119th Session **Judgment No. 3429**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 21 March 2011 and corrected on 13 April, the EPO's reply dated 22 July, the complainant's rejoinder of 17 October 2011 and the EPO's surrejoinder dated 23 January 2012;

Considering the applications to intervene filed by Mr A. K., Mr P. T. and Mr T. H. on 24 August 2011 and the EPO's comments of 3 October 2011 on those applications;

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. With a view to obtaining the administration's approval prior to seeking reimbursement, the complainant, a former EPO employee, submitted in July 2006 an inventory and two estimates from two relocation companies for his removal costs from the Netherlands to Sardinia, which was to take place in August 2006.

The Personnel Department informed him by a letter of 7 July that there was a discrepancy in price between the estimates provided by him and the usual prices for removal between The Hague and Italy and asked him to provide the reasons for the difference in price, as well as a third estimate from a company of his choice showing a breakdown of all costs involved, as one of the estimates provided by

him included costs which were not covered by the EPO and the other did not specify the breakdown of costs. In a series of communications the complainant pointed to factors which had to be considered in the estimate such as the difficult access to his house and he provided a third estimate.

The EPO contacted one of the relocation companies chosen by the complainant for an explanation of its high estimate. The company explained that the main reason for the high estimate was the difficult access to the final destination. The EPO was also provided with a fourth estimate from another relocation company, which had made an offer to the complainant involving significantly lower costs, but which he had refused. The EPO asked the complainant why he deemed the offer made by this company not suitable or comparable to the other estimates. The complainant replied that the offer did not consider all the factors which he deemed pertinent.

The EPO informed the complainant on 11 August 2006 that it would reimburse only part of the expenses foreseen in his estimate and only upon proof of the actual costs incurred for the removal. The complainant relocated to Italy in August 2006 and asked the EPO to refrain from considering the offer from the fourth company which had made a significantly cheaper offer but which the complainant had refused, on the grounds that it was based on different conditions and that it had not been provided to the EPO by him.

On 5 September 2006 the complainant alleged that the EPO was acting in breach of Article 81 of the Service Regulations for Permanent Employees of the European Patent Office in intending to reimburse his removal expenses on the basis of the offer made by the fourth company, which he rejected and which he did not submit to the EPO. He asked to be reimbursed 29,444 euros or to have partially reimbursed the expenses incurred by his removal costs, based on the estimate provided by him. The EPO asked him to submit his objections complemented by documentary evidence related to the offer made by the fourth company. He was informed that he was free to pick a relocation company of his choice and was asked to hand in the invoice for processing after the removal, subject to the ceiling of 20,444.60 euros.

In October he was reimbursed expenses in the amount announced by the administration.

In a letter of 10 November 2006 the complainant alleged corporate bullying and malice on the part of the administration and requested that an enquiry be conducted, that his removal expenses be fully reimbursed, and asked for moral damages as well as costs. It was to be treated as an internal appeal in the event that his requests were not met.

By a letter of 21 December 2006 the complainant was informed that his requests had been rejected and that his appeal had been referred to the Internal Appeals Committee (IAC). In an opinion of 30 December 2010 the IAC unanimously recommended to dismiss his appeal as partly irreceivable with respect to his request to have the EPO conduct an enquiry into alleged wrongdoings by staff members working in the Personnel Department and sanctions adopted against those staff members. A majority of the IAC members recommended that his appeal be dismissed as unfounded. A minority recommended reimbursing the complainant's actual removal expenses with interest, and awarding him 3,000 euros in moral damages as well as 500 euros in costs.

By a letter dated 4 March 2011 the complainant was informed that the President had decided to reject his appeal as unfounded, in accordance with the IAC majority opinion. The President considered that the EPO was entitled to conduct its own enquiries whenever the submitted offers seemed to be well beyond the usual market price, and that such enquiries were not in breach of Article 81 of the Service Regulations. The reimbursement offer made by the EPO corresponded fully with the requirements of the specific removal. His claim for full reimbursement was dismissed as unfounded, as well as his claims for moral damages and costs. That is the impugned decision.

B. The complainant draws the Tribunal's attention to his letter of appeal and to the IAC minority opinion for his arguments. In his letter of appeal he alleged malice and corporate mobbing on the part of the EPO administration. He argues that he submitted three estimates in full compliance with Article 81 of the Service Regulations. The estimate considered by the EPO was not submitted by him, in breach of Article 81,

and he maintains that it is not comparable and involves different removal conditions to the three other estimates submitted by him. The minority opinion focuses on the terms of Article 81(3), which require a permanent employee to submit at least two estimates, to argue that the EPO may not submit an estimate and is therefore bound to approve one of the two estimates submitted by the staff member. The complainant asks that his removal costs in the amount of 29,444 euros be completely reimbursed, with interest. He seeks moral damages in the amount of 20,000 euros for the EPO's malicious conduct and an award of moral damages for the excessive delay in the internal appeal, as well as costs.

C. In its reply the EPO submits that the claim for moral damages on account of excessive delay is irreceivable, as it was not part of the complainant's internal appeal. The purpose of the requirement found in Article 81(3) of the Service Regulations that at least two estimates be provided is to avoid fraud. An international organisation is entitled to make an enquiry when a reasonable doubt exists as to whether its rules are being properly implemented. In the present case, the complainant submitted estimates which did not correspond to the average cost of a removal between the Netherlands and Italy. In accordance with its duty of sound financial management, the EPO could not agree to pay twice the average price for an employee's removal costs. It therefore enquired about the reasons for the higher price. During its enquiry, the EPO became aware that the complainant had received an estimate which was much cheaper than those he submitted. Despite numerous opportunities to do so, he was not able to explain convincingly why he did not consider this estimate to be suitable and comparable to those submitted. As observed by the IAC majority, all the factors used to explain why he considered that estimate unsuitable were irrelevant. Indeed, none of the estimates submitted by the complainant mentioned the special delivery conditions. However, all estimates mentioned the full address to which the furniture and personal effects were to be relocated and, therefore, the special delivery conditions were taken into account. As a result, there is no reason why the estimate on which the EPO based the reimbursement could not be deemed

comparable to those provided by the complainant. The claim for moral damages is unsubstantiated by any evidence of actual injury.

D. In his rejoinder the complainant presses his pleas and argues that the EPO, in collusion with the removal company which provided the fourth estimate, arranged to have a removal offer far below the estimates provided by the complainant. He adds that the first two estimates were refused on discriminatory grounds.

E. In its surrejoinder the EPO maintains its position in full. It strongly contests the complainant's allegation that it acted in a discriminatory manner or on discriminatory grounds. It denies the complainant's allegation of collusion and submits that the evidence proves otherwise.

F. In its comments on the applications to intervene the EPO submits that the interveners are not in a similar situation as the complainant, as the rule allegedly breached is no longer in force since 1 July 2010.

CONSIDERATIONS

1. The complainant impugns the decision of 4 March 2011 (taken by the Vice-President of Directorate General 4, by delegated authority from the President) to endorse the unanimous opinion of the IAC to reject his appeal as irreceivable in part, to endorse the majority opinion of the IAC in finding the remainder of the appeal unfounded and, consequently, to reject his claim for the reimbursement of expenses related to his removal, as well as his claims for moral damages and costs.

2. The complainant has applied for oral proceedings and asks the Tribunal to order that the EPO reimburse his complete removal costs in the amount of 29,444 euros, instead of the 20,444 euros already paid to him, with interest at a rate of 8 per cent per annum on the amount due. He claims moral damages in the amount of 20,000 euros for the EPO's malicious conduct and an award of moral damages for the delay in the internal appeal procedure, as well as costs.

3. The complainant offers no justification for his application for oral proceedings. The Tribunal, having examined the written submissions and their annexes, finds that they are sufficient to make an informed decision. Considering this, and in accordance with consistent case law, the Tribunal disallows the complainant's application.

4. The EPO submits that the claim for moral damages regarding the delay in the internal appeal procedure is irreceivable as it is a new claim which was not raised before the IAC in the internal proceedings. The Tribunal points out that a claim concerning the excessive length of the appeal proceedings is, by its very nature, one that could not have been raised before the IAC (see Judgment 2744, under 6). Thus, the claim is receivable and its merits are addressed under consideration 7 below.

5. The Tribunal finds that the complainant's claim for the payment of the remainder of his removal costs, with an interest at the rate of 8 per cent per annum, is unfounded. The EPO was within its rights to set a reasonable maximum amount for the reimbursement of removal costs, based on an estimate provided or obtained. Article 81(1)c) of the Service Regulations provides: "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: […] c) on leaving the service, with the proviso that reimbursement may be refused if the employee resigns before completing twelve months' service with the Office." Article 81(3) of the Service Regulations further provides: "A permanent employee shall be required for the purposes of this Article to submit to the President of the Office, for prior approval, at least two estimates from different firms relating to these removal expenses and specifying the distance to be covered, together with an inventory of the household and personal effects involved, which shall not include private motor vehicles. Reimbursement will be met only within the approved estimate." The IAC, in its majority opinion, stated, inter alia, that "[t]he administration was allowed to reimburse the incurred expenses for removal subject to the ceiling set by the cheapest estimate at its disposal,

which had been approved, as it has to respect the principle of frugal economic management. If the price fixed in a quotation apparently exceeds the usual price for the services to be rendered, the administration has the right to start enquiries on its own initiative to respect the above principle. As the offer provided by the [complainant] exceeded the usual prices for removals between The Hague and Italy by more than […] 20,000 [euros], the Office had justified reasons for starting a further investigation into the matter." The IAC's reasoning is sound. The Tribunal considers that, according to the above provisions, the EPO has a duty to verify the appropriateness of the estimates provided. In the present case, as the estimates provided by the complainant were drastically higher than the average cost of a removal between the Netherlands and Italy, the EPO was required to investigate further, which it did by enquiring about the reasons for the higher price. The EPO also became aware of a much cheaper estimate, which the complainant had requested and received from another removal company and which was based on the same inventory list, but which he had refused. Contrary to the IAC minority opinion, the EPO was not required to choose one of the estimates submitted by the complainant. It is allowed to request additional estimates when necessary and to approve a ceiling amount, based on an actual estimate, for the reimbursement of removal costs.

A provision such as Article 81 should not be interpreted literally if such a literal interpretation frustrates the purpose and object of the provision. The purpose and object of Article 81 is to ensure that a staff member is paid an adequate but not excessive amount for removal costs. Moreover, even interpreted literally, there is a condition precedent to reimbursement of removal costs, namely prior approval of an estimate. In the present case, there was no such prior approval of the amount now claimed.

The complainant asserts that the estimate chosen by the EPO was prepared in collusion with the company in order to cause him harm. He provides no evidence to support this assertion and the Tribunal considers that the documents show that the terms of the chosen estimate were comparable to those of the more expensive estimates provided by the complainant.

6. The three applications to intervene are irreceivable, since the applicants are not in a situation in fact and in law similar to that at of the complainant (see Judgment 2237, under 10). Consequently, the ruling which the Tribunal is to make in the present case will not affect them, as required by Article 13, paragraph 1, of the Rules of the Tribunal.

7. The complainant submitted his request for review of the decision to reimburse his removal expenses subject to the ceiling of 20,444 euros in a letter dated 10 November 2006. As the EPO rejected his request, it was forwarded to the IAC as an internal appeal on 21 December 2006. The EPO did not submit its position paper until 28 January 2010, over 3 years later, giving no justification for the egregious delay. The IAC issued its opinion in a report dated 30 December 2010. The EPO's final decision was communicated in a letter dated 4 March 2011, concluding the internal appeal procedure after over 4 years. The Tribunal is of the opinion that the appeal was not a particularly complicated one, the complainant was not responsible in any way for the delay in the proceedings, and the EPO has provided no justification whatsoever for the delay in submitting its position paper. Thus, the Tribunal finds that this constitutes an excessive delay in the procedure and merits an award of damages in the amount of 2,000 euros. As the complainant only succeeds in part, he is entitled to a partial award of costs which the Tribunal sets in the amount of 250 euros. All other claims are dismissed.

DECISION

For the above reasons,

1. The EPO shall pay the complainant 2,000 euros in damages as detailed under consideration 7 above.

2. It shall also pay him 250 euros in costs.

3. All other claims are dismissed.

4. The three applications to intervene are dismissed.

In witness of this judgment, adopted on 14 November 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ