C.

v.

EPO

134th Session **Judgment No. 4555**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. C. against the European Patent Organisation (EPO) on 24 July 2020, the EPO's reply of 4 November, the complainant's rejoinder of 10 December 2020 and the EPO's surrejoinder of 8 March 2021;

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 contests the decision not to pay him the additional installation allowance in respect of his second child following his transfer to The Hague.

The complainant joined the European Patent Office, the EPO's secretariat, in Munich on 1 January 2014. Upon taking up his duties, he received an installation allowance equal to one month's basic salary in accordance with Article 73(1)(a) of the Service Regulations for permanent employees of the European Patent Office. Article 73 relevantly provides that, for permanent employees who are entitled to a household allowance, the installation allowance is supplemented by an additional payment of half a month's salary, if they have not more than one dependent child, and of one month's basic salary, if they have at least two dependent

children. This additional payment is payable "only where the spouse and dependent children have taken up residence at the place of employment and the employee concerned has satisfactorily completed the probationary period".

Following the birth of his first child in Munich on 24 July 2014 and his completion of the probationary period in February 2015, the complainant, who was entitled to a household allowance, received an additional payment of half a month's basic salary as a supplement to the installation allowance paid to him when he first took up his duties.

On 1 July 2016 the complainant was transferred to The Hague, where he began a six-month probationary period in his new post. On 6 September 2016 his second child was born in the Netherlands. On 18 October 2016 the complainant requested payment of an installation allowance equal to two months' basic salary, i.e. for his transfer to The Hague and the fact that he had two dependent children. In November 2016 he received his payslip for November 2016, through which he was informed that his request of 18 October 2016 had been granted only in part, since he had received an installation allowance equal to one and a half months' basic salary, i.e. for his transfer to The Hague and his first child but not his second.

On 24 February 2017 the complainant submitted a request for review of the decision not to grant him an installation allowance equal to two months' basic salary, that is, taking into account both of his children. Referring to the fact that his installation allowance had been supplemented by an additional payment of half a month's basic salary upon his first child taking up residence in Germany, the complainant requested the same benefit for his second child.

Further to the rejection of his request for review on 21 April 2017, the complainant filed an internal appeal against this decision on 30 June 2017 claiming payment of an additional installation allowance of half a month's basic salary.

In its opinion of 19 March 2020, the Internal Appeals Committee (IAC) unanimously recommended that the appeal be rejected as unfounded. The IAC also recommended that the complainant be awarded 150 euros

in moral damages for the unreasonable length of the internal appeal proceedings.

By a letter of 7 May 2020, the Chief Corporate Policies Officer informed the complainant of her decision, taken by delegation of power from the President of the Office, to reject his appeal as unfounded but to award him 250 euros in moral damages for the length of the internal appeal proceedings. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the EPO to pay him an additional installation allowance amounting to half a month's basic salary. He claims moral damages of at least 1,000 euros for the length of the internal appeal process and reimbursement of the legal costs he incurred in bringing this complaint to the Tribunal, as well as any other costs the Tribunal considers appropriate.

The EPO invites the Tribunal to dismiss the complaint as irreceivable in part and unfounded in its entirety.

CONSIDERATIONS

1. The central question that arises for determination is whether the complainant is entitled to an additional installation allowance equal to half a month's basic salary, which he claims with respect to his transfer to The Hague. The payment of such an allowance is provided for in Article 73 of the Service Regulations but the complainant also refers to Articles 13 and 69 of the Service Regulations. The issue first arose when, on 18 October 2016, the complainant requested the installation allowance for his 1 July 2016 transfer from Munich to The Hague in respect of his two dependent children. However, he was denied the installation allowance in respect of his second child, born on 6 September 2016 in the Netherlands, on the ground that the condition for its payment was not met because the child was born after the complainant's transfer to his new place of employment and had therefore not changed residence to that place.

2. In the impugned decision, dated 7 May 2020, the Chief Corporate Policies Officer, by delegated authority from the President and on the unanimous recommendation of the IAC, rejected the complainant's internal appeal in which the latter had contested the rejection of his claim for the installation allowance on behalf of his second child. However, the complainant was awarded 250 euros for the delay in the internal appeal proceedings, thereby increasing the 150 euros which the IAC had recommended. The complainant seeks an order setting aside the impugned decision. He centrally contends that the rejection of his claim for the additional installation allowance was based on a wrong interpretation of Articles 13, 69 and 73 of the Service Regulations. He also seeks an order for the award of 1,000 euros for the delay in the internal appeal proceedings and an order for the award of the costs he incurred in bringing the present complaint as well as any other costs which the Tribunal considers appropriate.

3. The EPO submits that the claim for "[a]ny other costs the Tribunal considers appropriate" is irreceivable for lack of basic clarity. This aspect of the claim for costs is dismissed as the complainant has not articulated any basis for such an award.

4. Article 73 of the Service Regulations, under which the complainant claims the installation allowance, relevantly states as follows:

> "(1) An installation allowance shall be payable to permanent employees:
>
> [...]
>
> (b) on transfer from one place of employment to another place of employment, these places of employment being situated at least 400 kilometres apart, provided such transfer is of indefinite duration exceeding two months.
>
> This installation allowance shall be equal to one month's basic salary; it shall be supplemented by an additional payment of half a month's basic salary for permanent employees entitled to a household allowance and having not more than one dependent child, and of one month's basic salary for permanent employees entitled to a household allowance and having at least two dependent children.

> (2) Subject to the provisions of paragraph 1 above, the installation allowance shall be payable from the permanent employee's [...] transfer from one place of employment to another; however, the additional payments referred to in paragraph 1 shall be payable only where the spouse and dependent children have taken up residence at the place of employment and the permanent employee concerned has satisfactorily completed the probationary period.
>
> [...]"

5. Article 13 of the Service Regulations, which provides for the probationary period, relevantly states, in paragraph 2, that the probationary period shall be six months in case of transfer. Article 69, to which the complainant also refers, provides for the dependants' allowance.

6. The complainant contends that at any time within the probationary period he should have been paid the additional installation allowance in respect of his second dependent child, who was born during his probationary period in The Hague. The complainant argues that, although the relevant provisions make no references to the family situation, it seems reasonable that changes in the family situation during the probationary period should be taken into account, as the relevant provisions would otherwise suggest "not relocating the family without having successfully completed the probationary period". This, he states, clarifies who are the family members for whom the installation allowance is paid: the members of the household who are residing in the place of employment before or at the time of transfer to that place as well as those who reside there during the probationary period.

7. The IAC, whose reasoning and recommendations the Chief Corporate Policies Officer accepted in the impugned decision, noted that the date at which the entitlement to the installation allowance accrued was not specified but considered the purpose of the allowance. It referred to the Tribunal's interpretation of Article 73(2) in Judgment 1820. In consideration 2 of that judgment, the Tribunal noted that the conditions for payment of the additional allowance do not appear to be the same in the French as in the English and German texts in that the French requires the mere fact of residence of the family at the duty station but

the English and German their taking up residence there. The Tribunal stated that where a rule is cast in more than one official language and no one version is to prevail, all versions shall be deemed to bear the same meaning and the right construction shall be the one that respects the draftsman's intent and best reconciles them. The Tribunal concluded that there is no real discrepancy since, while the French text requires the fact of residence, it does not say at what date it should have been taken up. On the other hand, the English and German say neither that residence should have been taken up at any particular date nor that residence at the new duty station must continue, in which event, the three versions were open to an interpretation that reconciles them but the interpretation must fit the legal context.

8. The Tribunal considered, in Judgment 1820, that since the allowance in question is an additional one payable to the employee in the event of a change of duty station, unless the contrary can be shown, it stands to reason that, being additional and therefore incidental, it should be due on the same terms as the basic allowance, namely where the employee or family changes residence. The Tribunal also considered that its purpose is obviously the same, namely to help the employee meet the costs of removal, which are ordinarily higher when the family is moving as well. It concluded that the additional allowance is payable when, on the employee's transfer, the family takes up residence at the new place of employment and is still living there at the time of the claim.

9. The Tribunal's reasoning in Judgment 1820 bears out the general principle of interpretation in the case law stated, for example, in consideration 5(b) of Judgment 2258, that statutory provisions must be interpreted in such a way that their true meaning is preserved, taking into account, *inter alia*, the actual letter of the provision, its origin, its aim and its place within the legal framework of an organisation, and without necessarily dwelling on inaccurate or inappropriate terms (see also Judgment 1456, under 16). Accordingly, the Tribunal finds that the IAC correctly concluded, in the present case, that the installation allowance is a one-time payment which, although the complainant received it after his second child was born, with his November 2016 salary, pursuant to

Article 73(1)(b) of the Service Regulations, it accrued and became payable at the time of transfer, as it is designed to assist staff with the installation. The IAC thereupon correctly did not accept that the complainant's entitlement to the installation allowance accrued at any time during the complainant's six-month probation in The Hague so as to take into account the change in the family situation during that period. The Chief Corporate Policies Officer did not err when, in the impugned decision, she adopted the IAC's reasoning on these issues.

10. Returning to the terms of Article 73 and addressing the specific question of the circumstances in which the additional payment is to be paid, the answer lays in the concluding words of Article 73(2). It is relatively clear that the word "where" is, in substance, the identification of "when". That is to say it identifies when the entitlement to the additional payment arises. The entitlement arises when the staff member takes up residence and by reference to his circumstances at that time. In this case, the complainant's circumstances were that he had one child only and was thus entitled to the additional allowance of half a month's basic salary, and not entitled to the additional allowance in respect of his second child. It is true that the payment will not actually be paid to a staff member on probation until the probationary period has concluded, but this does not alter the fact that the actual entitlement is ascertained at the time a probationary staff member takes up residence.

11. The complainant submits that he is entitled to the additional installation allowance because there existed a "well-established common procedure" in the EPO that the allowance had been treated as accruing at any time during the probationary period. However, according to the case law, a practice cannot become legally binding where, as in the present case, it contravenes specific rules which are already in force (see, for example, Judgment 4026, consideration 6).

12. The Chief Corporate Policies Officer accepted the IAC's conclusion that there was unreasonable delay in the internal appeal proceedings and awarded the complainant 250 euros instead of 150 euros the IAC recommended. The complainant contests the award of 250 euros

and claims 1,000 euros in moral damages for the delay instead. However, as he does not explain why the amount that he was awarded was insufficient, his claim will be dismissed.

13. In the foregoing premises, the complaint will be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 May 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ