

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 5)

v.

EPO

120th Session

Judgment No. 3526

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr C. O. D. L. against the European Patent Organisation (EPO) on 7 July 2011, the EPO's reply dated 2 November 2011, the complainant's rejoinder dated 3 February 2012, the EPO's surrejoinder of 15 May 2012, the complainant's additional submissions dated 8 January 2015 and the EPO's final comments of 29 January 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant joined the European Patent Office, the secretariat of the EPO, in 1990. At the material time he worked in the sub-office in Vienna, and was elected as deputy member of the Vienna Staff Committee for the period 2008-2009. Shortly after the beginning of the mandate, new elections were organised following the resignation of several members of the Staff Committee. The complainant contests these elections.

The elections of the Staff Committee for the 2008-2009 mandate took place in December 2007. On 1 September 2008 the newly elected

members of the Staff Committee were informed that its chairman had to return to work in The Hague with immediate effect. The Staff Committee held a general assembly on 15 September, during which it was decided to organise new elections as all members, except the complainant, said that they would resign. The complainant wrote to the President of the Office on 10 October raising doubts as to whether it was lawful to organise new elections.

The elections were held on 21 October 2008, but the complainant did not stand for re-election. Following an exchange of correspondence with the Administration, in which he again raised doubts as to the lawfulness of the elections, the complainant wrote to the President on 15 December 2008 requesting that the latest elections of the Staff Committee be cancelled and that the previously elected members be reinstated.

The complainant's request for review was rejected and the matter was referred to the Internal Appeals Committee (IAC) for opinion. The IAC heard the complainant before issuing its opinion on 15 February 2011. In its view, the complainant had a cause of action in contesting the lawfulness of the new elections because his two-year mandate was terminated prematurely without his having resigned or agreed to reduce it. However, it unanimously recommended dismissing the appeal as unfounded on the following grounds: Article 12 of the Rules of Procedure for the election of the Vienna local section of the Staff Committee provided for the possibility of organising new elections when some members resigned and when no further alternate members were available to replace them; it agreed with the EPO's contention that it was not possible for the complainant to be the only member of the Staff Committee; moreover, there was no right to be a member of the Staff Committee for two years (Article 35(1) of the Service Regulations for Permanent Employees of the Office merely provides for a maximum duration of the mandate of the members of the Committee); and no statutory provision allowed the President to cancel the elections on the ground that they were unlawful.

By a letter of 11 April 2011 sent on behalf of the President, the complainant was informed that, in accordance with the IAC's opinion,

his appeal was rejected as unfounded for the reasons set out by the Office during the appeal proceedings. Contrary to the IAC's opinion, his appeal was irreceivable *ratione materiae* on the ground that, under Article 35(6) of the Service Regulations, the President has no right to evaluate and validate the Staff Committee's elections. That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to declare the elections of the Staff Committee in Vienna held on 21 October 2008 null and void, as well as its "related cascad[e] of effects" (i.e. no elections took place in fall 2009 and the elections held in 2010 were also unlawful as they were held "out of pace" of the ordinary election periods). He also asks the Tribunal to reinstate him in the functions he held before the elections of October 2008, to award him moral damages and punitive damages for undue delay and violation of the rules, and to award him 10,000 euros in "damage[s] for a humiliating remark".

The EPO asks the Tribunal to dismiss the complaint as irreceivable *ratione materiae* and subsidiarily as unfounded. It also submits that his claim for punitive damages is irreceivable for failure to exhaust internal means of redress as it was not raised in the internal proceedings.

CONSIDERATIONS

1. In December 2007 the complainant was elected a deputy member of the Staff Committee in Vienna. Four other members of staff were also elected to positions on the Staff Committee. One was elected chairman, another deputy chair, another as member and another as deputy member.

In September 2008, the chairman indicated he was relocating and was no longer available to act in that role. Three of the four remaining members of the Staff Committee (but not the complainant) decided that, in the circumstances, they would resign and arrange for new elections.

At a general assembly of the Staff Committee held on 15 September 2008 it was decided new elections would take place and an electoral

committee was constituted. The elections were held on 21 October 2008 though the complainant did not stand for election. In the result, five staff members were elected to the Staff Committee including two deputy members.

2. The complainant lodged an internal appeal resulting, ultimately, in an opinion of the IAC that concluded the appeal was unfounded though receivable. It published its recommendations on 15 February 2011. In a letter to the complainant dated 11 April 2011, the Director of Regulations and Change Management (acting on behalf of the President) said he rejected the appeal as unfounded, consistent with the recommendation of the IAC. He adhered to the view which had been advanced by the Administration in the appeal but rejected by the IAC, namely that the appeal was irreceivable.

3. In relation to the complaint filed on 7 July 2011 in this Tribunal, the EPO advances an argument that the complaint is irreceivable. It is desirable to consider this issue at the outset. The legal framework for elections to the Staff Committee (and other organs of staff representation within the EPO) was regulated by Chapter 2 of the Service Regulations in the more general context of Article 30 of those Regulations, which declares that permanent employees shall enjoy freedom of association.

4. Chapter 2 constituted, by Article 33, a Staff Committee comprised of a Central Committee and local sections for the different places of employment. The Committee in these proceedings falls within that latter class. Article 34 identified the functions of the Staff Committee. Article 35, which concerned the composition of the Staff Committee, provided:

“(1) The Staff Committee shall consist of full members and, where appropriate, alternates. They shall be elected by secret ballot. Their term of office shall be two years.

[...]

(6) The following shall apply to the election of staff representatives:

- (a) Election of members of the local section: the regulations regarding the election of a local section shall be determined by a general meeting of the permanent employees of the Office in service at that place of employment;

[...]

- (7) Subject to the above provisions, the members of staff of each category shall have complete freedom in the choice of their representatives.”

It can be seen that Article 35, for present purposes, does two things. Firstly, it declares that the term of office of members of a Staff Committee is two years and, secondly, it vests in the members of staff in the location in a general meeting, a wide discretionary power to make regulations concerning elections and it vests in members of staff a right otherwise to have complete freedom in the choice of their representatives.

5. The legal issue that arises in relation to the receivability of the complaint is whether the subject matter of the complaint concerns non-observance in substance or in form of the terms of appointment of the complainant or the provisions of the applicable Staff Regulations as provided in Article II of the Tribunal’s Statute. It is important to note that the Article is expressed in terms of “non-observance” though it does not say by whom.

There is established jurisprudence of the Tribunal that generally the Tribunal has no jurisdiction to adjudicate on electoral processes relating to staff associations (see, for example, Judgments 78 and 2636). It is true that, in the present case, the Service Regulations provide that a person in the position of the complainant is elected to office for two years. However Article 35(1) does not create a right enforceable against the EPO. Article II of the Tribunal’s Statute is fundamentally concerned with non-observance of staff regulations by the organisation, which is the employer. The present case does not raise for consideration the infringement of the complainant’s rights by the EPO. That can be illustrated by the relief he seeks, which is a declaration that the October 2008 elections were null and void and consequential orders including damages. But that is not relief against the EPO in vindication of the violation of a right conferred on the complainant as against the EPO.

The complaint is irreceivable and should be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2015, 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 30 June 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ