

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

112th Session

Judgment No. 3088

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Ms D. V. against the European Patent Organisation (EPO) on 23 October 2009 and corrected on 17 November 2009, the Organisation's reply of 24 February 2010, the complainant's rejoinder of 31 March and the EPO's surrejoinder dated 13 July 2010;

Considering Article II, paragraph 5, 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. Part 1 of the Rules of Procedure of the Administrative Council of the EPO concerns attendance at meetings. At the material time Article 7(4) read as follows:

“Unless the Council decides otherwise in a particular case, staff representatives may take part in those deliberations of the Council which do not relate to confidential agenda items [...]. Administrative approval for their participation shall be at the discretion of the President of the European Patent Office.”

The complainant, who has dual Canadian and French nationality and who was born in 1946, joined the European Patent Office, the

EPO's secretariat, in 1993. Although she was elected Deputy Chairman of the local section of the Staff Committee in Vienna (Austria), but at the material time she was acting as Chairman of that section because its Chairman was appointed Chairman of the Central Staff Committee of the EPO. On 9 May and 19 June 2006 she submitted two duty travel requests: the first in order to attend the 87th meeting of the Budget and Finance Committee in Munich (Germany) and the second to attend the 88th meeting of the same committee, the 106th meeting of the Administrative Council and a meeting with the Chairman of the Council in The Hague (Netherlands). Both requests were rejected. Reasons were given only for the rejection of the first request. They were that only four staff representatives, one from each of the Office's sites, could attend the Budget and Finance Committee's meeting.

On 19 May and 30 June 2006 respectively, the complainant submitted internal appeals to the President of the Office against each of these decisions. In a single opinion of 26 May 2009 a majority of the members of the Internal Appeals Committee, to which these appeals had been referred, recommended that they be dismissed as unfounded. By a letter of 23 July 2009 the complainant was informed that the President of the Office had decided to follow this recommendation. That is the impugned decision.

B. The complainant contends that the decisions to reject her duty travel requests lack any legal basis. She states that, according to Article 7(4) of the above-mentioned Rules of Procedure, the decision to exclude a staff representative from part or all of a meeting lay with the Administrative Council, not with President of the Office. She therefore considers that, since she complied with the rules in force at that time and followed the usual procedure, she should have been allowed to perform her duties as staff representative unhindered. She emphasises that, in order to justify the rejection of her duty travel requests, the Office furnished a variety of explanations, some of which were vague.

She asks the Tribunal to set aside the impugned decision and to order the Organisation to pay 4,000 euros in compensation for moral injury, as well as costs.

C. In its reply the EPO submits that the impugned decision was both warranted and consistent with the provisions in force at the material time. Firstly, it states that according to Article 7(4) of the Rules of Procedure quoted above, approval of participation in Administrative Council meetings is at the discretion of the President of the Office. Secondly, it argues that the decisions to reject the duty travel requests were balanced, because they ensured the representation of the Office's four sites and were taken in the context of a legislative reform process aimed at restricting the attendance of Council meetings by employees in general and by staff representatives in particular. Hence limiting the number of participants was a reasonable and proportionate measure. Thirdly, the defendant points out that the complainant's legitimate expectations were not breached in any way. On the one hand, she was aware of the legislative reform process that was in progress and, on the other hand, the reasons for the refusal did not vary, contrary to her submissions. Lastly, the Organisation submits that the complainant has not provided any evidence of the alleged moral injury.

D. In her rejoinder the complainant comments that, in saying that the decisions to reject her duty travel requests were taken in the context of a legislative reform, the EPO admitted that the President had based these decisions on legislation which had yet to be adopted and which, moreover, concerned the Administrative Council and not the Office. She also emphasises that if the President had intended to alter the practice governing the designation of staff representatives to attend Administrative Council meetings, he ought formally to have informed the "Chairman of the staff representatives".

E. In its surrejoinder the Organisation denies that the disputed decisions rested on forthcoming legislation and that there was any

change in practice. On the contrary, they were based on the Rules of Procedure of the Administrative Council in force at the material time and on the discretionary power which those rules confer on the President of the Office.

CONSIDERATIONS

1. At the material time the complainant was Deputy Chairman of the local section of the EPO Staff Committee in Vienna, but in practice she was acting as Chairman of that section, because its Chairman had been appointed Chairman of the Central Staff Committee.

2. On 9 May 2006, acting in her capacity as staff representative, she submitted a first duty travel request with a view to attending the 87th meeting of the Budget and Finance Committee of the Administrative Council. On 19 June 2006 she submitted a second request in order to attend the 88th meeting of the Committee, the 106th meeting of the Administrative Council and a prior meeting with the Council's Chairman. As these requests were rejected by the President of the Office, the complainant lodged two appeals which were referred for an opinion to the Internal Appeals Committee. In its report of 26 May 2009, the Committee recommended, by a majority of its members, that the appeals should be dismissed. The complainant was informed by letter of 23 July 2009 that the President of the Office had decided to follow this majority opinion.

3. In challenging this decision before the Tribunal, the complainant seeks to have it set aside. She also claims 4,000 euros in compensation for the moral injury which she claims she has suffered and the award of costs.

4. The central issue here is whether, under the version of Article 7(4) of the Rules of Procedure of the Administrative Council which was in force at the material time, the President of the Office

could reject a duty travel request submitted by a staff representative and thereby deny her the possibility, in that capacity, of attending meetings of the Administrative Council and the Budget and Finance Committee. Article 7(4) reads as follows:

“Unless the Council decides otherwise in a particular case, staff representatives may take part in those deliberations of the Council which do not relate to confidential agenda items [...]. Administrative approval for their participation shall be at the discretion of the President of the European Patent Office.”

5. Relying on this article of the Rules of Procedure, the complainant submits, in substance, that the impugned decision is legally unfounded and that the President of the Office could not exclude staff representatives from Administrative Council meetings, or from part of one of its meetings, because such a decision could be taken only by the Chairman of the Council. She explains that, for this reason, the staff representatives would send the list of representatives appointed to attend meetings directly to the Council. She adds that at the material time the secretariat of the Administrative Council would contact the staff representatives directly to find out who would be attending and that this practice was not altered until October 2006. Having followed the normal procedure in accordance with the rules in force at the time, she “m[ight] expect that she would be allowed to perform her duties as staff representative unhindered”.

6. The defendant argues that the complaint should be dismissed as unfounded. It considers that the President of the Office exercised his discretionary power in a correct manner, that restricting the number of participants was a reasonable and proportionate measure and that the complainant cannot allege to have suffered any injury.

7. It may be concluded from the version of Article 7(4) of the Rules of Procedure of the Administrative Council which was in force at the material time that, while only the Council could bar the attendance of staff representatives from discussions “in a particular case”, the President of the Office could withhold the approval needed

by an employee who was one of the staff representatives, but only on the grounds that his or her participation was not in the interests of the service.

8. According to the defendant, the President of the Office rejected the duty travel requests on the grounds that, since the Chairman of the local section of the Staff Committee in Vienna was the Chairman of the Central Staff Committee, that section should be deemed to be represented and there was therefore no need for the complainant to attend the meetings of the Administrative Council and its Budget and Finance Committee. This reason, which was unrelated to the interests of the service, does not constitute a legal basis for the impugned decision, which must therefore be set aside.

9. The unlawful nature of the decisions rejecting the duty travel requests which the complainant had submitted in order that she might carry out her functions as staff representative caused her moral injury which must be redressed by an award of compensation in the amount of 2,000 euros.

10. The complainant is entitled to costs set at 1,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The EPO shall pay the complainant moral damages in the amount of 2,000 euros.
3. It shall also pay her 1,000 euros in costs.

In witness of this judgment, adopted on 10 November 2011, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 February 2012.

Seydou Ba
Claude Rouiller
Patrick Frydman
Catherine Comtet