

**P. (No. 15)**

**v.**

**EPO**

**134th Session**

**Judgment No. 4566**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifteenth complaint filed by Mr L. P. against the European Patent Organisation (EPO) on 3 September 2013, the EPO's reply of 17 February 2014, the complainant's rejoinder of 4 April, corrected on 12 May, and the EPO's surrejoinder of 30 July 2014;

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 complainant challenges a selection procedure for which he was a member of the Selection Board.

The complainant is a permanent employee of the European Patent Office, the EPO's secretariat, and was, at the material time, an elected member of the Staff Committee.

On 16 August 2011, the EPO published a vacancy notice advertising four vacant positions. The complainant was appointed as one of the three members of the Selection Board. On 30 September 2011, after the first meeting of the Selection Board held the previous day, the complainant sent an email, copying the other members of the Selection Board, to the Chairman of the Staff Committee, raising concerns about a "prima facie indication of favouritism in relation to one particular

candidate” and what he considered as interference in the selection process by a Director who was not member of the Board.

On 14 November 2011 the complainant sent his dissenting opinion to the Principal Director of Personnel in which he disagreed with the conclusions of other members of the Selection Board regarding the selection procedure in question and expressed strong reservations about the way it was conducted. On 17 November the Selection Board communicated to the appointing authority its report with a list of suitable candidates. On 25 November 2011 the candidates were informed of the outcome of the selection procedure.

On 12 January 2012 the complainant, in his capacity as a member of the Selection Board and of the Staff Committee, challenged the decision of 25 November 2011 to the extent that it did not appoint one of the candidates, Ms S., to one of the vacant positions. He contended that her non-selection was the result of a bias. By a letter of 12 March 2012, the complainant was informed of the President’s decision to reject all of his claims and to register his appeal of 12 January with the Internal Appeals Committee (IAC).

Having held a hearing on 10 July 2012, the IAC issued its report on 23 April 2013. The majority recommended to set aside the decision of 25 November 2011 and to let Ms S. choose between either a new selection procedure or financial compensation. It also recommended an award of punitive damages and costs. The minority recommended an award of moral damages. By letter of 25 June 2013, the Vice-President of Directorate-General 4 (DG4), by delegation of power from the President, decided not to follow these recommendations and to dismiss the appeal, as he could not establish any fundamental, substantial or procedural flaw with regard to the contested appointment decision. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to annul the selection procedure and re-establish the *status quo ante* pending the organisation of a new, objective and fair selection procedure. The complainant seeks compensation for all prejudice flowing from the impugned decision towards all people affected. He requests moral damages of at least 1 euro for each staff member represented as well as

moral damages for future delay in the adjudication of the present dispute. The complainant also claims punitive damages of at least 3 euros for each staff member represented as well as costs in the amount of 1,000 euros.

The EPO asks the Tribunal to dismiss the complaint as unfounded.

### CONSIDERATIONS

1. The complainant states that he was at the material time an elected member of the Staff Committee and that, in that capacity, he was appointed as a member of the Selection Board. As such, he considered the applications to fill the subject positions, but, as in his view the selection process was irregular, he wrote a dissenting opinion and eventually challenged the selection process by way of the present complaint. He states that he challenges the subject decision in his capacity as a staff representative and a member of the Selection Board and asserts that his complaint is receivable *ratione materiae* because it is his duty to ensure the regularity of the selection process and if the process was not regular he has standing to ask the Tribunal to oblige the EPO to respect the rule of law.

2. In response, the EPO states that while the complainant may have standing as a member of the Selection Board to challenge the decision not to select Ms S. to fill the subject post, “his quality as a staff representative in this regard is irrelevant [and that moreover] the complainant has [no] standing as a member of the selection board to challenge the decision to open a competition [as that] decision is taken by the appointing authority prior to establishing a selection board and is independent of any obligation or duty the selection board has under the [Service Regulations] *vis a vis* the selection procedure”. The EPO further states that it does not otherwise contest the receivability of the complaint.

3. Firstly, the complainant lacks *locus standi* in his capacity as a staff representative for the reasons given by the Tribunal in its case law (see Judgment 3642, considerations 8 to 14). Secondly, he lacks *locus standi*

in his capacity as a member of the Selection Board. In Judgment 4317, consideration 4, the Tribunal relevantly stated as follows:

“[...] the Tribunal adopted Judgment 3557, in a summary procedure, where it found that it was clear that the complainant, who was likewise acting in his capacity as a member of a Selection Board, did not have standing to challenge the outcome of the selection procedure. The same reasoning must be applied in the present case as ‘[the complainant] does not specifically allege any non-observance of his terms of appointment as required by Article II, paragraph 5, of the Tribunal’s Statute’.

As a matter of general principle, a complainant must, in order to raise a cause of action, allege and demonstrate arguably that the impugned administrative decision caused injury to her or him or was liable to cause injury (see, for example, Judgments 3921, consideration 6, and 3168, consideration 9). In accordance with this case law, a member of a board within an international organization, acting in this capacity, may only raise with the Tribunal the defects that have affected her or his prerogatives as a member of the board as defined by the internal provisions (see above-mentioned Judgment 3921, consideration 9). In the present case, the complainant does not specifically allege any non-observance of his terms of appointment or of board-related internal provisions.”

4. In light of the foregoing statements, the complaint is irreceivable as the complainant lacks *locus standi* to bring it because he has not identified any prerogative of his, as a member of the Selection Board, which has been affected. Moreover, the deficiencies perceived by the complainant in the process were made clear in his dissenting opinion which would have become part of the reasoned report of the Selection Board under Article 5(4) of Annex II of the Service Regulations for permanent employees of the EPO. Accordingly, it would have been made available in any challenge to the decision of the appointing authority, by a person aggrieved by that decision, either internally or in the Tribunal.

In the premises, it is unnecessary for the Tribunal to consider the complainant’s request for an oral hearing or his requests in his rejoinder to produce various documents. Neither is it necessary for the Tribunal to consider the complainant’s requests that Ms S. (the unsuccessful candidate) be invited to express her point of view based on his appeal/complaint or to allow him (the complainant) to make one more written submission

in order to take a position in view of the new facts and evidence which may be disclosed in the documents he seeks to be produced.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 24 May 2022, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ