

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

B. and H.-B.

v.

EPO

125th Session

Judgment No. 3975

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr G. B. and Ms H. J. H.-B. against the European Patent Organisation (EPO) on 8 May 2017 and corrected on 24 August 2017;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainants are the successors (the brother and sister) of Mr J. B., a former official of the European Patent Office, the EPO's secretariat, who passed away on 15 March 2017.

2. On 16 June 2015 the late Mr B. filed a request for review of the Administrative Council's decision CA/D 2/15 of 26 March 2015 amending the provisions of the Service Regulations for permanent employees of the European Patent Office relating to sick leave and invalidity. As this request for review was rejected as unfounded on 10 August 2015, he lodged on 10 November 2015 an internal appeal which was registered under the reference RI/174/15.

3. In September 2015 Mr B. was diagnosed with a particular condition and his treating doctor stated that it was unlikely that he would be able to return to regular employment.

On 23 September 2015 Mr B. submitted a request for early retirement as from 1 January 2016. He also requested to be paid, in the event of permanent invalidity, a lump sum pursuant to Article 84 of the Service Regulations. Having received no final decision from the President, Mr B. filed, in February 2016, a request for review against the implicit rejection of his requests. In the absence of a decision concerning this request, he lodged on 9 May 2016 an appeal which was registered under the reference RI/58/16. The appeals were joined and dealt with by the Appeals Committee, resulting in an opinion issued in December 2016.

4. On 8 May 2017 the complainants filed a complaint with the Tribunal. They consider that there has been an implied decision to reject both internal appeals and they base their complaint on Article VII, paragraph 3, of the Statute of the Tribunal.

5. The complainants' approach is mistaken. The Tribunal's case law makes it clear that where the Administration takes any action to deal with a claim, by forwarding it to the competent authority for example, this step in itself constitutes a "decision upon [the] claim" within the meaning of Article VII, paragraph 3, of the Statute, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3428, consideration 18, and 3146, consideration 12). On 1 September 2016 Mr B. was informed that his appeals had been joined and that the matter would be dealt with pursuant to the summary procedure. On 8 December 2016 Mr B. was informed that the Appeals Committee had sent its opinion to the competent appointing authority whose decision would be communicated to him, with the said opinion, in due course.

Thus, the complainants cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that both appeals have been implicitly rejected, as the proceedings are still ongoing.

6. Although the amount of time that the EPO has taken to process these internal appeals appears, *prima facie*, to be excessively long, the Tribunal notes that the public delivery on 30 November 2016 of Judgment 3785, dealing with the composition of the Appeals Committee, may well account for the fact that the complainants did not receive a final decision at the end of 2016. Indeed, given the finding of the Tribunal that the Appeals Committee was not composed in accordance with the applicable rules, a final decision could not have been based on the opinion of the Appeals Committee in relation to the internal appeals.

7. Since the complainants have not exhausted the internal remedies available to them as required by Article VII, paragraph 1, of the Statute of the Tribunal, the complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

However, the complainants may seek compensation for any undue and unjustified delay in the processing of the internal appeal if and when they impugn the final decision on the internal appeals.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ