

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

d. I. F. d. A. (No. 6)

v.

EPO

141st Session

Judgment No. 5196

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr P. d. I. F. d. A. against the European Patent Organisation (EPO) on 11 April 2024 and the EPO's reply of 24 July 2024, no rejoinder having been submitted by the complainant;

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 amount of moral damages awarded to him following the setting aside of a decision that was declared unlawful.

The complainant, who joined the European Patent Office, the EPO's secretariat, in 1987, ceased his employment on 1 August 2006 on the grounds of permanent invalidity and, from that time, received an invalidity pension. He was then granted an invalidity allowance with effect from 1 January 2008, in accordance with a change to the applicable scheme, introduced by decision CA/D 30/07 of 14 December 2007.

Following the reform introduced by decision CA/D 2/15 of 26 March 2015, the invalidity scheme was further amended, in particular by transforming the invalidity allowance into a retirement pension for health reasons plus a compensatory payment – Article 36 of the decision having inserted an Article 14 to this effect in the Pension Scheme Regulations with effect from 1 January 2016 (Article 72(2) of the decision). This reform also prohibited, from that date until the statutory retirement age, the performance of any gainful activity or employment by the recipients of this new pension, pursuant to Articles 37 and 72(3) of the aforementioned decision, as well as the new Article 15 of the Pension Scheme Regulations. Furthermore, Article 29 of the same decision opened up the possibility of transitional measures being taken to cover situations such as the one in which the complainant found himself.

The Head of the Salaries, Pensions and Administrative Services Department informed the complainant of these changes and this new prohibition by letter of 17 July 2015, asking him to cease any gainful activity or employment before 31 December 2015 and to provide proof of this to his department. The Office also sent the complainant, on 20 October 2015, a provisional calculation of the new retirement pension on health grounds and, on 18 November 2015, that of the compensatory payment due, in accordance with Article 72(2) of decision CA/D 2/15. In two requests for review, the complainant contested this ban on all gainful activities, as well as the new provisional calculations in relation to his pension. These requests were rejected by the Directorate for “H[uman] R[esources] Operations” on 11 December 2015.

On 10 March 2016 the complainant lodged an internal appeal against this decision, in which he requested that the ban on gainful activities for recipients of a pension on health grounds be lifted, that the Office provide him with the information necessary to understand the calculation of this new pension, that he be awarded moral damages of 500,000 euros and that he be reimbursed for the costs incurred in the internal proceedings.

The appeal was forwarded to the Internal Appeals Committee, which issued a first reasoned opinion on 7 December 2016. However, pursuant to the Tribunal's ruling in Judgment 3785 concerning the improper composition of the Appeals Committee, the President referred the complainant's appeal back to the Appeals Committee for a fresh examination. Following the unanimous recommendation of the Committee in its opinion of 12 March 2020, the President of the Office summarily rejected, on 27 March 2020, the complainant's appeal as irreceivable for lack of a cause of action, while compensating the complainant for the excessive length of the proceedings.

The complainant challenged this decision before the Tribunal, which set it aside in Judgment 4554, while remitting the case to the EPO so that the merits of the complainant's internal appeal could be given proper consideration by the Internal Appeals Committee and so that a new final decision could be issued thereon. The Tribunal also awarded the complainant the sum of 7,000 euros for the moral injury suffered as a result of the fact that the unlawful rejection of the complainant's appeal had placed him in an uncertain and stressful situation.

The Appeals Committee issued its new opinion on the internal appeal on 24 November 2023, recommending, by a majority of its members, that the ban on the performance of any gainful activity or employment be lifted in respect of the complainant, that a change be initiated in Article 15 of the Pension Scheme Regulations so as to ensure that it complies with the principle of proportionality, that the complainant be awarded moral damages of 3,500 euros, and that costs for the internal proceedings be reimbursed. While recognising that it could not recommend the setting aside of a general rule, the Committee nevertheless considered that it could recommend that it not be applied in a particular case, taking the view that the ban imposed was disproportionate and that the Office was failing in its duty of care by imposing a rigid rule without taking account of individual situations. The majority of the Committee considered that the ban on any gainful activities was disproportionate, and based this view on the fact that, as the complainant's reinstatement could not be envisaged, he had a legitimate interest in being able to pursue gainful activities unrelated to

the Office's work. His individual situation should therefore have been taken into account and consideration given to granting him a transitional arrangement in application of Article 75 of decision CA/D 2/15 of 26 March 2015. The Committee also recommended, unanimously this time, that the complainant be given a clear explanation of the calculation of his pension.

On 22 January 2024 the Vice-President of Directorate-General 4 informed the complainant of the Office's decision to follow the Appeals Committee's recommendations. As a result, the complainant was now authorised to perform gainful activities or employment while retaining his retirement pension on health grounds, he was awarded moral damages of 3,500 euros and his costs for internal proceedings would be reimbursed upon presentation of supporting documents. She also advised him that he would be provided with the necessary information to understand the calculation of his pension. That is the impugned decision, in that it has the effect of implicitly refusing to pay the complainant the sum of 500,000 euros claimed as compensation for the moral injury suffered following the aforementioned letter of 17 July 2015.

Details of the calculation of the complainant's pension were provided to him in written exchanges in February and April 2024, and a telephone conversation was organised to answer his questions.

The complainant asks the Tribunal to set aside the implicit decision not to award him compensation of 500,000 euros for the injury suffered, under all heads, and to order the payment of this sum. He also seeks an order to provide more details on the method of calculation of his retirement pension on health grounds, in particular concerning the guaranteed nominal value, the payment of costs for internal proceedings, and an award of 15,000 euros in costs.

The EPO asks the Tribunal to dismiss the complaint as partially irreceivable and entirely unfounded.

CONSIDERATIONS

1. The complaint has two main aspects: firstly, a request for compensation for the various injuries that the complainant alleges to have suffered as a result of the Organisation's conduct towards him and, secondly, a request that the Tribunal order the Organisation to provide him with further details on the method of calculation of his retirement pension on health grounds, in particular concerning the guaranteed nominal value.

2. As regards the first aspect of the complaint, the complainant seeks the payment of the total sum of 500,000 euros, which he justifies as follows: 270,000 euros in compensation for the material injury suffered as a result of "loss of income and assets"*; 150,000 euros to compensate for the moral injury suffered as a result of "serious damage to his health[,] dignity and professional status resulting from the inactivity [that has been] arbitrarily imposed on him"* since 1 January 2016; and 80,000 euros to cover the injury resulting from "suffering and the irreparable loss of enjoyment of life for 8 years"*.

3. The Tribunal notes, however, that although the complainant had indeed claimed the sum of 500,000 euros in the internal proceedings, he had only justified the full sum by the compensation for the moral injury suffered.

As no claim for material damages was put forward in the internal appeal, the complainant cannot claim for such compensation before the Tribunal (see, in this connection, Judgments 4801, consideration 6, 4796, consideration 16, 4752, consideration 2, 4304, consideration 8, and 3967, consideration 5).

It follows that the present complaint must be declared irreceivable in so far as it seeks compensation for material injury.

* Registry's translation.

4. With regard to the moral injury allegedly suffered, including “suffering and the irreparable loss of enjoyment of life for 8 years”*, the complainant seeks the award of the total sum of 230,000 euros. In order to justify this amount, he invokes serious harm to his health, dignity and professional status resulting from the inactivity that was arbitrarily imposed on him.

However, the Tribunal notes, first of all, that the complainant produces no concrete evidence in support of his claim that could constitute at least the beginning of a justification to prove the relevance of the amount thus claimed. It should also be noted that this moral injury has already been the subject of two forms of compensation: on the one hand, by Judgment 4554, in which the Tribunal awarded the complainant the sum of 7,000 euros in compensation for the moral injury resulting from the unlawful rejection of his appeal for lack of a cause of action, set out in the decision of the President of the Office of 27 March 2020 following examination under the summary procedure, which had the effect of placing the complainant in an uncertain and stressful situation; on the other hand, by the impugned decision, in which the complainant was awarded the sum of 3,500 euros in compensation for the moral injury suffered due to the prohibition on performing any additional gainful activities or employment from 1 January 2016.

Added to this is the fact that, for the period from 1 July 2008 to 31 December 2015, the complainant does not assert, nor does he produce any concrete evidence that could prove that he actually performed gainful activities or employment during this period.

Lastly, although the complainant seeks “any other compensation which the Tribunal finds [it] appropriate to award”*, a claim worded in this way is, in any event, too vague to be regarded as receivable (see, in this regard, Judgments 4994, consideration 18, 4796, consideration 16, and 4719, consideration 7).

In the circumstances, the Tribunal considers that fair compensation has already been made for all the moral injury suffered by the complainant.

* Registry’s translation.

5. As regards the second aspect of the complaint, the Tribunal has already noted the following in Judgment 4554, consideration 7:

“The complainant [...] requests the Tribunal to order the EPO to ‘[p]rovide unambiguous details of the method of calculating the “new” pension for health reasons, in particular with regard to the guaranteed nominal value’.

Thus framed, this claim can only be dismissed as irreceivable. Indeed, it is firmly established by the case law that it is not for the Tribunal to make orders of this kind against organisations (see, for example, Judgments 2370, consideration 19, 2541, consideration 13, 3506, consideration 18, or 4038, consideration 19).

On this point, the Tribunal merely notes that, although the file shows that on 20 October and 18 November 2015, the EPO sent the complainant tables showing the method used to calculate his pension, it cannot be considered, as the Organisation submits, that the complainant’s request for information has thereby become moot, particularly since the tables were not accompanied by any explanations in words and, moreover, they were expressly presented as being only provisional. If the complainant were to continue to wish for additional information concerning the method used to calculate his pension, the Organisation should, under its duty to provide information and its duty of care, endeavour to meet his expectations, provided, at least, that they are formulated with sufficient clarity (see, on this point, Judgment 3963, consideration 2).”

Concerning the irreceivability of a request for an order, the Tribunal sees no reason to rule differently in the present case.

With regard to the provision of information to the complainant concerning the calculation of his pension, the Tribunal notes that the file shows that the Office provided him with additional information in writing in February and April 2024, and that oral clarifications were also provided in response to his questions during a telephone conversation that took place in April 2024. The statements to this effect made by the Organisation in its reply are not disputed by the complainant, who has not filed a rejoinder.

This claim is therefore rejected.

6. The complainant requests that the Office be ordered to reimburse him the costs for the internal proceedings.

The Tribunal recalls, however, that consistent precedent has it that costs for internal appeal proceedings within international organisations may only be awarded under exceptional circumstances (see Judgment 4554, consideration 7, as well as Judgments 5034, consideration 21, 5030, consideration 10, 4963, consideration 24, 4962, consideration 26, 4961, consideration 26, 4819, consideration 23, and 4217, consideration 12). Such exceptional circumstances have not been established in the present case.

At the present stage of the proceedings, this claim cannot be granted.

7. As the complaint must be dismissed in its entirety, the complainant is not entitled to the amount he claims by way of costs for the present proceedings.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 November 2025, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, 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.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.