

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B. (No. 7)

v.

EPO

120th Session

Judgment No. 3511

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr F. B. against the European Patent Organisation (EPO) on 10 June 2011 and corrected on 22 July 2011, the EPO's reply of 6 February 2012, the complainant's rejoinder of 20 June and the EPO's surrejoinder of 27 July 2012;

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

Having examined the written submissions and decided not hold oral proceedings, for which neither party has applied;

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

CONSIDERATIONS

1. The complainant, who was at the material time an employee of the European Patent Office, the EPO's secretariat, contests the third version of his staff report for the period from 1 January 2002 to 31 January 2003. The facts of the case can be found detailed in

Judgments 3151, 3248 and 3249 concerning the complainant's first, second and third complaints respectively.

Essentially, in his first complaint, which gave rise to Judgment 3151, delivered on 4 July 2012, the complainant challenged the validity of the President's decision to follow the first recommendation of the Internal Appeals Committee with regard to his three joined appeals. This decision was notified to him by a letter from the Director of Regulations and Change Management. The complainant argued before the Tribunal that the decision was taken *ultra vires* as the EPO did not produce evidence that the Director was acting with delegation of authority from the President or that the President had taken the decision. He also contested the decision not to award him moral damages for the lengthy appeals process. The Tribunal found that the decision was properly taken and notified to him, and that there was no unreasonable delay in the internal appeals process. It found, however, that the complainant's claim for moral damages with respect to the two previous unlawful versions of the staff report for the period 1 January 2002 to 31 January 2003 was founded and it awarded him moral damages on that ground.

In his second complaint, which gave rise to Judgment 3248, delivered on 5 February 2014, the complainant requested the Tribunal to order the cancellation of the "potential [...] final decisions" taken by the President with regard to his three joined appeals if the Tribunal found that they had been duly signed by the President, or alternatively, to set aside the "potential [...] final decisions" regarding his three joined appeals if the Tribunal found they had been taken *ultra vires*. He also requested an award of moral damages and costs. The Tribunal dismissed his second complaint having regard to the principle of *res judicata* as the complaint was in substance identical to his first complaint, which the Tribunal had ruled on in Judgment 3151.

In his third complaint, which gave rise to Judgment 3249, delivered on 5 February 2014, the complainant impugned the President's implicit rejection of his request for a final decision with regard to his three internal appeals and of his request to annul the third version of his staff report for 2002-2003. He requested that a new, fourth version of

the staff report be “duly and officially confirmed and explicitly hand signed by the President”, and that he be awarded moral damages and costs. The Tribunal dismissed his third complaint as unfounded on the merits. Prior to the completion of the parties’ submissions in the complainant’s third complaint, the President endorsed the third version of the complainant’s staff report and notified it to the complainant on 16 March 2011. The Tribunal considered that the explicit rejection of the complainant’s request to quash the third version of his staff report was the impugned decision, particularly as there was no change between the implicit and explicit decisions which both confirmed and endorsed the third version of his staff report. Additionally, as noted under E in Judgment 3249, the EPO had, “for procedural economy”, accepted that the explicit decision replaced the implicit one originally impugned in the complaint.

2. In the present complaint, his seventh, the complainant impugns the President’s explicit decision, as notified to him on 16 March 2011, to accept and endorse the third version of his staff report for the period 1 January 2002 to 31 January 2003. He requests the Tribunal to quash the impugned decision and the third version of his staff report, and to order the drafting of an entirely new and fourth version of his staff report. He also requests compensation for moral damages, and costs.

The EPO argues that the subject-matter of the present complaint is the same as that of the complainant’s third complaint in which he also requested that a new version of his staff report for 2002-2003 be prepared.

3. This complaint is identical in substance to the complainant’s third complaint concerning the quashing of the decision to endorse the third version of his staff report which was addressed fully in Judgment 3249. The present complaint also raises questions of moral damages in relation to the undue delays in two of his three internal appeals. This question was addressed by the Tribunal in Judgment 3151, under 7, concerning his first complaint and again in Judgment 3248, under 1, concerning his second complaint.

4. Given that the complainant does not raise any new arguments which could be seen to vitiate the Tribunal's decision in Judgment 3249, the Tribunal concludes that this complaint should be dismissed in application of the principle of *res judicata*. "[T]he principle of '[r]es judicata operates to bar a subsequent proceeding if the issue submitted for decision in that proceeding has already been the subject of a final and binding decision as to the rights and liabilities of the parties in that regard'. The principle applies when the parties, the purpose of the suit and the cause of action are the same as in the earlier case (see Judgments 1216, under 3, and 1263, under 4)." (See Judgment 2993, under 6, reiterated in Judgment 3248, under 3.)

5. The complainant raises the issue of the delay in the time the President took to expressly endorse the third version of his staff report. The Tribunal concludes that since the complainant was able to impugn the President's implicit decision to endorse the third version of his staff report, he has suffered no damage.

In light of the above, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 21 May 2015, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ