

The Administrative Tribunal,

Considering the application for execution of Judgment 2457 filed by Mr I.H. T. on 21 February 2006, the reply of the European Patent Organisation (EPO) of 2 June, the complainant's rejoinder filed on 22 June and supplemented by an addendum of 22 August, and the Organisation's surrejoinder of 18 October 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions;

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

A. The complainant's career history and facts relevant to this dispute are given in Judgment 2457, delivered on 6 July 2005, concerning the complainant's first complaint. It will be recalled that he holds a post at grade A4(2) at the European Patent Office, the secretariat of the EPO. On 26 November 2002, in response to vacancy notice TPI/3578, he applied for several director posts at grade A5. After the Selection Board had met on 18 December 2002 to screen candidates to be shortlisted for the posts to be filled in Munich, the complainant challenged its decision not to call him for interview. In Judgment 2457 the Tribunal found that the absence of one member of the Board during the above-mentioned meeting constituted a formal flaw and it referred the case back to the EPO, ordering the latter to restore the complainant to the position in which he was prior to the Board's meeting and to review his application in accordance with the applicable rules. It also ordered the Organisation to pay the complainant 5,000 euros in moral damages and 2,000 euros in costs.

In August 2005 the Organisation paid the complainant the 7,000 euros it owed him in execution of Judgment 2457. On 26 September the complainant enquired when the judgment would be implemented in respect of a review of his application. In a letter of 14 October the Principal Director of Personnel asked him to be patient. He explained that his services were asking the members of the Board which had dealt with the applications received in response to the publication of vacancy notice TPI/3578 to meet and conduct the said review. He added that the complainant would be informed of the next steps as soon as possible.

On 17 November the complainant sent an e-mail to all the members of the Board who were still working at the EPO, asking them to inform him of the date when he might expect to hear the result of the review of his application. As this e-mail went unanswered, on 19 December the complainant sent a letter to the President of the Office in which he regretted the fact that two members of the Board which had examined his application had retired. The President's Office acknowledged receipt of this letter on 21 December 2005. As he received no reply the complainant referred the matter to the Tribunal on 21 February 2006.

B. While he does not dispute the fact that international organisations which have recognised the Tribunal's jurisdiction must be allowed sufficient time to execute its judgments, the complainant says that a period of 150 days would appear to be a reasonable limit. He considers it unacceptable that the Administration did not find time to review his application during the period of more than six months which had elapsed since Judgment 2457 was delivered, given that during that period two rounds of promotion to director posts had taken place. In the complainant's opinion, these facts should not be seen in isolation and, as in his previous case, he submits that the Chairman of the Selection Board was prejudiced against him.

Moreover, the complainant observes that in May 2005 he once more applied for several director posts but his candidature was rejected yet again. In his view this shows that the Administration is not acting in good faith towards him and is even committing an abuse of power. He also considers that he is a victim of mobbing and asserts that the selection procedures for director posts are flawed on account of the favouritism shown to some

candidates.

Lastly, he points out that when he filed the present complaint 60 days had already elapsed since the date on which the President's Office had acknowledged receipt of his letter of 19 December 2005, and he claims that the absence of a reply to that letter must be interpreted as a final rejection.

The complainant asks the Tribunal to order the EPO to execute Judgment 2457 by reviewing his application on the basis of "objective and transparent criteria". He also asks the Tribunal to rule that the procrastination in his case is a reflection of the abuse of power, bad faith, mobbing and discrimination against him. He requests the payment of a monthly fine as from 1 January 2006 until the above-mentioned judgment has been fully implemented, as well as costs.

C. In its reply the EPO underlines that it does not question in any way the fact that it is bound to execute Judgment 2457. On the other hand, it points out that there is no time limit for executing a judgment and that the length of time required for this depends on the circumstances of each case. With reference to the information contained in the letter of 14 October 2005, it considers that the three months it needed to institute the implementation procedure were not excessive because this procedure involved coordination between several officials and most staff members are on leave between July and September. In addition, the retirement of two members of the Selection Board which had examined the complainant's application had aggravated the situation as it had been necessary to replace them. On 26 January 2006 the President of the Office agreed to the appointment of the two successors whose nomination had been proposed to him on 17 January 2006. The EPO says that the review of the complainant's application is thus imminent and that the time it will have needed for this should not be considered unacceptable.

The Organisation further submits that the fact that the Tribunal set aside the competition procedure where the complainant's application was concerned does not mean that the Tribunal agreed that the Chairman of the Selection Board had displayed prejudice towards the complainant or that the latter was qualified to be appointed as a director. The Organisation rejects the complainant's allegations of abuse of power and favouritism as being unfounded.

D. In his rejoinder the complainant points out that a Selection Board comprising two new members in fact met on 28 April 2006 to review his application in execution of Judgment 2457 and decided not to call him for an interview. He considers that the EPO has slighted his dignity since, in his opinion, it was really not necessary to take more than nine months to organise such a meeting. He contends that the Board did not substantiate its decision and showed bias. In addition, his application was not reviewed in the sense requested by the Tribunal and must therefore be deemed not to have occurred. Given that his applications for director posts have systematically been rejected, and in view of the conditions in which the posts advertised in vacancy notice TPI/3578 were allocated, the complainant states that the injustice done to him over so many years can be remedied only by his retroactive promotion to grade A5.

In the addendum to his rejoinder, the complainant states that he received a letter from the Principal Director of Personnel, dated 28 July 2006, in which the latter notified him of the final decision of the President of the Office. He informed the complainant that the Selection Board, which had met on 28 April 2006, had compared his qualifications and experience with those of the candidates who had been invited to an interview and had unanimously concluded that he did not meet the requirements set out in the vacancy notice and hence had decided not to call him for an interview. The President of the Office had followed the recommendation of the Selection Board and his application had therefore been rejected. The complainant indicates that this decision is not properly substantiated and that it merely confirms the preconceived opinion of the Selection Board which met on 18 December 2002, whose Chairman was prejudiced against him. In addition, he criticises the fact that the President of the Office took three months to announce his final decision.

E. In its surrejoinder the EPO notes that the Service Regulations for Permanent Employees of the European Patent Office do not specify a deadline by which the Board must establish a shortlist or by which the President of the Office must take his final decision. It considers that by discharging its obligation to refer the case back to the Selection Board so that it could review the complainant's candidature it complied with Judgment 2457. Although the Selection Board's findings went against the complainant, they cannot be challenged as the review was conducted properly. The Organisation rejects the allegation that the Chairman of the Selection Board was biased since the Board which met on 28 April 2006 was not chaired by the same person.

CONSIDERATIONS

1. Facts relevant to the dispute between the two parties are given in Judgment 2457 delivered on 6 July 2005. In that judgment the Tribunal set aside, on the grounds of a formal flaw, the decision of 26 May 2004 dismissing the complainant's appeal against the Selection Board's decision not to place him on the shortlist of candidates to be interviewed for director posts at grade A5. It also referred the case back to the EPO in order that the complainant might be restored to the position in which he was prior to the Board's meeting on 18 December 2002 and that his application might be reviewed in accordance with the applicable rules.

2. In response to the complainant's enquiry about the follow-up to that judgment, the Principal Director of Personnel informed him on 14 October 2005 that his services were writing to the members of the above-mentioned Selection Board and asked him to be patient. In an e-mail of 17 November addressed to all the members of the Board who were still working at the EPO, the complainant asked when he could expect to hear the results of the review of his application, and he added that if, by 17 December, he had not received a definite answer he would have to assume that the Organisation had decided not to implement the Tribunal's judgment, in which case he would file a further complaint. As he received no answer, on 19 December he sent a letter to the President of the Office setting out the merits of his request. The President's Office acknowledged receipt of this letter on 21 December 2005. As he subsequently received no reply, the complainant referred the case to the Tribunal on 21 February 2006.

3. The pleas and claims of the parties are summed up in paragraphs B to E above.

4. According to the Tribunal's case law there is no single time limit for executing judgments. The organisation must have a reasonable amount of time to act, and what is reasonable will depend on the circumstances and the issues at stake (see Judgment 1812, under 4).

In the present case the sums the EPO was ordered to pay in Judgment 2457 were paid within a reasonable period of time.

However, the referral of the case back to the Organisation meant that the Selection Board had to review the complainant's application and that it therefore had to reconvene. The Tribunal finds on perusing the parties' submissions that the review procedure was already under way before the case was referred to it, that the Board then met on 28 April 2006 and that the complainant was notified of the final decision of the President of the Office in a letter of 28 July 2006. Bearing in mind the circumstances and the genuine difficulties reported by the Organisation in respect of the composition of the Selection Board – two of its members having retired – and the convening of the Board's meeting, the EPO executed the judgment within a reasonable period of time. The Tribunal finds no bad faith on the part of the Organisation and the allegation of abuse of power is completely unsubstantiated.

5. As to the other claims, it must be noted that pursuant to Judgment 2457 the Organisation was obliged to review the complainant's application in accordance with the applicable rules and to take a new decision; the Tribunal cannot rule on the lawfulness of that decision itself in the context of an application for execution.

6. The application must therefore be dismissed without any need to order a hearing.

DECISION

For the above reasons,

The application is dismissed.

In witness of this judgment, adopted on 10 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 15 February 2007.