

A. (No. 20)

v.

EPO

123rd Session

Judgment No. 3780

THE ADMINISTRATIVE TRIBUNAL,

Considering the twentieth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 12 September 2011 and corrected on 17 October 2011, the EPO's reply of 13 February 2012, the complainant's rejoinder of 21 March and the EPO's surrejoinder of 3 July 2012;

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

Having examined the written submissions;

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

The complaint deals with the complainant's daughter's affiliation to a Dutch health insurance scheme.

The complainant is a former staff member of the European Patent Office, the EPO's secretariat, who ceased to perform his duties on grounds of invalidity in 2005.

In January 2006 new social security legislation in the Netherlands required family members of EPO staff to have basic Dutch health insurance. Pensioners of the EPO were exempted from the obligation to subscribe a private health insurance unless they were gainfully employed in the Netherlands. As to their dependants, they were also exempted

from the obligation to subscribe a private health insurance unless they were gainfully employed in the Netherlands and/or received social allowances from the Dutch social security system. As its collective medical insurance contract (CIC) did not qualify for the purposes of the legislation, the EPO organised additional and optional coverage called the “Integrated Group Solution” (IGS), whereby any premiums charged by the basic Dutch health insurer are refunded to affiliates by the CIC insurers.

The complainant applied to the EPO for affiliation for his family members in the course of 2006. On 26 September 2006, in order to consider his request fully, the EPO asked him to provide information about the residency of his dependent children, their possible employment and the possible payment of Dutch social allowances.

In March 2011 the complainant informed the EPO that one of his daughters – M. – had received a letter from the Dutch authorities informing her that she had to subscribe a private health insurance in the Netherlands within three months, otherwise she would be fined. He asked the EPO to state that she was covered by a private health insurance. The EPO replied that it was not in a position to confirm any insurance coverage besides the CIC and that as his daughter was resident in the Netherlands, she indeed had to take out a basic Dutch health insurance.

By an e-mail of 7 July 2011 the complainant informed the President of the Office that his daughter had been fined 343.74 euros. He asked the EPO to contact the Dutch authorities in order to clear M.’s insurance position and pay the fine and claimed moral damages in the amount of 5,000 euros. In the event that his requests could not be met, he asked that his e-mail be considered as an internal appeal.

By letter of 5 August 2011 the complainant was informed that the EPO had taken action to affiliate M. with a Dutch health insurer and that it would pay the fine on an *ex gratia* basis. He was further informed by a letter of 5 September 2011 that his request for moral damages could not be met, on the grounds that the delay in handling his request had not been unreasonable, and that he had not suffered any injury as a result of the delay since the EPO had paid the fine. His appeal was referred to the Internal Appeals Committee (IAC) for an opinion.

The IAC acknowledged receipt of the appeal and informed the complainant accordingly by a letter of 7 September 2011.

On 12 September 2011 the complainant filed the present complaint before the Tribunal, challenging the alleged implied rejection of the claims made in his e-mail of 7 July 2011. That is the impugned decision.

The complainant asks the Tribunal to order the EPO to pay the fine in the amount of 343.74 euros. He claims moral damages in the amount of 5,000 euros, as well as costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable as there was an internal appeal on foot when the complainant filed the present complaint. He has therefore failed to exhaust internal remedies. Additionally, the complaint is irreceivable on the grounds that the complainant has no cause of action since the fine was paid on 16 August 2011. Subsidiarily, the EPO submits that the complaint is unfounded.

CONSIDERATIONS

1. On 12 September 2011, the complainant filed a complaint with the Tribunal. On the same day he filed another complaint which is dealt with in Judgment 3779 also delivered in public this day. The Tribunal repeats some of the introductory comments made in that judgment. In the complaint form the complainant identified himself as a former official of the EPO. By way of relief, he sought the payment of a fine amounting to 343.74 euros and moral damages in the sum of 5,000 euros and also costs.

2. In its reply, the EPO contended, amongst other things, that the complaint was irreceivable. This is a threshold issue that should be addressed at the outset. It is convenient to refer to the factual background but, at this point, only insofar as it relates to the question of receivability.

3. One procedural matter should be noted. In the complaint form the complainant indicated that he wishes to have a hearing under Article 12, paragraph 1, of the Tribunal's Rules. He did not signify that there were witnesses he wished to call in the event that there was such

a hearing. In his rejoinder, the complainant addressed the question of whether there should be an oral hearing arguing that to deny him an oral hearing would be to deny him due process. The Tribunal does not accept this argument. Quite plainly the powers conferred on the Tribunal by Article V of its Statute include the power to decide or decline to hold oral proceedings. In the present case, the Tribunal is satisfied on the material before it that the complaint is irreceivable and the factual foundation for this conclusion is not, on the pleas, contentious. These are the reasons for reaching this conclusion.

4. In the complaint form, the complainant identifies himself as an Italian national. He commenced working with the EPO in January 1980. He ceased performing his duties in December 2005 due to invalidity. From January 2008 he was assigned to non-active status on invalidity grounds and started to receive an invalidity allowance. In a form completed in November 2005, the complainant notified the EPO that, in effect, his residential address between December 2005 and August 2006 was an address in the Netherlands and thereafter (from 30 August 2006) his residential address was an address in Italy. However he also indicated, in effect, that his mail address would continue to be the address in the Netherlands notwithstanding his residential relocation to Italy. That this remained the position was confirmed in an e-mail from the complainant to the EPO in August 2011. In that same e-mail the complainant requested that any material sent to him to his home address in Italy should be sent by registered mail to guarantee its receipt by him.

5. For reasons which are detailed in the summary of facts above, the complainant was involved in dealings with the EPO commencing in 2006 concerning the question of whether he and his family (and, in particular, his daughter) were obliged to have, and should be provided with, basic Dutch health insurance. The EPO's health insurance scheme did not provide all the cover required by the Dutch social security legislation. In July 2011, the complainant's daughter was fined 343.74 euros by the Dutch Health Insurance Board for, it appears, failing to have basic Dutch health insurance.

6. By e-mail dated 7 July 2011 the complainant wrote to the President of the Office and three other officials of the Organisation requesting that the position of his daughter in relation to health insurance be clarified, that the fine of 343.74 euros be paid by the EPO and that he be paid 5,000 euros as moral damages for “the distress caused to [the complainant] by [the EPO’s] biased/inefficient administration”. In the same e-mail, the complainant said that if those requests could not be met, the e-mail should be considered as an internal appeal.

7. In a letter to the complainant dated 5 August 2011, the EPO offered to pay the fine and this was done on 16 August 2011. In that letter the complainant was invited to withdraw his internal appeal. This did not occur. By registered letter dated 5 September 2011 sent to the complainant’s Italian address, the EPO confirmed that the fine had been paid, indicated that the daughter now, in substance, had been provided with cover but indicated that the claim for moral damages was rejected. The complainant was informed that his e-mail of 7 July 2011 had been forwarded to the IAC as an internal appeal. By letter dated 7 September 2011 addressed to the complainant at his Dutch address, the IAC advised that the appeal would be dealt with as soon as possible. He was also advised that when the IAC had received a dossier on the case, he would be sent a copy and invited to present his comments.

8. In his rejoinder the complainant does not contend that, as a matter of fact, he had not received the letters of 5 September 2011 and 7 September 2011. Thus the status of the complaint filed by him before this Tribunal on 12 September 2011 should be determined by reference to the fact that an internal appeal was on foot challenging the failure of the EPO to meet all requests he had made in the e-mail of 7 July 2011. As at 12 September 2011, the complainant had not exhausted his internal means of redress. Accordingly, having regard to Article VII, paragraph 1, of the Tribunal’s Statute this complaint is irreceivable. On that basis it must be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 19 October 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ