

H. (No. 3)

v.

EPO

123rd Session

Judgment No. 3810

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr H. H. against the European Patent Organisation (EPO) on 1 March 2016;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant is a former official of the European Patent Office, the secretariat of the EPO, and challenges the decision to eliminate the ceiling on employees' contributions to sickness insurance.

2. On 30 June 2010 the EPO's Administrative Council adopted decision CA/D 7/10, modifying Article 83 of the Service Regulations for permanent employees of the European Patent Office. Prior to the entry into force of this decision, Article 83 relevantly provided that an employee's contribution to the Organisation's sickness insurance would not exceed 2.4 per cent of her or his basic salary. As a result of decision CA/D 7/10, this 2.4 per cent ceiling was eliminated, although Article 4

of the decision provided that the employees' contribution would be maintained at 2.4 per cent of basic salary for 2011, 2012 and 2013.

3. On 27 September 2010 the complainant submitted appeals to both the President of the Office and the Administrative Council challenging decision CA/D 7/10 insofar as it removed the 2.4 per cent ceiling. He contended, in particular, that this decision violated the acquired rights of serving staff members and that relevant facts had been overlooked. He requested that CA/D 7/10 be quashed and he claimed damages and costs. Similar appeals were filed by more than a thousand other EPO employees. The appeals filed with the Administrative Council were re-directed to the President of the Office, who referred them, together with the appeals that had been filed with him, to the Internal Appeals Committee (IAC). In an opinion dated 3 July 2015, the IAC unanimously recommended that the appeals be dismissed as irreceivable in light of the Tribunal's decision in Judgment 3291 concerning challenges to general normative decisions.

4. By a letter of 7 December 2015, the Principal Director of Human Resources informed the complainant that she had decided, by delegation of power from the President, to reject his appeal as manifestly irreceivable in accordance with the opinion of the IAC. That is the impugned decision.

5. Relying in particular on Judgments 421 and 1053, the complainant submits that he is entitled to challenge decision CA/D 7/10 directly, because it adversely affected him as soon as it was adopted. He argues in particular that the existence of the 2.4 per cent ceiling constituted a "practice" on which staff came to rely, and that it was a "core feature" of the conditions of employment that he accepted when he joined the EPO in 1988. He also contends that the General Advisory Committee was not validly consulted prior to the adoption of CA/D 7/10 and that the proceedings before the IAC were flawed.

6. The complainant essentially argues that decision CA/D 7/10 had direct and immediate adverse effects on him and that the EPO was wrong in rejecting his appeal against that general decision. By doing this, he directly contradicts the Tribunal's specific finding that decision CA/D 7/10 is a general decision requiring further individual implementation and that it can be challenged only through impugning an individual decision (considerations 2(h) and 8 of Judgment 3291). Any change in an employee's contribution will be reflected in a salary or pension payslip which may demonstrate individual implementation.

7. Furthermore, in Judgment 3628, which was delivered in public on 3 February 2016, prior to the filing of the present complaint, the Tribunal dismissed a similar complaint challenging decision CA/D 7/10 on the grounds that it was directed against a general decision which, at the time when the complaint was filed, had not been applied to the complainant individually and had not affected him in any way.

8. In the present case, the complainant himself acknowledges in his submissions that it was not until 1 January 2014 that a contribution rate exceeding 2.4 per cent of the employees' basic salary was set by the EPO. Accordingly, the general decision was not individually implemented prior to that date.

9. None of the arguments put forward by the complainant in this case would lead the Tribunal to depart from its findings in Judgments 3291 and 3628. The complaint is therefore clearly devoid of merit, which makes it irreceivable, and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ