

G. (No. 2)

v.

EPO

134th Session

Judgment No. 4560

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr B. G. against the European Patent Organisation (EPO) on 5 June 2020, the EPO's reply of 29 October and the e-mail of 22 December 2020 by which the complainant's counsel informed the Registrar of the Tribunal that the complainant had decided not to file a rejoinder;

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

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

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

The complainant contests the decisions (i) to recover the amounts paid to him for Long-Term Care insurance benefits in respect of his ex-wife and (ii) to demand the immediate repayment of the outstanding balance of a home loan he took out from the EPO in 2006.

The complainant is a former staff member of the European Patent Office, the EPO's secretariat. In his first complaint to the Tribunal, he impugned the decision to dismiss him from service for misconduct effective 26 June 2017. In Judgment 4364, delivered in public on 7 December 2020, the Tribunal dismissed his first complaint on the merits.

Judgment 4364 provides the background to the present case. Suffice it to recall that in January 2004 the complainant started receiving from the EPO Long-Term Care (LTC) insurance benefits in respect of Ms L.G., his wife at the time. In September 2004 the complainant and Ms L.G. divorced but the complainant failed to report this to the Office and continued to receive LTC insurance benefits in respect of Ms L.G. until September 2015. When this came to the EPO's knowledge, a report of possible misconduct was drawn up and the matter was referred to the Investigative Unit for investigation.

By a letter of 13 October 2016, the Director, HR Operations, informed the complainant that the Office would proceed to recover the LTC insurance benefits unduly paid to him for Ms L.G. in the sum of 262,689.42 euros. Attached to the letter was a repayment schedule which, as the Director explained, was based on the prospective selling by the complainant of property he owned in France.

The Investigative Unit submitted its final report of 25 November 2016, concluding, among other things, that on the balance of probabilities, the complainant had committed misconduct by intentionally misrepresenting facts relevant to his family situation in order to obtain a personal advantage, namely the receipt of undue LTC insurance benefits in respect of Ms L.G., thereby causing financial damage to the Office in the sum of 262,689.42 euros.

The complainant was suspended from service with half pay. On 27 April 2017 disciplinary proceedings were initiated against him which culminated in the President's decision of 26 June 2017, taken in accordance with the Disciplinary Committee's unanimous opinion, to impose upon him the disciplinary measure of dismissal for misconduct with immediate effect.

In a letter of 7 August 2017, the Director reiterated the Office's 13 October 2016 decision and, additionally, informed the complainant that, further to his disciplinary dismissal, the Office had offset the amounts due to him upon termination of employment against the sum owed by him for undue LTC insurance benefits, as a result of which this sum now stood at 158,586.89 euros. The Director also stated that it was appropriate to add to that amount the outstanding balance of a home

loan, concluded between the Office and the complainant in 2006, which then stood at 82,180.50 euros, thus bringing the total amount owed by the complainant to 240,767.39 euros. He invited the complainant to make proposals regarding the repayment modalities by 21 August 2017 at the latest.

On 22 September 2017 the complainant's counsel wrote to the Director to argue that by withholding 100 per cent of the four months' salaries due to the complainant upon termination of employment – which was done to offset the relevant amounts against those owed by the complainant for unduly paid LTC insurance benefits – the Office had placed the complainant in a very difficult financial position. He therefore requested that the Office withhold only 50 per cent of the four months' salaries due and that it pay him the remaining 50 per cent in full. The complainant's counsel also requested a suspension of the Office's decision to recover the amounts paid to the complainant in LTC insurance benefits, noting that the complainant had lodged that same day a request for review of that decision which could potentially lead to a complaint to the Tribunal. With regard to the reimbursement of the home loan balance, the complainant's counsel requested that the original repayment schedule, requiring the complainant to repay 393.72 euros per month, be maintained.

The Director responded on 23 October 2017 that neither the lodging of a request for review nor the filing of a complaint with the Tribunal suspended the execution of the 13 October 2016 decision. As to the repayment of the home loan balance, the Director specified that according to a clause of the home loan agreement, the outstanding balance had to be paid back without delay in the event of cessation of service. The complainant rejected this view in an email of 24 October 2017, arguing that there was no stipulation in the home loan agreement requiring him to pay back the home loan in one instalment. The Director replied by a letter of 27 October 2017 that, pursuant to Article 6(4)(c) of the Regulations for the Grant of Home Loans (Home Loan Regulations), which formed an integral part of the home loan agreement, the outstanding amount of the home loan, plus interest, were to be repaid immediately.

In a letter of 29 November 2017, the complainant's counsel disagreed with this position arguing that Article 6(4)(c) of the Home Loan Regulations conflicted with clause 7 of the home loan agreement, which ought to prevail as *lex specialis* and which provided that, if the amount of the severance grant and all other payments due by virtue of the complainant's service being terminated were insufficient to cover the debt, the complainant undertook to irrevocably instruct his new employer to pay to the Office the interest and repayment instalments as they fell due and to retain the appropriate amounts from his salary and allowances. The complainant's counsel also challenged the Office's right to recover the amounts paid to the complainant for LTC insurance pending a future resolution of the matter by the Tribunal.

The Director wrote back on 21 December 2017 asserting that the outstanding home loan balance had to be repaid immediately. He added that, as the complainant had not filed a request for review of the 13 October 2016 decision to recover the undue LTC insurance benefits, any such request had now become time-barred.

On 20 March 2018 the complainant filed a request for review of the 21 December 2017 decision but this was rejected as irreceivable *ratione temporis* and, subsidiarily, as unfounded. On 14 August 2018 the complainant seized the Appeals Committee which, in its opinion of 15 January 2020, unanimously recommended dismissing the appeal as irreceivable for failure to follow the mandatory review procedures and thereby to exhaust the internal means of redress. By a letter of 11 March 2020, the complainant was informed of the President's decision to reject his appeal in accordance with the Appeals Committee's opinion. This is the impugned decision.

The complainant asks the Tribunal to find the complaint receivable and to set aside the impugned decision. He claims repayment in full of all amounts the EPO withheld from him since his dismissal in repayment of the LTC insurance benefits and the outstanding home loan balance. He also claims reimbursement of all legal costs he incurred in the management review, the internal appeal and the proceedings before the Tribunal. He claims interest at the rate of 5 per cent per annum on all amounts ordered by the Tribunal from the date such amounts become

due until the date they are paid. He also claims such other relief as the Tribunal may find to be just, fair and appropriate.

The EPO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal remedies and, subsidiarily, as unfounded.

CONSIDERATIONS

1. This case evolved from and is related to disciplinary proceedings initiated against the complainant after the EPO became aware that he and his wife, Ms L.G., had divorced in September 2004. The complainant had failed to report their divorce to the Office, as Article 65(1)(f) of the Service Regulations for permanent employees of the European Patent Office required, and he had, after their divorce, continued receiving from the EPO LTC insurance benefits in respect of Ms L.G. until September 2015. For this, the complainant was eventually dismissed from the service of the EPO with effect from 26 June 2017. In Judgment 4364 the Tribunal dismissed the complainant's first complaint against the decision to dismiss him from service. The present case arose out of related proceedings to recover the sums which the complainant had continued to receive for the subject insurance benefits, as well as the outstanding balance on his home loan from the EPO.

2. Pursuant to Article 88 of the Service Regulations, the Office initiated steps to recover from the complainant the sums which it alleges he owed in respect of undue payments he received for the subject insurance benefits. Further, pursuant to Article 6(4)(c) of the Home Loan Regulations, the Office also required the complainant to repay in full the amount outstanding on his home loan with the EPO.

3. The complainant was first notified of the decision to recover the undue LTC insurance payments in the letter of 13 October 2016, in which the Director, HR Operations, also proposed a repayment schedule. Pursuant to Article 109(2) of the Service Regulations, the complainant was mandated to submit any request for review of this decision within three months after being notified of it. Instead, on 20 March 2018, he

requested the review of what he referred to as the “decision” contained in the letter of 21 December 2017 which the Director, HR Operations, had sent to him. In that letter, however, the Director had merely reiterated the 13 October 2016 decision that the complainant should repay the undue LTC insurance payments he received and correctly informed him that his 20 March 2018 request for review was time-barred.

4. The complainant’s reliance on correspondence subsequent to the letter of 13 October 2016 between his counsel and the Office which referred to his repayment of the undue LTC insurance benefits, in effect contending that such correspondence culminated in a challengeable decision made on the matter in the letter of 21 December 2017, is misplaced. In essence, the Office’s communications with him beginning with the 7 August 2017 letter from the Director, HR Operations, following the complainant’s dismissal for misconduct on 26 June 2017, confirmed the decision of 13 October 2016. In the 7 August 2017 letter, the Director informed the complainant that further to his dismissal, the Office had offset the amounts due to him upon termination of employment against the sum he owed for the undue LTC insurance benefits. Subsequent correspondence between the parties on the matter, including the letter of 21 December 2017, relevantly discussed repayment schedules. They did not contain a new decision informing the complainant of his liability to repay the undue LTC insurance benefits, thereby triggering new time limits within which he was required to submit a request for review.

5. As the complainant did not contest the decision contained in the 13 October 2016 letter within the time limit stipulated in Article 109(2) of the Service Regulations, he failed to exhaust the internal means of redress that were available to him regarding the issue of his repayment of the undue LTC insurance benefits. His complaint regarding this issue is therefore irreceivable, pursuant to Article VII, paragraph 1, of the Tribunal’s Statute.

6. It was in the 7 August 2017 letter that the Director, HR Operations, informed the complainant of the decision that he should repay the outstanding balance on his home loan. The 21 December 2017 letter, which the complainant contested by way of request for review on 20 March 2018, merely confirmed that decision. It was not a new decision on the matter and, therefore, did not trigger a new time limit within which the complainant was required to submit a request for review, pursuant to Article 109(2) of the Service Regulations (see Judgment 4116, considerations 4 and 5). As he did not submit his request for the review of the 7 August 2017 decision that required him to repay the outstanding balance on his home loan within the time limit stipulated in Article 109(2) of the Service Regulations, he failed to exhaust the internal means of redress that were available to him. His complaint is therefore also irreceivable, pursuant to Article VII, paragraph 1, of the Tribunal's Statute, to the extent that he seeks to contest the decision to repay his home loan.

7. In the foregoing premises, the complaint will be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

HONGYU SHEN

DRAŽEN PETROVIĆ