicating personal bias or any breach of the applicable requirements relating to the composition of the Committee (see, for example, Judgment 3438, consideration 8). This allegation is therefore unfounded.

12. The complainant contends that the decision to suspend him does not meet the conditions of Article 95(1) of the Service Regulations on the ground that he was on extended sick leave and that a subsequent medical evaluation found that there had been no misconduct as his conduct had been influenced by mental illness.

13. Article 95(1) of the Service Regulations relevantly provides:

"Suspension

If an allegation of serious misconduct is made against a permanent employee and if the misconduct alleged is of its nature incompatible with his continuing in service, whether the misconduct amounts to failure to carry out his official duties or to a breach of law, the appointing authority may decide to suspend him forthwith."

Article 95(1) requires only the existence of an allegation of serious misconduct of a nature incompatible with continued service; neither this provision nor the Tribunal's case law requires that the misconduct

be established prior to the decision to suspend (see, for example, Judgment 4658, consideration 2). Moreover, staff members on extended sick leave remain in service within the meaning of the Service Regulations. Sick leave does not shield them from suspension measures.

14. The complainant further alleges that the suspension measure was disproportionate and unnecessary, and that the letter of 12 February 2015 informing him of the suspension did not contain sufficient reasons.

The Tribunal has consistently held that a suspension imposed in the context of disciplinary proceedings, whether with or without pay, is an interim measure that does not prejudice the outcome of the disciplinary process. As such a decision involves the exercise of discretion, the Tribunal's review is limited. Importantly, the lawfulness of such a measure must be assessed at the date of its adoption; later developments may bear on its continuation but do not retroactively affect its initial legality. The Tribunal relevantly stated the following in Judgment 4658, consideration 2:

“As the Tribunal has stated on a number of occasions, a measure of suspension decided in the context of disciplinary proceedings, with or without pay, is an interim measure which in no way prejudices the decision to be taken on the merits as to whether a disciplinary sanction should be imposed on the official concerned. However, since it imposes a constraint on the official, it must be legally founded, justified by the requirements of the organisation and in accordance with the principle of proportionality. A measure of suspension will not be ordered except in cases of misconduct (see, in particular, Judgments 4519, consideration 2, 3035, consideration 10, and 2365, consideration 4(a)). Such a decision lies at the discretion of the organisation's executive head. It is subject therefore to only limited review by the Tribunal and will not be set aside unless it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with abuse of authority, or if a clearly mistaken conclusion was drawn from the evidence (see, in particular, Judgments 4586, consideration 8, 4519, consideration 2, 4452, consideration 7, 3037, consideration 9, 3035, consideration 10, 2698, consideration 9, and 2365, consideration 4(a)). In order to assess whether a measure of suspension is lawful, the Tribunal must determine whether the conditions required to take such a measure were met at the time it was ordered, all subsequent facts being irrelevant (see, in particular, Judgments 3036, consideration 13, 3035, consideration 12, and 2365, consideration 4(c)). Where a measure of suspension has been

extended, the Tribunal must also determine whether the conditions for each extension decision were met at the time that decision was taken (see, in particular, Judgment 4586, consideration 10). Lastly, while an authority may adopt a measure of suspension if it considers, on the basis of the evidence before it and at its own discretion, that the charge of misconduct against an official is reasonable, there is no need at this stage to prove that the accusations are well founded (see, in particular, Judgments 3036, consideration 13, 3035, consideration 14(a), and 2698, consideration 11).”

15. Regarding the alleged failure to provide sufficient reasons for the suspension decision, the initial decision of 12 February 2015 cited several incidents, including the complainant’s failure to attend medical examinations, which led to his being considered absent without authorisation, as well as other breaches under Articles 26, 62, 63 of the Service Regulations and Circular No. 22. It stated that the matter would be referred to the Disciplinary Committee and that the complainant was immediately suspended, but with full pay. The Tribunal need not assess whether the allegations were ultimately established, but whether they were reasonably such as to justify an interim suspension, in order to protect the Organisation’s interests, reputation, or workplace integrity, for example, or for the preservation of evidence (see Judgments 4948, consideration 16, and 4658, consideration 2). In light of the seriousness of the alleged misconduct including the complainant’s unauthorised absences, the EPO’s decision to impose an immediate suspension fell within its margin of discretion. The modalities of implementation, including obligation to reside at the place of employment and to obtain permission to travel outside the duty station, were not inconsistent with the Service Regulations. Moreover, the report of 23 February 2015 detailing the conduct which had led the Office to suspend the complainant was provided to him shortly after the suspension took effect. The Tribunal recalls that reasons need not be exhaustively set out in the initial notification, provided they are conveyed within a reasonable time by other means to safeguard the right of defence (see, for example, Judgment 4081, consideration 5). The initial suspension was therefore not unlawful for lack of reasoning.

16. The Tribunal next considers whether maintaining the suspension after the medical assessment of 24 June 2015 was proportionate. It is appropriate to quote findings made in Judgment 4051:

“12. [...] The medical expert submitted his conclusions, the gist of which was that: (a) the complainant had a serious medical condition and was not accountable for his actions; (b) any disciplinary sanction would therefore be inappropriate; (c) he urgently needed different treatment; (d) retirement on invalidity grounds was not recommended at that stage, as it was necessary to see how the complainant would respond to more appropriate treatment; (e) it was important to bring about better cooperation from the complainant and his doctors.

13. Given that the findings of the medical expert were quite unequivocal as to the complainant’s non-accountability for his actions (that is to say the actions with which he was originally charged), the Tribunal considers that the only decision that the President could legitimately take at that stage was to close the disciplinary case without any sanction. Instead, partly on the basis of subsequent events (which were not comprehended in the initial charges and hence were never examined by the Disciplinary Committee), the President, in error and in violation of due process, re-opened the suspended disciplinary proceedings and, in the letter of 23 June 2016, imposed the disciplinary sanction of dismissal upon the complainant. That dismissal decision, as well the impugned decision of 15 November 2016 which confirmed it, must therefore be set aside.”

The Tribunal held in Judgment 4051 that “the only decision that the President could legitimately take at that stage was to close the disciplinary case without any sanction”. By analogy, the continued application of the suspension, which derived solely from the pending disciplinary process, could no longer serve a legitimate organisational purpose. The precautionary aims that may initially have justified the measure, such as protecting the workplace or preserving evidence, had already been fulfilled. The Tribunal considers that, after the medical report of 24 June 2015, the complainant’s situation should have been addressed exclusively within the framework of medical management.

17. Since suspension imposes a constraint on the staff member, it must be legally founded, justified by the requirements of the organisation, and in accordance with the principle of proportionality (see, for example, Judgment 4519, consideration 2). By failing promptly to reconsider or lift the suspension in light of the medical conclusions, the EPO breached

its duty of care and the principle of proportionality. Maintaining the complainant's exclusion from duty and from entering the EPO's premises after he had already been found medically non-accountable was objectively unnecessary and, in effect, punitive. While the initial decision of February 2015 was justified on the information then available, its continuation beyond the medical findings of June 2015 was unnecessary and hence disproportionate. The complainant is therefore entitled to moral damages for the distress and uncertainty caused by this undue prolongation, which the Tribunal fixes at the amount of 10,000 euros, which the complaint claims.

18. The complainant claims moral damages for the excessive duration of the internal appeal. He has not demonstrated he suffered moral injury beyond what was already compensated by the EPO's award of 2,000 euros. Absent such proof, no further moral damages are justified.

19. The complainant also seeks reimbursement of costs incurred in the earlier proceedings culminating in Judgment 3894, contending that those costs would have been avoided had his lawyer been timely informed that the case was being remitted to the Appeals Committee. However, in Judgment 3894, the complaint was summarily dismissed, and no costs were awarded. The complainant cannot seek, in the present case, to reopen the issue of costs relating to a case that has already been adjudicated. Accordingly, this claim must be dismissed.

20. The complainant also seeks reimbursement of legal costs incurred in the internal appeal proceedings and in the present complaint. As provided in Article 7(9) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, any costs incurred by the appellant in the course of the appeal proceedings, in particular fees payable to a person chosen from outside the Organisation to represent or assist him, shall be borne by him, unless the competent appointing authority decides otherwise. The Tribunal has consistently held that costs of this kind may be awarded only in exceptional circumstances (see, in particular,

Judgments 4217, consideration 12, and 4156, consideration 9), which do not exist in the present case. Accordingly, this claim is dismissed.

21. As the complainant succeeds in part, he is entitled to costs for the proceedings before the Tribunal, which are determined at the amount of 7,000 euros.

DECISION

For the above reasons,

1. The EPO shall pay the complainant 10,000 euros in moral damages.
2. The EPO shall pay the complainant 7,000 euros for legal costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 20 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.