

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

D. (No. 11)

v.

EPO

134th Session

Judgment No. 4557

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr A. D. against the European Patent Organisation (EPO) on 5 August 2020 and corrected on 8 August, the EPO's reply of 11 November, the complainant's rejoinder of 18 December 2020 and the EPO's surrejoinder of 10 March 2021;

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 rejection of his request for a certificate from the medical adviser of the European Patent Office, the EPO's secretariat, attesting to his efforts to obtain his old medical file.

Facts relevant to this case are to be found in Judgment 4556 on the complainant's tenth complaint, also delivered in public this day. Suffice it to recall that in 2011, the complainant made various attempts to obtain a complete copy of the medical file for, in particular, the period when he had been treated by Dr Ki., an external doctor who had provided services to the Office from 1992 to 2003. Since Dr Ko., the Office's medical adviser, did not have the medical file kept by Dr Ki., who had died in the meantime, Dr Ko. told the complainant that it was physically impossible to provide him with the file in question. Dr Ko. added that

he did not have any file for the complainant and advised him to contact Dr Ki. directly.

On 15 March 2012 the complainant was invited by his supervisor to undergo a medical examination as referred to in Article 26(2) of the Service Regulations. He declined the invitation and at the same time asked Dr Ko. to issue a certificate attesting to his efforts to obtain his medical file from the period when he had been treated by Dr Ki. As he did not receive a reply, he repeated his request on 27 and 29 March, clarifying that he was not seeking an official opinion from a medical adviser and that his request was completely unrelated to aforementioned Article 26. On 10 July 2012 he informed Dr Ko. that, if he did not receive a satisfactory reply to his request, it was to be treated as an internal appeal for the purposes of Articles 106 to 108 of the Service Regulations. On 11 September 2012, following the rejection of his request, his appeal was referred to the Internal Appeals Committee (IAC), which delivered an opinion on 17 June 2015 recommending that the appeal be dismissed as manifestly irreceivable. That recommendation was endorsed by the President of the Office in a decision of 24 July 2015. The complainant impugned that decision in his fourth complaint to the Tribunal.

Judgments 3694 and 3785 were delivered in public on 6 July and 30 November 2016 respectively. Although these judgments concerned cases that did not involve the complainant, they found the membership of the IAC at the time when it issued its opinion of 17 June 2015 to be unlawful. The President of the Office therefore withdrew his decision of 24 July 2015 and on 1 March 2017 remitted the complainant's internal appeal to a differently composed IAC. In Judgment 4256, delivered in public on 10 February 2020, the Tribunal noted the withdrawal of that decision and dismissed the complainant's fourth complaint on the grounds that it had become devoid of object.

After a fresh consideration of the appeal and the provision of further explanations by the Office, the IAC delivered a unanimous opinion on 26 June 2019. It decided to deal with the complainant's appeal in a summary procedure, pursuant to Article 9 of the Implementing Rules to Articles 106 to 113 of the Service Regulations. It unanimously

recommended that the appeal be rejected as manifestly irreceivable on the grounds that it was not directed against an act adversely affecting the complainant. It considered that the refusal to issue the requested certificate did not affect the rights and obligations arising from the complainant's administrative situation. Unsuccessful attempts were subsequently made by the EPO and the complainant to reach an amicable settlement. In a letter of 15 May 2020, the complainant was informed that the President of the Office had decided to endorse the IAC's recommendation. That is the impugned decision, which bears the reference R-RI/2017/076.

The complainant asks the Tribunal to set aside the impugned decision and the IAC's opinion and to order the EPO to issue a certificate attesting to his "indefatigable efforts" to obtain a copy of his old medical file. He claims compensation in the amount of 40,000 euros for the moral injury allegedly suffered, with interest at the rate of 5 per cent from 15 March 2012 until the date when the certificate is issued, payment of a sum of 20 euros per day for delay in issuing the certificate, and an award of 7,000 euros in costs.

The EPO submits that the complainant is irreceivable *ratione materiae* inasmuch as the complainant does not specifically allege a non-observance of his terms of appointment. It also contends that there was no act adversely affecting the complainant, that he has no cause of action and that his new claims are irreceivable since he failed to exhaust internal means of redress. It asks the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant requests that the Tribunal set aside both the IAC's opinion of 26 June 2019 and the final decision of the President of the Office of 15 May 2020, order the EPO to issue a certificate "attesting to [his] indefatigable efforts to obtain a copy of [his] medical file" and to award him moral damages in the amount of just over 40,000 euros for moral injury, exacerbation of affronts to his dignity, integrity and honour, and the undue delay in issuing the certificate, as

well as costs in the amount of 7,000 euros “for the time and energy consumed over a difficult [eight] years of prevarication”.

2. Under Article II, paragraph 5, of its Statute, the Tribunal is “competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations”.

3. At the outset, the Tribunal notes that, as the EPO rightly points out, in his complaint the complainant does not allege that any provision of his terms of appointment or of the EPO’s Service Regulations has been breached. His request for a certificate attesting to his efforts to obtain his medical file is not based on any such provision. In particular, as the Organisation observes, the request finds no support in Articles 26 and 26a of the Service Regulations, which relate to medical examinations and the medical adviser. Moreover, in his emails of 29 March, 15 May and 10 July 2012, which he sent on this subject, the complainant acknowledged that he was merely appealing to Dr Ko.’s “willingness to help” and the “promises” he had allegedly made during their previous communications. However, the Tribunal has consistently dismissed complaints that do not specifically allege a non-observance of the terms of appointment or the applicable staff regulations as referred to in Article II, paragraph 5, of its Statute (see, for example, Judgments 4317, consideration 4, and 4458, consideration 6).

Moreover, since the Organisation was not under any obligation, the duty of care to which the complainant refers is not applicable to the issuance of such a certificate.

4. In the light of the foregoing, the complaint must be dismissed in its entirety owing to the Tribunal’s lack of jurisdiction to hear it.

5. The complainant has requested an oral hearing. However, in view of the Tribunal’s lack of jurisdiction, which he could not effectively have challenged, this request must be dismissed as being without object.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 2 May 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ