

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**Z.**  
**v.**  
**EPO**

**126th Session**

**Judgment No. 4053**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. R. Z. against the European Patent Organisation (EPO) on 23 April 2012 and corrected on 25 May, the EPO's reply of 10 September, the complainant's rejoinder of 19 December 2012 and the EPO's surrejoinder of 9 April 2013;

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

Having examined the written submissions;

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

The complainant challenges the decision to refuse her request to withdraw her resignation.

The complainant joined the European Patent Office, the secretariat of the EPO, in August 2003. From May 2005 until her separation from service, she was absent from work almost continuously on either sick leave or annual leave. By a letter of 23 March 2006 she notified the EPO of her decision to resign effective 30 April 2006. On 27 March the Principal Director of Administration acknowledged receipt of her letter and stated that the President of the Office had accepted her resignation. This was confirmed in a document dated 29 March 2006 signed by the President. In May 2006 the complainant filed a harassment complaint.

On 5 June 2006 she wrote to the President purporting to withdraw her letter of resignation. She explained that when she handed it in she was under intense psychological stress deriving from “a very painful situation at the Office”, which had lasted for months and which she could now clearly identify as harassment. On 26 June the Principal Director of Administration replied that the EPO could not accede to her request. On 15 August the complainant asked the President to review that decision, to revoke her resignation, to reinstate her and to compensate her. Her request was rejected on 4 October 2006 on the ground that there was no valid reason to consider her resignation null and void. The matter was referred to the Internal Appeals Committee (IAC).

The IAC issued its opinion on 10 November 2011. A majority of its members considered that the complainant had not established that she had resigned against her own free will or under duress. They recommended rejecting the appeal as unfounded.

Two members of the IAC issued a minority opinion. In their view, it was immaterial whether at the time the complainant resigned her ability to take an informed decision was demonstrably impaired, because the decision of 26 June 2006 was in any case illegal as the Principal Director of Administration had not provided reasons for it and he was prejudiced against her. The minority considered that, in order to understand the facts leading to the resignation, it would have been useful to have completed the harassment procedure under Circular No. 286. They found that the failure to do so involved a breach of the duty of care which, coupled with the delays in the internal procedure, constituted a “grave denial of justice” as it had prevented her from providing further evidence to support her request. They therefore recommended that the decision of 26 June 2006 be revoked, that the harassment procedure be completed, that the complainant be asked to provide any additional evidence she considered relevant to assess her health condition at the time she tendered her resignation, and that she be paid 10,000 euros and reimbursed her costs.

By a letter of 11 January 2012 the complainant was informed that the Vice-President of Directorate-General 4, acting on delegation of authority from the President, had rejected her appeal as unfounded.

He considered that she had not provided precise, cogent and consistent evidence that her consent to resign was vitiated. He also considered that the reasons for refusing the withdrawal of her resignation could be found in the letter of 4 October 2006, and that there was no evidence to support the IAC minority's view that the contested decision could have the "appearance of bias". That is the decision the complainant impugns before the Tribunal.

The complainant asks the Tribunal to set aside the decisions of 26 June 2006, 4 October 2006 and 11 January 2012 and to award her material damages as compensation for "legal and travel costs", together with moral damages (including 30,000 euros for undue delay). She also seeks "[d]isclosure and examination of testimonies and witnesses relevant as expressly requested by the Minority of the [Internal] Appeals Committee", an examination by an independent medical expert, and the minutes of all IAC's meetings. She further asks the Tribunal to order the "[e]stablishment of due guarantees for an appropriate independent investigation and examination according to Art. 9 of Circ. 286 for the claimed events of harassment".

The EPO asks the Tribunal to dismiss the complaint as unfounded. It stresses that the amount claimed in compensation for undue delay is excessive. The request for the establishment of "due guarantees for an appropriate independent investigation and examination according to Art. 9 of Circ. 286 for the claimed events of harassment" is irreceivable for failure to exhaust internal means of redress.

## CONSIDERATIONS

1. The complainant commenced employment with the EPO in 2003. By letter dated 23 March 2006, the complainant wrote to the EPO saying: "This is to formally notify you that I am resigning from the European Patent Office as administrative employee. The 30<sup>th</sup> April 2006 will be my last day of employment." The central legal issue in these proceedings is whether this resignation letter was legally effective.

2. The EPO's response to this letter was a letter dated 27 March 2006 from the Principal Director of Administration indicating the resignation letter had been received and including the observation that: "The President naturally regrets to learn that you will be leaving us, but accepts your request to do so." On 29 March 2006 the President executed a document that noted, in particular, Article 51 of the Service Regulations for permanent employees of the Office as well as the receipt of the resignation letter. The operative part of the document said: "The resignation tendered by [the complainant] on 23.03.2006 is hereby confirmed with effect from 01.05.2006." Both the 27 March 2006 letter and the 29 March 2006 document were received by the complainant on 1 April 2006.

3. By letter dated 5 June 2006 from the complainant to the President, the complainant purported to withdraw her letter of resignation explaining:

"I was at the time I handed in my resignation under such an intense psychological stress and despair that I resigned in order to flee a very painful situation at the Office, which had been lasting over 18 months and which I now clearly identify as harassment. I was therefore not in a position to handle such important matters in an adequate way."

She also requested that her resignation be considered "legally void and non effective". Before this letter was written the complainant had, on 16 May 2006, filed a harassment complaint under Circular No. 286. On 26 June 2006, the Principal Director of Administration wrote to the complainant stating, amongst other things: "We regret that we cannot accede to your request to withdraw your resignation or to consider it null and void."

4. Thereafter the complainant sought the review of the decision of 26 June 2006 culminating in an opinion of the IAC dated 10 November 2011 in which the majority recommended that the appeal be rejected as unfounded while the minority recommended the revocation of the decision of 26 June 2006, the "implementation to a completion of the procedure according to [Circular No.] 286", that the complainant be asked to provide further evidence she might consider as relevant to the

assessment of her state of health at the time of her decision to resign and the payment of 10,000 euros to the complainant as well as a refund of her costs. By letter dated 11 January 2012 the complainant was informed of the decision of the Vice-President of Directorate-General 4, acting on delegation from the President, to reject the internal appeal as unfounded. This is the decision impugned in these proceedings.

5. The central legal issue, the validity of the resignation, is also, in a sense, a threshold issue. If the complainant cannot demonstrate the resignation was legally ineffective then the impugned decision is of no legal consequence or significance. That is because if the resignation was legally effective then the decision-maker (in this case a Vice-President acting on delegation) had no power or authority to reverse or otherwise undo what, as a matter of law, was the legal effect of the resignation letter and its acceptance (though perhaps not in circumstances where the initial acceptance was tainted by legal error). In the present case, the resignation of a staff member is dealt with by Article 51 of the Service Regulations, which addresses some procedural and related issues concerning resignation but which does not derogate from the principle just discussed. The essence of the complainant's argument that her resignation was legally ineffective was that at the time she wrote the letter of 23 March 2006, she was mentally ill and incapable of making a rational decision to resign.

6. One authoritative judgment of the Tribunal on these questions is Judgment 856. Several related principles emerge from this judgment. The first is that a resignation comes into effect when it is accepted by the employer. The second is that once the resignation has come into effect it cannot be withdrawn unless the offer to resign was tainted with some flaw that renders it void. If the alleged flaw is that the individual purporting to resign was suffering from a psychological illness, then the individual, as a complainant, has to adduce precise, cogent and consistent evidence to show that the consent was lacking.

7. Thus it is necessary for the complainant to point to precise, cogent and consistent evidence that she lacked the mental capacity to make and communicate a decision to resign. Apart from what the complainant says about her mental condition at the time, she relies on the evidence of five witnesses. One was Dr B., who saw the complainant between 9 August 2005 and 28 November 2005. He prepared a report on 22 February 2011. In somewhat qualified terms he expressed the opinion that “it must be assumed that” at that time and after, the “complainant’s condition rendered her incapable of taking crucial life decisions appropriate in her circumstances”. Another was a psychotherapist in the EPO’s welfare counselling service, Ms T., who was seen by the complainant in a period from 3 May 2005 to 16 November 2005 and later from February 2006. Significantly, Ms T. reported positive changes in the complainant’s attitude when she saw her in February 2006 and later in March 2006 when, as Ms T. perceived things, the complainant looked “radiantly happy”. Indeed the complainant discussed with Ms T. her plans to resign and Ms T. sought to persuade the complainant not to take this step. They discussed alternatives. What Ms T. does not say is that one of the reasons discussed with the complainant for not taking this step was that the complainant was incapable of making the decision, nor does Ms T. say, apart from whatever she may have said in those discussions, it was her professional assessment that the complainant was not capable of making a decision to resign. The other three witnesses were other EPO staff members. One was, at the relevant time, the Chairman of the Local Staff Committee and the other two were, in differing ways, work colleagues. None say, directly, that they believed the complainant was incapable of making a decision to resign. They said, in varying ways, the complainant was stressed and unhappy, if not profoundly unhappy, at work. Even if, as appears to be the case, the complainant was working in an environment that had a significant negative effect on her sense of well-being and that either contributed to or precipitated the decision to resign, it does not follow that she did not understand the effect of, or lacked the capacity to write, the resignation letter of 23 March 2006. Indeed it is of some significance that the complainant appears to have had rational discussions with Ms T. about the advantages and

disadvantages of resigning in the period leading up to the sending of the letter. This fact militates strongly against the conclusion that the complainant was not giving her consent to resigning as she did in the letter of 23 March 2006.

8. The complainant also argues that she was coerced into resigning or did so under duress. While it is true she appears to have had troubled relations with some in her workplace, and indeed she ultimately made a complaint of harassment, conduct of others that she particularised falls well short of establishing coercion or duress which led to her resigning but not as an act of free will.

9. The complaint is unfounded. The complainant offered to resign and the offer was accepted. The legal effect was a resignation from which the complainant could not resile and which cannot now be voided.

10. The complainant also challenges the internal appeal process arguing that her right to a hearing was denied, the consideration of her appeal was tainted by bias and there was undue delay. The material to which the complainant refers does not sustain these arguments and they should be rejected.

The complainant sought an oral hearing. The Tribunal is satisfied the case can be resolved on the written material before it.

11. In the result, the complaint should be dismissed.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ