

L. (No. 11)

v.

EPO

142nd Session

Judgment No. 5308

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr M. L. against the European Patent Organisation (EPO) on 6 August 2021 and the EPO's reply of 15 July 2022, 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 decision to adopt the new Rules of Procedure of the Appeals Committee in July 2014 pursuant to decision CA/D 2/14.

Additional facts regarding the context of this case may be found in Judgment 4550, delivered on 6 July 2022, on the complainant's ninth complaint.

The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat, who retired on 1 December 2015. He was a full member of the Appeals Committee appointed by the Central Staff Committee when the Administrative Council adopted decision CA/D 2/14 on 28 March 2014, which amended the legal framework for social dialogue, in particular Article 111(3) of the

Service Regulations for permanent employees of the Office. In the framework of the so-called “social democracy” reform, the President of the Office adopted, on 30 June 2014, the new Rules of Procedure of the Appeals Committee, which entered into force on 1 July 2014. In light of Article 2(5) and Article 111(3) of the Service Regulations, the Rules of Procedure of the Appeals Committee were no longer adopted by the Appeals Committee itself but by the President of the Office after consultation with the Chair of the Administrative Council.

On 20 July 2014, the complainant filed a first request for review with the President challenging the new Rules of Procedure. The President rejected his request on 19 September 2014 for lack of a cause of action since the Rules of Procedure were meant to organise the internal functioning of the Appeals Committee and members of the Appeals Committee may derive no prerogatives from these rules. He also held that the request was unfounded. The complainant filed an appeal (RI/2014/147) on 25 September 2014 against that decision. He requested *inter alia* that the Rules of Procedure in force before 1 July 2014 be applied to his internal appeal, that the new Rules of Procedure be quashed, that the former rules be reinstated, that decision CA/D 2/14 be quashed, and that the internal appeals filed after 1 July 2014 be re-examined. On 29 September 2014, the complainant filed a second appeal (RI/2014/138) challenging the rejection of another request to review decision CA/D 2/14. His two internal appeals were consolidated into a single procedure by the Chair of the enlarged chamber of the Appeals Committee.

On 5 March 2020, the enlarged chamber of the Appeals Committee issued its opinion on several appeals lodged against the “social democracy” reform, including appeals RI/2014/138 and RI/2014/147 filed by the complainant. Regarding the complainant’s challenge to the new Rules of Procedure introduced by the President’s decision of 30 June 2014, the enlarged chamber of the Appeals Committee held that there were no rules vesting the complainant, although a member of the Appeals Committee at the time, with any responsibility to act so as to “keep the regulations for the [Appeals Committee] lawful”. It therefore found that the complainant’s consolidated appeal was on that aspect

manifestly irreceivable. To the contrary, the enlarged chamber of the Appeals Committee considered that the complainant was receivable to contest decision CA/D 2/14 because those who, like him, had lodged their appeal in their capacity as a member of a statutory body, had a cause of action given that decision CA/D 2/14 had a direct adverse impact on them in the discharge of their functions. The enlarged chamber of the Appeals Committee noted that, following the modifications introduced by the reform, the complainant's mandate as a full member of the Appeals Committee had ended prematurely on 1 October 2014, despite the fact that he had been appointed by the Central Staff Committee to perform that function until the end of the year. The enlarged chamber of the Appeals Committee recommended granting him 600 euros in moral damages for undue delay in the internal appeal procedure. The majority recommended awarding him 2,000 euros in view of the "unjustified interference with [his] freedom of association" right as a result of the premature termination of his term of office on the Appeals Committee.

By letter of 18 May 2020, the complainant was informed of the President's decision to endorse the aforementioned recommendations of the majority of the Appeals Committee for the reasons it stated. However, the President disagreed with the finding that the premature termination of the complainant's term of office had violated his individual rights; he rather considered that it violated the staff representation's rights. He therefore decided to award the complainant moral damages for the early termination of his term of office, but the amount would be allocated to the training and duty travels budgetary line of the Staff Committee. In accordance with the Appeals Committee's recommendation, the President also awarded the complainant compensation for the length of the internal proceedings insofar as he had lodged his appeal in his individual capacity. The letter expressly indicated that it was a final decision regarding *inter alia* appeals RI/2014/138 and RI/2014/147. The complainant impugned that decision in his ninth complaint filed on 5 August 2020.

On 6 August 2021, the complainant filed the present complaint challenging the decision “implicitly” rejecting his appeal (RI/2014/147) of 25 September 2014. He explains that this implicit decision was notified to him by the surrejoinder the EPO filed before the Tribunal regarding his ninth complaint and that it was communicated to him on 26 May 2021. On his complaint form, he indicates that he received a final decision on 26 May 2021, which is the decision he now impugns.

The complainant asks the Tribunal to set aside *ab initio* the 30 June 2014 decision to introduce the new Rules of Procedure of the Appeals Committee, declare the new Rules of Procedure null and void *ab initio*, quash the underlying decision CA/D 2/14, and declare null and void *ab initio* Article 2(5) of the Service Regulations and amended Article 111(3) of the Service Regulations. He also requests the Tribunal to ensure that all appellants, whose appeals were treated after 1 July 2014, are offered the possibility to have their appeals re-examined again by the Appeals Committee, “with other members and Chair, as if these appeals were never treated before, thus, such that the final decision of the President for these cases is declared null and void”. In addition, he seeks that the previous Rules of Procedure be reinstated. Lastly, he claims compensation for excessive delay in treating his internal appeal, punitive damages for trying to deny staff access to the Tribunal by refusing to provide the information needed to observe time limits before the Tribunal, and costs.

The EPO asks the Tribunal to reject the complaint as irreceivable. Subsidiarily, the EPO asks the Tribunal to reject the complaint as unfounded.

CONSIDERATIONS

1. In the complaint form, the complainant indicates that he received a final decision on 26 May 2021, which is the decision he now impugns. However, he identifies the decision he challenges in this complaint as the new Rules of Procedure for the Appeals Committee, which came into force from 1 July 2014, with decision CA/D 2/14 as the underlying unlawful decision and Articles 2(5) and 111(3) of the

Service Regulations as the unlawful implementing decisions. Although the complainant advances a number of grounds to support the complaint on its merits, there are two circumstances which lead to its resolution on procedural grounds as irreceivable *ratione materiae*, as well as by the operation of the principle of *res judicata*.

2. One circumstance is revealed in the complainant's outline of the factual background to the case as a precursor to identifying the decision he challenges. He states, among other things, that on 26 May 2021, he was notified in paragraph 65 of the surrejoinder, which the EPO filed with the Tribunal regarding his ninth complaint, that the EPO "had without communication implicitly decided by final decision to reject [his] appeal concerning [the New Rules of Procedure]". In his ninth complaint, the complainant challenged decision CA/D 2/14 and the decisions which implemented it.

3. In paragraph 65 of its surrejoinder on the complainant's ninth complaint, the EPO merely made a statement that contradicted an assertion the complainant had made in his rejoinder in that same procedure to the effect that the Rules of Procedure were the subject of an appeal he had filed on 25 September 2014 and the Office had not delivered a final decision on that appeal. It is obvious that paragraph 65 did not contain an implicit administrative challengeable decision such as engages this Tribunal's competence to hear it by virtue of paragraph 5 of Article II of its Statute. This provision relevantly states, for the purpose of the EPO and other organizations that the Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex to the Statute which addressed to the Director-General of the International Labour Office a declaration recognising, in accordance with their Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as the Tribunal's Rules, and which is approved by the Governing Body (see, for example, Judgments 4997, consideration 2, and 4295, considerations 6 and 7). The Tribunal has held that "legal defenses

presented to the Tribunal by an organization, such as replies, surrejoinders, or further written submissions, cannot be construed as administrative decisions. These are communications addressed to the Tribunal by legal representatives or legal staff of the organizations concerned. They are not administrative decisions adopted by the officer-in-charge following required procedures and formally addressed to the staff concerned” (see Judgment 5138, consideration 3). The complaint is therefore irreceivable *ratione materiae*.

4. The second circumstance, with reference to consideration 1 of this judgment, emerges from the complainant’s brief in this complaint, which shows that he is essentially contesting, as he states in the conclusion in the brief, “[t]he decision of the former [P]resident on 30 June 2014 to implement new Rules of Procedure from 1 July, with basis in [decision] CA/D 2/14, [was] formally flawed and introduce[d] unlawful measures in the procedure of the [Appeals Committee]”. In his claims for relief, the complainant seeks, among other things, an order declaring decision CA/D 2/14 and the new Rules of Procedure it introduced, as well as the implementing decisions, null and void. A reading of Judgment 4550, in which the Tribunal considered the complainant’s ninth complaint, reveals that he made similar claims and raised similar issues in his complaint underlying Judgment 4550, which the Tribunal resolved in that judgment. Importantly, the central purpose of both complaints is to have decision CA/D 2/14 and the decisions which implemented it declared unlawful. It is notable that the complainant filed the present complaint during and out of the procedure underlying Judgment 4550. In the result, the EPO correctly argues that this complaint is irreceivable by the operation of *res judicata* (see, for example, Judgment 4183, considerations 7 and 8). The Tribunal concurs with the view that the purpose of the suit is the same as in the complainant’s ninth complaint.

5. This complaint will therefore be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2026, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 16 July 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.