

NINETY-NINTH SESSION

Judgment No. 2448

The Administrative Tribunal,

Considering the complaint filed by Ms C.R.F. against the European Patent Organisation (EPO) on 15 September 2003 and corrected on 11 November 2003, the Organisation's reply of 17 February 2004, the complainant's rejoinder of 26 March and the EPO's surrejoinder of 4 August 2004;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this dispute are given under A in the Tribunal's Judgment 2341 which was delivered on 14 July 2004.

The complainant, a Spanish national born in 1959, joined the European Patent Office, the secretariat of the EPO, on 1 November 1990 as an examiner. She currently holds grade A3.

On 28 June 2001, at its 85th meeting, the Administrative Council approved a decision introducing provisions for long-term care insurance, as well as the relevant implementing rules, into the Service Regulations for permanent employees of the Office. By that decision long-term care insurance was introduced into the Office's social security scheme with effect from 1 July 2001. The measures were brought to the attention of staff by a circular issued on 2 July.

On 1 October 2001 the complainant lodged an appeal with the Appeals Committee of the Administrative Council, challenging the decision of 28 June 2001 and, in particular, the aforementioned implementing rules concerning, inter alia, the contributions paid by the Office and by insured persons. She complained of a breach of the principle of equal treatment. She also objected to the composition of the Committee on the grounds that the latter included no staff representative. In application of Judgment 1896, delivered in February 2000, the Council had amended Article 37 of the Service Regulations, which specified the bodies on which staff are represented, and in particular Article 37(c). As a result there would no longer be staff representatives on the Appeals Committees dealing with appeals against decisions taken by the Administrative Council, but only on those dealing with appeals against decisions taken by the President of the Office.

The Council's Appeals Committee found that the complainant's appeal lacked foundation and unanimously recommended that it be rejected. The Administrative Council decided to follow that recommendation and dismissed her appeal. In a letter of 10 June 2003, which constitutes the impugned decision, the Chairman of the Administrative Council notified the complainant of the Council's decision.

In Judgment 2244, delivered on 16 July 2003, the Tribunal ruled on a case in which the complainant was an intervener and the complainants contested the amendment to Article 37(c). The Tribunal ruled that "the discrimination introduced by the amendment of Article 37 of the Service Regulations [was] unjustified and must therefore be deplored". On 30 October 2003 the Administrative Council adopted decision CA/D 14/03 amending both Articles 37(c) and 110 of the Service Regulations in order to provide for staff representation on its Appeals Committee.

B. The complainant contends that the impugned decision is tainted with a substantial procedural flaw. In her view, Judgments 1896 and 2244 confirmed that a balanced composition of the Council's Appeals Committee is a fundamental right of EPO employees; in her case that right was violated because no staff representative sat on the Committee that heard her appeal. As she was an intervener in the case that led to Judgment 2244, she considers that the benefit of that judgment should be extended to her.

She considers that she was denied due process as well as the right to a fair “trial”. Owing to the fact that crucial parts of her pleas were not taken into account and that the Committee was not properly constituted, the latter’s opinion could not serve as a basis for the Council’s decision.

Lastly, the complainant submits that she is incurring a financial loss owing to the delay in taking a decision on the matter of the legality of the high level of contributions for long-term care insurance deducted from her salary every month.

The complainant asks the Tribunal to set aside the decision of 10 June 2003. She wants her internal appeal to be referred back to the Administrative Council for it to take a decision on her appeal only after having obtained an opinion from a “correctly composed” Appeals Committee. She claims 1,000 euros in moral damages, as well as 2,000 euros in costs.

C. The Organisation, which would have preferred the complaint to be joined with that submitted by Mr F. leading to the above-mentioned Judgment 2341, contends in its reply that the complainant’s pleas are unfounded and that the decision of 10 June 2003 is not open to criticism. The decision was taken on the basis of the opinion of an Appeals Committee that was properly constituted according to the rules then in force.

The EPO does not accept the complainant’s plea that she was denied a fair “trial”. According to the Office, it is clear from the Appeals Committee’s report that the Administrative Council explained in detail its view on her appeal. The complainant had the opportunity to develop her arguments not only in writing but also during the hearing.

The Organisation notes that the issue of contributions to the long-term care insurance scheme is only indirectly addressed by the complainant and responds to the arguments put forward by her on this issue.

D. In her rejoinder the complainant submits that her case and Mr F.’s differ insofar as she is able to put forward different arguments. She sets out to show that the proceedings before the Appeals Committee were tainted by the bias of its members, who were, in her view, neither willing nor able to give an objective and impartial opinion on her appeal. Pointing out that, as early as 31 May 2002, the Committee had drafted an opinion which was identical in substance to its final opinion, she maintains that, long before it heard her case, the Committee had already adopted a position and decided on the content of the recommendation it would submit to the Administrative Council.

In view of what she considers to be a particularly gross and serious breach of her procedural rights by the Appeals Committee, the complainant increases the amount of the moral damages she is claiming to 5,000 euros and asks the Tribunal for a hearing.

E. In its surrejoinder the EPO maintains its position. It considers that the fact that the Appeals Committee’s two opinions contain the same recommendation cannot be construed as evidence that they are tainted with bias. The existence of a “provisional” opinion proves on the contrary that the relevant provisions have been strictly applied.

It objects to the receivability of the complainant’s new claim for moral damages.

CONSIDERATIONS

1. The complainant, a Spanish national, joined the European Patent Office on 1 November 1990 as an examiner. Further to a decision of 28 June 2001 by the Administrative Council, long-term care insurance was incorporated in the Office’s social security scheme. The complainant filed an appeal against that decision on 1 October 2001, challenging in particular the implementing rules relating to such insurance. The Appeals Committee of the Administrative Council, to which her appeal was referred, considered it to be receivable, but unanimously recommended that it be dismissed. By a letter of 10 June 2003 the Chairman of the Administrative Council informed the complainant that the Council had accepted the Appeals Committee’s recommendation and had dismissed her appeal.

2. On 15 September 2003 the complainant lodged a complaint in which she claims, in particular, the quashing of the decision of 10 June 2003, received on 17 June 2003, and an award of moral damages, set at 1,000 euros in

her initial submissions and increased to 5,000 euros in her rejoinder.

3. The EPO had requested that the complaint be joined with that of another staff member of the Office, Mr F., whose complaint was the subject of Judgment 2341, delivered on 14 July 2004. This request has obviously become redundant, and there is no need to examine the pleas put forward by the complainant to oppose a joinder which can no longer be ordered.

4. As in the case leading to Judgment 2341, the complainant contends that the Appeals Committee, which issued the opinion on which the Administrative Council based its decision, was not properly constituted because, contrary to the principles established by the Tribunal, particularly in Judgment 2244 delivered on 16 July 2003, its members did not include a staff representative. The EPO asserts, as it did in the case that led to Judgment 2341, that the Appeals Committee was properly constituted at the date on which the internal appeal was filed and at the date of the Administrative Council's decision, as Judgment 2244 was delivered after those dates. The Tribunal pointed out in Judgment 2341 that this argument cannot be accepted, because a declaration of invalidity is necessarily retrospective. It therefore applies to the Appeals Committee which heard the present complainant's appeal. For the reasons set forth in that judgment, the Tribunal considers that the impugned decision must be set aside and that the matter must be referred back to the Administrative Council for a new decision after consultation of a properly constituted Appeals Committee.

5. The complainant raises further issues. She submits that the Appeals Committee breached procedural rules, particularly regarding its hearings, that its opinion was neither impartial nor objective, and that it was biased. On these grounds she considers that the Organisation should compensate her for the moral injury resulting from the breach of her procedural rights. This claim cannot be allowed: the complainant obtains redress by virtue of the setting aside of the impugned decision on the grounds that the Appeals Committee was not validly constituted and, as the Tribunal held in the case leading to Judgment 2341, her claim for damages is dependent upon the validity of her claim on the merits. The Appeals Committee to be consulted must, of course, be validly constituted and must correctly apply the procedural rules by which it is bound.

6. Whilst the claim for damages must be rejected, the complainant, whose claim for the setting aside of the impugned decision is allowed, is entitled to an award of costs, which the Tribunal sets at 2,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The case is sent back to the Administrative Council for a new decision, to be taken after consultation of a properly constituted Appeals Committee.
3. The EPO shall pay the complainant 2,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 13 May 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2005.

Michel Gentot

James K Hugessen

Flerida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 14 July 2005.