

The Administrative Tribunal,

Considering the complaint filed by Mr G. N. against the European Patent Organisation (EPO) on 22 December 2001, the Organisation's reply of 24 May 2002, the complainant's rejoinder of 2 September and the EPO's surrejoinder of 21 November 2002;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who was born in 1932 and has German nationality, joined the European Patent Office - the EPO's secretariat - in 1978 and was retired on 31 December 1995 for invalidity reasons. He is one of a number of EPO staff members who in 1996 accepted a settlement proposed by the Office in a bid to end a long-standing salary dispute which had arisen in 1992. To that end, he signed a declaration by which he agreed to renounce all pending and future proceedings concerning the salary dispute, in return for a lump sum which the EPO undertook to pay him within one month of receipt of the signed declaration.

Other staff members chose not to accept the settlement and brought the salary dispute before the Tribunal, which largely ruled in their favour in its Judgment 1663, delivered on 10 July 1997. A large number of staff members who had accepted the settlement then sought to benefit from the more favourable solution of Judgment 1663, but their claims were rejected by the Tribunal in Judgment 1980, delivered on 12 July 2000.

The declaration was sent to the complainant for signature under cover of a letter dated 22 May 1996, in which the Office informed the complainant that the lump sum due under the settlement, as well as two other outstanding amounts, would be offset against a debt of 8,886.97 German marks representing overpaid salary which he owed to the EPO. He was invited to indicate his agreement to monthly deductions of 500 marks from his pension for the purpose of recovering the balance of 3,502.56 marks. The complainant signed and returned the declaration on 28 May 1996. He did not, however, agree to the proposed deductions from his pension, and in a separate exchange of correspondence he disputed the amounts which the EPO was seeking to recover. This disagreement culminated in the filing of five internal appeals by the complainant, which were joined by the Appeals Committee.

In the context of the appeal proceedings, the complainant argued that since the Office had not paid him the lump sum due under the settlement, it had failed to comply with the terms of the settlement, which was thereby rendered void; consequently, he considered he was entitled to benefit from the application of Judgment 1663 on the same basis as other staff members who had not signed the declaration. The Appeals Committee considered this to be a new claim and treated it as a separate appeal, on which it issued a report on 8 August 2001, recommending that the appeal be rejected as unfounded. The President endorsed this recommendation and the complainant was so informed by a letter of 24 September 2001, which constitutes the impugned decision.

B. The complainant considers that, in accordance with the terms of the settlement, his undertaking to renounce pending and future proceedings in connection with the salary dispute was subject to the condition that the Office actually paid him the lump sum provided for in the declaration within the stipulated deadline. Since the Office failed to do so, he is entitled to disregard the settlement and to assert his claims concerning the salary dispute.

He also argues that even if the defendant had undisputable claims against him, it would not necessarily be entitled to offset them without his consent. The settlement was an exceptional measure which in his view should not have been mixed with other issues. The Office, which was aware that its claims could place him in a difficult financial

situation, should have paid him the lump sum due under the settlement, even if it intended subsequently to recover amounts allegedly owed to it.

The complainant asserts that the offsetting by the defendant contravened Article 88 of the Service Regulations, because in the absence of certainty as to the amount he owed to the EPO, the claimed overpayment could not be considered "patently such that he could not have been unaware of it".

He seeks the annulment of the impugned decision; payment of the remuneration to which he would have been entitled pursuant to Judgment 1663, with interest in view of the delay in payment; moral damages; and costs.

C. The Organisation replies that the complaint is irreceivable on two grounds. Firstly, it was established in Judgment 1980 that in the absence of special grounds to the contrary, staff members could not benefit from Judgment 1663 if they were not parties to the proceedings in that case. Secondly, the complainant waived his right to appeal in connection with the salary dispute by signing the declaration.

On the merits, the EPO submits that the offsetting of its claims, which was intended to avoid the payment of sums which would have to be reimbursed later, did not nullify the contract. Nor did such action require the complainant's consent. According to the EPO, there are no grounds for departing from what is now settled law, namely that those who signed the declaration cannot benefit from Judgment 1663, and the fact that the lump sum due to the complainant was offset against his debts does not put him in the same position as staff members who did not accept the settlement.

The EPO considers that the complainant's argument regarding his financial difficulties is unconvincing, having not been raised during the internal appeal proceedings, and that it should not be taken into consideration.

D. In his rejoinder the complainant continues to deny that the settlement could be properly executed by offsetting the lump-sum payment, for which it provided, against his debts. He points out that the "special ground", within the meaning of Judgment 1980, allowing him to benefit from Judgment 1663 is the fact that he is no longer bound by the settlement agreement, as a result of the EPO's failure to honour the terms of the settlement.

E. In its surrejoinder the defendant maintains its objections to receivability and presses its pleas on all other issues.

CONSIDERATIONS

1. The complainant was employed as a paper-keeper in the Berlin sub-office of the European Patent Office from June 1978 until 31 December 1995, when he was retired because of invalidity.

2. For some time prior to May 1996, there was a serious dispute between the EPO and its staff concerning salary adjustments. In May 1996 some but not all EPO staff signed an individual declaration whereby each agreed to accept a lump sum "unreservedly and in final settlement" of his or her salary claim. The complainant signed the declaration on 28 May 1996. In his case, the declaration provided for a lump-sum payment of 3,943.45 German marks, which the EPO undertook "to pay, within one month of receiving the [signed] declaration". In return, the complainant and other EPO staff who signed the declaration undertook:

"neither to pursue any existing appeals, nor to file any new ones relating hereto, given that his/her other rights, notably to correct application of the adjustment procedure in the future, are not thereby affected."

3. As already indicated, a number of EPO employees did not sign the declaration. Instead, they pursued their appeal rights and it was eventually determined by this Tribunal, in Judgment 1663, that the EPO had adjusted salaries incorrectly during certain periods. The cases were sent back to the EPO for it to make new decisions correctly adjusting the salaries of the complainants, and of those interveners who were in the same position in fact and law as the complainants.

4. The adjustments effected by the EPO in consequence of Judgment 1663 were more favourable to staff members than the lump-sum payments accepted by those who signed the declaration in final settlement of their claims. A number of those who accepted the settlement subsequently sought to benefit retrospectively from Judgment 1663 and ultimately filed complaints with this Tribunal. Their complaints were dismissed by Judgment 1980, it being

held, so far as is presently relevant, that "the complainants were not parties to the proceedings that led to Judgment 1663 and so [were] not entitled to benefit from it unless they [could] invoke some special ground", and that the compromise to which they had agreed could neither be rescinded nor reviewed on the ground that they were mistaken as to the scope of their rights.

5. Although the complainant signed the declaration accepting a lump sum of 3,943.45 marks, he did not, in fact, receive the sum in question. Rather, it was offset against moneys which the EPO claimed were recoverable from him.

6. The amounts set off by the Office were overpayments, some of which related to a period of sick leave from 2 December 1994 to 31 August, 1995. The complainant was informed by a letter dated 22 May 1996, that he had been overpaid and that, after deducting the lump-sum payment of 3,943.45 marks, there would remain owing to the Office an amount of 3,502.56 marks which, it was suggested, should be withheld from his pension in monthly instalments of 500 marks. It is not clear whether the complainant received this letter prior to signing the compromise declaration on 28 May 1996. However, on 29 May he wrote to the Remuneration Department disputing the claimed overpayments. He wrote again on 4 July 1996 denying that he owed certain sums to the EPO and calling for payment of various amounts, including the 3,943.45 marks which the EPO had undertaken to pay him under the compromise declaration. His request was refused by letter of 31 July 1996. On 17 September the complainant wrote to the President of the Office reiterating his claim and stating that:

"although I signed the salary compromise on time in order to be paid a lump sum of [3,943.45 marks], I have yet to see that sum on my bank account, contrary to your undertaking.

I therefore see every reason to doubt that the settlement has actually been honoured on your part. Offsetting the sum against unwarranted claims of the Office does not in my eyes in any way reflect the sense and wording of the agreement."

The complainant asked that if the Office could not comply with his requests, including the request for payment of 3,943.45 marks, without delay, then the various points raised by him were to be treated as "separate internal appeals". None of his requests was complied with and the various issues were referred to the Appeals Committee as five separate appeals, which were subsequently joined by the Committee.

7. It was recommended by the Appeals Committee that his appeal relating to an alleged double payment, which the Office had included in the amount it proposed to offset, be allowed, but that his appeals with respect to other amounts claimed by the EPO be dismissed. During the course of the appeal, the complainant contended for the first time that, as he had not in fact received the agreed lump sum of 3,943.45 marks, he was no longer bound by the settlement and was thus entitled to salary adjustments in accordance with Judgment 1663. It was held that this was a new claim and it was recommended that a letter from the complainant to the President dated 30 January 1998, raising this new claim, be treated as a separate internal appeal.

8. The Appeals Committee subsequently recommended that the further appeal by which the complainant contended that he was entitled to salary adjustments in accordance with Judgment 1663 be rejected as unfounded, on the grounds that those who "accepted the compromise pay settlement by signing the 'declaration' [could not] assert claims relating to the past over and above the lump sum". The Committee also considered that it was legitimate for the EPO to offset the lump sum owing to the complainant against its claim for repayment "in view of the fact that the claims relate to salary payments or payments in settlement of salary claims".

9. The President of the Office accepted the recommendation of the Appeals Committee on 24 September 2001, and it is that decision which the complainant now challenges. In challenging that decision, the complainant accepts, at least for the purposes of these proceedings, that at all relevant times he owed the EPO an amount greater than the lump sum settlement of 3,943.45 marks, and that the EPO is entitled to offset whatever it owes him against his debt to the Organisation. Thus, the issue is whether he is bound by the settlement or, whether, as he contends, he is entitled to the benefit of Judgment 1663.

10. Before turning to the issue raised by the complainant, it is necessary to note that the EPO contends in its reply that the complaint is irreceivable. Firstly, it states that as the complainant was not a party to the proceedings that led to Judgment 1663, he cannot benefit from it as he does not invoke special grounds. Secondly, the complainant waived his right to any appeal by signing the compromise declaration. The EPO's contentions with respect to the

receivability of the complaint mistake its nature.

11. The complainant's contention is that the declaration is not binding upon him. If he is right in that contention, a question arises as to whether that constitutes a special ground entitling him to benefit from Judgment 1663. Further, if he is not bound by the declaration, he has not waived his right to appeal. Accordingly, as the complaint concerns only the question of whether the declaration he signed is binding on him, it is receivable.

12. The essence of the complainant's argument is that he is entitled to treat his obligations under the declaration as no longer binding because the EPO did not correctly implement the settlement.

13. A person is entitled to bring his or her contractual obligations to an end if the other party, by action or inaction, indicates that it no longer intends to be bound by the agreement, as, for example, where it fails to perform some fundamental term, or denies that it is under an obligation to perform it. That is not the present case. At all times the EPO acknowledged that, pursuant to the compromise, the complainant was entitled to a lump sum of 3,943.45 marks. The only issue was how that entitlement should be conferred: should it be conferred by crediting the amount to the complainant's bank account or by offsetting it against the moneys the EPO claimed he owed it? Thus, the question that arose was how the EPO was to perform its obligation, not whether there was an obligation on its part to be performed.

14. There being no denial that there was an obligation on the part of the EPO, it is merely a question of the manner in which that obligation should be discharged. Moreover, offsetting moneys due against moneys owed is generally recognised as equivalent to actual payment and, on that basis, it can be said that the EPO in fact performed its contractual obligation. Thus, the complainant is not entitled to treat the declaration he signed as no longer binding on him.

15. As the complainant is not entitled to consider himself no longer bound by the declaration, no question arises as to whether there are special grounds entitling him to claim the benefit of Judgment 1663. And as he was not entitled to consider himself no longer bound by the declaration, he is bound by his agreement to waive appeal rights in respect of the disputed salary adjustments. Accordingly, his complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2003, Mr Michel Gentot, President of the Tribunal, Mrs Flerida Ruth P. Romero, Judge, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

Flerida Ruth P. Romero

Mary G. Gaudron

Catherine Comtet