

106th Session

Judgment No. 2795

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr P. A. against the European Patent Organisation (EPO) on 19 March 2007 and corrected on 12 June, the Organisation's reply of 21 September, the complainant's rejoinder of 14 November 2007, corrected on 16 January 2008 and the EPO's surrejoinder of 10 March 2008;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts concerning the present case can be found in Judgments 1344, 1650 and 2580, delivered on 13 July 1994, 10 July 1997 and 7 February 2007, respectively. Suffice it to recall that the complainant, an Italian national born in 1948, is a former staff member of the European Patent Office – the EPO's secretariat – who retired on 1 December 2005 after a Medical Committee had determined that he was permanently unfit to perform his duties. On that date he began receiving an invalidity pension pursuant to Article 14(1) of the Pension Scheme Regulations of the European Patent Office.

During his tenure with the Office the complainant sent various letters to the Administration expressing concern about his working conditions and the treatment he was subjected to by some staff members. In particular, he made numerous complaints about his supervisor, Mr V., who was appointed Director of Directorate 1.2.52, in Directorate-General 1 (DG1), in The Hague on 1 January 1999, and accused him of bullying behaviour. In a letter dated 5 December 2002 he alleged that Mr V. had insulted and threatened him and physically prevented him from leaving his office on two occasions. These letters were addressed or copied to senior EPO officials, including the President of the Office, the Vice-President in charge of DG1, the Principal Director of Administration in DG1, the President of the Staff Union of the European Patent Office (SUEPO), the Office's medical adviser, and Mr V.

In his written comments in his staff report for the period 1998-1999 the complainant submitted that he had been the victim of mobbing and harassment by his superiors which had spoiled his career prospects and had caused him health problems. In his comments in his staff report for the period 2000-2001 he accused Mr V. of deliberately awarding him lower ratings, in order to "settle old scores" and prevent his promotion, and of spreading slanderous remarks about him and bullying him in front of colleagues. He requested that the EPO senior management deal with the bullying and mobbing, asserting that he had the right to have the problem addressed quickly and fairly. In his comments in his staff report for the period 2002-2003 he complained that he had been subjected to workplace bullying which had caused him serious health injuries.

The complainant met with the Director of Personnel on 16 October 2002 and again on 21 January 2003 in order to discuss his allegations. The Administration summarised the discussion at the meeting of 21 January in a "Note for the record" dated 22 January 2003. In a letter to the complainant of 21 February 2003 the Director of Personnel referred to these meetings and concluded that the complainant's grievance merely related to staff reporting. He invited

him to make use of the conciliation procedure provided for in the

General Guidelines on Reporting contained in Circular No. 246. He indicated that he had found no facts to substantiate the allegations of bullying and asked the complainant to refrain from sending further letters regarding these allegations so as to safeguard Mr V.'s reputation. The complainant replied on 1 March 2003, stating inter alia that, by reducing his complaints to a problem with staff reporting, the Director of Personnel had proven that he was incapable of dealing with workplace bullying.

On 20 July 2004 the complainant wrote to the newly appointed President of the Office, alleging that he was suffering from serious health problems as a result of the bullying and mobbing to which he was subjected by his supervisor. He contended that Mr V. had a history of such behaviour which the Vice-President in charge of DG1 and other managers in that Directorate-General had failed to address. He argued that his case had not been dealt with by the former President and he asked for an investigation into Mr V.'s "bullying behaviours". The President replied on 5 October 2004, stating that he was satisfied with the way the situation had been handled by his predecessor and noting that the complainant had not provided any additional information or evidence to support his claims of harassment. In January 2005 the complainant lodged an internal appeal against this decision requesting inter alia a thorough investigation into his allegations. In its opinion dated 6 December 2006 the Internal Appeals Committee recommended that the appeal be dismissed as unfounded. Citing the Tribunal's case law, it found that the burden of proof rested with the complainant and that, because he had not sufficiently substantiated his allegations of bullying and mobbing, there was insufficient evidence to support a finding that the Office had failed to observe its duty of care. Consequently, an investigation was not warranted.

By a letter dated 20 December 2006 the complainant was informed that the President of the Office had decided to reject his appeal as unfounded. That is the impugned decision.

B. The complainant contends that he was the target of prolonged bullying, harassment and mobbing by Mr V. and other hierarchical

superiors. Over a long period of time he made repeated written complaints about this to the EPO senior management but he seldom received a response. The replies he did receive were, in his view, elusive and inadequate, indicating an “intention to avoid the issue”. As evidence of this he provides a “non-exhaustive list” of the correspondence between himself and senior management.

He submits that when faced with consistent and persistent allegations of bullying and mobbing, the Organisation has a duty of care towards its employees, which requires it to conduct a thorough investigation and to take adequate remedial measures. The EPO never investigated seriously and in good faith the substance of his allegations. The only concrete step the Office took was to hire an external expert to explore the possibility of solving the problem by transferring him. This, however, was not sufficient. Consequently, the Office has been recklessly negligent and has failed in its duty of care towards him. The complainant points out that other organisations recognise the serious impact of workplace bullying and mobbing and take active steps to investigate allegations and eradicate any existing problems. He disagrees with the finding of the Internal Appeals Committee that he bears the burden of proof in his claim.

He emphasises that he suffered severe physical and psychological problems as a result of the situation and that the Office’s medical adviser confirmed in writing that his health problems were due to his work environment. He has experienced substantial pain and suffering and claims that he was not taken seriously. In addition, the EPO did not adequately safeguard his physical and mental health and his “right to dignity”.

He asks the Tribunal to award him compensation for loss of income calculated on the basis of the amount he would have earned had he been able to continue working at the EPO rather than being retired for invalidity, with interest. He also seeks compensation for pain and suffering of at least 50,000 euros, moral damages of at least 10,000 euros and costs.

C. In its reply the EPO points out regarding receivability that the Tribunal cannot under the principle of *res judicata* consider documents submitted by the complainant that pre-date the delivery of Judgment 1344 concerning his second complaint. It notes that in his fourth complaint, which led to Judgment 2580 concerning the medical aspects of the case, the complainant also included allegations that he felt mobbed, harassed and intimidated by his supervisor and that the Office had persistently failed to address the problem.

On the merits the Organisation acknowledges that, according to the case law, an allegation of harassment requires an international organisation to conduct a thorough investigation; however, this is only possible if the staff member making the allegation provides enough evidence to permit an investigation. It considers that in this case the complainant failed to substantiate his allegations but that it took appropriate measures in response to them.

The EPO points out that the complainant had the opportunity to pursue the comments he made in his staff reports through the conciliation procedure provided for in the General Guidelines on Reporting. He also had the opportunity to file internal appeals between 1998 and 2005 but he failed to do so. In the EPO's view, he did not make full use of the internal procedures available to him.

Furthermore, the complainant had the opportunity to state his case at the two meetings he had with the Director of Personnel. At the first meeting in October 2002, his letters to the Administration were discussed, as was a note from the President dated 25 September 2001. The EPO tried to investigate the allegations, but the complainant provided no evidence to substantiate his claims and declined to name witnesses. He did suggest involving an external mediator, but at the meeting in January 2003 he explained that he did not want to pursue that option because he felt it was not possible to re-establish a working relationship with his supervisor. The complainant also rejected a proposal by the Director of Personnel that he move to another department and suggested that his supervisor be transferred instead.

The EPO considers that it properly exercised its duty of care. It took the allegations of harassment seriously and tried to find a solution

to the complainant's work-related problems. However, its efforts were unsuccessful because of the complainant's response. Consequently, its refusal to conduct a further investigation did not constitute an abuse of authority.

D. In his rejoinder the complainant argues that the defendant has missed the thrust of his claim of harassment. He asserts that he submitted ample information for the EPO to conduct an investigation and points to letters in which he made specific allegations of verbal and physical threats. In his view, the action taken by the Office demonstrated a failure to treat the matter seriously. He argues that his case deals with criminal behaviour which he characterises as "torture at work" and provides, in support of this, a detailed research paper. He further alleges that almost all of the managers at the EPO were aware of his situation and that they all had a role in the "criminal design" to cause injury to his health and have him removed from the Office.

E. In its surrejoinder the EPO maintains its position. It states that an investigation may be conducted either on an ad hoc basis or as part of a staff reporting exercise where harassment has been alleged. However, such an investigation can only be conducted if the staff member concerned provides enough evidence. It also submits that the complainant is estopped from relying on events that occurred prior to early April 1998 in order to substantiate his claims relating to the length of time during which the alleged mobbing and harassment took place. It rejects his assertion that he was the victim of torture and reiterates that it fully met its duty of care towards him.

CONSIDERATIONS

1. The complainant impugns a decision by the President of the Office, dated 20 December 2006, rejecting the internal appeal he filed whereby he sought, inter alia, an investigation into his allegations of harassment.

2. The Internal Appeals Committee considered the appeal as admissible but unfounded because there was “insufficient evidence that the [Organisation] failed to observe its duty of care” and unanimously recommended that it be dismissed. In the internal appeal proceedings, the EPO denied that it had failed to observe its duty of care and argued that the complainant had not provided evidence to support his allegations of “bullying behaviour” on the part of his supervisor and other hierarchical superiors. It argued that the complainant had been given the chance to state his case at two meetings he had with the Director of Personnel, in October 2002 and in January 2003, and also to make full use of the conciliation procedure provided for in the General Guidelines on Reporting. It also argued that, as these meetings failed to resolve the matter, the Organisation had proposed that the complainant be moved to another directorate but the complainant had refused because he felt that being forced to change technical fields would be tantamount to a punishment.

The Committee was of the view that the Organisation did enough to exercise its duty of care. It noted in that respect that the Office had taken the complainant’s allegations seriously, had tried to investigate the matter and had also tried to find a solution to the complainant’s work-related problems by involving an external mediator and also by recommending a change of department. It concluded that in view of the circumstances, the Organisation’s refusal to conduct a further investigation did not constitute an abuse of authority. The President of the Office accepted the Committee’s recommendation and dismissed the complainant’s appeal.

3. The complainant challenges the President’s decision on the basis that his allegations of harassment, bullying and mobbing were not properly investigated and adequate remedial measures were not taken. He requests compensation for loss of income, compensation for pain and suffering of at least 50,000 euros, moral damages of at least 10,000 euros, and costs.

4. The question in this case is not if harassment took place, but rather, whether or not the Organisation fulfilled its duty to investigate the allegations. That being so, no question arises with respect to receivability. So too, the issue raised by the Organisation in relation to documents filed in earlier proceedings is irrelevant.

5. The Tribunal is of the opinion that the complaint is founded. As it held in Judgment 2552 an accusation of harassment “requires that an international organisation both investigate the matter thoroughly and accord full due process and protection to the person accused”. Moreover, it recalled in Judgment 2642 that the Organisation’s duty to a person who makes a claim of harassment:

“requires that the claim be investigated both promptly and thoroughly, that the facts be determined objectively and in their overall context (see Judgment 2524), that the law be applied correctly, that due process be observed and that the person claiming, in good faith, to have been harassed, not be stigmatised or victimised on that account (see Judgment 1376).”

Given the high volume of the complainant’s communications alleging harassment (which were viewed by the Administration as vague and repetitive), the Organisation’s response by way of mediation and conciliatory meetings might be considered reasonable. However, by reason of the mere fact that, among the many allegations put forward by the complainant, there existed some specific allegations of harassment such as those detailed below, the Organisation ought to have conducted a serious and thorough investigation.

6. The Tribunal notes that the objective of the meetings in October 2002 and in January 2003 seemed geared towards assisting the complainant and his supervisor in reconciling their personality differences and not in investigating the allegations of harassment. This is evidenced in the letter from the Director of Personnel, dated 21 February 2003, which states inter alia:

“[o]ne option which was offered to you, namely to repair the working relation between you and your [supervisor] with the support of an external mediator, was not pursued at your wish.

On the basis of the letters produced by you and the discussions we have had, I have come to the conclusion that your complaint merely relates to

staff reporting and I therefore kindly request you to make use of the conciliation procedure (Circular No. 246, under D). As concerns your complaints about bullying behaviour by your [supervisor], I have found no facts substantiating this. Also in order to safeguard the good reputation of your [supervisor], I must ask you to refrain from sending letters as referred to above.”

Further, the “Note for the record” dated 22 January 2003 that summarised the meeting of 21 January puts forth no mention of an investigation into the allegations of harassment. The complainant had written a letter, dated 5 December 2002, to the Principal Director of Administration in DG1 which was copied to the Principal Director of Search, in DG1, the President of SUEPO, the Principal Directorate of Personnel and the Office’s medical adviser. In this letter he explained that on the mornings of 25 November and 2 December 2002, Mr V. came into his office and started to insult and threaten him. He asked Mr V. to put his questions and requests in writing and then tried to leave his office, but Mr V. impeded him from leaving the office by putting himself against the door. After the first incident he went to his colleagues for advice. During the incident of 2 December 2002, when he was finally able to leave his office, Mr V. followed him into the corridor shouting at him and threatening him.

7. Considering the specific nature of these allegations, it is unacceptable that no investigation took place. Moreover, it is incomprehensible that no mention of the incident was made by the Organisation either in the above-mentioned “Note for the record” or in the letter from the Director of Personnel of 21 February 2003. In Judgment 1344, in which it ruled on the complainant’s first complaint, the Tribunal sanctioned the Organisation for having disguised punitive measures as routine assessments of the complainant’s work. An improper attitude towards the complainant having been identified, the Organisation should have been henceforth more attentive in its dealings with him in order to avoid the further deterioration of that negative work environment. Moreover, taking into account the complainant’s fragile physical and mental health, which was known to the Organisation, it had a clear duty to protect him. The Tribunal is of the opinion that the offer of a transfer does not absolve the

Organisation of the responsibility it had towards the complainant to investigate his allegations of harassment, bullying and mobbing.

8. The impugned decision must therefore be set aside. However, in view of the circumstances, it is unclear that, even if the Organisation had thoroughly investigated the allegations, the complainant would have worked until his statutory retirement age or would have been deemed eligible for an invalidity pension due to occupational disease. In any event, as a result of the Organisation's breach of its duty of care, the complainant lost a valuable opportunity to establish his allegations and thus the possibility of working in an acceptable work environment until retirement age which he would reach in October 2013. The loss of that opportunity warrants an award of material damages in the amount of 25,000 euros. It has not been established that the complainant suffered physical pain as a result of the Organisation's failure to investigate his allegations. The Tribunal concludes nevertheless that the Organisation's failure to carry out an investigation was an affront to the complainant's dignity and caused him stress, for which he is entitled to moral damages in the amount of 10,000 euros. The complainant is also entitled to costs, which the Tribunal sets at 3,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.
2. The Organisation shall pay the complainant material damages in the amount of 25,000 euros.
3. It shall also pay him moral damages in the amount of 10,000 euros.
4. The Organisation shall pay the complainant costs in the amount of 3,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 31 October 2008, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2009.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet