

V. (No. 5)

v.

EPO

(Application for review)

124th Session

Judgment No. 3817

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3623 filed by Mr D. V. on 2 May 2016 and corrected on 13 June, the reply of the European Patent Organisation (EPO) of 4 October, corrected on 12 October, the complainant's rejoinder of 10 November 2016 and the EPO's surrejoinder of 19 December 2016;

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

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

CONSIDERATIONS

1. The complainant requests review of Judgment 3623, delivered in public on 3 February 2016. In that judgment the Tribunal dismissed the complaint by which the complainant had impugned the EPO's decision to assign him to non-active status and to replace his invalidity pension, which was subject to national income tax, with a tax-exempt invalidity allowance in accordance with Administrative Council decision CA/D 30/07.

2. The facts of the case can be found in Judgment 3623. It suffices to note that the Tribunal held (under considerations 7 and 8)

that the impugned individual decision and the general decision CA/D 30/07 did not violate the complainant's acquired rights. The Tribunal found, under consideration 10, as follows:

"10. The complainant bases his claim, that the new pension scheme is less advantageous for him, on the fact that under the new scheme he cannot deduct his interest payments on his mortgages from his taxable income. The complainant refers to document CA/159/07, part I, paragraph 15 which states '[t]his new measure will be applied to all current employees including those already on invalidity pension as from 1 January 2008. For those who have become invalids and for whom the new scheme would be less advantageous, the old regulations should continue to be applied.' The Tribunal finds that this must be read in conjunction with document CA/159/07, part VII, paragraph 28(a) on transitional measures which provides:

'Permanent employees under 65 years in receipt of an invalidity pension when this decision enters into force are subject to the new invalidity allowance scheme in accordance with Article 62a of the Service Regulations and the Implementing Rules therefor as from 1 January 2008.

In cases where the application of the new regulations would lead to an employee receiving a lower benefit, the rate of the invalidity pension to which he would have been entitled under the Pension Scheme Regulations in force until 31 December 2007 shall be guaranteed until the recipient dies, except in cases where the employee ceases to satisfy the conditions for the entitlement of the allowance.'

It should be noted that the new regulations have brought the invalidity pensions for employees who have not reached the pension age into a national tax exempt scheme. The Tribunal is satisfied that the transitional provision, properly construed, was not intended to require the EPO to take into account the effect of the new regulations on each employee, having regard to their individual tax circumstances. The passages quoted above must be read to mean that the 'benefit' refers to the amount that the EPO pays to its employees and not to the final net amount which the complainant receives after taking account of all the various tax options for his particular situation."

3. Article VI of the Statute of the Tribunal states that judgments are final and without appeal, but that the Tribunal can nonetheless consider applications for review. Consistent precedent has it that they carry *res judicata* authority and may be reviewed only in exceptional circumstances and on strictly limited grounds. "The only admissible grounds therefor are failure to take account of material facts, a material

error, in other words a mistaken finding of fact involving no exercise of judgement which thus differs from misinterpretation of the facts, an omission to rule on a claim, or the discovery of new facts which the [complainant] was unable to rely on in the original proceedings. Moreover, these pleas must be likely to have a bearing on the outcome of the case. On the other hand, pleas of a mistake of law, failure to admit evidence, misinterpretation of the facts or omission to rule on a plea afford no grounds for review” (see Judgment 3719, under 4, and the case law cited therein).

4. The complainant bases his request for review on an alleged failure to take into account material facts, material errors, and “later discovery of essential facts”. He asserts that the Tribunal did not take into account the following material facts: actuarial studies are not to be trusted, he suffered a financial loss which resulted from the reform, and there was a lack of guarantee from the Member States on the invalidity allowance. The complainant also states that the Tribunal committed material errors: in referring to the President of the EPO as “she” instead of “he”, in not considering the complainant’s exemption from pension contributions under the previous regime, and by stating under consideration 6 of Judgment 3623 that “[i]n the present case the complainant limited his brief to a referral to his attached internal appeal, which the EPO contests”. He submits that the EPO stopped paying him a transitional compensation in 2015, which constitutes a new essential fact on which he was unable to rely in the original proceedings.

5. With regard to the complainant’s claim that elements were not taken into account, the Tribunal points out that his reference to the actuarial studies is, in essence, a disagreement with the Tribunal’s assessment. The Tribunal did not consider the studies as a fact, but, merely assessed that, at the relevant time, they represented a sound basis for decision CA/D 30/07, which did not infringe any acquired right. In consideration 10 of Judgment 3623 (as quoted above), the Tribunal considered the complainant’s financial loss, stating that “the ‘benefit’ refer[red] to the amount that the EPO pa[id] to its employees and not to the final net amount which the complainant receive[d] after taking

account of all the various tax options for his particular situation”. The complainant’s financial loss resulted from no longer receiving the same tax adjustment as his new status was tax exempt. The Tribunal considered the alleged loss of the Member States’ guarantee and dealt with it expressly in consideration 11.

The Tribunal points out that, in stating “the complainant limited his brief to a referral to his attached internal appeal”, it merely summarized the EPO’s contention that the complainant in his brief had merely referred to an annex as containing the relevant information in breach of Article 6, paragraph 1(b), of the Rules of the Tribunal, which requires that the brief contains the facts of the case and the pleas. In his third complaint, under the heading “The arguments”, the complainant wrote in relevant part: “[t]he position paper of the [complainant] gives a full and detailed recital of his arguments and the judgments, documents and legal rules which support them. It is not intended to repeat them *in extenso*. The arguments put forward in **Appendix 4** constitute an integral part of these pleadings.” The alleged material errors detailed above did not have any bearing on the outcome of the case.

The complainant’s reference to the EPO’s decision to stop paying him a transitional compensation in 2015 cannot be considered a new fact as that action is not related to the lawfulness at the relevant time of the reform of the invalidity scheme which he impugned in the complaint leading to Judgment 3623.

The complainant requests a higher award of damages for the delay in the internal proceedings. He was paid 500 euros, which the Tribunal found in Judgment 3623 to be sufficient. This request is denied as the complainant disagrees with the judgment of the Tribunal without raising any reviewable grounds.

6. In conclusion, the complainant’s submissions do not fall within the scope of admissible grounds for review and the application for review must be dismissed.

DECISION

For the above reasons,
The application for review is dismissed.

In witness of this judgment, adopted on 15 May 2017, 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 28 June 2017.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ