

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

H. (No. 3)

v.

EPO

123rd Session

Judgment No. 3811

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr S. H. against the European Patent Organisation (EPO) on 14 December 2015 and corrected on 23 June 2016;

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

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is a non-active employee of the European Patent Office, the secretariat of the EPO. He impugns the Administrative Council's rejection of his request for management review of the Administrative Council's decision CA/D 2/15 of 26 March 2015 amending the provisions of the Service Regulations for permanent employees of the European Patent Office relating to sick leave and invalidity. The Administrative Council dismissed his request for review at its 145th meeting in October 2015, and he was notified of this decision by a letter dated 2 November 2015 signed by the Chairman of the Administrative Council. This is the impugned decision.

2. According to the complainant, decision CA/D 2/15 is discriminatory, violates the principle of equal treatment of non-active staff, constitutes a breach of the EPO's duty of care and a breach of contract, violates acquired rights and contravenes the prohibition of retroactive legislation. Consequently, he seeks the quashing of decision CA/D 2/15 in its entirety or, failing that, the quashing of Article 72 of that decision. The complainant also claims damages on several grounds as well as costs.

3. It is worth quoting in full Article 72, which reads as follows:

- “(1) Until 31 December 2015, the rights and obligations of a recipient of an invalidity allowance on 31 March 2015 shall continue to be governed by the provisions in force on 31 March 2015.
- (2) As from 1 January 2016, he shall cease to receive an invalidity allowance and shall instead be granted a retirement pension for health reasons, increased by a compensatory payment as follows:
- (a) His pension shall be calculated as set forth in Article 14 of the Pension Scheme Regulations or, where applicable, Article 12b of the New Pension Scheme Regulations, as amended by the present decision.
- (b) The level of his pension shall be increased by a compensatory payment, calculated as follows:
- (i) until the last day of the month during which the employee reaches the age of 65 years, the compensatory payment shall cover the difference up to the level of invalidity benefits he was entitled to on 31 December 2015;
- (ii) from the first day of the month following that during which the employee reaches the age of 65 years, the compensatory payment shall cover the difference up to the theoretical level of his retirement pension calculated under Chapter II, Section 1 of the Pension Scheme Regulations.
For the latter calculation, the period of time between 1 January 2016 and the last day of the month in which he reaches the age of 65 years shall count for full reckonable years.
- (c) Notwithstanding the above, employees in receipt of an invalidity pension until 31 December 2007 shall continue to benefit from the guarantee adopted by the Administrative Council in Article 29 of CA/D 30/07 and confirmed in CA/D 15/12.

- (3) As from 1 January 2016, gainful activities or employment shall no longer be allowed.
- (4) Recipients of an invalidity allowance shall be allowed, upon provision of evidence, to claim for reimbursement of the national income tax paid and attributable to their invalidity allowance. Any advance payment already made shall be offset against such final reimbursement. The detailed conditions and procedure therefor shall be established by the President of the Office.
- (5) Where applicable, and in case of national taxation of the pension calculated under paragraph 2, the employee may claim the tax adjustment set forth in Article 42 of the Pension Scheme Regulations and in the Implementing Rules thereto.”

4. It is clear from these provisions that the date on which Article 72 would begin to produce individual effects was 1 January 2016. Indeed, when the complainant first challenged decision CA/D 2/15 internally, he received an answer from the Administration indicating that its practical application in his case would occur only in January 2016.

5. Before the Tribunal, however, the complainant, citing the case law of this Tribunal as well as several national and international courts of justice, argues at length that decision CA/D 2/15 is a decision that applies to him directly without the need for further implementation measures.

6. The complainant is mistaken and he misinterprets the case law. While it is true that the case law does not exclude the possibility of challenging a general decision directly, it draws a distinction between, on the one hand, general decisions setting out the arrangements governing pay and other conditions of service, and, on the other hand, general decisions which do not give rise to implementing decisions and which involve matters of common concern to all staff (see, for example, Judgment 3427). Contrary to the view put forward by the complainant, decision CA/D 2/15 belongs to the former category. Its individual application to the complainant was due to occur in January 2016 and he should have filed a request for management review with the President of the Office against an individual implementing decision. Therefore,

his request for management review filed with the Administrative Council on 14 June 2015 was not only premature but also submitted to the wrong authority (see Judgment 3700).

7. The complaint is therefore clearly irreceivable as the complainant did not exhaust the internal remedies available to him. It 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 2 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ