

**NINETY-EIGHTH SESSION**

**Judgment No. 2381**

The Administrative Tribunal,

Considering the eleventh complaint filed by Mr R. H. against the European Patent Organisation (EPO) on 12 September 2003, the Organisation's reply of 1 December 2003, the complainant's rejoinder of 17 February 2004 and the EPO's surrejoinder of 30 March 2004;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a Belgian national born in 1926, is a former staff member of the European Patent Office, the secretariat of the EPO, who retired on 1 July 1986. He resides in Tenerife (Canary Islands, Spain).

In a fax dated 29 January 2003 he complained that he had not been paid his pension for that month. The next day, the Pension Administration Department sent him the text of a letter which had been dispatched on 28 January saying that a delay of two to five working days was to be expected in the payment of pensions, owing to a technical problem which was partly due to the approval of new salary scales by the Administrative Council in December 2002. In the complainant's case, the pension and related tax adjustment were paid on 4 February 2003.

After an initial exchange of correspondence with the Office, the complainant sent a letter on 26 May saying that the incident was regrettable and pointing out that it was not the first time it had occurred. He requested payment of interest on arrears at the rate of 5.25 per cent per annum plus at least 200 euros in compensation for moral injury. He asked the President of the Office to "inform [him] of his decision as required by the Administrative Tribunal of the International Labour Organization (ILO)". Having received no reply, he filed this complaint with the Tribunal on 12 September 2003.

B. The complainant starts by pointing out that at the beginning of 2002 the EPO changed his address without consulting him. He considers such action "inexcusable" since in his view it was not a mistake but a "misplaced personal initiative" which had caused him considerable inconvenience. In November 2002, moreover, the Office did not pay his pension into the usual account: as a result, he incurred a financial loss since the bank transfer gave rise to two commissions, totalling 30.06 euros, which were never refunded.

According to the complainant, his pension for the month of January 2003 was paid ten days late. As he had commitments due on 1 February, he had to take urgent steps to avoid penalties on arrears in his mortgage payments. He then lists examples of the Office's alleged negligence.

The complainant further explains that he has a problem every year when certifying his tax return, owing to the fact that the EPO sends him a form in English, French and German which the Spanish tax authorities refuse to sign because it is not in Spanish. He refers to a breach of Rules 42/4 and 42/5 of the Implementing Rules to the Pension Scheme Regulations, dealing respectively with information to be supplied to Member Countries by the Organisation and evidence of payment of tax. As a solution, he has had to resort to sending a photocopy of his tax return to the EPO, as succinct as possible in order to shield his personal details. The process would be greatly simplified if he had a form drafted in Spanish.

The complainant claims the payment of the above-mentioned sum of 30.06 euros plus interest on arrears from 1 December 2002, and the payment of interest for the period from 31 January to 4 February 2003 on the amount of his pension for January 2003 and the related adjustment. He asks the Tribunal to order the EPO to provide him with a copy of the Administrative Council's decision of December 2002, to let him know how Rules 42/4 and 42/5 were applied at the time he retired, to stop obliging him to use the trilingual form and "to ensure that no copy is made of

his tax return”, to authorise “a different procedure outside the normal rules to safeguard the confidentiality of [his] personal data” and to inform him of this procedure within 60 days of the judgment delivered on his complaint. Should the EPO not meet this last claim or that regarding the application of Rules 42/4 and 42/5, he asks the Tribunal to permit him “to appear before [it] a second time under the present complaint”. He also claims damages for the “inconvenience” he has been subjected to, in view of his age and the Administration’s inertia. Lastly, he claims costs and requests the publication in the EPO’s *Gazette* of his brief, of some annexes of the file and of the judgment.

C. In its reply the EPO contends that since the complainant has not filed an internal appeal his complaint is irreceivable; in its view, it is the payment decision of 4 February 2003 which should have been impugned within three months. It points out, furthermore, that with one exception – the claim for interest on arrears arising from the payment of the pension for January 2003 – the complainant’s claims are new and hence irreceivable.

Subsidiarily, the defendant submits that in accordance with Rule 37/1 of the Implementing Rules to the Pension Scheme Regulations, pensions must be paid on the last working day but two of the month to which they relate and that the complainant’s pension for January 2003 was therefore paid six days, that is to say four working days, late. It expresses regret for this “very slight delay”. Considering that it had apologised for that exceptional delay, which it had taken care to announce, and that the interest claimed would amount to only 4.96 euros, it considers that by virtue of the principle of *de minimis non curat praetor* a complaint is not justified. Moreover, since the complainant has not proved that he suffered injury, the EPO asks the Tribunal to reject as unfounded the claim for the payment of interest on arrears on his pension.

As far as the complainant’s claim for 30.06 euros is concerned, the EPO states that this sum plus interest at 5.5 per cent per annum, making a total of 31.57 euros, was paid to the complainant together with his pension for October 2003. In addition, it has produced document CA/D 13/02 of 12 December 2002 as an annex to its brief. In its view the two corresponding claims are now without substance.

The Organisation asserts that it has been unable to find a copy of the information transmitted to the Spanish authorities in 1986 pursuant to Rule 42/4. But since the wording remains the same, it has instead produced a copy of the information transmitted for the tax years 1994 and 2002, which complies with the requirements of the Pension Scheme Regulations. It submits that Rule 42/5 concerns only relations between the EPO and the national tax authorities. English, French and German being the three official languages of the Organisation, no provision is made in the relevant texts for communications to be transmitted in any other language. The documents it supplies to Member States never disclose the complainant’s personal details.

Insofar as the complainant has suffered no injury caused by the EPO which has not been made good, the Office considers that he should be awarded neither damages nor costs.

D. In his rejoinder the complainant contends that he could not file an internal appeal since, despite his request of 26 May 2003, no decision was taken causing him injury. His complaint is therefore receivable under the terms of Article VII, paragraph 3, of the Statute of the Tribunal. He explains why he could not challenge the “decision” of 4 February 2003 and adds that, for pensioners afflicted like himself with health and mobility problems, an internal appeal procedure can be a real “ordeal”.

The complainant denies that the EPO ever apologised for the injury it has caused him. He alleges that he was penalised on several occasions by payment delays, particularly in 1999 and 2000, which in his view confirms the contempt shown by the Office. According to his understanding, pensions should be paid not later than the last working day of the month, failing which the consequences can be “catastrophic” for some pensioners.

In addition, the complainant contends that the payment of 31.57 euros, made belatedly by the EPO under the pressure of his complaint, is “null and void”.

He maintains that the reason why the defendant did not find a copy of the information transmitted for 1986 is that the document never existed. He considers that the defendant has not replied to his request for explanations concerning Rule 42/5 nor to the question of using a form drafted in Spanish. He submits that the Administration does use a language other than the three official languages whenever it has to. He gives as an example the case of Belgian officials who retire to the Dutch-speaking part of the country and who are sent a form in four languages. He asks the Tribunal to declare that the solution of photocopying his tax returns as a solution to the problems

arising from the use of a trilingual form is unlawful. He reiterates his claims for the payment of damages and interest on arrears.

E. In its surrejoinder the defendant reiterates that the complaint is irreceivable. It explains that the Spanish authorities have not changed their attitude and that as a result pensioners resident in Spain have to supply a copy of their tax return. It adds, however, that a new procedure is to be applied for 2003 income tax returns.

## CONSIDERATIONS

1. The complaint concerns a delay in the payment of the pension and related tax adjustment owed to the complainant for January 2003. These payments were made to the complainant's bank account only on 4 February 2003, whereas by virtue of Rule 37/1 of the Implementing Rules to the Organisation's Pension Scheme Regulations they should have been paid "on the last working day but two of the month to which they relate".

2. On 22 February 2003 the complainant, who took up residence in Tenerife, wrote to the President of the Office to express his "disapproval regarding the circumstances surrounding the method of payment of [his] pension for the month of January [...] received ten days late". He complained of a "lack of consideration" and an attitude of "contempt" shown by the Office towards its retired staff members. He asked that all steps should be taken in order "to ensure that such a situation does not occur again in future".

On 17 April 2003 the Vice-President in charge of Directorate-General 4 replied that the Office regretted the late payment of pensions for January; he recalled that a number of measures had recently been adopted which, in his view, clearly showed "the Office's wish to provide the best service possible to its former staff members".

On 26 May 2003 the complainant wrote back to the Vice-President expressing satisfaction at the measures taken. He pointed out, however, that his criticism related "to the circumstances surrounding the payment of the pension for January 2003". He added that the occurrence was not unprecedented, at least as far as he personally was concerned. Alleging that he had incurred financial and moral damage as a result of the late payment of his pension, he asked for "interest on arrears at 5.25 per cent over ten days" by way of financial compensation, and an award of "not less than 200 euros" for moral injury. In conclusion, he asked the President of the Office to "inform [him] of his decision as required by the Administrative Tribunal of the ILO".

Having received no reply, he filed a complaint with the Tribunal on 12 September 2003.

3. It should be made clear at the outset that it is essential that both salaries and pensions be paid punctually and in full, if only on account of the precise commitments which beneficiaries may have to honour at the end or the beginning of each month. It would be unacceptable for the Tribunal, when dealing with a complaint of this kind, to take shelter – as the defendant has suggested – behind the principle of *de minimis non curat praetor* in order to dismiss the matter because it concerns apparently trifling amounts. That would be conceivable only if the Statute of the Tribunal included a provision whereby cases were subject to a prior selection process according to the magnitude of the interests at stake, which is not the case.

It must then be examined whether the complaint is irreceivable for the other reasons given by the defendant.

4. Article 106, paragraph 2, of the Office's Service Regulations stipulates that a former permanent employee may submit to the President a request that he take a reasoned decision relating to him within two months from the date on which the request was made. If at the end of this period no reply to the request has been given, this shall be deemed to constitute an implied decision rejecting it. According to Article 107, paragraph 1, and Article 108, paragraphs 1, 2 and 4, of the Service Regulations, an internal appeal may be lodged against an implied decision of rejection, but must be filed with the President within a period of three months following the date of expiry of the period for reply.

In view of its content, and in particular of the clear wording of its last paragraph, the letter of 26 May 2003, in which the complainant requested compensation for moral injury and the payment of interest on arrears, may be deemed to be a request for an individual decision in the meaning of Article 106, paragraph 2, of the Service Regulations. No reply was given to that request within the statutory time limit. Faced with an implied decision of rejection, the complainant was therefore free to file an internal appeal. This he should have done within three months of the expiry of the period allowed to the President for the purpose of replying to the request. Instead of

taking that course of action, however, he filed a complaint directly with the Tribunal. According to the case law concerning Article VII of the Statute of the Tribunal, the requirement that internal means of redress be exhausted also applies where the impugned decision is an implied decision of rejection (see Judgment 587, under 5). The complaint is therefore irreceivable for this reason insofar as it relates to the financial and moral damage for which the complainant requested compensation on 26 May 2003.

5. Even if the complaint had been receivable, the Tribunal could not have ruled on the claims for compensation for the damage the complainant maintains he incurred. His submissions are in fact not sufficient to enable the Tribunal to make a ruling in that respect. It must be emphasised that it is for complainants to put forward specific arguments in support of their complaints, concisely and precisely, so that the Tribunal may rule on their claims in full knowledge of the facts.

6. The complainant's other claims are submitted for the first time before the Tribunal. They are therefore equally irreceivable under the terms of Article VII, paragraph 1, of the Statute of the Tribunal.

7. Furthermore, the complaint has lost its cause of action in two respects. Firstly, the defendant has admitted in its reply that it was obliged to compensate the complainant's loss arising from the fact that the commission of 30.06 euros collected by the bank in November 2002 as a result of a transfer error was not refunded; the Organisation thus paid the corresponding amount, which came to 31.57 euros including interest, with the pension payment for October 2003. Secondly, the EPO enclosed with its reply the decision of the Administrative Council of 12 December 2002, which constitutes the legal basis for remuneration adjustments as from 1 July 2002, pursuant to Article 64, paragraph 6, of the Service Regulations. In his rejoinder the complainant admitted that the defendant thereby, albeit belatedly in his view, produced the document he had requested in his complaint.

8. The complaint is therefore irreceivable in every respect.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 18 November 2004, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet