

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

**T. (No. 51)**

**v.**

**EPO**

**137th Session**

**Judgment No. 4806**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifty-first complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 28 December 2020, the EPO's reply of 4 August 2021, the complainant's rejoinder of 22 October 2021 and the EPO's surrejoinder of 24 January 2022;

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, acting in his capacity as staff representative at the material time, challenges the appointment of the Principal Director of Human Resources.

The complainant is a former employee of the European Patent Office, the EPO's secretariat.

In November 2012, the Office published vacancy notice TAI/5380 for the post of Principal Director of Human Resources. The complainant did not apply for the post.

On 30 January 2013, the Vice-President of Directorate-General 4 announced that the new Principal Director of Human Resources was appointed with effect from 1 February 2013. The complainant, acting in his capacity as a staff representative, initiated the internal appeal proceedings in early 2013. On 15 February 2016, the President of the Office rejected the appeal as irreceivable. The complainant impugned that decision before the Tribunal. However, pursuant to Judgments 3694 and 3785 in which the Tribunal considered that the composition of the Appeals Committee was unlawful, the President withdrew his decision on 1 March 2017 and referred the matter back to the Appeals Committee.

In January 2018, the complainant was informed that the Appeals Committee had registered the remitted appeal and that it would reconsider it based on the file as it then stood. The parties could add comments in respect of new facts that had occurred in the meantime. During the internal appeal proceedings, the complainant contested the withdrawal of the 15 February 2016 decision as well as the remittal of his internal appeal to the Appeals Committee.

The complainant retired on 1 March 2019.

In Judgment 4256, delivered in public on 10 February 2020, the Tribunal examined the complainant's initial complaint, and ruled that the withdrawal of the impugned decision was lawful. It dismissed the complaint as being without object.

On 6 April 2020, the complainant was informed that his appeal would be treated in accordance with the written procedure and dealt with at one of the Appeals Committee's next sessions. The following day he asked the Appeals Committee to base its opinion on the submissions he had filed in his earlier complaint – the one that led to Judgment 4256. In his appeal, he sought the annulment of competition TAI/5380, the “revocation of the decision of 30 January 2013”, the “revocation of the promotion of the successful candidate to Grade A6 and any rights associated with that position with effect from 1 February 2013”, and the “recovery of unduly received salaries by the successful candidate”. He also asked to be reimbursed the costs he incurred in filing his complaint.

In its opinion of 12 August 2020, the Appeals Committee rejected a number of the complainant's procedural objections and requests, in particular his challenge to the decision to remit his original appeal to the Appeals Committee. Indeed, based on the Tribunal's findings in Judgment 4131, there was a valid legal basis for the President's decision to withdraw the original final decision and to refer the matter to the Appeals Committee for a new recommendation. The Appeals Committee also rejected his request to incorporate the submissions he made before the Tribunal in the current internal appeal proceedings as the Appeals Committee did not have access to them. Regarding the subject of the appeal, the Appeals Committee noted that the complainant did not apply for the contested position and that he did not allege violation of individual rights, be they rights common to all staff such as the right to freedom of association, or rights limited to staff representatives, such as the right to be consulted. Accordingly, he did not have *locus standi* in his capacity as staff representative. The Appeals Committee therefore recommended dismissing the appeal as irreceivable. However, it recommended awarding the complainant 688 euros in moral damages for undue delay in the internal appeal proceedings and reimbursing the "reasonable and duly justified" legal costs he had incurred in relation to the filing of his earlier complaint before the Tribunal.

On 9 October 2020, the Office's decision of 8 October 2020 to endorse the Appeals Committee's recommendation for the reasons stated in its opinion was communicated to the complainant. Consequently, his appeal was dismissed as irreceivable, and subsidiarily unfounded. He was awarded the recommended 688 euros, which were paid to the specific budget line of the Staff Committee related to training and duty travel because he had filed his internal appeal in his capacity as a staff representative. Regarding the reimbursement of the costs incurred in the filing of his earlier complaint, he was asked to provide evidence of "reasonable costs".

The complainant asks the Tribunal to set aside the impugned decision, the "associated President's decision to deny acknowledgement" of a flawed selection procedure (in TAI/5380) and the unlawful appointment, with concomitant promotion, of a grade A3 official to a

grade A6 post. In addition, he asks the Tribunal to annul the contested procedure *ex tunc* and to determine the ensuing legal and financial implications “weighing-up the adverse effects on the individual interests of EPO staff members collectively and the individual interests of the unlawfully promoted” official. He also asks the Tribunal to set aside the “general measure CA/D 34/07”, which was relied upon by the then President as the legal and administrative basis for implementing the contested appointment, and to award him costs with respect to his earlier complaint, which was rejected by Judgment 4256. He further claims moral damages for the EPO’s lack of good faith in refusing to pay him “individual costs in any reasonable amount” with respect to the aforementioned complaint. He also claims “moral (and in part punitive) damages” regarding several alleged flaws. Lastly, he seeks an award of costs for the present complaint.

The EPO asks the Tribunal to declare the complaint irreceivable for lack of a cause of action and subsidiarily unfounded.

#### CONSIDERATIONS

1. The complainant is a former member of staff of the EPO who retired on 1 March 2019. This complaint is the complainant’s fifty-first and was filed on 28 December 2020. It is unnecessary to detail at this point the comparatively complex path his grievance over the appointment of the new Principal Director of Human Resources on 30 January 2013 has taken. It is sufficiently set out in the preceding part of this judgment.

2. At all times, the complainant has pursued his challenge to the appointment of the new Principal Director of Human Resources in his capacity as a staff representative and not in an individual capacity. In his brief, under the heading “Introductory Remarks”, the complainant says:

“The present complaint is filed in the complainant’s capacity as member of the Central Staff Committee (CSC) and Chairman of its Local Section in Munich in the materially relevant period 2012 – 2013.”

3. As just noted, the subject matter of his grievance has been the appointment on 30 January 2013 of the new Principal Director of Human Resources.

4. The EPO puts in issue his right to challenge this appointment as a staff representative. The issue of the rights of a staff representative in this respect was settled by Judgment 3644 delivered in public on 6 July 2016. While there are several more recent judgments concerning the rights of staff representatives to challenge decisions of an organisation in the Tribunal, none have a bearing on the correctness of Judgment 3644 (see, for example, Judgments 4566, consideration 3, and 4485, consideration 1). It is instructive to set out a lengthy passage of this judgment commencing at consideration 9:

“9. The jurisprudence of the Tribunal on the standing of elected staff representatives to take proceedings before the Tribunal in a case such as the present [a challenge to the appointment of a staff member] is not uniformly clear. Recently in Judgment 3557, consideration 3, the Tribunal indicated that in certain circumstances staff representatives may challenge the appointment of another official, but can only do so if they allege breach of their own individual rights. In another recent case, Judgment 3546, the Tribunal concluded it was unnecessary to consider whether a staff representative had standing generally to challenge the extension of the appointment of another official because the complainant, who was a staff representative, had had a right to be advised of the proposal to extend the appointment and that right had been allegedly violated. That was viewed as sufficient to give the complainant standing.

10. On the other hand, the right of a staff representative to file a complaint challenging the appointment of an official has been recognised as an aspect of the right of an elected staff representative to bring proceedings on behalf of a staff committee with a view to preserving common rights and interests of staff (see Judgment 2791, consideration 2, and Judgment 2755, consideration 6).

11. However ultimately, the Tribunal’s jurisdiction and the related question of a person’s right to invoke that jurisdiction should be determined by reference to the Tribunal’s Statute. Article II addresses both questions. The Tribunal is conferred with jurisdiction to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office and other organisations which have submitted to the Tribunal’s jurisdiction, as well as complaints alleging non-observance of such provisions of the relevant Staff Regulations as are

applicable to the case. Having identified and defined the jurisdiction, Article II identifies in paragraph 6, the class or classes of people who can invoke that jurisdiction. That paragraph provides that '[t]he Tribunal shall be open [...] to the official' and to any person to whom the 'official's rights have devolved' on death together with any other person entitled to some right of a deceased official. A legal normative document conferring jurisdiction on a court should not be narrowly construed. However there is little room to doubt that the expression 'shall be open to the official' is a reference to the official whose terms of appointment have allegedly not been observed or, in relation to whose circumstances (in 'a case'), applicable provisions of the Staff Regulations have allegedly not been observed. This is reinforced by the reference to 'the official's rights', in the singular, in relation to rights that have devolved on death. That is to say, standing is directed to the vindication or enforcement of the rights of an individual officer. The clause does not cast the net any wider in relation to who can invoke the jurisdiction of the Tribunal.

12. Similarly in Article VIII, dealing with remedies, the focus of the Article is the provision of relief or a remedy to an individual complainant on the assumption the relief or remedy will overcome the effect or consequences on that complainant of the non-observance by either undoing the effect of the defendant organisation's conduct (by rescission) or the payment of compensation to the complainant.

13. Accordingly, in the present case, the question is whether any of the complainants is an official with some or all of these characteristics. None had been a candidate for the position to which Mr J.K. was appointed. Any non-observance of the Staff Regulations in relation to the competition which did take place and the appointment of Mr J.K. had no bearing on the position of other officials of WIPO who are not potential candidates, including officials who were elected representatives.

14. It might be thought all officials have a 'right' to have the organisation which employs them comply with and observe the organisation's Staff Regulations irrespective of whether any failure to comply or non-observance had any bearing on their own situation as an official of the organisation. If this was so, all officials would have standing to commence proceedings in the Tribunal in relation to any non-observance of the Staff Regulations. It is highly improbable that the Statute intended this result. But is an elected staff representative able to enforce this 'right' even though all other officials cannot unless affected by the non-observance? There is no basis in the language or structure of the Statute or by reference to the nature of the jurisdiction conferred on the Tribunal, to suggest this is so. Consistent with the entire focus of the Statute, the right of an elected representative to enforce the Staff Regulations for the benefit of all staff is limited to circumstances where the provision (which has allegedly not been observed)

confers a right on the elected representative as a member of staff. It might be a right limited to the staff representative (such as the right to be consulted) or it might be a right enjoyed by all staff (such as the right to freedom of association).

15. In the result, the Tribunal does not accept that the complainants have some special standing derived from their status as elected representatives to challenge the appointment of Mr J.K.”

5. Consistent with the foregoing, the complainant in these proceedings cannot challenge the appointment of the new Principal Director of Human Resources. This was the conclusion of the Appeals Committee in its report of 12 August 2020 as adopted by the President of the Office on 8 October 2020.

6. As indicated in consideration 4 above, the complainant, who had initiated the internal appeal proceedings in his capacity as staff representative, has not demonstrated that he had special standing to contest the appointment of the new Principal Director of Human Resources. It is therefore unnecessary to consider the legal significance, if any, of the fact that at the time the complaint was filed with the Tribunal, the complainant was not a staff representative. Indeed he was not a member of staff of the EPO at all.

7. The complaint should be dismissed.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, 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

HUGH A. RAWLINS

HONGYU SHEN

MIRKA DREGER