

C. (No. 11)

v.

EPO

141st Session

Judgment No. 5193

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr P. C. against the European Patent Organisation (EPO) on 8 September 2017 and corrected on 19 December 2017, the EPO's reply of 7 May 2018, the complainant's rejoinder of 9 October 2018, corrected on 31 October 2018, and the EPO's surrejoinder of 11 February 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 contests the implied rejection of his request for reimbursement of the costs he incurred in the proceedings before the Disciplinary Committee.

Additional facts regarding the context of this case may be found in Judgments 3958, 3959, 3960, 3961, 4632 and 4633 on the complainant's third, fourth, fifth, sixth, seventh and eighth, and thirteenth complaints, respectively.

On 3 December 2014, the complainant, a member of an EPO Board of Appeal, was informed that he was accused of systematically and repeatedly disseminating defamatory information to the detriment of the EPO and of the personal reputation of members of the Administrative

Council, of the President of the European Patent Office, the EPO's secretariat, and other staff.

By decision CA/D 12/14 of 11 December 2014, the Administrative Council, which was the complainant's appointing authority, suspended him from service with immediate effect pending the investigation into the alleged misconduct.

In March 2015, the Administrative Council informed the complainant that, based on the proposal of its chairperson, it had decided to initiate disciplinary proceedings against him and to continue his suspension until the end of the disciplinary proceedings.

On 23 June 2015, the Disciplinary Committee issued its opinion, in which it concluded that the complainant had engaged in misconduct, which was incompatible with the proper carrying out of his duties. The suspension decision was extended, with half of the complainant's basic salary being withheld until a final decision was taken. Criminal proceedings were also initiated against the complainant in national courts.

On 8 February 2017, the complainant filed a request for decision with the Administrative Council pursuant to Article 107(1) of the Service Regulations for permanent employees of the Office. He asked the Council, among other things, to take a decision to reimburse him for the legal costs incurred in the disciplinary procedure. On 27 April 2017, he was informed that, according to Article 105 of the Service Regulations (formerly Article 95(5)) – which stated that, if an employee is subject to criminal proceedings for conduct giving rise to a suspension, a final decision in a disciplinary procedure shall be taken only after a verdict of the court hearing the case has become final – no decision was taken in respect of the pending disciplinary proceedings against him.

On 17 May 2017, the complainant filed a request for review against what he considered to be an implied decision rejecting his request of 8 February 2017. He asked that his request for review be dealt with during the 152nd meeting of the Administrative Council.

By decision CA/D 7/17 of 29 June 2017, the Administrative Council amended the provisions of the Service Regulations relating to the internal appeal procedure. These amendments entered into force on 1 July 2017. A transitional provision provided that until the new Appeals Committee was operational, the former Committee would continue to operate and apply the appeal procedure in place before decision CA/D 7/17. On 10 July 2017, the complainant asked the Administrative Council to clarify the procedural status of his request for review in light of the new amendment. On 14 July 2017, he was informed of the Council's decision not to reappoint him as a member of the Board of Appeal.

On 8 September 2017, the complainant filed his eleventh complaint with the Tribunal challenging the implied rejection of his 17 May 2017 request for review. On the complaint form, he indicates 28 June 2017 as the date on which he notified the EPO of his unanswered claim.

By decision CA/D 19/17 of 10 October 2017, the Administrative Council maintained the decision to suspend the complainant from duties given the ongoing national criminal proceedings against him "within the meaning of Article 105" of the Service Regulations.

Following the delivery of Judgments 3958 and 3960 on 6 December 2017, the Council withdrew the suspension decision and decided that the complainant was reinstated under the authority of the President of the Boards of Appeal "until the end of his mandate on 31 December 2017". The complainant also received material and moral damages and costs.

On 13 December 2017, the Administrative Council issued decision CA/D 23/17 in which it found that the complainant had engaged in misconduct and decided to impose on him the sanction of demotion to the lowest grade and step in his job group. It also decided to reject his request for reimbursement of the costs incurred in these proceedings. The complainant was notified of this decision on 14 December 2017.

Also on 13 December 2017, the Council took decision CA/D 24/17 in which it rejected, among other things, the complainant's request for decision of 8 February 2017 and his request for review of 17 May 2017

on the ground that those requests were covered by final decision CA/D 23/17.

In his eleventh complaint, the complainant asks the Tribunal to set aside the implied rejection of his 17 May 2017 request for review and the implied rejection of his 8 February 2017 request for an individual decision. He requests that the EPO be instructed to take a reasoned decision on the matter of the requested reimbursement of legal costs in the disciplinary proceedings and communicate its response to him promptly and diligently, taking due and proper account of the alleged serious procedural and substantive flaws tainting the proceedings before the Disciplinary Committee, and to duly reimburse him for all costs incurred in those proceedings. He claims moral and exemplary damages totalling at least half a year of his gross salary. Additionally, he seeks the reimbursement of his legal fees, including for the internal appeal procedure. Lastly, he asks to be paid interest and any other relief as the Tribunal determines to be just, necessary, appropriate and equitable.

The EPO argues that the complaint has become moot in view of the issuance of decision CA/D 24/17 on 13 December 2017. On a subsidiary basis, it asks the Tribunal to dismiss the complaint as irreceivable and unfounded. It further asks the Tribunal to order the complainant to pay a portion of its legal costs in the amount of 15,000 euros.

CONSIDERATIONS

1. It is unnecessary to descend into more detail about the events leading up to and following the filing of the complaint to which this judgment relates. Suffice it to note that the Administrative Council initiated disciplinary proceedings against the complainant in March 2015. In June of that year, the Disciplinary Committee determined that the allegations against the complainant were proved.

2. In February 2017, the complainant requested a decision under Article 107(1) of the Service Regulations. The import of that provision is that it enables an employee of the EPO to submit a written request

that an individual decision relating to her or him be taken by the competent appointing authority. Article 107(2) requires the appointing authority, as a generalisation, to take a decision within two months of the request though there are qualifications to this generalisation. According to Article 107(3), if, within two months, the request has not been replied to, there is deemed to be an implied decision rejecting the request.

3. The complainant's request for a decision in this matter was dated 8 February 2017. It was made to the Administrative Council. There was one substantive request, namely that "the Council [was] requested to order the reimbursement of the [...] legal expenses for the period between 14th April and 3rd June 2015 as detailed in the annexed invoice of 21st December 2016". Later in the request of 8 February 2017, three additional matters emerged. The first was that the invoice merely related to the legal expenses incurred in respect of the proceedings before the Disciplinary Committee between 14 April and 3 June 2015. The second was that the complainant anticipated incurring further legal expenses. The third was that the complainant "hereby maintain[ed] a claim for reimbursement and/or compensation in respect of all outstanding legal expenses incurred in respect of the impugned disciplinary procedure". It is not at all clear, on its face, whether this last observation was intended to be a further formal request under Article 107 of the Service Regulations. On balance, the better view is that it was not.

4. There was no reply to the request of 8 February 2017 within two months, and the complainant thereafter acted on the basis that there had been an implied decision rejecting his request. This led the complainant to file a request for review of the implied decision on 17 May 2017, and, ultimately, to file a complaint with the Tribunal on 8 September 2017.

5. The EPO raises a number of preliminary issues concerning the complaint. It is only necessary to address one, namely that the request for a cost order is premature as the complainant should have awaited

the final outcome of the disciplinary proceedings. As a consequence, the complaint is irreceivable.

As is apparent from his request dated 8 February 2017, summarized in consideration 3 above, the complainant plainly accepted that his request for a decision as to the costs he incurred in the proceedings before the Disciplinary Committee would be likely to be followed with further requests to similar effect for further costs incurred. The following observations of the Tribunal in considerations 4 and 5 of Judgment 4632, on the complainant's seventh and eighth complaints, are apt to apply in this matter:

“4. One of the threshold issues raised by the EPO is to the following effect. The complainant cannot challenge the disciplinary procedure or his suspension until there is actually an express final decision (or even an implicit final decision) by a competent authority. It observes that any of the complainant's claims or requests made in respect of the lawfulness of the disciplinary proceedings or the suspension decision are irreceivable as the complainant would otherwise be allowed to contest the disciplinary procedure irrespective of whether it had reached its end. The EPO cites Judgments 1363, consideration 22, and 3198, consideration 13. This legal proposition is correct, and its rationale was explained in Judgment 3961, consideration 4 (another case concerning the complainant):

‘[...] once the ongoing disciplinary proceedings against the complainant have concluded and a final decision within the meaning of Article VII of the Statute of the Tribunal has been delivered, the complainant may then challenge that decision and any part of the proceedings. In the meantime, in the absence of a final challengeable decision, this complaint is premature. Consistent case law holds that procedures may include many steps which lead to a final, impugnable decision, but those steps cannot be challenged separately. To allow otherwise would open procedures to a senseless and paralysing number of individual appeals that would serve no useful purpose (see Judgments 3876, under 5, 3700, under 14, 3433, under 9, and 3512, under 3).’

5. The complainant's request did not proceed on the premise that there had been a final decision on the disciplinary case brought against him. Rather it was to terminate prematurely (the complainant would say appropriately) the disciplinary proceedings. This was only a step in the process [...] Accordingly, his two complaints are irreceivable and should be dismissed.”

6. As things stood at the date of the filing of this complaint, which is the point in time when receivability is to be assessed (see, in this regard, Judgments 5063, consideration 4, and 1968, consideration 5), the disciplinary proceedings had not been concluded. The complainant should have awaited the conclusion of the disciplinary proceedings before claiming his costs. He provides no effective answer to this argument. His complaint is therefore irreceivable and should be dismissed.

7. The complainant seeks the disclosure of certain documents. They do not appear to the Tribunal to be relevant to the issue of receivability as just discussed, if relevant to the proceedings at all. No disclosure will be ordered.

8. It is lastly necessary to deal with a counterclaim made by the EPO seeking a cost order against the complainant. The Organisation seeks the payment of 15,000 euros. It does so for much the same reasons as advanced in the complainant's ninth complaint. The Tribunal's response to those reasons in that matter is:

“[The EPO] argues in its reply, that the complainant has ‘tried to create and then exploit procedural flaws, attack the disciplinary procedure prematurely, and needlessly duplicate proceedings, all in an effort to draw attention away from the serious misconduct established as proven by the [Disciplinary Committee]’. The Tribunal doubts such an inference can be drawn as to what has motivated the complainant. At base, the EPO's grievance is about the complainant's use of Article 107 of the Service Regulations. But his use of Article 107 was open to him having regard to its terms. [...]”

The same applies here. The counterclaim is unfounded.

9. In the result, the complaint should be dismissed, as should the counterclaim for costs made by the EPO.

DECISION

For the above reasons,

The complaint is dismissed, as is the counterclaim for costs.

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.