

The Administrative Tribunal,

Considering the complaint filed by Mr W.P.S. against the European Patent Organisation (EPO) on 13 April 2004 and corrected on 12 August, the EPO's reply of 30 November 2004, the complainant's rejoinder of 14 January 2005 and the Organisation's surrejoinder of 18 April 2005;

Considering Article II, paragraph 5, 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 is a German national born in 1962, who, after a period of employment in the German civil service, took leave of absence and joined the European Patent Office – the EPO's secretariat – under a fixed-term contract commencing on 1 November 1999. With effect from 1 June 2001 he was appointed as a permanent employee of the Office, which did not affect his status as a German civil servant.

By a letter of 4 March 2002 he applied to have the pension rights he had accrued previously with the German civil service pension scheme transferred to the Office's pension scheme, in accordance with Article 12(1) of the Office's Pension Scheme Regulations. Article 1(1) of the Agreement between the Federal Republic of Germany and the EPO on the implementation of Article 12 of the Office's Pension Scheme Regulations (hereinafter the "Agreement") stipulates that transfer applications must be made "within six months from the appointment of the employee on a permanent basis". This time limit is also specified in the Implementing Rules to the Pension Scheme Regulations. The complainant explained in his application that he had failed to observe the time limit through no fault of his own, since his parents had both been taken ill and he had had to take care of them. By a letter of 24 June he asked the Office to take a decision on his letter of 4 March, which was to be interpreted as an application "for re-establishment of his rights".

The Pension Administration Department informed the complainant in a letter of 8 October 2002 that, although the reasons he had put forward to explain the delay had been considered, his application for transfer of his pension rights was rejected for non-compliance with the applicable time limit, which had expired on 30 November 2001, six months after his appointment as a permanent employee.

On 13 November 2002 the complainant lodged an internal appeal against that decision, asking that it be set aside and that the transfer of his pension rights be allowed, provided that it would be advantageous to him. In its opinion dated 12 December 2003 the Appeals Committee unanimously recommended that his appeal be dismissed. The Committee noted that the Office discharges its duty to inform staff of the time limit by providing them at the time of their appointment with a copy of the EPO "Codex", which contains the relevant regulations, and by pointing out the option of a transfer. It considered that the complainant's status as a German civil servant had no bearing on the issue of compliance with the time limit for submitting his application. The Committee acknowledged that the possibility of re-establishing the rights of an applicant who has failed to meet the deadline is mentioned in an information brochure on transfer of pension rights, issued by the Office, and in the Protocol to Article 7 of the Agreement, but pointed out that this possibility is limited to cases in which a person is prevented, through no fault of his own, from complying with a time limit. Given that an informal letter from the complainant indicating his intention to transfer his pension rights would have sufficed, the Committee considered that the personal circumstances on which he relied did not justify waiving the time limit and re-establishing his rights.

By a letter dated 13 January 2004, the head of the Conditions of Employment and Statutory Bodies Directorate informed the complainant that for the reasons put forward before the Appeals Committee, and in accordance with the Committee's unanimous opinion, the President of the Office had decided to reject his appeal. That is the impugned decision.

B. The complainant states that he is contesting both the rejection of his application for transfer of his pension rights and the refusal to re-establish his rights. He maintains that he had “neither the time nor the mental capacity” to apply for the transfer because he was so busy nursing his parents. In this respect, the fact that the application was subject to no particular formal requirements is, in his view, irrelevant. Since it was through no fault of his own that he failed to observe the time limit, the Organisation should grant him “re-establishment” of his rights.

He acknowledges that he received a copy of the Codex when he took up his functions, but denies that he was provided with an information brochure on the transfer of pension rights. Referring to the Office’s obligation, under Article 4 of the Agreement, “to provide clarification and advice”, he submits that although the possibility of a transfer was mentioned at an induction meeting he attended on joining the EPO, that did not amount to the issuing of a proper instruction. According to the complainant, the six-month period for filing an application never even began to run, since he was not informed of it. Furthermore, since his status as a German civil servant had not changed, he had no reason to think that he needed to arrange for a transfer of his pension rights.

The complainant also points out that the Office failed to consider his request for re-establishment of his rights, which, he contends, is a discretionary matter. The grounds for the rejection of that request ought to have been stated, in accordance with Article 106(1) of the Service Regulations for Permanent Employees of the Office. He argues that the Office abused its discretion by failing to distinguish that request from his transfer application and dismissing both as if it had no discretion in the matter. In his view, the Office ought to have addressed his request for re-establishment of his rights before considering his transfer application.

Lastly, referring to a decision of the EPO’s Legal Board of Appeal, he asserts that the impugned decision is contrary to the principle of good faith insofar as it was incumbent on the Office to warn him of the impending expiry of the time limit.

The complainant asks the Tribunal to set aside the decision conveyed to him on 8 October 2002 and to order the EPO to allow the transfer of his previously accrued pension rights to the Office’s pension scheme, provided that the Office’s calculations reveal that such a transfer would be advantageous to him.

C. In its reply the Organisation relies on Judgment 2339 in submitting that the impugned decision was duly motivated because it referred to the Appeals Committee’s unanimous opinion recommending that the complainant’s appeal be rejected. It notes in this connection that the Committee referred in its opinion to the Tribunal’s case law confirming that the grounds for a decision can be given at any time prior to the time the internal appeal is heard.

It points out that the Office interprets the six-month time limit generously, since it considers that each confirmation of an appointment gives rise to a new period for application. Thus, the complainant in fact had two opportunities to apply: the first six-month period began when his appointment under a fixed-term contract was confirmed in May 2000; the second began in June 2001 when he was appointed on a permanent basis. He had ample time to familiarise himself with the relevant rules. The Appeals Committee shared the Organisation’s view that he had not been blameless in failing to observe the time limit, notably because all that was required was a simple declaration of intent to transfer his pension rights, and because the earliest date at which the complainant indicates that he had to care for his parents was 19 November 2001, almost at the end of his second six-month period. Consequently, the EPO maintains that the refusal of his request for re-establishment of his rights was legitimate.

Regarding the complainant’s status as a German civil servant on leave of absence, the Organisation submits that this does not have the effect of suspending the time limit for filing an application for transfer of pension rights. Only if he agreed to a transfer proposal made by the Office in response to his application would he have to resign from the German civil service to allow the transfer to take place, as explained in Judgment 2238.

Lastly, the EPO considers that the case law of the Office’s Legal Board of Appeal is irrelevant to the present case. The decision to which the complainant refers concerns the Organisation’s duty, under certain circumstances, to warn patent applicants that a time limit is due to expire. The Organisation clearly cannot be considered to owe a similar duty to its staff, since that would entail monitoring the administrative details of more than 6,000 individuals.

D. In his rejoinder the complainant presses his pleas. He states that he was not aware that he had missed a first opportunity to apply for a transfer following the confirmation of his fixed-term appointment in May 2000. This, he argues, further illustrates the fact that the Organisation failed to discharge its duty to inform staff about transfers.

He also emphasises that the need to look after his parents obviously did not arise precisely on 19 November 2001, but resulted from a progressive decline in their health which had already placed heavy demands on him prior to that date.

E. In its surrejoinder the Organisation submits that the complainant's rejoinder does not introduce any argument liable to make it change its position, which it maintains in full.

CONSIDERATIONS

1. The complainant, who joined the EPO on 1 November 1999, became a permanent employee of the Organisation with effect from 1 June 2001. He had previously worked for the German government, and he had accrued pension rights through his employment as a civil servant. By a letter dated 4 March 2002 he applied to have those pension rights transferred to the Office's pension scheme.

2. The EPO rejected the transfer of rights, in a letter dated 8 October 2002. The letter reads, in part:

“Under Article 1 [paragraph] 1 of the Agreement made between the European Patent Organisation and the Federal Republic of Germany relating to implementation of Article 12 of the Pension [Scheme Regulations of] the EPO, an application for transfer must be submitted to the Office within six months of appointment [of the employee on a permanent basis].”

3. The letter goes on to note that for the complainant the application period ended on 30 November 2001. His letter of 4 March 2002 was well beyond the deadline for application for transfer.

4. Article 1(1) of the Agreement to which the letter of 8 October refers is incorporated in the EPO Codex and reads in part, as follows:

“A permanent employee or member of the contract staff of the European Patent Office who has been compulsorily or voluntarily insured with the German social security pension insurance scheme shall be entitled to have transferred to the pension scheme of the European Patent Office the total compulsory and voluntary contributions paid in respect of him to an authority responsible for the social security pension insurance scheme in the Federal Republic of Germany up until the time of his entry into the service of the European Patent Office, taking into account where appropriate any pension adjustment, together with 3.5 per cent interest for each complete year following the contribution payment until the time of the transfer. The transfer shall be effected on application by the person entitled; it may also be applied for by his survivors. **Such application is to be made to the European Patent Office within six months from the appointment of the employee on a permanent basis** or, in the case of a member of the contract staff, within six months from the date on which he acquires a right to a retirement pension. That period shall not expire earlier than six months after the entry into force of this Agreement.”
(emphasis added)

5. The complainant pleads that he failed to observe the six-month time limit for filing an application for transfer to the Office's pension scheme through no fault of his own, and that he should consequently be granted “re-establishment” of his rights. He argues that he had been so busy caring for and nursing both his parents, who had fallen ill just prior to the expiry of the time limit, that he was unable to file the required application within the set time limit. In essence, he is seeking an extension of time.

6. In its opinion, which was endorsed by the President of the Office in the impugned decision, the Appeals Committee took the view that the complainant was not blameless in having allowed the time limit to go by without having taken any steps to protect his rights. That was a view which was clearly open to the Organisation in the exercise of its discretion and the Tribunal will not interfere with it.

7. The complainant also contends, somewhat inconsistently given his preceding arguments, that he did not know about the time limit, as he was not adequately informed of its existence and of its enforcement. He submits that he did not receive an information brochure on the transfer of pension rights. Whether or not that is so, and the EPO cannot prove positively that the brochure in question was handed to him, he does admit that the Codex (with the full text of the relevant regulations) had been handed to him at the time that he first became an employee in November 1999.

8. The complainant argues that the EPO has failed in its obligation to provide him with information and advice. The relevant provision of the Agreement is Article 4, which reads, in part, as follows:

“It shall be incumbent on the authorities responsible, under the terms of this Agreement, for the social security pension insurance scheme and on the European Patent Office, in the framework of their competence, to provide general clarification and advice to persons concerned regarding their rights and obligations pursuant to this Agreement.”

9. There is no evidence that the complainant ever sought timely clarification or advice. Indeed, in the light of the very clear text of the applicable regulation it is difficult to see what clarification or advice might have been required. He had been given a copy of the regulation and it was for him to acquaint himself with it and make the necessary enquiries if there was some aspect of his right to a transfer of his pension rights which was not clear to him. His failure to do so cannot be blamed upon his employer.

10. The complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet