*Registry's translation,
the French text alone
being authoritative.*

112th Session **Judgment No. 3086**

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr C. M. against the European Patent Organisation (EPO) on 27 June 2009, the Organisation's reply of 26 October 2009, the complainant's rejoinder of 29 January 2010 as corrected on 23 March, and the EPO's surrejoinder of 5 July 2010;

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 and the pleadings may be summed up as follows:

A. The complainant, a French national born in 1943, is a former permanent employee of the European Patent Office, the EPO's secretariat, who retired on 1 September 2005.

In June 2005 he took part in a mission consisting of a visit to nuclear facilities in France. In accordance with Article 78(1)g)[*] of the

[*] At the material time this subparagraph read as follows: "If the Office pays travel expenses which also comprise provision for meals or overnight accommodation, the daily subsistence allowance shall be reduced by 15% for each main meal and 50% for overnight accommodation provided for in those expenses."

Service Regulations for Permanent Employees of the European Patent Office, the daily subsistence allowance due to him was reduced by 15 per cent. By an e-mail of 26 August he enquired about the reasons for this measure given the fact that, to the best of his knowledge, it had not been applied to some of his colleagues who had also participated in the mission in question.

At the request of the editors of the *Gazette*, the EPO in-house magazine, the complainant completed a form with a view to the publication of an article on his retirement. In this form he not only summarised his career and described his plans for the future, but also made some cutting remarks about the EPO. As these remarks were not reproduced in the article about him which appeared in the September 2005 issue of the *Gazette*, he requested the publication of a corrigendum.

On 15 July 2005 the complainant, who had decided to leave Germany and settle in France, his country of origin, filled out a claim form for the reimbursement of his removal expenses. At that point he authorised the Office to settle the invoice of the firm instructed to carry out the removal of his personal effects, although he specified in a handwritten footnote that the Office should do so only "after having obtained [his] approval". A few weeks later, as he was extremely dissatisfied with the services of the removal firm, particularly because it had damaged some of his furniture, he asked the Office to pay only part of the invoice. On 4 September 2006 the Regional Court of Munich ordered the complainant to pay the full invoice with interest and costs. Having been authorised by the complainant to pay the firm in question a sum corresponding to approximately half of the amount due, the Office made the payment that same month.

In the meantime, on 28 November 2005, the complainant had sent the President of the Office a letter reiterating his grievances. As he received no reply, on 5 May 2006 he lodged four internal appeals. In the first he stated that two of his colleagues who had taken part in the mission in June 2005 had told him that the daily subsistence allowance which they had received had not been reduced by 15 per cent, whereas his allowance had been reduced by that amount. In the

second he took issue with the fact that the article about him in the *Gazette* had been "shortened compared with the version [he] had proposed", although he had not been informed of this beforehand. The third related to the services of the removal firm and the fourth to his salary for July and August 2005. The four appeals were forwarded to the Internal Appeals Committee, which considered them jointly. In its opinion of 29 January 2009 the Committee recommended the dismissal of the first three appeals on the grounds that they were unfounded. As the complainant himself had made it known during the proceedings that the fourth had become moot, the Committee considered that it was irreceivable. By a letter of 26 March 2009, which constitutes the impugned decision, the complainant was informed that the President of the Office had decided to adopt the Committee's recommendation.

B. As far as his first appeal is concerned, the complainant maintains that two of his colleagues who participated in the mission in June 2005 told him in August 2005 that no reduction had been made in their daily subsistence allowance for a meal taken on one of the sites visited. He contends that the principle of equal treatment has been breached and he asks the Tribunal to hear the two persons in question. He also claims 2,500 euros to compensate for moral injury and to cover his costs.

With regard to his second appeal, he explains that he takes the Organisation to task for not having submitted to him for his approval the article it intended to publish about him in the *Gazette*. In his view the article was "an abridged, watered down version of [that] which [he] had sent to the editors of the *Gazette*". In addition to the publication of a corrigendum approved by him, he claims nominal damages in the amount of one euro.

With respect to his third appeal, the complainant refers to the damage caused by the removal firm whose services he had been "advised to take, or which had even been recommended to [him]" by one of the permanent employees of the Office, whom he asks to be heard. He claims 6,000 euros in compensation for material injury and 2,000 euros in damages for moral injury and costs.

The complainant also contends that the facts giving rise to his complaint are further proof of the harassment to which he was subjected throughout his career at the Office. He asks for the payment of an additional 1,000 euros to redress the "moral injury to [his] person" and because of the "deliberate attempt […] to give [him] a reputation which [he] do[es] not deserve".

C. In its reply the Organisation states that the relevant provisions of the Service Regulations have been applied correctly and that the complainant has suffered no injury justifying an award of financial compensation.

It submits, with regard to his first appeal, that the complainant simply took for granted what two of his colleagues had told him in August 2005. At that point, at least one of them was unaware that his daily subsistence allowance had been reduced. It points out that the complainant has not furnished the slightest proof, whereas it provides documentary evidence showing that, in the case of the two above-mentioned colleagues, the allowance in question had indeed been reduced by 15 per cent and that these persons confirmed this in October 2009. In these circumstances it considers that a hearing of these persons is unwarranted.

With respect to the second appeal, the EPO, relying on the Tribunal's Judgment 2626, observes that when – as in this case – an employee drafts a text in immoderate language, a refusal to publish it in full is justified. It also maintains that the article published in the *Gazette* in no way injured interests of the complainant which had to be protected.

As far as the third appeal is concerned, the Organisation refers to Judgment 777 and explains that, although under Article 28 of the Service Regulations it has a duty of assistance towards its permanent employees and former permanent employees, this "does not extend to participation in a private lawsuit", such as the dispute between the removal firm and the complainant. It emphasises that the permanent employee who contacted this firm on the complainant's behalf has

confirmed that he never recommended that the latter should choose that firm and it holds that it is unnecessary to hear him.

Citing Judgment 2278 the EPO contends, lastly, that if the Tribunal decided to award costs to the complainant, the amount thereof should be reduced, because throughout the proceedings the complainant has employed inappropriate language and has thus breached the principle of mutual respect between an Administration and its staff.

D. In his rejoinder the complainant submits that as the Office did not actually settle the bill for the meal that he took on one of the sites visited during the mission in June 2005, he must be reimbursed the amount by which his daily subsistence allowance was reduced, i.e. 34.20 euros.

He maintains his position regarding the publication of the article in the *Gazette*, but confines his claims to the request for nominal damages of one euro.

The complainant considers that pursuant to Article 28 of the Service Regulations the Organisation ought to have assisted him in the context of his dispute with the removal firm. He undertakes to settle the outstanding balance on the firm's invoice – an amount which was indeed debited from his account in March 2010 – and he asks the Tribunal to order the EPO to pay him the amount of this outstanding balance and at least some of the costs which he was ordered to pay by the Regional Court of Munich. He maintains his claim for damages for the moral injury which he considers he has suffered. Lastly, he claims costs.

E. In its surrejoinder the Organisation reiterates its position. Relying on Judgment 960 in particular, it states that the claim presented by the complainant in his rejoinder, that he should be reimbursed an amount corresponding to the reduction in his daily subsistence allowance, is irreceivable for failure to exhaust internal means of redress. It explains that it has already reimbursed the complainant for the outstanding balance on the removal firm's invoice.

CONSIDERATIONS

1. The complainant is a former permanent employee of the European Patent Office who retired on 1 September 2005. His ninth complaint is directed at the decision of 26 March 2009 by which the President of the Office dismissed, inter alia, three of his internal appeals respectively concerning a reduction in the daily subsistence allowance which he had received for a mission, the publication of an article concerning him in the EPO *Gazette* and the services of the removal firm which moved his personal effects after his retirement. The Tribunal will examine each of these three disputes separately.

2. The Tribunal considers that there is no need to order the hearings requested by the complainant, since it is sufficiently informed by the parties' extensive submissions and the evidence in the file.

3. (a) In June 2005 the complainant took part in an official mission the purpose of which was to visit some French nuclear facilities. Pursuant to Article 78(1)g) of the Service Regulations, the daily subsistence allowance due to the complainant was reduced by 15 per cent because of a meal taken on one of the sites visited.

(b) In the complainant's opinion this reduction constitutes unequal treatment, because two permanent employees who took part in this mission told him that no such reduction had been applied to the daily subsistence allowance which they had been paid.

(c) It is, however, plain from the accounts produced by the Organisation that the daily subsistence allowance received by these two permanent employees was reduced by the same amount as that received by the complainant. The statements to the contrary which these persons allegedly made to the complainant appear to be explained by the fact that they were unaware that the daily subsistence allowance which the Office had paid them had been reduced. The plea therefore has no factual basis.

(d) In his rejoinder the complainant asks to be reimbursed an amount corresponding to the reduction made, i.e. 34.20 euros. Since

this claim was presented for the first time in the rejoinder it is not receivable and, as such, must be dismissed in accordance with the Tribunal's case law (see, in particular, Judgments 565, under 4, 960, under 8, and 1768, under 5).

(e) All the complainant's claims related to the reduction in the daily subsistence allowance which he received must therefore be dismissed.

4. (a) A few weeks before he retired, the complainant was invited by the editors of the *Gazette* to supply some personal information in order that an article paying tribute to him could be written before he left. Although he says that he neither asked nor wished for the publication of an article concerning him, the complainant filled in the form which had been sent to him for this purpose. Nevertheless he added, in what were – to say the least – cutting terms, some remarks about the wrongs allegedly done to him within the EPO for many years.

The article entitled "*Un pionnier nous quitte*", which appeared in the September 2005 issue of the *Gazette*, summarises his career and ends with a brief mention of his plans for the future.

(b) The complainant voices no criticism of the contents of this article insofar as it recapitulates the information which he himself had supplied in the above-mentioned form. However, he contends that the article in question is "an abridged, watered down version of [that] which [he] had sent to the editors of the *Gazette*", and he objects to the fact that the editorial team did not submit the article to him for his approval prior to publication.

(c) The editors of the *Gazette* could not have failed to notice that the complainant attached great importance to his criticism. It is therefore regrettable that, as a matter of courtesy, he was not informed that it would be omitted from the article. However, this does not constitute a fault which must be censured. The above-mentioned form makes it clear that the questions are designed simply to enable the editorial team to obtain an accurate portrait of the employee in question. Moreover, the complainant does not rely on any rule

requiring the editors to abide word for word by the information supplied by the permanent employee, or to reproduce it exhaustively. What matters is that an article paying tribute to a retiring employee should faithfully and objectively describe his or her career and plans without breaching his or her personal rights.

(d) Furthermore, the article in the *Gazette* depicts the complainant as a highly valued employee; the cultural and social activities in which he wishes to engage during his retirement are presented in such a way as to make all readers warm to him. It is unclear what interest he could have in obtaining the publication – in the form he wished – of criticisms and reproaches recalling his disagreements with the Organisation.

(e) The claims related to the article published in the *Gazette* in September 2005 must therefore also be dismissed.

5. (a) At the material time, Article 81(1) of the Service Regulations read in relevant part as follows:

> "A permanent employee shall be entitled to reimbursement of expenses actually incurred for the removal of household and personal effects not including private motor vehicles on the following occasions:
>
> a) […]
>
> b) […]
>
> c) on leaving the service […]."

On the basis of this provision, the Office paid the full amount of the costs occasioned by the complainant's move from Germany to France after he retired.

(b) The complainant emphasises that the removal firm did not do its work properly and that the resultant material injury he suffered gave rise to a dispute with it. In his opinion, the Organisation has incurred liability, particularly because it had urged him to place the move in the hands of that firm, which it trusted.

(c) With regard to the latter point, the Tribunal finds that it is by no means established that an employee of the Office formally

recommended that the complainant should choose the firm which carried out the move.

(d) Moreover, when an international organisation defrays the removal expenses of an official or former official, it does not follow that it becomes a party to the contract between the person concerned and the removal firm. Neither of the parties to this private law contract acts on behalf of the organisation. For the latter, the contract is *res inter alios*. This is all the more understandable given that it has no means of ascertaining whether the contract has been performed satisfactorily or, if necessary, of establishing the damage resulting from faulty performance.

The complainant does not cite any provision requiring that, in the situation covered by Article 81(1)c) of the Service Regulations and in the actual circumstances of the case, the Organisation should be bound to guarantee the satisfactory performance of the contract which he had concluded with the removal firm.

(e) He further contends that, in the context of his dispute with the removal firm, the EPO ought to have assisted him in accordance with Article 28(1) and (2), which read as follows:

> "(1) If, by reason of his office or duties, any permanent employee, or former permanent employee, or any member of his family living in his household is subject to any insult, threat, defamation or attack to his person or property, the Organisation shall assist the employee, in particular in proceedings against the author of any such act.
>
> (2) If a permanent employee or a former permanent employee suffers injury by reason of his office or duties, the Organisation shall compensate him in so far as he has not wilfully or through serious negligence himself provoked the injury, and has been unable to obtain full redress."

Insofar as they apply to former permanent employees, these very clear provisions plainly do not refer to situations such as that which faced the complainant.

(f) The complainant's third claim is therefore equally unfounded in its very principle and the request to enter further

submissions, which he sent to the Tribunal on 3 November 2010 after the proceedings had closed, is to no avail.

6. The complainant submits that he was the victim of harassment by the Organisation, but he offers no proof of any actual harassment.

7. It follows from the foregoing that the complaint must be dismissed in its entirety.

8. The Organisation's argument that any costs awarded to the complainant should be reduced on account of the immoderate terms used by him in his submissions has become moot, since he will not be entitled to costs because the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 18 November 2011, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet