Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B. (No. 16)

v.

EPO

137th Session **Judgment No. 4796**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixteenth complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 6 June 2020, the EPO's reply of 30 October 2020, the complainant's rejoinder of 9 December 2020 and the EPO's surrejoinder of 30 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 challenges the decision to deduct from the amount of the education allowance paid in respect of his child the remuneration received by the latter during an internship.

At the material time, the complainant received an education allowance for his son pursuant to Article 71 of the Service Regulations for permanent employees of the European Patent Office, the EPO's secretariat, the amount of which was normally 464.41 euros per month.

From 7 September 2015 to 8 February 2016, the complainant's son participated in an internship as part of his studies, for which he received a monthly payment which varied between 227.52 euros and 1,805.11 euros.

By email of 23 March 2016, the complainant was informed of the Administration's decision to deduct from the amount of the education allowance that had been paid to him for the period from 7 September 2015 to 8 February 2016 the net income received by his son during that period, limited to the component of the allowance corresponding to indirect education costs each month, which came to a total deduction of 2,540.82 euros. This deduction was then reflected in the complainant's payslips from April to June 2016.

On 23 May 2016 the complainant submitted a request for review of the decision of 23 March 2016. His request for review was rejected on 25 July 2016.

The complainant lodged an internal appeal on 14 October 2016. The Appeals Committee, which delivered its opinion on 15 January 2020, recommended by a majority that the internal appeal be rejected as unfounded. It however recommended that the complainant be awarded compensation of 150 euros on account of the delay in dealing with the internal appeal.

By letter of 9 March 2020, the complainant was informed of the decision, taken by delegation of power from the President, to reject his internal appeal and to award him an increased sum of 250 euros for the unreasonable duration of the internal appeal procedure. That is the impugned decision.

The complainant asks the Tribunal to order that the sum of 2,540.82 euros be reimbursed to him and that compound interest be paid from the date of its deduction. He seeks compensation of 2,500 euros for the moral injury he considers he has suffered, 500 euros of which relate to the duration of the internal appeal procedure. Lastly, he claims costs together with "any other compensation which the Tribunal considers [as] just and equitable". In his rejoinder, he also claims punitive damages.

The EPO asks the Tribunal to dismiss the complaint as unfounded and submits that some of the complainant's claims are irreceivable.

CONSIDERATIONS

1. Article 71 of the Service Regulations for permanent employees of the European Patent Office establishes an education allowance to cover some of the expenditure incurred by employees in the education of their dependent children throughout their studies, including at post-secondary level.

Under that article, in the version in force at the time of the facts that led to these proceedings, the allowance in question consisted of three parts, provided for in points (a), (b) and (c) of Article 71(5), corresponding respectively to the cover provided, on the conditions and within the limits set out in Article 71(6), for direct education costs – such as registration and examination fees –, to miscellaneous education costs – such as the child's board and lodging and daily travel – and to travel expenses between the educational establishment and the employee's duty station.

Article 71(9), in the version applicable to the present case, provided that:

> "The actual amount of the education allowance shall be determined after deduction, where appropriate, of any allowance received from other sources for the child's education (scholarships, grants)."

2. At the material time, the complainant received an education allowance in respect of the higher education of his son, then aged 23, at the *Haute École de La Haye* (The Hague, Netherlands). By an email of 23 March 2016, he was notified of a decision taken by the Office on the basis of the provisions of the aforementioned Article 71(9) to deduct from the amount of the allowance in question the net income that his son had received during an internship carried out as part of his studies, during the period from 7 September 2015 to 8 February 2016, at the Port of Rotterdam. The income consisted of the internship payments made to the son by that employer. The Office had considered that it needed to make the deduction in question by allocating it against the sole component of the education allowance that corresponded to the indirect education costs provided for in Article 71(5)(b), up to the limit of the monthly amount payable for that component, resulting in a total

deduction of 2,540.82 euros to be made by way of recovery of the overpayment which the complainant had supposedly previously received. This deduction was divided into three instalments which were successively withheld from the complainant's monthly remuneration from April to June 2016.

It is the final decision, taken by delegation of power from the President of the Office on 9 March 2020, which, in accordance with the recommendation of the majority of the Appeals Committee, confirmed the deduction to be made in this way, which the complainant impugns before the Tribunal.

3. As this dispute essentially revolves around the interpretation of the aforementioned provisions of Article 71(9) of the Service Regulations, it is appropriate to recall the basic rules of statutory interpretation defined by the Tribunal's case law. These state that words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgments 4639, consideration 3, 4506, consideration 5, 4066, consideration 7, 4031, consideration 5, and 3744, consideration 8).

4. In support of his claims, the complainant submits first of all that the wording of Article 71(9), which states that the actual amount of the education allowance is to be determined "after deduction, where appropriate, of any allowance received from other sources for the child's education (scholarships, grants)", allows for the deduction only of scholarships and grants from that amount and not of any other allowances received for the child's education.

However, the Tribunal considers it apparent from the provision in question – even though the wording could undoubtedly be better – that the two particular kinds of allowance mentioned are not exhaustive and that allowances other than scholarships and grants, which are only referred to because they are the most common forms of educational assistance, could also give rise to such a deduction. The way in which the words "scholarships" and "grants" appear in the text, being placed

in brackets and separated by a comma, rather than by a conjunction such as "or" or "and", supports this interpretation. This is further confirmed by the fact that Article 71(9) refers to the "deduction [...] of any allowance received from other sources for the child's education (scholarships, grants)" (emphasis added).

In addition, when called upon to rule on complaints challenging the lawfulness of Article 71 of the Service Regulations, the Tribunal stated, in Judgment 2870, consideration 12, that "[p]rovision is also made in Article 71(9) for the deduction of allowances from other sources (e.g. scholarships) payable in respect of the child's education" (emphasis added). While not entirely addressing the matter at hand in the present case, the wording used by the Tribunal in that sentence was already leading towards the above interpretation.

5. However, the Tribunal also considers that, contrary to the view taken by the Office and the majority of the Appeals Committee, internship payments made to the child of an employee during an internship carried out with an employer as part of her or his studies – whether the internship is compulsory, as it was in the present case, or optional – do not constitute an allowance received for the child's education within the meaning of Article 71(9) and cannot, therefore, be lawfully deducted from the amount of the education allowance.

The reference made in that provision to "any allowance received [...] for the child's education" must be understood as an allowance the purpose of which is to contribute to the expenditure involved in the child's studies, which, once again, is confirmed by the reference in the text, quoted above, to "any allowance received [...] for the child's education" (emphasis added).

But that is not the purpose of internship payments made by employers to students or pupils carrying out an internship with them as part of their studies. Such payments are principally intended as remuneration for the services provided by the intern to the employer. Even though – for the reasons set out below – such payments can certainly not be regarded as a salary, they are still, by their very nature,

a form of remuneration made to the child, and not a contribution to the cost of her or his education.

6. It is true that internship payments can sometimes include a contribution from the employer towards the expenses incurred by the child or by her or his family in connection with the internship. Even on this assumption, however, that is not their essential purpose, which is still to remunerate the intern as described above, and such a contribution cannot, in any event, be regarded as a payment "for the child's education" within the meaning of the aforementioned Article 71(9). Furthermore, the Tribunal notes that, as the complainant rightly submits, the kind of expenses contributed to by the employer may relate to specific costs incurred in connection with the internship, such as, for example, the rental of temporary accommodation near the internship location or daily transport between that location and the child's normal place of residence. These are expenses over and above those normally incurred in connection with the child's education which, by definition, are not taken into account when determining the amount of the education allowance payable by the EPO, given that the component of the allowance pertaining to indirect education costs – which includes expenses of this kind – is, under Article 71, fixed at a flat rate.

7. Admittedly, these considerations do not mean that internship payments made to the child cannot, in appropriate circumstances, cover some of the costs connected with her or his education, and, in particular, the indirect education costs just referred to. But the same is in fact true of any sum, of any kind, received by the employee or by her or his family. The aforementioned Article 71(9) does not provide, in letter or in spirit, that any allowance which derives from a source other than the Office and which could potentially be set towards those costs can be deducted from the amount of the education allowance. It only permits the deduction of those allowances the specific purpose of which is to contribute to the expenditure connected with the child's studies, which, as already stated, is not the case with internship payments.

Moreover, the reasoning used by the EPO in this regard essentially amounts to considering that internship payments made to the child should, as a matter of principle, be allocated first and foremost to covering the costs of her or his education. However, there is nothing to justify the suggestion that a child who has carried out an internship should not have total freedom in using the payment that she or her received in return for the services provided to an employer in that context.

The latter observation also leads the Tribunal to reject the EPO's argument that to accumulate the whole of the education allowance with the internship payments would result in unjust enrichment of the employee. The internship payments have a legal consideration of their own, being the remuneration of the services provided by the child for the benefit of the employer concerned.

8. The EPO argues that to regard internship payments made to a child as akin to a salary would jeopardise the employee's whole entitlement to the education allowance, since the allowance is only available for children during their studies and therefore ceases if those children are earning an income. More fundamentally, the recognition of the child's status as a dependant, which is a prerequisite for entitlement to the allowance, would then, according to the Organisation, *ipso facto* also be compromised.

But these arguments must fail since, as explained above, internship payments of this kind cannot be regarded as a salary, even though they essentially consist of remuneration for the services performed by the intern. Such payments, which are generally made under the terms of an internship agreement in the context of the school or university course followed by the child, differ fundamentally, from a legal perspective, from the remuneration received by an employee under an employment contract. Nor can the payments be assimilated to a salary given that they are normally very modest in amount when compared with ordinary pay for professional activities at a level similar to the tasks carried out by the intern.

9. Lastly, the Tribunal points out that, while it is clear from the file that the EPO's practice, at the material time, was to decide whether or not internship payments should be deducted from the education allowance depending on the specific purpose for which they were made – which, moreover, contrasts with the principled stance defended by the EPO in its submissions in favour of a systematic deduction –, it is evident that such a deduction would, in fact, be impossible in any case. In view, particularly, of the range of national regulations and customary practices applied in this field, it would not be appropriate for the approach taken to be contingent on the particular circumstances of each case, the analysis of which might sometimes prove a tricky matter.

Indeed, the present case itself illustrates the difficulties encountered in such an exercise. Although the internship agreement in question described the internship payments made to the complainant's child as a "reimbursement of expenses", it is clear from the – undisputed – evidence on file that the payments were accompanied by payslips and were subject to social security contributions and income tax, showing that they in fact amounted to remuneration rather than to reimbursement.

10. It follows from the foregoing considerations that, as the dissenting member of the Appeals Committee stated, the EPO was wrong to deduct the amount of the internship payments made to the complainant's son from the amount of the education allowance paid to the complainant and that, in making such a deduction, the EPO breached the aforementioned provisions of Article 71 of the Service Regulations and the principle of *tu patere legem quam ipse fecisti*, which prohibits an organisation from breaching the rules which it has itself established.

11. It follows that the impugned decision of 9 March 2020 must be set aside, as must the initial decision of 23 March 2016 and the decision of 25 July 2016 dismissing the request for review of that earlier decision, without there being any need to rule on the complainant's other pleas against them.

12. As a consequence of those decisions being set aside, the EPO will be ordered to repay the total sum of 2,540.82 euros which had been withheld from the complainant's remuneration from April to June 2016.

This sum shall bear interest at a rate of 5 per cent per annum to run, in respect of each of the sums deducted, from the date of the deduction to the date of the repayment.

However, an order for the interest in question to be compounded, as requested by the complainant, is not appropriate. Following the practice developed by the Tribunal through its case law, the interest to be added to certain monetary awards is, in principle, simple interest, compound interest being awarded only in exceptional circumstances (see, in particular, Judgments 4235, consideration 15, 3013, consideration 3, and 802, consideration 4). There are no special circumstances in the present case to justify an order for compound interest.

13. The complainant seeks the award of damages for the moral injury allegedly caused to him by the impugned decision. However, in his submissions he does not provide any evidence that such an injury exists and, in view of the nature of the decision at issue, the effects of which are purely financial, the Tribunal considers that the repayment of the deductions wrongfully made from the complainant's remuneration, together with interest, is, in the circumstances, sufficient redress for the whole of the injury he suffered as a result of that decision.

14. Neither is it appropriate to order the EPO, as the complainant suggests, to pay punitive damages on account of the bad faith which the Organisation allegedly showed in the administrative handling of his case. Although the impugned decision was indeed unlawful, there is nothing on the file to indicate that the error the Tribunal has found the Organisation to have committed in the application of Article 71 of the Service Regulations was the result of any bad faith on its part. This claim will therefore be dismissed as unfounded, without there being any need to rule on the objection to its receivability raised by the EPO.

15. The complainant also seeks moral damages for the unreasonable duration of the internal appeal procedure. But the Tribunal notes that nowhere in his submissions does the complainant, who has already been awarded 250 euros to this effect under the impugned decision itself, explain why that sum is insufficient to compensate him for the whole of the injury in question. This claim must, in the circumstances, be dismissed.

16. Lastly, although the complainant seeks the award of "any other relief which the Tribunal considers just and equitable", a claim worded in this way is, in any event, too vague to be regarded as receivable (see, for example, Judgments 4719, consideration 7, 4602, consideration 8, and 550, consideration 10).

17. Nonetheless, as the complainant succeeds for the main part, he is entitled to costs, which – in view, in particular, of the fact that he did not engage a lawyer – the Tribunal sets at 750 euros.

DECISION

For the above reasons,

1. The impugned decision of 9 March 2020 is set aside, as are the decisions of 23 March 2016 and 25 July 2016.
2. The EPO shall repay to the complainant the sum of 2,540.82 euros, together with interest calculated as indicated in consideration 12, above.
3. The Organisation shall pay the complainant costs in the sum of 750 euros.
4. All other claims are dismissed.

In witness of this judgment, adopted on 7 November 2023, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

MIRKA DREGER