

J. (No. 9)

v.

EPO

139th Session

Judgment No. 4980

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr P. J. against the European Patent Organisation (EPO) on 1 June 2019 and corrected on 29 July 2019, and the EPO's reply of 18 November 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 challenges his staff report for 2012-2013.

At material times, the regulatory framework within the EPO for creating and reviewing staff reports was embodied in Circular No. 246, entitled "General Guidelines on Reporting". If a staff member was not in agreement with the content of her or his report, Section D facilitated a conciliation procedure between her or him and her or his reporting and countersigning officers, under the direction of a mediator appointed by the President of the European Patent Office, the EPO's secretariat. If no agreement was reached at the end of the mediation procedure, Section D(7) permitted the staff member to pursue the matter before the Internal Appeals Committee in accordance with Articles 107 and 108 of the Service Regulations for permanent employees of the Office.

The complainant is a permanent employee of the Office since 1990. With effect from 1 September 1998, he was promoted from grade B5 to grade B6. At material times, he held grade G10.

Following a prior interview with his reporting officer held on 12 March 2014, the complainant received his staff report for the period from 1 January 2012 to 31 December 2013, signed by the reporting and countersigning officers on 8 and 9 May 2014 respectively. His quality and aptitude were rated as “very good”, whereas his productivity, attitude to work and dealings with others and his overall performance were assessed as “good”.

On 17 June 2014, the complainant expressed his disagreement with the ratings given which “seem[ed] to be different than the impression [he] ha[d] about [his] performance and le[d] to a feeling of disappointment and lack of recognition”. He discussed the deadlines allotted to him to perform his duties and the fact that the ratings under productivity, attitude to work and dealings with others and his overall performance had changed from “very good” to “good” compared to the previous reporting exercise. He added that the title of his master’s degree was incorrect in the report. On 27 June, the reporting officer submitted his final comments in the report, indicating that the ratings given were justified and that he could not change the title of the complainant’s master’s degree at that stage. These comments were approved by the countersigning officer on 30 June.

On 4 July 2014, the complainant requested the application of the conciliation procedure set out in Section D of Circular No. 246.

A conciliation meeting took place on 24 October 2014, but no agreement could be reached. The mediator drew up a report on 30 October 2014 and sent it to the Vice-President of Directorate-General 4 (DG4) for a decision.

On 19 December 2014, the Vice-President of DG4 decided that the report would remain unchanged. The complainant signed it on 12 January 2015. On 5 April 2015, he lodged an internal appeal requesting that his staff report be amended so that he received the rating of “very good” under productivity, attitude to work and dealings with others and his overall performance and that a correction be made concerning the title

of his university studies. He also claimed moral damages in an amount of 5,000 euros and costs. His appeal was forwarded to the Appeals Committee.

In its opinion of 18 December 2018, the Appeals Committee unanimously recommended rejecting the appeal as unfounded in its entirety and awarding the complainant 200 euros in damages for the length of the procedure. By a letter dated 15 February 2019, the complainant was informed that the President of the Office had decided to follow those recommendations and to increase the amount of damages by 100 euros for the additional length of the procedure until the issuance of his decision. That is the impugned decision.

The complainant asks the Tribunal either to order the amendment of his staff report for 2012-2013 so that he receives a marking of “very good” under productivity, attitude to work and dealings with others and his overall performance or to instruct the EPO to make a fresh assessment of his performance by a different reporting officer, agreed upon by him. He also seeks the correction of the title of his university studies in the staff report and the award of moral damages and costs.

The EPO argues that the complainant’s claim aiming at an amendment of his staff report is irreceivable as the Tribunal does not have jurisdiction to issue injunctions. It also raises doubts as to the complainant’s cause of action since the staff report conveys a favourable assessment of his performance and he does not allege any adverse effect arising from this favourable evaluation. Consequently, it requests the Tribunal to dismiss the complaint as partially irreceivable and as unfounded in its entirety.

CONSIDERATIONS

1. In contesting the impugned decision, dated 15 February 2019, the complainant asks the Tribunal to order the amendment of his staff report for the period from 1 January 2012 to 31 December 2013 so that he receives a marking of “very good” (as he had received for quality and aptitude) under productivity, attitude to work and dealings with others and for the overall performance. Alternatively, he asks the

Tribunal to instruct the EPO to have his performance for the period 2012-2013 evaluated afresh by a different reporting officer, agreed upon by him. He also seeks the correction of the title of his university studies in the staff report. He further seeks an award of 5,000 euros in moral damages for the “wrongful report”, as well as 5,000 euros in damages (additional to the 300 euros the EPO had already paid him) for the “grossly exces[s]ive delay in treating the matter”, as well as costs for the internal appeal procedure and the present proceedings.

2. As the complainant challenges the impugned decision on substantive grounds, the Tribunal refers to its consistent case law which it recalls in consideration 2 of Judgment 4977, also delivered in public this day.

3. In light of the Tribunal’s limited scope of review, it is not within its power of review to order the amendment of the contested staff report so that the complainant receives a marking of “very good” under productivity, attitude to work and dealings with others and for his overall performance. The Tribunal may however, if appropriate, set aside the contested staff report at the same time as the impugned decision and remit the matter to the EPO for review.

4. The complainant’s request that this complaint “be treated by the Tribunal in conjunction with the other pending claims relating to [his] annual assessments” is rejected as he has failed to identify the complaints which he wishes to have joint with this complaint.

5. Regarding the alleged substantive flaws in the contested staff report, the complainant essentially repeats the statements he made in his comments in his staff report and in his submissions before the Appeals Committee, which had concluded that it discerned no material ground to conclude that the reporting officer did not exercise his discretion lawfully or that the contested staff report was unjustified and had recommended that his internal appeal be rejected.

6. In its analysis of the submissions the complainant proffered to challenge the merits of the assessment and his request for the amendment of the markings he received for productivity and attitude to work and dealings with others, as well as for the overall performance to “very good”, the Appeals Committee correctly appreciated that, pursuant to the case law, its scope of review of a performance evaluation was wider than that of the Tribunal. It cited the statements in consideration 5 of Judgment 3318 and consideration 6 of Judgment 3161, that its power of review in effect extends to the overall re-examination of all matters submitted to it, except to the extent that the internal rules which governs the Committee provide otherwise, its role being to determine whether the decision appealed is correct on the facts or whether some other decision should be made. The Committee also noted the Tribunal’s statement in consideration 6 of Judgment 1136, that, within the scope of the reporting officer’s wide discretion, it is to be presumed that the assessment of a staff member’s performance is made in good faith and in the interest of both the staff and the organisation.

7. The Tribunal is satisfied that, in its analysis, the Appeals Committee properly considered all of the arguments the complainant proffered to support his claim for the amendment of the contested staff report, which arguments he essentially repeats in this complaint.

8. As in his complaint, the complainant had, in his comments in the contested staff report and in his internal appeal, referred to an error his reporting officer made in the description of the studies he had undertaken towards his master’s degree. In his internal appeal, the complainant recalled that he had requested, what he refers to in his complaint as a “clerical error”, to be corrected but his reporting and countersigning officers refused to correct it. In his view, this amounted to an error of fact as it was readily correctible, but the reporting officer stated that it could not have been corrected at that stage of the procedure. He states in his complaint (as he did in his internal appeal) that, whilst it may seem that the precision in the title of the degree may not be significant, it demonstrates that the mindset of the reporting officer is one that militates against an objective and reasoned evaluation

of his performance or any useful dialogue. In its opinion, the Appeals Committee stated, correctly, in the Tribunal's view, that although the error was unfortunate, that alone did not influence the assessment made in the contested staff report and was not a basis from which to infer bad intentions on the part of the reporting officer leading to the overturn of the staff report.

9. The Appeals Committee had also noted and correctly rejected the complainant's argument which suggested, in effect, that the reporting officer erred by not considering the markings and overall performance ratings he had been awarded in previous performance evaluations. The Committee stated, correctly, that such reference was irrelevant to the subject assessment because, as a matter of principle, to be fair, every staff report has to be consistent in itself and cannot be compared with previous staff reports and must be based solely upon a staff member's performance in each reporting period. The Committee also correctly rejected the other arguments the complainant proffered to support his request for the amendment of the subject markings and overall performance rating, which are based on his subjective opinions. Those arguments did not engage the scope of the Committee's power of review and of the Tribunal's power of review recalled in Judgment 4977, consideration 2. They are therefore unfounded, as is the complainant's claim for moral damages for the "wrongful report" consequentially.

10. Regarding the complainant's claim for compensation for the inordinate delay in the internal appeal procedure, the Tribunal notes that, following the unanimous recommendation of the Appeals Committee, the EPO has already paid the sum of 300 euros to him for this. As the complainant has not put forward any argument to justify the award of the additional amount he seeks under this head, the claim is rejected.

11. As the complainant has not prevailed either in the internal appeal procedure or in this complaint, there is no basis for awarding him the costs he seeks.

12. The preceding reasons entail a detailed and comprehensive consideration of all arguments advanced by the complainant. It cannot be assumed that in the future reasons of this character will be given and that the matter will not be dealt with in a much more summary way.

13. In the foregoing premises, the complaint will be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 4 November 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER