

**K. (No. 19)**

**v.**

**EPO**

**135th Session**

**Judgment No. 4641**

THE ADMINISTRATIVE TRIBUNAL,

Considering the nineteenth complaint filed by Mr T. K. against the European Patent Organisation (EPO) on 15 April 2019, corrected on 6 and 11 May, the EPO's reply of 15 November 2019 (following a stay of proceedings granted by the President of the Tribunal at the EPO's request), the complainant's rejoinder of 16 March 2020 and the EPO's surrejoinder of 30 September 2020;

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 interim results of his job grade evaluation.

Facts relevant to this case are to be found in Judgment 4640, also delivered in public this day, on the complainant's third complaint. Suffice it to recall that between July 2009 and April 2010 the complainant lodged four internal appeals in which he raised a certain number of claims regarding the fact that his administrative status was unclear after he had been detached to various projects. In July 2012 the Internal Appeals Committee (IAC) considered these appeals jointly and found that the EPO had not discharged its duty of care and was responsible

for a set of unlawful acts that had caused damage to the complainant. In addition to recommending an award of damages, it recommended that a series of actions be undertaken in order to clarify the complainant's administrative status. It recommended, inter alia, that the complainant's post held as of 1 November 2006 be assessed in terms of its level of duties.

By letter of 24 September 2012 the Vice-President of Directorate-General 4 (DG4), by delegation of power from the President, allowed in part the complainant's internal appeal. He decided to refer the complainant's case for a job grade evaluation concerning the position he occupied as of November 2006 to the Controlling Office. He further stated that, based on that evaluation, it would then be possible to determine his job title and to issue a job description as well as to assign him a reporting and a countersigning officer. He decided to award the complainant a global compensation payment of 8,000 euros.

By letter of 2 May 2013 the complainant was notified of the interim results of the job grade evaluation of the duties he had performed since November 2006. These results indicated that his post should be classified at expert level, assigned to grade group B6/B4, and that the characteristics of his post did not correspond to those of an Administrator in "A-grade career". He was also informed that a further evaluation of his grading within "B career" would follow in order to reach a final conclusion on his job grade.

By letter of 2 August 2013 the complainant requested a review of the job grade evaluation alleging a flawed procedure and process to reach the interim results. By letter of 24 September 2013, he was informed of the rejection of his request for review on the basis that the letter of 2 May 2013 did not constitute a decision as it only provided interim results of a job grade evaluation that was still ongoing.

On 22 October 2013 the complainant filed an internal appeal. In its report dated 19 November 2018, the Appeals Committee recommended by a majority to reject the appeal as manifestly irreceivable under the summary procedure because the appeal was not directed against a final decision but rather against the interim results of a job grade evaluation with no legal effect. It also recommended an award of 300 euros for the length of the procedure. The minority opinion recommended rejecting

the internal appeal as irreceivable but to award moral damages of 1,500 euros for the length of the procedure and the late remittal.

By letter of 21 January 2019 the Vice-President of DG4, by delegation of power of the President, endorsed the majority opinion of the Appeals Committee and decided to dismiss the complainant's appeal as manifestly irreceivable. She further decided to award damages in the amount of 300 euros for the excessive length of the procedure. That is the impugned decision.

By letter of 9 October 2013 the final outcome of the job grade evaluation confirming that his post belonged to the B5/B1 grade group was communicated to the complainant. He challenged that decision by way of internal appeal RI/56/14 which was suspended pending the outcome of the complainant's third complaint before the Tribunal.

The complainant asks the Tribunal to set aside the impugned decision of 21 January 2019 and to order his retroactive upgrade to grade A2 as of 1 November 2006, which corresponds to the period when he started carrying out duties of Application Management. He asks the Tribunal to order the EPO to pay him 5,000 euros in punitive damages for its failure to examine, in accordance with IAC's recommendation of July 2012, whether his Application Management responsibilities would fall into the A-level category. He also asks the Tribunal to order the EPO to pay an additional 5,000 euros in punitive damages for having conducted an evaluation without "a proper, valid, objective and fair job description/job specification". The complainant further seeks moral damages in the amount of 1,500 euros for the length of the procedure as well as costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable or, on a subsidiary basis, as unfounded.

## CONSIDERATIONS

1. The complainant requests the Tribunal to order the production of his personal file. The request is rejected as the file is unnecessary for the determination of the issues raised in this complaint.

2. Underlying this complaint are procedures the complainant initiated to have his administrative situation clarified, which resulted in the decision of 24 September 2012 to conduct a job grade evaluation of the duties he had performed since November 2006. In the letter of 2 May 2013, which he contested by way of a request for review dated 2 August 2013, the Vice-President of DG4 relevantly informed him that he had reviewed the job grade evaluation results, a copy of which he attached. The Vice-President continued: “More specifically, the Controlling Office considers that there are indications to classify your post at expert level and assign it to B6/B4 grade group. It also reached the conclusion that the characteristics of your post are not those of an Administrator in A grade career. [...] To reach a final conclusion on your job grade, in accordance with the Controlling Office’s recommendation and as announced in my previous letter a further evaluation of your grading within the B career band will therefore follow at the earliest opportunity. [...] We will keep you duly informed about the progress and outcome of the further evaluation process. [...] I trust that a final outcome in clarifying your administrative situation can be reached soon.” The outcome of the subject job evaluation was communicated to the complainant by letter dated 9 October 2013.

3. In his request for review, the complainant challenged and rejected “the many uncorroborated, unsupported, non-measurable, and non-verifiable judgments as made by the Office (DG4) in its letter of [2 May 2013] and its ‘job grade evaluation’ by the Controlling Office [and] the procedures and process followed by the Office to reach such judgments [...]”. The complainant attached a copy of an analysis by his legal counsel.

4. In the 24 September 2013 letter rejecting the complainant’s request for review, the President stated that the 2 May 2013 letter did not constitute a challengeable act or decision within the meaning of Article 108 of the Service Regulations for permanent employees of the European Patent Office as it merely provided information on the interim results of the job grade evaluation and indicated that the evaluation was still ongoing. Article 108(1) of the Service Regulations relevantly states

that a staff member may challenge an act which adversely affects her or him. In consideration 13 of Judgment 3198, citing consideration 6(a) of Judgment 1674, the Tribunal stated as follows:

“a complaint is irreceivable when the decision at issue is not one that adversely affects the complainant. A decision is an act by an officer of an organisation which has a legal effect on the staff member’s status: see Judgment 532 [...]. The complainant suffers no injury from having to wait for a later decision which he may impugn [...]. Similarly, an internal appeal, followed by a complaint, is not receivable when the organisation’s rules prescribe some formality to be completed first (see Judgment 468 [...] concerning ‘something which is only one step in a complex procedure and of which only the final outcome is subject to appeal’).”

5. In his appeal against the rejection of his request for review, the complainant did not only challenge the decision which rejected his request for review. He also made claims which fell outside the scope of his request for review, including claims he had previously made in other internal appeals, some of which were eventually the subject of complaints before the Tribunal, as well as claims relating to his administrative status prior to 2006, which the Tribunal considered in Judgment 3273, and a claim concerning his personal file for which he had not sought administrative review pursuant to Article 109 of the Service Regulations.

6. The majority of the Appeals Committee, whose conclusions the Vice-President of DG4 endorsed in the impugned decision, recommended that the appeal be rejected as manifestly irreceivable pursuant to the summary procedure provided in Article 9 of the Implementing Rules for Articles 106 to 113 of the Service Regulations, but to award the complainant 300 euros in moral damages for the excessive length of the procedure. Article 9 permits the Appeals Committee to deliver an opinion by a majority limited to the receivability of an appeal if it considers the appeal to be manifestly irreceivable or manifestly unfounded. It may decide to apply the summary procedure without any hearing. Under that Article, an internal appeal may be considered to be manifestly irreceivable, *inter alia*, if it does not challenge an individual decision within the meaning of Article 108 of the Service Regulations; or if it challenges a decision having the authority of *res judicata* or a final

decision within the meaning of Article 110, paragraph 4, of the Service Regulations; or if it challenges an individual decision which should have been subject to the review procedure pursuant to Article 109, paragraph 1, of the Service Regulations.

7. The majority of the Appeals Committee correctly observed that the 2 May 2013 letter merely communicated to the complainant an interim result of his job evaluation and concluded that as such it did not contain a final decision which adversely affected the complainant, which was a challengeable individual decision within the meaning of Article 108(1) of the Service Regulations. The majority further concluded, correctly, that the claims which the complainant had made again which were already the subject of other proceedings, including his claims concerning his personal file and his administrative status prior to 2006, were irreceivable because they were the subject of parallel proceedings (see, for example, Judgments 3442, under 10, and 3291, under 6). They additionally correctly concluded that the two last mentioned claims were also irreceivable because they were not within the scope of the complainant's request for review. Accordingly, the complainant has failed to challenge a final decision as required by paragraph 1 of Article VII of the Statute of the Tribunal, which states that "[a] complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of redress as are open to her or him under the applicable Staff Regulations". It is clear that the "decision" contained in the 2 May 2013 letter that the complainant purported to challenge was a mere step towards what eventually became a final challengeable decision of 9 October 2013, which informed him of the outcome of his job evaluation and which he has contested in another internal appeal. Moreover, the majority of the Appeals Committee correctly concluded that insofar as the complainant made claims which related to his administrative status prior to 2006 that were extensively considered by the Tribunal in Judgment 3273, they were also irreceivable being *res judicata*.

8. In the foregoing premises, the Vice-President of DG4 did not err when she endorsed the Appeals Committee's conclusions and recommendation to dismiss the complainant's internal appeal as being manifestly irreceivable. The complaint will therefore be dismissed in its entirety.

#### DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 25 October 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 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ