

K. (No. 71)

v.

EPO

142nd Session

Judgment No. 5317

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventy-first complaint filed by Mr A. C. K. against the European Patent Organisation (EPO) on 13 June 2024 and corrected on 20 July 2024, the EPO's reply of 5 November 2024, the complainant's rejoinder of 6 December 2024 and the EPO's surrejoinder of 17 March 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 general decision CA/D 2/15, prohibiting recipients of a retirement pension for health reasons from exercising any gainful external activity, and he also challenges the individual implementation of this decision in his case.

The complainant joined the European Patent Office, the EPO's secretariat, on 1 July 1990. On 4 June 2007, the Office granted him permission to exercise an external activity as a lecturer at a university in Munich (hereafter "the University"), Germany. By virtue of this authorisation, the complainant regularly lectured at the University.

On 1 July 2012, he was placed on non-active status due to invalidity. On 1 July 2014, Ms B., Principal Director Human Resources (HR), informed him that following the change of his administrative

status, that is from active to non-active status, he was required to request anew permission to exercise an external activity, as the permission previously granted was no longer valid. Ms B. instructed him to immediately cease all external activity, gainful or not, including his lectureship at the University and to properly request authorisation if he wished to pursue any other external activity in the future.

On 26 March 2015, the Administrative Council adopted decision CA/D 2/15 which amended several provisions of the Service Regulations for permanent employees of the Office relating to sick leave and invalidity. In particular, decision CA/D 2/15 provided that as from 1 January 2016, a recipient of an invalidity allowance would cease to receive the allowance and would instead be granted a retirement pension for health reasons. It further provided that as from 1 January 2016, gainful activities or employment would no longer be allowed. On 17 July 2015, the complainant was notified of the individual implementation of decision CA/D 2/15 in his case. Specifically, he was informed he was no longer permitted to engage in any gainful activity as from 1 January 2016 and, if already engaged in such activity, he was instructed to completely cease it by 31 December 2015 and to submit evidence in this regard. On 1 January 2016, the complainant retired for health reasons thus becoming a recipient of a pension for health reasons.

Between September 2014 and December 2015, the complainant lodged four internal appeals (RI/2014/135, RI/2015/002, RI/2015/003, RI/2015/203) against the “ban on exercising gainful employment”. These appeals culminated in the Administration’s 12 February 2020 decision to reassess the withdrawal of permission for the complainant to act as a lecturer at the University, to also reassess his request for the renewal of said permission, and to award him compensation in the amount of 3,000 euros for moral injury and 500 euros for the length of the procedure. The complainant impugned this decision in his fifty-seventh complaint to the Tribunal, filed on 12 May 2020.

On 17 March 2020, the Administration asked the complainant to indicate whether he maintained his request to act as a lecturer at the University and, if so, to provide details on the period for which he sought permission to undertake the activity; the course(s) he proposed

to teach; the basis on which he considered the activity to be compatible with his invalidity; and whether the activity would be paid or unpaid. On 31 March 2020, the complainant provided the requested information, indicating that he wished to continue lecturing for an unlimited period of time, according to the University's need for continuity, and that he would accept remuneration in the future, if he was allowed to do so.

By a letter of 27 October 2020, the Director, HR Operations informed the complainant that the Office granted him permission to carry out the proposed lecturing activity on a "pro bono" basis, as the provisions governing retirement pension for health reasons did not allow any additional earning for staff members benefiting from such pension. This letter was issued by electronic signature of the Director, HR Operations, and was sent to the complainant by email on 28 October 2020. The complainant requested a paper version of the letter with a handwritten signature so that he could submit it to the University but this request was refused.

On 1 January 2021, the complainant submitted a request for management review, challenging the 27 October 2020 decision and the form in which it was issued. This request was rejected on 26 February 2021 and, on 26 May 2021, the complainant lodged an internal appeal (RI/2021/048) requesting, inter alia, permission to accept remuneration for his activity as a lecturer at the University; the lifting of the blanket ban on any gainful activity or employment; respect for the former rule that staff with invalidity benefits may engage in gainful activities; the setting aside of decision CA/D 2/15; and compensation equal to the amount he was entitled to earn under the former "earnings rule" until the ban on any gainful activity was lifted.

The Appeals Committee issued its opinion on 19 January 2024. It recommended, by a majority, that the Office:

- lift the ban on gainful employment in respect of the complainant based on a transitional arrangement under Article 75 of decision CA/D 2/15;
- initiate a change in Article 15 of the Pension Scheme Regulations so as to ensure that it complied with the principle of proportionality;

- award the complainant the net income he could have earned as a lecturer at the University between March 2021 and the date of his retirement under the regular pension scheme, together with 5 per cent interest;
- award him 3,500 euros in moral damages; and
- reimburse him all reasonable costs upon presentation of relevant documentation.

The Appeals Committee unanimously recommended that the Office:

- award the complainant 100 euros in moral damages for failing to provide him with the permission to act as a lecturer in paper form;
- award him 150 euros in moral damages for the length of the procedure;
- refund the appeal registration fee; and
- reject all other claims.

By a letter of 15 March 2024, the Vice-President of Directorate-General 4 (DG4), informed the complainant of the Office's decision to follow the recommendations of the Appeals Committee and to award him 3,500 euros in moral damages for the Office's breach of the principle of proportionality and its duty of care; 100 euros in moral damages for its failure to provide him with the permission to act as a lecturer in paper form; 150 euros in moral damages for the length of the proceedings; the net income he could have earned as a lecturer at the University between 1 March 2021 and the date of his retirement under the regular pension scheme, together with 5 per cent interest (on 10 May 2024, the Office paid the complainant 9,541.62 euros on that ground, namely 8,553.60 euros in "theoretical earnings", plus 988.02 euros in interest); reimbursement of reasonable costs upon presentation of evidence; and 200 euros for the appeal registration fee. This is the impugned decision.

The complainant asks the Tribunal to order the EPO to respect and apply consistently the rule (in existence since 1979) according to which staff members receiving invalidity benefits may engage in gainful external activities, in which case the invalidity benefits may be reduced

according to the earnings rule. He also asks the Tribunal to set aside the underlying general decisions, notably decision CA/D 2/15 and to award him compensation for the unlawful prohibition from engaging in gainful external activity in an amount to be determined under the earnings rule. Subsidiarily, he asks the Tribunal to order the EPO to apply the previous text of the Service Regulations, notably the earnings rule; and to award him 50,000 euros in moral damages; 1 euro in symbolic punitive damages; 1,000 euros for his “out of pocket expenses”, time and trouble in filing the present complaint; and interest on all amounts due at the rate of 4 per cent above the German consumer price index.

The EPO asks the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety. It submits that the complainant obtained satisfaction in the impugned decision but that he nevertheless filed the present complaint, which induced a waste of time and resources. It therefore makes a counterclaim for costs in the amount of 100 euros.

CONSIDERATIONS

1. The complainant applies for oral proceedings. The Tribunal observes that the parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Thus, the request for oral proceedings is rejected.

2. The complainant impugns the 15 March 2024 decision, whereby the Vice-President of DG4, endorsing the Appeals Committee’s recommendation of 19 January 2024, allowed his internal appeal against the 26 February 2021 decision, which in turn, had rejected his request for management review of the 27 October 2020 decision. The latter had granted the complainant’s request of 31 March 2020 to be authorized to carry out a university lectureship, for which activity he would not accept any payment. Specifically, the 27 October 2020 decision, signed by electronic signature, stated that: “permission to carry out the activity on a ‘pro bono’ basis is herewith granted. [...] As

to the possible remuneration you could receive for your commitment at the University, [...] the provisions governing retirement pension for health reasons of the EPO do not allow any additional earning[s] for staff members who benefit from such a pension for health reasons”.

The 26 February 2021 decision rejected the complainant’s request to be provided with a paper version of the said authorization. Based on the reasoning that the complainant had not demonstrated that his lectureship would be remunerated, the 26 February 2021 decision also rejected his request that the ban on gainful activities be removed.

The 15 March 2024 decision:

- (i) stated that the complainant “should have been allowed to exercise gainful activities or employment when [he was] a pensioner for health reasons between 2016 and 2022”;
- (ii) awarded him material damages in the sum of “the net income [he] could have earned as external lecturer at the [University] between March 2021 and the date of [his] retirement under the regular pension scheme [...] with 5% interest upon presentation of relevant evidence”;
- (iii) awarded him moral damages based on various grounds, namely 3,500 euros for the violation of the principle of proportionality and of the duty of care; 100 euros for the failure to provide the complainant with the authorization to act as a lecturer in paper form; 150 euros for the length of the proceedings;
- (iv) granted him the reimbursement of legal costs upon presentation of relevant documentation; and
- (v) granted him the reimbursement of 200 euros for the appeal registration fee.

The complainant confirms that following the 15 March 2024 decision, he was paid the amount granted by the decision as moral damages and reimbursement of the appeal registration fee, and a sum equivalent to his theoretical income as a university lecturer from March 2021 until his placement under the regular pension scheme upon reaching retirement age.

He challenges the impugned decision to the extent:

- it does not grant him a sum equivalent to his theoretical income as a university lecturer from 1 January 2016;
- it does not grant him the damages he allegedly suffered from the ban on “any gainful activity”, as only the ban on the lecturer activity had been considered; and
- it grants him moral damages in a sum which does not cover his entire moral prejudice.

3. It is appropriate, at the outset, to establish the scope of the present complaint.

The complainant raises a number of issues which are the subject matter of another complaint he has filed with the Tribunal. Specifically, the 1 July 2014 decision, to withdraw the 4 June 2007 permission for a university lectureship, is challenged in his fifty-seventh complaint, which is still pending.

He also refers to “[t]he special situation of former A4(2)-staff”, which, he alleges, “is the subject-matter of co-pending complaints”. In this respect, the complainant filed applications to intervene in complaints concerning the transposition of staff in the new career system, which have been decided in Judgments 4712 and 5091.

Any issue raised by the complainant, which is the subject matter of other cases before the Tribunal, falls outside the scope of the present complaint. Moreover, there is a general principle of law that a person cannot simultaneously litigate the same issues in separate or concurrent proceedings (see Judgments 4799, consideration 3, 4778, consideration 5, and the case law cited therein).

Furthermore, any reference made by the complainant to failed attempts at an amicable settlement with the EPO is immaterial in the present case. The Tribunal has held that when the parties before the Tribunal make reference to failed negotiations aimed at finding an amicable resolution to the dispute, the Tribunal is not required to take into consideration discussions of this kind (see Judgment 4665, consideration 8).

The complainant observes that due to the 25-page limit imposed by the Tribunal for his brief, he is not able to develop all his arguments and, therefore, “some annexes stand for themselves”.

The Tribunal’s case law has it that the parties cannot incorporate by reference, into their pleas before the Tribunal, arguments, contentions and pleas found in other documents, often a document created for the purposes of internal review and appeal, and that the Tribunal would be entitled to disregard those contentions and pleas (see Judgments 5147, consideration 3, and 4715, consideration 12). Thus, in the present case, the Tribunal will not consider any issue which is not contained in the complainant’s brief or rejoinder, and which is merely incorporated by reference to other documents.

Lastly, any reference by the complainant to the German law will not be taken into account by the Tribunal, as the conditions of employment of staff members of international organizations are subject exclusively to their organization’s staff rules and regulations and the general principles of the international civil service. National laws, and in particular those of the host country, apply only where there is express reference thereto, and this is not the case here (see Judgments 4553, consideration 4, and 4401, consideration 6).

4. The complainant requests that general decision CA/D 2/15, imposing a ban on any gainful activity for former staff members in receipt of an invalidity pension, be set aside. This claim must be rejected because the complainant does not have a cause of action. On the one hand, the impugned decision, based on the Appeals Committee’s recommendation, has already established that the ban on any gainful activity, contained in said general decision, should not have been applied to the complainant from 1 January 2016 (that is when the ban entered into force) until the date the complainant was transferred to the ordinary pension scheme. Based on this outcome of his internal appeal, the effects of the general decision on the complainant have been removed retroactively and, thus, the complainant has no cause of action in requesting that the general decision be set aside. On the other hand, considering that the complainant has reached the retirement age and he

is no longer in receipt of an invalidity pension, decision CA/D 2/15 is no longer applicable to him. Also in this respect, he no longer has a cause of action to challenge it.

5. The complainant contends that the amount of material damages granted by the impugned decision is unlawful, on two grounds:

- (i) the theoretical income for his university lectureship should have been paid as from 1 January 2016 and not only as from 1 March 2021;
- (ii) the contested ban concerned any gainful activity, but the impugned decision granted him material damages only for his activity as a lecturer; thus, he should be paid a sum equivalent to the difference between the basic salary of an employee holding a “G15/3” position and his pension for health reasons from 2016 to 2022, plus interest, in keeping with the so-called “earnings rule”.

This plea is unfounded.

The Tribunal’s established case law relevantly states that any complainant seeking compensation for either material or moral damages must always provide evidence of the prejudice suffered, of the alleged unlawful act, and of the causal link between the unlawful act and the prejudice, and that it is the complainant who bears the burden of proof in this respect (see Judgment 4832, consideration 56, and the case law cited therein).

In brief, material damages are meant to compensate for an actual not a hypothetical loss.

The Appeals Committee recommended that the complainant “be paid the net income he could have earned for his activity as an external lecturer at the [University] between March 2021 – the time when he first indicated that he would accept payment [...] – and the date of his retirement under the regular pension scheme”.

There is evidence on record that the complainant's university lectureship had not always been remunerated during the relevant period. In a letter addressed by the University to the complainant on 15 May 2014, entrusting him the lectureship at issue, it is said: "this lectureship is not gainful". In a medical report prepared by the complainant's physician on 6 August 2014, it is stated: "[a]ccording to [the complainant's] information he is [an] unsalaried lecturer".

Additionally, by letter of 17 March 2020, the EPO requested the complainant to provide details of his activity as a lecturer and to specify, *inter alia*, whether this activity "would be paid or unpaid". The complainant replied on 31 March 2020, but he did not clarify whether the lectureship was at least theoretically remunerated by the University. He merely declared that he would accept payment in the future if allowed.

The complainant's objection that he had no reason to request permission for gainful activity earlier, because the EPO categorically prohibited all gainful activities, is untenable. When he wrote to the EPO on 31 March 2020, he had an opportunity to clarify if he intended to accept payment from that moment onwards, or at least if a theoretical remuneration had been offered to him, but he did not. Accordingly, there is no evidence that the complainant was offered a remunerated lectureship at any time before March 2021. In this respect, the Appeals Committee, in its 19 January 2024 opinion, recommended to award the complainant material damages as of "March 2021", considering March 2021 as "the time when he first indicated that he would accept payment (p. 166)". Thus, the Appeals Committee relies on an indication provided by the complainant in his internal appeal. The complainant has neither provided the Tribunal with his internal appeal nor specifically contested the Appeals Committee's remark that in his internal appeal, at page 166, he indicated "March 2021".

Furthermore, the complainant had already been banned from any gainful activities before the issuance of the 27 October 2020 decision by virtue of two decisions, which fall outside the scope of the present complaint. Specifically:

- the 1 July 2014 decision, which is challenged in the complainant’s fifty-seventh complaint, revoked the former 4 June 2007 permission of the lectureship at issue on the ground that since the complainant’s status had changed from active status to non-active status, he was required to submit a new request for permission; and
- the 17 July 2015 decision, which is not the subject matter of the internal appeal which prompted the decision impugned in the present complaint, informed the complainant that his invalidity allowance had been replaced by an invalidity pension, and that as of 1 January 2016 he would no longer be allowed to carry out any external gainful activity and, if already engaging in such activity, invited him to cease it by 31 December 2015.

Since the 1 July 2014 and the 17 July 2015 decisions fall outside the scope of the present complaint and the original decision at the basis of the present complaint is the 27 October 2020 decision, prompted by the complainant’s letter of 31 March 2020, it is manifest that possible material damages stemming from the prohibition of gainful activities for the period between 1 January 2016 and 31 March 2020, even if proven, were not caused by the 27 October 2020 decision, but by the former 17 July 2015 decision which, as explained, cannot be addressed by the Tribunal in the present complaint.

As a result, the Appeals Committee lawfully considered that material damages could be established only as from March 2021, when the complainant first indicated that he would accept payment for his lectureship.

Even before the Tribunal, the complainant fails to demonstrate that the University offered him payment for his lectureship at an earlier time, which he could not accept due to the EPO’s ban.

As to the additional material prejudice allegedly stemming from the ban on “any gainful activity”, the complainant’s claim is merely speculative. He has not demonstrated which actual external gainful activities had been offered to him that he could not accept due to the EPO’s ban. Thus, there is no evidence that, after the ban on any gainful activity entered into force on 1 January 2016, the complainant lost an opportunity to carry out gainful activities. In support of this conclusion,

it is also noted that there is no evidence that the complainant had engaged in external gainful activities before the ban entered into force (see Judgment 5196, consideration 4, for a similar reasoning in a similar situation). The only evidence on file concerns his lectureship activity.

6. The complainant contests the amount of the moral damages he was awarded. He contends that his moral prejudice derived from the unlawful ban on gainful activities and from the discrimination against him based on his invalidity. Thus, he should be awarded a higher compensation.

This plea is unfounded.

Moral prejudice must be proven and the complainant bears the burden of proof (see, for example, Judgments 4867, consideration 6, and 4157, consideration 7).

The complainant has not established that his moral prejudice deserves a compensation higher than that already granted by the impugned decision; moreover, as already noted, there is no evidence that the complainant had engaged in external gainful activities before the ban entered into force (see Judgment 5196, consideration 4, for a similar reasoning in a similar situation).

The Tribunal further notes that the complainant has already been granted compensation for the moral prejudice stemming from the fact that he had not been provided with the authorization to act as a lecturer in the form of a “paper document to be submitted to the University despite his request”.

7. The complainant contests the conduct of the appeal proceedings in written form. This plea is unfounded.

The complainant does not establish any legal flaw in the process, as the Appeals Committee was not bound to hold oral hearings.

8. In conclusion, all the complainant’s pleas are unfounded, and, accordingly, his claims for material, moral, and punitive damages are rejected, as well as his claim for costs. His complaint will be dismissed.

9. The EPO's counterclaim for costs in the amount of 100 euros is rejected, as the present complaint cannot be considered vexatious or frivolous.

10. In light of the outcome of the case, there is no need to address the receivability issues raised by the EPO, other than those expressly dealt with by the Tribunal in the considerations above.

DECISION

For the above reasons,

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

In witness of this judgment, adopted on 21 May 2026, Mr Michael F. Moore, President of the Tribunal, Mr Clément Gascon, Judge, and Ms Rosanna De Nictolis, 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

CLÉMENT GASCON

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.