

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

M.
v.
EPO

122nd Session

Judgment No. 3715

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr C. M. against the European Patent Organisation (EPO) on 10 March 2016;

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 impugns the implied decision to reject his appeal challenging the fact that, in application of Administrative Council decision CA/D 10/14, he was not granted a step advancement in August 2015.

2. The complainant submitted a request for review to the President of the European Patent Office on 31 August 2015, after having received his salary slip for that month, which showed that he had not advanced to the next salary step. Following the rejection of this request for review by a decision of 18 September 2015, the complainant lodged an appeal with the Appeals Committee on 15 October 2015. He was informed on 28 October 2015 that his appeal had been registered, together with other

similar appeals, under the reference RI/95/15 and that a “test-appeal” procedure would be followed, details of which would be provided to him in due course.

3. By his complaint filed on 10 March 2016, the complainant seeks to impugn the implied rejection of that appeal, relying on Article VII, paragraph 3, of the Statute of the Tribunal, which relevantly provides:

“Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision.”

4. The Tribunal’s case law makes it clear that where the Administration takes any action to deal with a claim, by forwarding it to the competent internal appeal body for example, this step in itself constitutes a “decision upon [the] claim” within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3428, consideration 18, and 3146, consideration 12).

5. In the present case, it is clear from the sequence of events recalled above that the EPO did take a decision on the complainant’s request for review within 60 days of the date on which it was filed. Consequently, the complainant cannot rely on Article VII, paragraph 3, in order to file a complaint with the Tribunal on the basis that his appeal pending before the Appeals Committee has been implicitly rejected.

6. As the complainant has not exhausted the internal remedies available to him, his complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 17 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Andrew Butler, Deputy Registrar.

Delivered in public in Geneva on 6 July 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

ANDREW BUTLER