

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L.
v.
EMBL

124th Session

Judgment No. 3850

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr V. L. against the European Molecular Biology Laboratory (EMBL) on 18 May 2015 and corrected on 1 July, EMBL's reply of 2 November 2015, the complainant's rejoinder of 29 January 2016, EMBL's surrejoinder of 23 May, the complainant's additional submissions of 4 August and EMBL's final comments of 15 December 2016;

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 challenges the decision to amend his job title.

The complainant joined EMBL in 1991 as a fellow at EMBL's outstation in Hamburg, Germany. He became a staff member in April 1995 and in January 2003 he obtained an open-ended contract. This contract showed his job title as "Deputy Head of Outstation and Group Leader in Crystallography". In 2011 he was appointed as Project Coordinator for a project known as the "XBI Project".

In September 2014 a strategic review of the XBI Project was undertaken. On 16 September, following a presentation of the findings of the review, the complainant had a meeting with the Director General,

at which the Head of Outstation was also present. The parties differ as to precisely what was said at this meeting. According to the complainant, he was then informed that he would no longer be Project Coordinator for the XBI Project. However, in an email of 6 October, responding to an email from the complainant, the Director General wrote: “As I said during our meeting on September 16th, your position at EMBL-Hamburg will be as a research group leader, no longer Deputy Head of Outstation [...]”, to which the complainant promptly replied that this had not been mentioned at their meeting.

On 27 November 2014 the complainant attended a meeting with the Administrative Director and the Acting Head of Human Resources. By a letter of 11 December 2014, the Acting Head of Human Resources informed the complainant that, “[a]s announced by the Director General, [his] job title ‘Deputy Head of Outstation and Group Leader’ w[ould] be changed to ‘Group Leader’ with immediate effect”. This was confirmed to him by the Director General in an email of 13 January 2015, following a meeting with the complainant on 12 January.

On 12 February 2015 the complainant filed an internal appeal, challenging the decision to change his job title. He alleged that this measure showed a disregard for his dignity and was damaging to his reputation. He requested that the appeal proceedings be suspended in order that settlement attempts could be explored via the Ombudsman or a mediator. By a letter dated 19 February 2015, the Head of Human Resources informed the complainant on behalf of the Director General that his appeal would not be considered further because it had been filed after the expiry of the 30-day time limit provided for in Article R 6 1.04 of the Staff Regulations. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to award him material and moral damages, as well as costs.

EMBL asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies. It also asks that the complainant be ordered to pay EMBL “a reasonable and equitable amount”, but not less than 3,000 euros, to cover its legal expenses in these proceedings.

CONSIDERATIONS

1. The determinative issue in this complaint is whether the complainant's internal appeal was time-barred. In his 12 February 2015 internal appeal, the complainant challenged the Director General's 13 January 2015 decision to change the job title in his contract, namely, Deputy Head of Outstation and Group Leader, without his consent. On 19 February 2015, the Head of Human Resources on behalf of the Director General informed the complainant that the 30-day time limit in the Staff Regulations for the lodging of an internal appeal against the disputed decision of 11 December 2014 had expired and his appeal would not be considered any further. The decision of 11 December 2014 stated: "As announced by the Director General, your job title 'Deputy Head of Outstation and Group Leader' will be changed to 'Group Leader' with immediate effect."

2. In summary, the complainant disputes EMBL's position that his internal appeal was time-barred. He submits that having regard to the Administration's unlawful refusal to submit the appeal to the Joint Advisory Appeals Board (JAAB) for its review, the 19 February 2015 letter confirming the change of his job title constitutes the final decision for the purpose of exhausting internal remedies. As to the decision of 11 December, the complainant states that immediately after receiving the decision he sought a meeting with the Director General with a view to settling the matter without having to file an internal appeal. The complainant and the Director General met on 12 January 2015. The complainant contends that the time limit for filing the internal appeal only started to run on 13 January 2015 when he received an email from the Director General rejecting an amicable resolution regarding his job title. He submits that where the parties are engaged in discussions to resolve the dispute, the time-limit for filing an appeal does not apply. In support of his position, the complainant refers to the Tribunal's observation in Judgment 2584, consideration 13:

"If an organisation invites settlement discussions or, even, participates in discussions of that kind, its duty of good faith requires that, unless it expressly states otherwise, it is bound to treat those discussions as extending

the time for the taking of any further step. That is because settlement discussions must proceed on the basis that no further step will be necessary.”

The complainant also disputes EMBL’s assertion that the original decision was taken on 16 September 2014 and confirmed in October 2014. The complainant points out that this is directly contradicted by the letter of 19 February 2015.

3. With respect to appeals filed with the Director-General, Staff Regulation R 6 1.05 relevantly provides that, “[b]efore making his decision, [the Director-General] shall consult the Joint Advisory Appeals Board [...]”. It is not disputed that this consultation did not occur in this case. However, EMBL argues that consultation of the JAAB was not required, because the appeal was time-barred and the Director-General therefore did not have to take a decision on its substance. It contends that consultation of the JAAB is required only where the Director-General must take a decision on the substance of the appeal. In support of this contention, it refers to Staff Rule 6 1.03, which relevantly provides that “appeals shall be made first to the Director-General who, before taking any decision on its substance, shall consult a Joint Advisory Appeals Board [...]”.

4. EMBL’s interpretation of this provision cannot be accepted. Staff Rule 6 1.03 must be interpreted in the sense that, before taking any decision which is determinative of the appeal (and not an interim decision), the Director-General must consult the JAAB. This interpretation is in keeping with the purpose of the provision and is consistent with the French version of its text. It is also borne out by the wording of the above-mentioned Staff Regulation R 6 1.05.

5. As the Director-General did not consult the JAAB, the impugned decision will be set aside and the case will be remitted to EMBL for the Director-General to take a new decision on the complainant’s appeal after consultation of the JAAB. The complainant is entitled to moral damages in the amount of 2,000 euros. As he succeeds in part, he is also entitled to an award of costs, which the Tribunal sets at 3,500 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The case is remitted to EMBL for the Director-General to take a new decision on the complainant's internal appeal after consultation of the Joint Advisory Appeals Board.
3. EMBL shall pay the complainant moral damages in the amount of 2,000 euros.
4. EMBL shall pay the complainant costs in the amount of 3,500 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 19 May 2017, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ