Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

115th Session **Judgment No. 3214**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.H. V.M. against the European Patent Organisation (EPO) on 5 July 2010, the Organisation's reply of 11 October, the complainant's rejoinder of 19 November 2010 and the EPO's surrejoinder of 2 February 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 5 of its Rules;

Having examined the written submissions;

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

A. Article 54(1) of the Service Regulations for Permanent Employees of the European Patent Office reads as follows:

> "(a) A permanent employee shall be retired
>
> – automatically on the last day of the month during which he reaches the age of sixty-five years;
>
> – at his own request under the conditions stipulated in the Pension Scheme Regulations.
>
> (b) Notwithstanding the provisions of paragraph (a), a permanent employee may at his own request and only if the appointing authority considers it justified in the interest of the service, carry on

> working until he reaches the age of sixty-eight in which case he shall be retired automatically on the last day of the month in which he reaches that age. This applies to members of the [Appeal] Boards […] provided that the Administrative Council, on a proposal of the President of the Office, appoints the member concerned pursuant to the first sentence of Article 11, paragraph 3, of the [European Patent] Convention with effect from the day following the last day of the month during which he reaches the age of sixty-five."

The complainant, a Belgian national born in December 1945, joined the Office in 1990 as a legally qualified member of a board of appeal, at grade A5. On 15 May 2008 he submitted a request to carry on working beyond the age of 65 to his superior. On 19 May the Vice-President in charge of Directorate-General 3 (DG3) replied that his request would be processed in due course, closer to the date when he would reach that age. On 22 May the complainant asked the Vice-President to advise him when his request would be forwarded to the President of the Office. On 29 May the Vice-President assured him that it would be processed during 2010.

The Vice-President in charge of DG3 made it clear in Communication 2/08 of 11 July 2008 that members of boards of appeal who wished to continue working beyond the age of 65 had to send him the request referred to in Article 54(1)(b) of the Service Regulations and that the President's proposal would be prepared by a Selection Committee within DG3.

On 12 November the complainant asked the aforementioned Vice-President to ensure that his request was forwarded to the President within a week. On 18 November 2008 the Vice-President replied that Communication 2/08 made no provision for directly referring a request of that nature to the President and that, in his case, the procedure would begin in the first half of 2010.

On 24 February 2010 the Selection Committee interviewed the complainant. The minutes of its deliberations show that the Committee proposed that the President should not accede to his request for a prolongation of service. By a letter of 13 April 2010, which constitutes the impugned decision, the President informed the complainant that she would not propose his appointment for a

further term of office to the Administrative Council. In view of the need to bring in new staff, she considered that no special factors – "such as organisational needs, performance or attitude" – justified the extension of his appointment in the interest of the service.

B. The complainant submits that Article 54(1)(b) of the Service Regulations is the only provision applying to his case, because Communication 2/08 had not entered into force when he submitted his request on 15 May 2008. According to that provision, only the appointing authority, in other words the Administrative Council, may decide to extend the appointment of a member of boards of appeal beyond the age of 65. From this he infers that, even if the above-mentioned Communication was applicable, the President was not competent to decide on his request, but she had a duty to forward a proposal – of some kind – to the Council, and in failing to do so she committed a "denial of justice".

He contends subsidiarily that his "rights of defence" have been breached. He states that the "conditions for implementing and applying" the procedure for prolonging the service of other permanent employees beyond the age of 65 are kept secret, that the membership of the Selection Committee was decided "at the discretion" of the Vice-President of DG3, that he was not informed of the composition of the Committee – which prevented him from asserting his right of recusal – and that he never had access to the minutes of the Committee's deliberations.

The complainant explains that, according to the aforementioned paragraph 1(b), the "interest of the service" is the only ground on which a request for an extension of appointment beyond retirement age may be refused. He considers that, since the granting of such an extension therefore depends "solely upon the will" of the EPO, the phrase "in the interest of the service" is an "oppressive clause" which should be regarded as null and void. He also argues that, even if the clause were lawful, the grounds mentioned in the impugned decision, in the light of which the interest of the service was assessed, are neither substantiated nor sound.

Lastly, he complains that, although he asked the President of the Office and the Vice-President of DG3 to process his request before the end of 2009, which would have enabled him to prepare for his return to his country of origin, they refused to do so.

The complainant asks the Tribunal to propose to the Administrative Council that it grant his request for an extension of his appointment until 31 December 2013 and, as an interim measure, to order the Council to grant such an extension until six months after the delivery of this judgment. He also asks the Tribunal to find that the phrase "in the interest of the service" in Article 54(1)(b) of the Service Regulations is "null and void", and "to remove from his application file all elements based on Communication [No.] 2/08". He seeks a provisional award of damages in an amount which he assesses at 300,000 euros, subject to an expert opinion. He also applies for an oral hearing.

C. In its reply the Organisation asserts that the complaint is irreceivable since, according to Judgment 1832 of the Tribunal, the President's decision not to submit a proposal to the Administrative Council regarding the complainant's appointment is not a decision adversely affecting him.

Subsidiarily, the EPO contends that the complaint is groundless. First, it points out that it is well settled by the Tribunal's case law that the decision to allow a staff member to remain in service beyond the age of 65 is a discretionary decision which may be set aside only under certain conditions. In its opinion, those conditions are not met in the instant case.

The defendant points out that a procedure for recruiting Chairpersons and members of boards of appeal has existed since 9 December 1988, whereby a selection committee submits its proposal for an appointment to the President of the Office, who in turn submits his or her own proposal to the Administrative Council. The Organisation emphasises that, although no guidelines on the application of Article 54(1)(b) of the Service Regulations had been adopted at the

time when the complainant submitted his request on 15 May 2008, its practice – subsequently confirmed by Communication 2/08 – was to follow that procedure in dealing with requests to remain in service beyond the age of 65. It concludes from this that the Selection Committee was competent to make a proposal to the President.

Furthermore, the Organisation asserts that the Selection Committee was set up in accordance with Communication 2/08 and the above-mentioned procedure. It lists its members and states that the complainant had no reason to recuse any of them. It submits that the Committee's deliberations are secret and provides a censored copy of its minutes. It adds that the President endorsed the reasoning set out in that document, which shows that the interest of the service was correctly and thoroughly assessed. It cites the Tribunal's case law in order to refute the allegation that the phrase "in the interest of the service" in the above-mentioned paragraph 1(b) is an oppressive clause and it considers that the President was right to follow the Committee's proposal.

Lastly, the EPO submits that the processing of a request for the extension of an appointment beyond normal retirement age "obviously" cannot begin until a date which is fairly close to that on which the person concerned will reach that age. It emphasises that, in this case, the complainant was notified of the impugned decision in good time, in other words more than seven months before he reached the age of 65, and was thus able to prepare for a possible return to his country of origin.

D. In his rejoinder the complainant challenges the receivability of the Office's reply on the grounds that no document has been produced to prove it has been "filed by an authorised person". In addition, he submits that his complaint is receivable because the Administrative Council could not decide on his request in the absence of a proposal from the President. Insofar as the impugned decision ended the procedure, it was indeed a final decision adversely affecting him, as a result of which he filed his complaint in accordance with Article 107(2)(b) of the Service Regulations.

Furthermore, he contends that the procedure laid down in Article 54(1) of the Service Regulations undermines the independence that members of boards of appeal are meant to enjoy pursuant to Article 23 of the European Patent Convention. With regard to the application of the procedure introduced on 9 December 1988, he considers that the EPO can hardly invoke a long-established practice, since his request was the "first of its kind" and that, in any case, the practice in question concerns the appointment of new members of boards of appeal. He also asserts that, according to Circular No. 302, which contains guidelines for applying Article 54 of the Service Regulations, a permanent employee of the Office who has asked to carry on working beyond the age of 65 must be notified of a decision within two months of the date on which the request was made. In his view, members of appeal boards are victims of discrimination, in that no such time limit applies to the processing of their requests.

He considers that a provisional award of damages in the amount of 300,000 euros is fully justified, bearing in mind the salary and retirement benefits he has lost and the harm done to his reputation owing to the non-extension of his appointment. The complainant asks the Tribunal to strike from the record the minutes of the Selection Committee's deliberations which, he contends, lack clarity and he requests that an expert be appointed to establish the final amount of compensation to which he is entitled. Lastly, he asks that the Office be ordered to pay "legal interest" and costs.

E. In its surrejoinder the defendant states that its reply was signed by a permanent employee of the Office, i.e. by a person who was authorised to do so. It points out that Article 23 of the European Patent Convention, which concerns the independence of members of boards of appeal in the exercise of their functions, does not deal with the appointment or reappointment of these members. On the other hand, the decision not to propose the appointment of an employee as a member of a board of appeal is one that the President of the Office is empowered to take pursuant to Article 10 of the Convention. The Organisation also explains that, if a permanent employee to whom the

provisions of Circular No. 302 applied were to submit a request for an extension of his or her appointment beyond the age of 65 long before he or she reached that age, like the complainant he or she would be told that the request was premature, because analysis of the needs of the service and the medical examination of the person concerned must take place at "a date fairly close" to that at which any extension would take effect. Lastly, the Organisation considers that it is unnecessary to hold hearings.

CONSIDERATIONS

1. Article 54 of the Service Regulations for Permanent Employees of the European Patent Office, which sets the retirement age for permanent employees at 65, was amended on 1 January 2008 to allow those who so request to carry on working until the age of 68 "if the appointing authority considers it justified in the interest of the service".

The second sentence of paragraph 1(b) of this article makes it clear that this option is open to members of boards of appeal, to whom the Service Regulations apply only insofar as they are not prejudicial to their independence, "provided that the Administrative Council, on a proposal of the President of the Office, appoints the member concerned pursuant to the first sentence of Article 11, paragraph 3, of the [European Patent] Convention with effect from the day following the last day of the month during which he reaches the age of sixty-five".

Thus, in order for members of boards of appeal to continue working, they must therefore be reappointed under the same conditions as those governing their initial appointment, since their last term of office must be deemed to end automatically at their normal date of retirement.

2. The complainant, who held grade A5, had been working as a member of boards of appeal since 1 October 1990. As he was born on 27 December 1945, he would normally have retired on 1 January 2011. However, on 15 May 2008, i.e. more than two and a half years before that date, he asked to be allowed to carry on working until the

age of 68 on the basis of the above-mentioned provisions. This would have postponed his retirement until 1 January 2014.

3. Notwithstanding the complainant's protests, the Office's services refused to process that request immediately, because they considered it to be premature and, more particularly, because the special procedure for examining such requests from members of appeal boards had yet to be defined, owing to the very recent amendment of Article 54 of the Service Regulations.

In fact, this procedure was subsequently established by Communication 2/08 of 11 July 2008, signed by the Vice-President in charge of DG3. The Communication stipulated inter alia that the proposal to the Administrative Council to reappoint the persons concerned would be prepared by a selection committee, and that some of the provisions of a document entitled "Procedure for recruitment of Chairmen and Members of the Boards of Appeal", dated 9 December 1988, would apply in that case.

4. After the complainant had been interviewed by that committee, and in accordance with its proposal, the President of the Office ultimately rejected his request. By a letter dated 13 April 2010 the President informed him that she "[would] not propose to the Administrative Council [his] appointment as a member of the appeal boards for a further period as from 1 January 2011".

5. That is the decision impugned by the complainant, who requests that it be set aside. Amongst other relief, he also asks the Tribunal to propose that the Administrative Council of the Office accede to his request for an extension of his appointment, and that it order the EPO to pay compensation for the injury which he considers he has suffered.

6. In his rejoinder the complainant challenges the receivability of the EPO's reply on the grounds that it has not been signed by a person with authority to do so. However, Article 5, paragraph 4, of the Rules of the Tribunal does not require a defendant organisation to

provide a power of attorney where, as in this case, it is represented by one of its officials (see, for example, Judgment 2965, under 10). This objection will therefore be dismissed.

7. The complainant has requested the convening of a hearing. In view of the abundant and sufficiently clear submissions and evidence produced by the parties, the Tribunal considers that it is fully informed about the case and does not therefore deem it necessary to grant this request.

8. The Organisation objects to the receivability of the complaint on the grounds that it is not directed against an act adversely affecting the complainant.

Its reasoning in this connection is based on Judgment 1832, which concerned a complaint filed by a permanent employee challenging the appointment of another person to the post of member of a board of appeal for which he had applied, and in which the Tribunal considered that the proposal for appointment submitted by the President of the Office constituted merely one step in preparation for the decision taken at the end of the procedure by the Administrative Council.

However, the Organisation is mistaken as to the scope of that precedent; it does not apply to a complaint directed against a refusal to propose an appointment where, as in the instant case, the refusal of the request of the permanent employee in question does not involve consideration of the merits of any competing candidate. In these circumstances, the position adopted by the President of the Office has the effect of ending the procedure, since the Administrative Council, which by definition has no proposal before it, is not called upon to take a decision on the request of the person concerned.

For this reason, such a refusal does constitute a decision having an adverse effect and it may therefore be challenged before the Tribunal given that, under Article 107(2) of the Service Regulations, decisions taken on this matter are not open to internal appeal.

9. In support of his claims the complainant first challenges the lawfulness of the above-mentioned Article 54 of the Service

Regulations insofar as it makes the continued appointment of a staff member beyond normal retirement age subject to the condition that this measure is justified "in the interest of the service". In his opinion, the reference to this notion turns it into an "oppressive clause".

This argument, which is certainly surprising coming as it does from a civil servant, disingenuously ignores the fact that the essential purpose of the staff regulations of an international organisation is to promote that organisation's interests while at the same time safeguarding the rights of its staff.

In addition, the complainant is greatly mistaken as to the scope of the provisions in question when he says that Article 54 gives a staff member who asks to be allowed to carry on working after 65 the right "in principle to the extension of his appointment, unless the EPO denies it". On the contrary, the career of a member of staff normally ends automatically when that person reaches retirement age, and plainly there is nothing abnormal in stipulating that an extension of appointment beyond that age limit, which by definition constitutes an exceptional measure, can be granted only if it is in the interest of the service.

10. Furthermore, the complainant has no grounds for submitting that, because the aforementioned Article 54 allows the EPO to refuse such an extension to members of boards of appeal on the basis of that criterion, it undermines the independent status which they enjoy by virtue of Article 23 of the European Patent Convention.

Since, as stated earlier, the last term of office of a member of an appeal board must be deemed to end when he or she reaches the normal age of retirement, contrary to the complainant's contentions, any refusal to employ the person concerned beyond that age limit does not in any way constitute a "veiled dismissal" in breach of the guarantees afforded by Article 23.

Moreover, the complainant's submissions in this connection do not convince the Tribunal that allowing the Organisation to grant or refuse an extension of appointment beyond retirement age in the interest of the service undermines the independence of members of appeal boards.

11. There are therefore no grounds whatsoever for the Tribunal to accept the complainant's principal claim that the phrase in Article 54 of the Service Regulations permitting the extension of an appointment beyond retirement age "in the interest of the service" be declared "null and void", or his subsidiary claim that it be declared "inapplicable to members of [appeal] boards".

12. Given that the reference to this criterion is maintained, the challenge to its lawfulness having been dismissed, Article 54 gives the authority deciding on such requests for an extension a broad discretion which is subject to only limited review by the Tribunal. Pursuant to its case law, the Tribunal will interfere with such a decision only if it was taken without authority, if a rule of form or procedure was breached, if it was based on a mistake of fact or law, if an essential fact was overlooked, if a clearly mistaken conclusion was drawn from the facts or if there was an abuse of authority (see Judgment 2969, under 10, concerning to the application of the same article, and Judgments 2377, under 4, 2669, under 8, or 2845, under 5, concerning the application of similar provisions providing for the prolongation of service beyond normal retirement age).

13. The complainant submits that the impugned decision was taken without authority.

Relying on the aforementioned provisions of Article 54 of the Service Regulations, which make it clear that decisions on requests to carry on working lie with the "appointing authority", he contends that, for members of boards of appeal, the authority in question is the Administrative Council by virtue of Article 11(3) of the European Patent Convention. He infers from this that, by denying him such an extension, the President of the Office unlawfully encroached on the Council's competence.

As stated earlier under 1, the second sentence of Article 54(1)(b) makes the continued service of a member of a board of appeal beyond normal retirement age subject to reappointment by the Administrative Council "on a proposal of the President of the Office". A long line of precedent has it that a provision of this kind, which grants the

executive head of an organisation the power to propose that another organ adopt a decision, authorises that person to refrain from making such a proposal if he or she sees no reason for it (see Judgment 585, under 5).

In the instant case, the President of the Office was therefore competent to take the impugned decision not to propose the complainant's renewed appointment as a member of a board of appeal to the Administrative Council and thus to preclude his further employment.

Moreover, the Tribunal would draw attention to the fact that the complainant did, at least at one point, share this view, since in a letter to the President of the Office dated 15 December 2008 he himself wrote that she was "the sole competent authority *ratione materiae* for submitting or not submitting [his] request to the Council".

14. The complainant contends that the EPO could not lawfully examine his request to carry on working under the procedure laid down in Communication 2/08 of 11 July 2008, because his request had been filed before that regulatory text was issued.

According to the Tribunal's case law, an administrative authority, when dealing with a claim, must generally base itself on the provisions in force at the time it takes its decision, and not on those in force at the time the claim was submitted. Only where this approach is clearly excluded by the new provisions, or where it would result in a breach of the requirements of good faith, the non-retroactivity of administrative decisions and the protection of acquired rights, will the above rule not apply (see Judgments 2459, under 9, 2986, under 32, or 3034, under 33).

There is no indication in Communication 2/08 that its provisions were intended to apply only to requests submitted after its entry into force. As for the various principles listed above, they would have been breached only if the application of the new text had had the effect of altering a definitively established legal situation, or of breaching an undertaking given to the complainant by the Organisation, which is by no means the case here.

Moreover, it must be noted that, since the main purpose of the above-mentioned Communication was to entrust a selection committee with the task of preparing the proposals of the President of the Office, the application of this text to the complainant's case offered him additional guarantees of equal treatment, fairness and impartiality, of which he can hardly complain.

The Tribunal also notes that, here again, the complainant previously held the opposite view to that which he now advances in his complaint, because in his aforementioned letter of 15 December 2008 he asked the President of the Office "forthwith to order any examinations [she] might consider appropriate, especially those mentioned in the Communication of 11 July 2008", and added that it was "clear that this Communication appl[ied] to [his] request in respect of all formalities after its date of publication".

15. It follows from the foregoing considerations that the Tribunal will not grant the complainant's claim seeking to have "all elements based on Communication 2/08 removed from his application file".

16. The complainant complains about the length of time which elapsed between the filing of his request on 15 May 2008 and the decision taken on it on 13 April 2010.

Since under Article 54 of the Service Regulations the granting of an extension of an appointment is subject to the condition that it is justified in the interest of the service, the Organisation is right in saying that any decision on the subject can logically be taken only at a date relatively close to that on which the permanent employee concerned will reach normal retirement age. Indeed, if the Organisation were to proceed otherwise, the competent authority would not be in a position to make an informed assessment of the advisability of such an extension in light of that criterion.

In addition, retaining the service of a member of a board of appeal is also subject, pursuant to paragraph 3 of Communication 2/08, to a medical examination in order to ascertain that the person making the request is still fit enough to continue working after normal retirement age. It makes little sense to hold such an examination too far in advance.

In this respect, the instant case where, as stated, the complainant's request was submitted more than two and a half years in advance, is ludicrous. The Tribunal sees nothing abnormal in postponing the examination of this request until the beginning of 2010.

Lastly, the complainant has no reason whatsoever to submit that this postponement prevented him from making adequate arrangements for his personal life after he had attained normal retirement age, as he was notified of the decision of 13 April 2010 almost nine months before he arrived at that age limit, which left him sufficient time to take the necessary steps.

17. In his rejoinder the complainant contends that the members of boards of appeal are victims of discrimination in comparison with EPO permanent employees appointed by the President of the Office, because Circular No. 302 of 20 December 2007, which contains guidelines for applying Article 54 of the Service Regulations to these permanent employees, provides that the employee concerned must be notified of the decision on prolongation of service within two months of the date on which the request was made. However, for the same reasons as those set forth earlier with regard to members of boards of appeal, and notwithstanding the fact that the provisions of the circular do not expressly refer to this eventuality, in practice this time limit will not apply to a request submitted at a time when it is not yet possible to carry out a proper assessment of the interest of the service and to ascertain the physical fitness of the person making the request as at the date on which the requested prolongation would take effect. This plea will therefore be dismissed.

18. The complainant also claims that he was not informed of the conditions in which individual decisions were adopted with respect to other permanent employees who had asked to carry on working. However, these requests made by other employees must be examined confidentially, and precise information on that subject could not therefore be given to him under any circumstances.

19. He submits that no reasons were given for the impugned decision. The Tribunal finds that, on the contrary, the decision sets out

in detail the legal and factual considerations on which it rested. The separate legal issue of the relevance of these considerations will be examined at a later stage.

20. The complainant also contends that the impugned decision was based on factors of which he had not been informed beforehand and which were not discussed with him in an adversarial manner. He was duly interviewed by the Selection Committee, and the fact that the decision taken thereafter might have been partly based on considerations other than those expressly mentioned during that interview or in other exchanges, cannot be regarded *per se* as a breach of his rights of defence.

21. Although the complainant submits that the membership of the Selection Committee was "*de facto* decided at the discretion of the Vice-President [in charge] of DG3", the evidence shows that the membership of that body complied with that specified in the provisions of paragraph 2 of Communication 2/08 and point 4 of the aforementioned document of 9 December 1988 read together.

22. The complainant further claims that he was not informed of the names of the members of the Selection Committee.

The Tribunal's case law establishes that, in accordance with the requirements of transparency and due process in administrative processes, a staff member is entitled to be apprised of the composition of an advisory body which is called upon to render an opinion concerning her or him, in order that she or he may comment on its composition (see, for example, Judgments 1815, under 5, or 2767, under 7(a)).

In the instant case, while the Organisation does not dispute the fact that it did not advise the complainant of the names of the Committee members, he does not say that he asked for this information, although he had every opportunity to do so during the proceedings, in particular when he received the invitation to his interview with that body. Since he did not seek to assert that right, he may not submit that the EPO, which was not obliged to supply him

with the information in question of its own accord, denied him the possibility of exercising it.

The Tribunal also notes that the complainant did in fact know the names of the Committee members, since he listed all of them in his complaint.

23. Similarly, the complainant has no grounds for holding that two members of that Committee could not lawfully sit on it. The fact on which he relies in support of this allegation, namely that they were Chairpersons of appeal boards on which he had not served, did not in any way prevent their participation in that body.

24. The complainant takes the EPO to task for not sending him the Selection Committee's opinion or the minutes of its deliberations showing its proposal.

The Tribunal's case law has it that, as a general rule, a staff member must have access to all evidence on which the competent authority bases its decisions concerning him or her, especially the opinion issued by such an advisory organ. A document of that nature may be withheld on grounds of confidentiality from a third person but not from the person concerned (see, for example, Judgments 2229, under 3(b), or 2700, under 6).

Once again, the Tribunal observes that the complainant does not say that he asked for the document in question. While the Organisation could not lawfully have refused to grant such a request, it was under no obligation to forward the document of its own accord (see Judgment 2944, under 42). The position would have been different only if – as is not the case here – the reasons given by the competent authority for its decision had been confined to a mere reference to the advisory body's opinion.

25. The EPO annexes to its reply a copy of the minutes of the Selection Committee's deliberations showing the latter's proposal.

The document supplied is, however, merely an expurgated version of the minutes where most of the grounds for its decision have been deliberately concealed. The Tribunal can only express its

regret that the Office should think it necessary to resort to such a step. Indeed, as has just been stated, contrary to the Organisation's submissions, in principle the Committee's opinion cannot be withheld from the complainant on grounds of confidentiality. Hence there appears to be no justification for not producing the full version of this opinion.

Nonetheless, the Tribunal will not accede to the complainant's request that this document be struck from the record. The complainant is correct in saying that it does not prove that the Committee's proposal was unanimous, as the Organisation maintains in its submissions. But he is wrong in contending that this fact alone is reason enough to strike this material from the record, particularly since the anomaly consisting in the failure to disclose the Committee's reasons does not in itself affect its authoritative nature.

26. In addition to his submissions concerning formal or procedural flaws which were analysed in the foregoing paragraphs, the complainant also criticises the substance of the impugned decision.

27. The grounds given for this decision show that it is based, on the one hand, on the consideration that, in the EPO's opinion, in the interests of the service it was necessary "to bring in some new staff" to fill the positions of the chairpersons and members of boards of appeal and, on the other, that no particular factor related to organisational needs or the complainant's professional skills would, in the instant case, have warranted an exception being made to the general preference for bringing in new staff.

28. Contrary to the view taken by the complainant, the criteria forming the basis of the decision on his request cannot be deemed arbitrary, nor do they involve any mistake of law. In particular, the complainant has no grounds for saying that the advisability of recruiting some new members for boards of appeal was not something that the President of the Office could lawfully consider, because this management goal is indeed related to the interest of the service, and the fact on which the complainant relies, namely that this criterion was not mentioned in the documentation laying the foundations for the amendment of Article 54 of the Service Regulations, which permits a

prolongation of service, does not in itself prevent the competent authority from referring to it.

29. The complainant also criticises the assessment made by the President of the Office of the benefit to the EPO of retaining his services, of his work and, especially, of his "performance" or his "attitude", which are specifically mentioned in the grounds given for the impugned decision. Within the limited review to which this kind of decision is subject, as defined under 12 above, the Tribunal would interfere with this assessment only if it were tainted with an obvious mistake. It must be found that the evidence in the file discloses no such mistake.

30. Lastly, the complainant submits that the refusal to prolong his service as he requested might have been prompted by the uncompromising independence which he had displayed throughout his career and which, according to him, had led him to withstand the pressure that was put on him in connection with a particular case. In the absence of any evidence corroborating this statement, this alleged misuse of authority can obviously not be regarded as proven.

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

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 26 April 2013, 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 4 July 2013.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet