

**K. (No. 10)**

*v.*

**EPO**

**137th Session**

**Judgment No. 4804**

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr M. K. against the European Patent Organisation (EPO) on 22 November 2017 and corrected on 28 December, the EPO's reply of 26 April 2018, the complainant's rejoinder of 17 September 2018 and the EPO's surrejoinder of 9 January 2019;

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 impugns the decision to reject his appeal seeking, in the main, moral damages for breach of confidentiality and defamation.

On 24 November 2011, the Administration held a meeting with staff representatives regarding the revision of the calculation of parental contributions for in-house and Office-subsidised crèches. At that meeting, the Director, Human Resources (HR) Staff Services, mentioned that the complainant's case was being dealt with by the Tribunal, thereby disclosing to those attending the meeting that the complainant had already filed a complaint with the Tribunal challenging the increase in parental contributions. Indeed, in November 2009, the complainant had filed a complaint directly with the Tribunal (his second) impugning the implied rejection of the appeal he had lodged against the increase in

parental contributions for staff members placing their children in Office-subsidised crèches (appeal RI/31/08). In August 2010, after the complainant's filing of his second complaint with the Tribunal, the Appeals Committee recommended to partly allow appeal RI/31/08, further to which, by a decision of 12 October 2010, the President of the Office undertook to revise the calculation of parental contributions.

On 28 February 2012, the complainant filed appeal RI/30/12 against "document CA/03/12 being submitted to the [General Advisory Committee] GAC and made public on [8 February 2012], and against the breach of confidentiality and defamation by HR Staff Services when presenting the 'Revision of Parental Contribution[s] for in-house and office-subsidised crèches'" at the 24 November 2011 meeting\*.

The Appeals Committee submitted its opinion on 29 June 2017. A majority of its members recommended rejecting the appeal as partly irreceivable and unfounded in the remainder. It nevertheless also recommended awarding the complainant 300 euros in damages for the length of the internal appeal process. One member of the Appeals Committee appended a dissenting opinion recommending that a new internal appeal process be carried out before an Appeals Committee "in a due composition", in accordance with Judgment 3785, before a final decision was taken.

By a letter of 29 August 2017, the Vice-President of Directorate-General 4 informed the complainant of his decision, taken by delegation of authority from the President, to reject his appeal in accordance with the majority recommendation of the Appeals Committee. The Vice-President acknowledged that "the information in question should not have been disclosed" at the 24 November 2011 meeting, but he did not consider that said disclosure warranted the award of moral damages. He nonetheless decided to award the complainant 350 euros in damages for

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\* Document CA/03/12, dated 23 January 2012, was the President's proposal to the Administrative Council for the amendment of Article 70a of the Service Regulations for permanent employees of the European Patent Office and Circular No. 301 (Rev. 1) for the purpose of introducing a new system for the calculation of parental contributions for in-house and office-subsidised crèches.

the length of the internal appeal process. This is the decision impugned by the complainant in his tenth complaint.

The complainant asks the Tribunal to set aside the impugned decision and to order the EPO to publish, in the EPO *Gazette* and/or on the intranet, the President's 12 October 2010 decision in internal appeal RI/31/08, in particular points 38 to 48 thereof, accompanied by a summary of the facts approved by him. He also asks the Tribunal to order the withdrawal of document CA/03/12 and to declare the respective GAC consultation flawed and invalid. He claims moral damages for the breach of confidentiality and the defamation in the amount of 15,000 euros. He also claims moral damages for the unreasonably long duration of the internal appeal process, in an amount of at least 1,000 euros per year, including past and future years, until a final decision has been rendered. He asserts that the incorrect composition of the Appeals Committee prevented him from having a fair internal appeal process and that this should be considered in the award of moral damages. He seeks 4,000 euros in costs.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable and unfounded in its entirety.

#### CONSIDERATIONS

1. The complainant applies for oral proceedings. He does not list witnesses. The parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. The request for oral proceedings is, therefore, rejected.

2. The Tribunal will firstly address the receivability issues raised by the EPO. By one of his claims, the complainant asks the Tribunal to order that the EPO publish, in the EPO *Gazette* and/or on the intranet, the President's 12 October 2010 decision on internal appeal RI/31/08, in particular points 38 to 48 thereof, accompanied by a summary of the facts approved by him. However, the Tribunal is not competent to make orders of this kind against international organisations (see

Judgments 4065, consideration 9, 4039, consideration 17, and 2058, consideration 13).

The complainant further asks the Tribunal to order that document CA/03/12 be withdrawn and to declare that the respective General Advisory Committee (GAC) consultation was flawed and invalid. The Tribunal notes that document CA/03/12 was not a decision, much less a final decision, but merely the President's proposal for the amendment of Article 70a of the Service Regulations for permanent employees of the European Patent Office and Circular No. 301 (Rev. 1). Therefore, it is not challengeable before the Tribunal (see Judgment 3860, considerations 5 and 6). Moreover, the complainant has not shown that he was adversely affected by that document. Therefore this claim is irreceivable.

3. The complainant's main claim concerns the moral injury allegedly suffered due to the unlawful breach of confidentiality during a meeting. In particular, on 24 November 2011, the Administration held a meeting with staff representatives regarding the revision of parental contributions for in-house and Office-subsidised crèches. At that meeting, the Director, Human Resources (HR) Staff Services, disclosed the fact that the complainant had filed a complaint with the Tribunal challenging the increase in parental contributions. This information was reproduced in the minutes of the meeting. According to the complainant, not only did this information breach the Organisation's duty of confidentiality, but it was also defamatory. At the outset, the Tribunal recalls that staff members have a right to bring complaints before the Tribunal and there should be no negative implications arising from the exercise of that right. In the present case, the Tribunal holds that, during the 24 November 2011 meeting, the statement regarding a pending case lodged by the complainant was presented in a neutral way, with no negative comments. It was not a defamatory statement warranting relief, because it was truthful and did not tarnish the reputation of the complainant (see Judgment 4478, consideration 6). With regard to the breach of confidentiality, which allegedly consisted in the complainant's name and his pending complaint before the Tribunal being mentioned during the meeting, the EPO has already acknowledged that this information should not have been disclosed. As a result, the Tribunal

has only to assess whether such breach of confidentiality caused the complainant a moral injury warranting compensation. According to the Tribunal's well-settled case law, the complainant bears the burden of proof that he suffered moral injury (see Judgments 4522, consideration 17, and the case law cited therein, and 4012, consideration 3). In the present case, even though the breach of confidentiality is proven (as it has been acknowledged by the EPO), there is no evidence that the complainant suffered any damage as a result of that breach. Considering all the facts and relevant circumstances of the present case, as well as the fact that the complainant did not submit any evidence to establish that he suffered any damage to his reputation or other injury, the Tribunal finds that the complainant's request for damages is unsubstantiated.

4. The complainant submits that the irregular composition of the Appeals Committee deprived him of his right to a fair trial and that this fact should be considered in the award of moral damages. However, he specifically requests that the Tribunal, if it were to allow such plea, refrain from referring the case back to the EPO and that it decide on the merits. Further to the public delivery of Judgment 4550, the EPO took concrete steps to implement the Tribunal's orders in that judgment, including by awarding 100 euros in moral damages for the irregular composition of the Appeals Committee to all staff members whose appeals had been dealt with by the irregularly composed Appeals Committee and whose complaints, arising from these appeals, were already pending before the Tribunal. The complainant was specifically informed of the President's decision to award him 100 euros in moral damages for the irregular composition of the Appeals Committee by a letter of 14 October 2022. The Tribunal finds that the complainant has been adequately compensated for the irregular composition of the Appeals Committee in the internal appeal proceedings underlying the present complaint and there is, therefore, no need to further consider his claim in this regard.

5. The complainant also seeks moral damages for the unreasonable duration of the internal appeal proceedings. The Tribunal's consistent case law holds that the amount of compensation for unreasonable delay

in internal proceedings will ordinarily be influenced by at least two considerations. One is the length of the delay and the other is the effect of the delay. These considerations are interrelated as a lengthy delay may have a greater effect. That latter consideration, the effect of the delay, will usually depend on, amongst other things, the subject matter of the appeal (see Judgments 4563, consideration 14, and 3160, considerations 16 and 17). In the present case, the complainant already received 350 euros as compensation for the delay and it is not apparent that the delay had a significant adverse impact on him warranting further compensation. Thus, this claim is rejected.

6. In conclusion, the complainant's claims are irreceivable in part and unfounded in the remainder. Thus, the complaint should be dismissed.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 26 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER