W.

v.

EPO

120th Session **Judgment No. 3541**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms B. U. W. against the European Patent Organisation (EPO) on 5 January 2012, the EPO's reply of 30 April, the complainant's rejoinder of 10 August, the EPO's surrejoinder of 17 October 2012, its additional submissions of 23 March 2015, and the complainant's comments thereon of 31 March 2015;

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 challenges the lower rate applied by the EPO to the retroactive payment of the lump sum education allowance for each of her four stepchildren for the period July 2004 to July 2006 (25 per cent versus 140 per cent).

The complainant joined the European Patent Office – the EPO's secretariat – in 1998 and was initially assigned to its Munich office. After her marriage in 2000, the complainant applied for and was granted the dependents' allowance for her spouse's four children (hereinafter "the children"), in accordance with Article 69(3)(a) of the Service

Regulations for Permanent Employees of the European Patent Office (hereinafter "the Service Regulations"). The children, who all have Senegalese citizenship, continued to live in their father's house in Senegal together with their grandmother, in the close vicinity of one parent while the complainant's spouse moved to Germany. Subsequently, the German authorities denied the applications for immigration visas for the children.

Upon the complainant's transfer from the Munich to the Berlin office in 2004, she applied for the education allowance for the four children, under Article 71(2) of the Service Regulations. On the application form she marked the box "child living at home". Her application was initially denied but, following a request for review, it was granted in December 2005 in view of the special circumstances of the case, namely that the children were not allowed to immigrate to Germany and were thus unable to attend schools which corresponded to their educational stage and which were within 80 km of the complainant's place of employment, as required by Article 71(2)(a) of the Service Regulations, due to circumstances beyond the complainant's control. A lump sum education allowance for all four children, calculated in accordance with Article 71(6)(b) of the Service Regulations, was granted retroactively for each month from July 2004 onwards at the rate of 25 per cent of the dependent child allowance – the rate applicable to children "living at home". This retroactive payment was made in February 2006. Thereafter, the education allowance for each child was paid monthly and reflected on the complainant's pay slips.

In January 2007, the responsibility for the payroll of the staff in Berlin was transferred from Munich to The Hague. Around the same time, and as a result of the transfer, the complainant and other members of the Personnel Administration in Berlin received payroll-related training from colleagues in The Hague. According to the complainant, she was then informed of a common practice within the EPO whereby the phrase "not living at home" in Article 71(6)(b) was defined as meaning that the child does not live with its mother and/or its father. Subsequently, the colleague who was in charge of the training in

The Hague forwarded to the complainant an e-mail dated 6 September 2006 which seemed to confirm this practice.

Relying on this information, the complainant indicated in her applications for education allowances for the 2006/2007 school year that the children were "not living at home". In a decision of 4 January 2008 on these applications, the Principal Director of Human Resources decided that the children were to be considered as "not living at home" and, therefore, that the allowance would be paid at the higher rate of 140 per cent with retroactive effect from 1 November 2006. He noted that this decision was an "administrative correction" and that the retroactive payment of the education allowance for the period July 2004 through October 2006 could not be granted, because the complainant had not challenged the earlier decisions regarding the rate of the allowance for that period within the applicable time limit. The retroactive effect was determined from the date when the responsibility for payment of salaries was transferred to The Hague, plus two additional months granted in order to take into account the time limit for lodging an internal appeal. This decision was communicated to the complainant on 14 January and reflected in her pay slip for January 2008.

In February 2008 the complainant asked the Principal Director to review his decision not to apply the higher rate for the period July 2004 through October 2006, asserting that she had been misled by the Personnel Administration in Munich when she had submitted her earlier applications for the education allowance. Having no basis to doubt the information given, she argued that the usual time limits for filing appeals should not apply in this case.

Having received no reply from the EPO, the complainant filed an internal appeal on 22 April 2008, challenging the decision not to grant retroactive payment of the lump sum education allowance at the rate of 140 per cent for the period July 2004 through October 2006.

On 20 June 2008 the complainant was informed that the President of the Office considered that the relevant rules had been applied correctly. Consequently, her appeal had been referred to the Internal Appeals Committee (IAC) for an opinion.

In July 2008, the EPO revisited its decision as to the retroactive effect, and the complainant received a sum consisting of the difference between the lower and the higher lump sum for the period from August 2006 to October 2006.

The IAC convened a hearing in April 2011 and issued its opinion on 9 August 2011. A majority of the IAC found that there was no common practice with respect to the application of Article 71(2) and (6)(b) and recommended that her appeal be dismissed in its entirety, on the grounds that her request for a lump sum payment for educational costs at the rate of 140 per cent for the period July 2004 through October 2006 was time-barred and that, even if it were deemed receivable, there was nothing in the re-evaluation to her advantage that implied that the previous assessment of the facts by the Personnel Administration in Munich was unlawful or had been carried out in bad faith, or that the re-evaluation necessarily entailed its retroactive application to when the education allowance was first requested and granted. A minority considered that there was evidence of a practice which the EPO had not followed and recommended granting retroactive payments with respect to the period July 2004 through October 2006.

By a decision of 10 October 2011 the complainant was informed that the President had decided to follow the recommendation of IAC majority and to reject her appeal as unfounded. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to order the EPO to pay for each of her spouse's four children the education allowance at the rate of 140 per cent for the period July 2004 to July 2006, less the 25 per cent she has already received, with interest. She seeks compensation for the excessive delay in the internal appeal proceedings and claims moral damages.

The EPO rejects the complainant's claims as both irreceivable and unfounded.

CONSIDERATIONS

1. This complaint concerns the payment of education allowances for the complainant's spouse's four children ("the children").

2. In general terms, Article 71(1) of the Service Regulations provides for the payment of an education allowance for the dependent children of permanent employees who are not nationals of the country in which they are serving. Exceptionally, permanent employees who are nationals of the country in which they are serving may be awarded the education allowance provided that the conditions set out in Article 71(2) are met. Article 71(6) sets out the rates at which the various education costs are reimbursed. Relevantly, Article 71(6)(b) provides for the payment of a lump sum for miscellaneous education costs. The amount of the lump sum payment is calculated on the basis of whether the "child [is] living at home" or the "child [is] not living at home" and is expressed as a percentage of the dependent child allowance being 25 per cent and 140 per cent respectively. The child's educational level is also factored into the calculation of the allowance.

3. A detailed account of the complainant's claim for the education allowances for the children is unnecessary. On 16 December 2005, the Personnel Administration Department informed her that having regard to the exceptional situation of her case, that is, the children not being permitted to immigrate to Germany, the education allowance would be granted. She was also referred to a colleague in the Personnel Administration in Munich for assistance with the formalities of the application.

4. The complainant states that when she was filling out the application forms for the education allowance it was unclear to her how the EPO defined "child living at home" and "child not living at home". As she was unable to find any assistance in the documentation available to employees, she contacted the person in Munich to whom she had been referred. The complainant was informed that since the children lived with their grandmother, they would be considered as

"living at home". The complainant completed the application forms marking the box "living at home" for each child. In February 2006, the lump sum education allowance at the rate of 25 per cent was paid retroactively from July 2004 and monthly thereafter.

5. In January 2007, the payroll responsibility for Berlin was transferred from Munich to The Hague. Around the same time, the complainant attended payroll-related training from colleagues in The Hague. During the course of this training, the complainant learned of a common practice within the EPO that "not living at home" in Article 71(6)(b) was defined by the Administration to mean that the child does not live with its mother and/or its father. Subsequently, the trainer from The Hague forwarded to the complainant a 6 September 2006 e-mail from the Administration in Munich to a number of colleagues in Munich working in salaries, pensions and finance. It reads:

> "The interpretation of the phrase 'living at home' with regard to Article 71 (6) (education allowance) has, from time to time, raised questions in the past. [Name of colleague] answered some of our case examples with an email of 16.2.2006 which would lead to another interpretation than our current practice (context: 'separate living arrangements caused by educational needs'). As we were not happy with that, especially since we have in the past interpreted 'living at home' as "living with father and/or mother', I have asked to clarify again with involvement of DG 5. As you can see from the below our current interpretation remains valid: A child 'is living at home' when it lives 'with father and/or mother' so to say under the same roof."

6. As a result, the complainant asked the Personnel Administration in The Hague to take the necessary steps for the children to be considered as "not living at home" and for receipt of the education allowance at the rate of 140 per cent.

7. With her rejoinder the complainant submitted additional e-mails leading up to the one cited above that appear not to have been in evidence before the IAC. They are included here for ease of reference.

In an e-mail dated 31 August 2006, sent by the Personnel Administration to the Director of Employment Law, it is stated as follows:

> "We would appreciate your advice as concerns the application of Art 71 SR.
>
> According to the Office's practice, recently confirmed by the IAC (RI …) the term "at home" in Art 71(6)(b) should be interpreted as living in the household of at least one parent. The purpose of the additional lump sum payment is thus to compensate the additional expenses which occur if the educational situation requires the child to live outside the parental household.
>
> The Office needs to decide whether in the following two cases the child may be considered as living at home:
>
> (i) The child attends university in Munich, both parents live in Munich. The child does not share apartment with his parents but lives separately, in an apartment owned by his parents.
>
> It seems that as no additional costs arise for the parents, and the choice of separate living arrangement is not due to the educational needs, the child should be considered as living at home.
>
> (ii) Similar as (i), the flat being rented.
>
> This seems more a borderline case. Additional costs arise, however, again this appears mainly due to personal choices and should not be covered by the Office.
>
> Could you inform us, whether you agree with the above?"

In an e-mail of 1 September 2006, the Director of Employment Law responded to the Personnel Administration, stating that:

> "I think that, unfortunately, it will be difficult to defend the argument that a student flat at his/her place of study which is at the duty station/place of residence of the staff member/spouse forms part of the family home. We will no doubt be given a thousand more or less good reasons for this situation (proximity to the university, need for somewhere quiet, etc.) and we will be dragged into further disputes. When all is said and done, if rent has to be paid by the parents, or if they allow their child to stay for free in housing for which they could otherwise charge rent, there is indeed loss of income (more or less) linked to education.
>
> If this situation is to be avoided, it will be necessary to review the terminology …"*

In an e-mail of 6 September 2006 from the Personnel Administration to the Head of Section Salaries and Allowances in Munich, it is stated as follows:

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* Registry's translation.

> "Hello
> As announced we had also asked DG5 [general legal services et all.] for advice. Mr. [Director of the employment law in DG5] advises the interpretation according to the wording of the Service Regulations. According to this the child is not living at home if it lives in a rented apartment or also in a separated apartment which belongs to the parents. We should follow this recommendation. In the future, however, it remains to be considered, if the Service Regulation could be defined more clearly."

8. On 4 January 2008 the Principal Director of Human Resources made two decisions: first, he agreed with the interpretation that the children were "not living at home", thus triggering the higher rate for the lump sum education allowance and, second, that the payment at the higher rate would be retroactive to 1 November 2006. In this latter regard, the decision states:

> "the case came to light on transfer of the salary payments from Munich to The Hague. As [the complainant] did not contest the level of allowance earlier than the date of transfer of payment of salaries, the allowance should not be paid for that period.
>
> Considering the notion that this can therefore be interpreted as an administrative correction, the allowance should be paid as from two months before the date of the case coming to light by analogy to decision of the appeal's committees granting retroactivity up to two months before the introduction of an appeal.
>
> Therefore, I have decided that the allowance to the level of 140% should be paid and that this decision shall apply from 1.11.2006."

9. It is convenient to note that although this decision made the payment retroactive to 1 November 2006, the payment was later made retroactive to August 2006.

10. In February 2008, the complainant requested a review of the decision regarding the retroactive application of the higher rate for the lump sum payment claiming that it should have been made retroactive to July 2004. She acknowledged the time limit in the Service Regulations for appealing a decision and stated that she would have been in a position to appeal if she had known about the definition of "living at home" being applied by the EPO. As well, she asserted that she was misinformed by the Personnel Administration in Munich that the

children would be considered as "living at home"; that she only became aware of the definition of "living at home" during a training program in early 2007; and that she could not have known about the definition as there was no information available to employees on this topic.

11. On 20 June 2008, the Director of Regulations and Change Management responded to the request for review. The decision reads:

> "Your request can not be met in full, since the statutory time limits have not been met.
>
> On 16.12.2005 it was decided by way of an exception and considering the exceptional circumstances of your case (the children of your spouse cannot enter Germany) to grant you education allowance. The payment of the allowance occurred at the rate applicable to children living at home which was also in line with the information provided by yourself on the application form.
>
> It was only when requesting education allowance for the school year 2006/2007 that you indicated that the children were not living at home. Again, considering the exceptional and unique circumstances of the case, it was decided to increase the amount of the lump sum to the rate applicable for children not living at home.
>
> In view of the deadline provided in Article 71(12) [of the Service Regulations] it is only possible to grant you education allowance at the increased rate of 140% as from the school year 2006/2007. A respective payment of the arrears will follow as soon as possible.
>
> As regards the school years 2004/2005 and 2005/2006 it is not possible to meet your request. After an in-depth examination of the case, it could not be established that when handling your case, the Office had provided you erroneous information which could justify lifting the statutory time limits."

12. This was followed by another letter of the same date indicating that the President considered the relevant rules had been followed and applied correctly and the complainant's request could not be granted. The case was referred to the IAC.

13. Before the IAC, in response to the EPO's submission that the retroactive claim for the period from July 2004 to 2006 was time-barred, the complainant advanced the same arguments put forward in

her request for review and added that the Administration had singled her out for differential treatment and had acted in bad faith by deliberately misleading her about the amount of the education allowance to which she would be entitled.

14. In its opinion, the majority of the IAC framed the issue as to "whether there are any circumstances in this case which would justify an exceptional suppression of non-receivability". Citing Judgment 955, under 4, the majority observed that "the culpable conduct of an Organisation in bad faith, so as to mislead an official, might be grounds for an exceptional suppression of non-appealability". The majority concluded that that there was no culpable conduct that would warrant an exceptional suppression of non-appealability. The majority also found that even if the appeal was receivable "there [was] nothing in the mere re-evaluation of the facts underpinning the [complainant's] request for the educational allowance, which necessarily entail[ed] the conclusion that this must be done retroactively to the earliest point in time where such education allowance was requested and granted".

15. The minority of the IAC found that the 6 September 2006 e-mail evidenced an existing practice in the assessment of whether children were "living at home" and that, had this practice been followed in December 2005 when the request for the education allowance was initially granted, the children would have been granted the status of "not living at home". The minority found that the Administration's failure to apply its practice to the children to the detriment of the complainant and its failure to inform the complainant of the existing practice and its reason for deviating from the practice "might" constitute bad faith. The minority also found that given there was no change in the complainant's factual situation between July 2004 and August 2006, there was no logical basis to limit the retroactive payment to August 2006 and that doing so appeared to be simply arbitrary. The minority recommended allowing the appeal for the retroactive payment together with interest. In the 10 October 2011 impugned decision, the President endorsed the findings and accepted the recommendation in the majority opinion and dismissed the appeal.

16. The EPO submits that although the complaint is receivable, the claim for retroactive payment of the education allowance at the higher level is time-barred. The initial decision granting the education allowance for the children at 25 per cent was made in December 2005 and was implemented in February 2006. The complainant did not challenge this decision or any of the pay slips granting the allowance at this rate within the ninety-day time limit in Article 108(2) of the Service Regulations. Accordingly, these decisions are final and cannot be appealed.

17. The EPO claims that the complainant's assertions of bad faith, misconduct and unequal treatment on its part are unfounded. It follows that the complainant's reliance on the breach of good faith exception identified in the case law that would permit the review of a decision beyond established time limits must be rejected. The EPO also notes that unequal treatment does not fall within the breach of good faith exception.

18. The complainant acknowledges that she did not challenge any of the pay slips for the period July 2004 to July 2006 within the ninety-day time limit. However, she maintains that her claim should not be considered time-barred due to the EPO's misconduct and bad faith. She submits that she was misinformed and led to believe that the children would be considered as "living at home" under Article 71(6)(b). At the time she claimed the education allowance, there was no information available to staff members regarding the definition of "living at home" under the Service Regulations. It was not until later that she became aware of the Office-wide existing practice that children are considered to be "living at home" only when they live with their mother and/or their father. Even though the Administration was aware that the children were living with their grandmother in Senegal, the common practice was not applied in her case, misleading her into believing that its common practice was different. Moreover, the EPO's failure to apply its common practice constitutes a breach of the principle of equal treatment.

19. The central issue is whether the claim for the retroactive payment of the lump sum education allowance at the higher rate for the period from July 2004 to July 2006 is time-barred.

20. The rules governing time limits stem from and are justified by the need for legal certainty. The case law is clear that a decision that has not been challenged within the relevant time limit is final and beyond challenge. However, the case law also recognizes exceptions that would permit the review of an otherwise final decision. One of the exceptions arises where there has been a breach of good faith. As explained in Judgment 3002, under 16, this "concerns the situation where an organisation has deprived one of its employees of the possibility of exercising his/her right of appeal by deliberately misleading him/her, or by concealing some paper from him/her with the intention of injuring him/her".

21. In the present case, the complainant's allegations of misconduct and bad faith on the part of the EPO are unfounded. There is no evidence that the EPO acted in bad faith, that is, deliberately misled her by telling her in response to her inquiry that for the purposes of the education allowance her spouse's children would be considered as living at home, misled her regarding the existence of a "common practice" in its application of the phrase "living at home" in Article 71(6)(b) or deliberately concealed it from her. Although, as will be discussed below, the EPO erred in law in its initial determination of the amount of the lump sum payment it does not amount to bad faith on its part. This finding, however, does not resolve the question as to whether the claim is time-barred.

22. A final decision may be subject to review in other circumstances not involving a breach of good faith. As stated in Judgment 2722, under 4, "a staff member concerned by an administrative decision may ask the Administration for review […] where the staff member is relying on facts or evidence of decisive importance of which he/she was not and could not have been aware before the decision was taken" (see Judgments 676, under 1; 2203, under 7; and 3002, under 14).

23. This is the basis upon which the complainant argued both at the time of her initial request for review in February 2008 and before the IAC that her claim for the retroactive payment of the allowance at the higher rate for the period July 2004 to July 2006 was not time-barred. As noted above, the allegation of bad faith was first advanced in the submissions to the IAC. However, the IAC and in turn the President, failed to consider this exception to the operation of the time-bar. Accordingly, it remains to be determined whether this latter exception applies in the circumstances. Although the EPO did not specifically address this exception to the operation of the time-bar, its assertions regarding the existence of a definition or "practice" made in the context of its submissions on the issues of bad faith, misconduct and unequal treatment are equally relevant to this analysis.

24. The first question is whether the fact on which the complainant relies existed at the time the decision to pay the education allowance at the lower rate was made. The decision under Article 71(2) granting the complainant the education allowances for the children was made in December 2005. Once that determination was made, the only remaining question was the rate at which the lump sum amount would be paid. The precise date of that decision is not in the record, however, as it was first implemented in February 2006, it may be assumed that it was made in early 2006.

25. The complainant contends that at the time the rate for the lump sum payment for the children was determined, the EPO's interpretation of the phrase "child living at home" was a child living with its mother and/or its father.

26. The EPO maintains that there was no existing practice at the material time regarding the definition of "living at home" and that the phrase was interpreted on a case-by-case basis. In support of this position, the EPO points to the fact that the letter from the Principal Director of Human Resources indicates that he considered the circumstances and agreed with the "interpretation" that the children were not living at home. Moreover, it submits that the complainant's

allegation as to what she was told at the payroll training is insufficient to establish the existence of a definition. With respect to the complainant's reliance on the e-mail exchange, the EPO counters that it indicates there was no practice. It shows that advice was requested from the Director of Employment Law in relation to specific circumstances. If there had been a practice, there would have been no reason to seek advice. The EPO argues the exchange shows the phrase has given rise to interpretation issues and whether a child is "living at home" involves an assessment of the circumstances in light of the Regulation's purpose. Finally, the EPO submits that its re-evaluation of the complainant's situation (made further to her having completed a new request form) and its characterization of this as a "correction" does not imply the existence of an established practice.

27. In its pleadings, the EPO does not specifically address the question of whether there was a settled interpretation of the phrase "child living at home" as living with the mother and/or the father at the material time. Moreover, it does not claim or point to a different definition or interpretation at the time. Instead, it denies the existence of a "common practice" and stresses that the phrase was applied on a case-by-case basis.

28. Although the evidence does not support this position, it requires comment. Article 71(6)(b) provides a formula for the calculation of the amount of the lump sum payment portion of the education allowance. While it is true that the phrases "living at home" or "not living at home" may arguably be subject to more than one interpretation, it does not follow that in the application of the formula, different interpretations may be applied on a case-by-case basis. Instead, the first task is to determine the meaning of the phrases on the basis of the applicable principles of statutory interpretation. This is essential to the uniform application of this type of provision that is not discretionary. It is also true that the meaning or the interpretation of a particular provision adopted by the Administration may be subject to challenge. However, until the interpretation is overturned, the Administration is obliged to

make the interpretation known to its employees and to apply the adopted interpretation consistently across the organisation.

29. The e-mail exchange shows that the above interpretation had been in existence for some time and, at least, at the time the rate of the lump sum payment was determined in early 2006. Contrary to the EPO's position, the evidence shows that it was the application of the interpretation itself that was done on a case-by-case basis as reflected in the two cases for which advice was sought in the e-mail exchange of late August and early September 2006.

30. The complainant's assertion that she did not know and could not have known about the existing interpretation at the time the decision was made is not challenged by the EPO and is accepted. The last question remains whether the evidence and its underlying facts are of decisive importance. That is, would it have been determinative of the outcome of the earlier decision. Of necessity, this requires to some extent a consideration of the merits of the case.

31. The EPO points out that the complainant herself indicated on the application forms for the education allowances that the children were "living at home". Thus, the decision to grant her the allowance at the lower rate applicable to children "living at home" was grounded on her own reporting of the children's circumstances. As the complainant answered the question on the application forms on the advice she received from the Personnel Administration in Munich, her own reporting cannot be relied upon to foreclose the application of the exception to the operation of the time bar. It is evident that if the complainant had known at the time she completed the formal application for the education allowances that the EPO interpreted the phrase living at home as "living with the mother and/or the father", she would not have indicated on the forms that the children were "living at home". More importantly for the purpose of this analysis, at the time the rate for the lump sum payment was decided, the children clearly did not come within the meaning of "living at home" applied by the EPO at that time. In these circumstances, there is no doubt that the fact relied upon by the

complainant would have materially altered the decision. It was of decisive importance, as discussed in considerations 22 and 30, above.

32. As the complainant has established the requisite elements of the exception, the early 2006 determination that the amount of the lump sum payment would be at the lower rate is subject to review.

33. In the 10 October 2011 decision, the President observed that as indicated by the majority of the IAC, the EPO, in the exercise of its discretion, granted the complainant the education allowance on the basis of its assessment of the exceptional circumstances of her case. The circumstances considered included the impossibility of the children immigrating to Europe and that they were living with their grandmother in the country of their nationality where they had always lived, in the vicinity of one parent and in a house owned by their father. Moreover, the 6 September 2006 internal e-mail did not relate to the complainant's case and, as such, did not consider her specific circumstances. More importantly, this showed the possibility of different interpretations of the phrase "child living at home" in Article 71(6)(b) of the Service Regulations. Lastly, as there was no bad faith in handling the complainant's request, the claim for further retroactivity together with interest was not justified.

34. Although the Tribunal agrees that the EPO's actions in the handling of the complainant's case do not amount to bad faith, some further observations are necessary. Once the December 2005 decision was made, this case was about the amount of the lump sum payment. The rationale underpinning the decision to grant the education allowances under Article 71(2), namely the complainant's unique and exceptional circumstances, was no longer relevant. In particular, it was partly irrelevant to the determination of the applicable rate for the calculation of the amount of the lump sum payment under Article 71(6)(b) and it was wholly irrelevant in relation to the extent of the retroactivity.

35. It must also be observed that the President's endorsement of "the possibility of different interpretations of the term 'child living at

home'" reflects an imperfect appreciation of an organisation's obligation of ensuring the uniform application of its regulations in accordance with its interpretation of the provision.

36. In the absence of any evidence of a relevant change in the complainant's factual situation between the period July 2004 to July 2006 and August 2006, there is no rational basis on which to limit the retroactivity of the lump sum payment at the higher amount to the latter date. The decision to do so can only be regarded as arbitrary. In light of the above conclusions, a consideration of the claim of unequal treatment is unnecessary.

37. Accordingly, the President's 10 October 2011 decision and his earlier 20 June 2008 decision will be set aside. The EPO shall pay the complainant for each of her spouse's children, the lump sum education allowance at the rate of 140 per cent of the dependent child allowance less the 25 per cent already paid to her for the period July 2004 to and including July 2006, together with interest at the rate of 5 per cent from the dates at which the payments would have been due to the date of payment to the complainant.

38. The complainant is also entitled to moral damages for the wrong advice she was given regarding the status of the children at the time the applications for the education allowances were being prepared, with the consequences that she has had to pursue her grievance both internally and before the Tribunal. The breach of the EPO's obligation to inform the complainant of a material fact also warrants an award of moral damages in the amount of 5,000 euros.

39. In her claim for relief, the complainant seeks compensation for the "overlong procedure". It is not clear whether the claim concerns moral damages for delay in the internal appeal proceedings or compensation for some other delay, for example, in the processing of her application for the education allowance. Under Article 6(1)(b) of the Tribunal's Rules, "the arguments of fact and law must appear in the complaint itself (supplemented, if need be, by the rejoinder)"

(Judgment 2264, under 3e). Here, neither the complaint nor the rejoinder contains arguments of fact and law that would permit the Tribunal to understand this claim. Accordingly, this claim for relief will not be granted.

DECISION

For the above reasons,

1. The President's 10 October 2011 decision, and his earlier 20 June 2008 decision, are set aside.

2. The EPO shall pay the complainant for each of her spouse's children, the lump sum education allowance at the rate of 140 per cent of the dependent child allowance less the 25 per cent already paid for the period July 2004 to and including July 2006, together with interest at the rate of 5 per cent from the dates at which the payment would have been due to the date of payment to the complainant.

3. The EPO shall pay the complainant moral damages in the amount of 5,000 euros.

4. All other claims are dismissed.

In witness of this judgment, adopted on 21 May 2015, Ms Dolores M. Hansen, Judge presiding the meeting, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 30 June 2015.

DOLORES M. HANSEN

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ