Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

F. (No. 4) and T.

v.

EPO

135th Session **Judgment No. 4628**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr T. F. (his fourth) and Mr C. Y. M. T. against the European Patent Organisation (EPO) on 9 September 2019, the EPO's single reply of 10 February 2020, the complainants' rejoinder of 25 June 2020, the EPO's surrejoinder of 12 October 2020, the EPO's further submission of 27 October 2021 and the complainants' final comments of 1 March 2022;

Considering the applications to intervene filed at various dates between 2 August 2021 and 15 March 2022 by the 404 persons listed in the annex to this judgment, and the EPO's comments thereon dated 7 March and 29 June 2022;

Considering the *amicus curiae* brief submitted by the Staff Union of the European Patent Office (SUEPO) on 30 May 2022 and the EPO's comments thereon dated 5 September 2022;

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 none of the parties has applied;

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

The complainants challenge the decision to accept only part of the recommendations of the Appeals Committee on their appeals against the postponement of a strike ballot by the President of the European Patent Office (the EPO's secretariat).

Facts relevant to this case may be found in Judgment 4432, delivered in public on 7 July 2021. As explained in that judgment, in June 2013 the EPO's Administrative Council adopted decision CA/D 5/13, creating a new Article 30a of the Service Regulations for permanent employees of the European Patent Office concerning the right to strike and amending the existing Articles 63 and 65 concerning unauthorised absences and the payment of remuneration. Paragraph 10 of Article 30a authorised the President to lay down further terms and conditions for the application of Article 30a, including with respect to the maximum strike duration and the voting process. Relying on that provision, the President issued Circular No. 347 containing "Guidelines applicable in the event of strike". Circular No. 347 relevantly provided that, upon receipt of a call for strike, the Office was responsible for organising a strike ballot, which had to be completed within one month from the date of the call for a strike.

On 16 May 2014 the Central Staff Committee (CSC) notified the President of a call for strike by a group of staff members calling themselves the "UNITY initiative", who had designated the CSC as their representative or interlocutor. The complainants were among the 903 signatories. Strike actions were foreseen on 25 and/or 26 June 2014, which would have coincided with the meeting of the Administrative Council at which the extension of the President's appointment was to be discussed. On 28 May the President announced in Communiqué No. 54 that it would not be possible to organise a ballot before the beginning of July, for two reasons. Firstly, the election process for electing staff representatives (including the CSC members) was under way, and the newly-elected CSC members would not take up their functions until 1 July. In the meantime, according to the President, it was impossible to conduct meaningful discussions with representatives who would not be in a capacity to do so throughout the process. Secondly, he argued that the organisation of a strike ballot during the

ongoing electoral campaign would create confusion and could create inequality between the candidates. He proposed to meet with the CSC on 4 July to discuss the matter.

In the event, the planned strike action did not take place. In August 2014 Mr F. and Mr T. filed requests for review challenging Communiqué No. 54. They contended in particular that the failure to organise a ballot within one month of the call for strike by the UNITY initiative, as required by Circular No. 347, constituted a violation of the right to strike. Mr F. filed his request for review in his dual capacity as staff representative and employee. These requests for review were rejected and the complainants then appealed to the Appeals Committee. A hearing took place in May 2018 and the Committee issued its opinion on 11 April 2019, in which it concluded that the decision embodied in Communiqué No. 54 was tainted by a legal flaw. The Committee found that the President ought to have discussed with the designated interlocutor (that is, the outgoing CSC members) at the outset the perceived problem arising from the fact that the strike would coincide with the staff representation elections. By failing to enter into any dialogue and effectively presenting the signatories of the UNITY initiative with a *fait accompli*, the President had taken disproportionate action and had violated their right to strike. A majority of the Committee (two of its three members) considered that this finding would provide "sufficient satisfaction" to the complainants and that no damages should be awarded for the violation of the right to strike, whereas the third member considered that an award of at least 3,000 euros in moral damages would be appropriate. The Committee unanimously recommended an award of 300 euros for delay.

By a letter of 12 June 2019, the Vice-President of Directorate-General 4 (DG4), acting by delegation of authority from the President, informed the complainants that she had decided to allow their appeals in part. Specifically, she accepted the Appeals Committee's unanimous recommendation to award each of them 300 euros in moral damages for delay, as well as the majority's recommendation not to award damages for breach of the right to strike, and rejected their remaining claims. That is the impugned decision.

In their complaints filed on 9 September 2019, each complainant asked the Tribunal to set aside Communiqué No. 54 and claimed 5,000 euros in moral damages for violation of the right to strike as well as 10,000 euros in moral damages for delay in the internal appeal proceedings. They also claimed costs and interest on all sums awarded to them. In his capacity as a staff representative, Mr F. additionally claimed moral damages in the amount of one euro.

On 7 July 2021 the Tribunal delivered several judgments dealing with various other complaints challenging the strike rules introduced by CA/D 5/13 and Circular No. 347. In Judgment 4432, the Tribunal ruled on a complaint filed by a staff member who had likewise challenged the President's decision to postpone the strike ballot following the call for strike by the UNITY initiative. The Tribunal noted that the EPO had conceded, in the course of the internal appeal proceedings, that the postponement of the strike ballot was unlawful, but it awarded the complainant in that case 8,000 euros in moral damages (including 2,000 euros for delay) and 500 euros in costs.

By letters of 24 September 2021, the complainants were informed that, in view of the similarity between their pending complaints and the complaint that was the subject of Judgment 4432, the EPO had decided to apply the outcome of that judgment to them as well. The EPO therefore paid each complainant 7,700 euros in moral damages (that is to say, 8,000 euros less the 300 euros already paid to them following their internal appeals) and 500 euros in costs, and it invited them to withdraw their complaints. However, the complainants chose not to do so.

CONSIDERATIONS

1. The following discussion proceeds against the background emerging from the facts just described. Before dealing with the specifics of this case, one general observation (also made in other cases determined this session) should be made. In proceedings brought by a complainant in which one or several individuals apply to intervene, the complainant has no legal or other relevant interest in the applications to intervene. In contrast, the defendant organisation does have such an

interest as successful applications to intervene can multiply both the legal and practical effect of a judgment in favour of the complainant.

2. In these proceedings there are two complaints. They should be joined so that one judgment can be rendered. It is tolerably clear from the complainants' final comments that they do not now seek, for themselves, any relief arising from their complaints (and none is identified) subject to pleas concerning Mr F.'s claim in his capacity as a staff representative. But his claim, in this respect, for a nominal amount of damages of one euro, is not maintainable (see Judgment 4550, consideration 20). Accordingly, the appropriate order to make is to dismiss the complaints. In accordance with the Tribunal's case law, it follows that the applications to intervene must also be dismissed. This conclusion renders irrelevant the observations made by SUEPO in its *amicus curiae* submission concerning those applications.

DECISION

For the above reasons,

1. The complaints are dismissed.

2. The applications to intervene are dismissed.

In witness of this judgment, adopted on 19 October 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ

Annex

Four hundred and four interveners (in alphabetical order):

Names removed.