

**119th Session**

**Judgment No. 3464**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr D. S. against the European Patent Organisation (EPO) on 22 June 2013;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is an employee of the European Patent Office, the secretariat of the EPO. At the material time he held grade A4.

On 30 January 2013 it was announced to all staff that the President of the Office had decided to appoint Ms B. to the post of Principal Director of Human Resources as of 1 February 2013. The complainant, acting in his capacity as a member of the Staff Committee in The Hague, asked the President on 25 February 2013 to review that decision, alleging that it was flawed.

By a letter of 23 April 2013 the President notified the complainant of his decision to reject his request for review. He added that if the complainant disagreed with his decision, he could file an appeal with the Internal Appeals Committee within three months from the date of notification. He referred to Article 110(1) of the Service Regulations for Permanent Employees of the Office and Article 4 of the Implementing Rules to Articles 106 to 113 of the Service Regulations.

On 22 June 2013 the complainant filed a complaint directly with the Tribunal, impugning the President's decision of 23 April. He contends

that the review procedure provided for in Article 109 of the Service Regulations cannot apply to decisions taken by the President of the Office and that the latter's decision of 23 April must be regarded as a final decision on the substance of his claims. He asks the Tribunal, among other things, to quash the decision of 23 April 2013 and to award him moral damages and costs.

2. The Tribunal notes that, by virtue of Articles 109 and 110 of the Service Regulations, the complainant should have filed an internal appeal with the Appeals Committee if he was not satisfied with the decision made on his request for review. The Committee would then have issued its opinion, on the basis of which the President would take a final decision.

3. Considering the above, the complaint is clearly irreceivable as the complainant could not validly impugn the decision of the President, contained in the letter of 23 April 2013, which was not a final decision. The complainant has failed to exhaust internal means of redress and his complaint must therefore be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal. In these circumstances, there is no need to hold oral proceedings as requested by the complainant.

#### DECISION

For the above reasons,  
The complaint is 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