

R. (No. 6) and W. (No. 10)

v.

EPO

121st Session

Judgment No. 3622

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms S. R. (her sixth) and Ms M. W. (her tenth) against the European Patent Organisation (EPO) on 12 July 2013, corrected on 18 July 2013, both complainants relying on a single legal brief, and the EPO's single reply of 13 December 2013, no rejoinder having been submitted by the complainants;

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 none of the parties has applied;

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

The complainants are challenging the retroactive implementation of the transitional measures accompanying the replacement of the former invalidity pension with an invalidity allowance.

On 14 December 2007 the Administrative Council of the EPO adopted decision CA/D 30/07 abolishing the invalidity pension system and replacing it with an invalidity allowance scheme with effect from 1 January 2008. Article 29 of CA/D 30/07 provided for transitional measures aimed at ensuring that employees who were already in receipt of an invalidity pension on 1 January 2008 would continue to receive

the same level of benefits when their invalidity pension was changed to an invalidity allowance.

The legality of the transitional measures contained in Article 29 was challenged through a number of internal appeals. The Internal Appeals Committee found that the transitional measures were unlawful on the grounds that the General Advisory Committee (GAC) had not been consulted prior to their adoption, but it did not however recommend that they be set aside.

In order to remedy this procedural flaw, in August 2012 the President of the European Patent Office, the EPO's secretariat, submitted the disputed transitional measures to the GAC for an opinion. After having received a divided opinion on the matter from the GAC, on 8 October 2012 he resubmitted his initial proposal regarding the transitional measures to the Administrative Council, asking it to adopt them with retroactive effect from 1 January 2008. On 26 October 2012, the Council endorsed the President's proposal and adopted decision CA/D 15/12, confirming the transitional measures with effect from 1 January 2008.

Acting in their capacity as staff representatives, the complainants challenged this decision by lodging an internal appeal with the Chairman of the Administrative Council on 17 December 2012. They contended that decision CA/D 15/12 violated the acquired rights of staff members who had joined the EPO prior to 1 January 2008, and they requested that it be annulled and that the financial provisions relating to permanent invalidity in force prior to 1 January 2008 be restored.

By two separate letters dated 11 April 2013, the Chairman of the Administrative Council informed the complainants that the Council had unanimously decided to treat their appeals as requests for review and to dismiss them as manifestly irreceivable. The complainants impugn these decisions of 11 April 2013.

They ask the Tribunal to quash decision CA/D 15/12 and to restore the financial provisions relating to permanent invalidity that were in force prior to 1 January 2008. In addition, they claim material and moral damages and costs.

The EPO, which was authorised by the President of the Tribunal to confine its reply to the issue of receivability, asks the Tribunal to dismiss the complaints as irreceivable for lack of a cause of action. They submit that they are directed against a general decision which has not been applied to the complainants in a manner prejudicial to them, and the fact that they are acting in their capacity as staff representatives is irrelevant in this regard.

CONSIDERATIONS

1. On 14 December 2007 the Administrative Council of the EPO made a decision (CA/D 30/07) which had the effect of abolishing the invalidity pension and replacing it with an invalidity allowance effective 1 January 2008 and creating transitional provisions in relation to staff then in receipt of the invalidity pension. As a result of a successful challenge to the legality of the transitional measures, a further decision (CA/D 15/12) was made by the Administrative Council on 26 October 2012 endorsing the original transitional clause with retroactive operation.

The complainants, employees of the EPO and members of the Munich and the Central Staff Committees, filed an appeal with the Chairman of the Administrative Council against CA/D 15/12. They were both informed in writing on 11 April 2013 by the Chairman that their appeals had been treated as requests for review and that the Administrative Council had decided at its 135th meeting on 20 and 21 March 2013 that the requests were manifestly irreceivable and should be dismissed.

On 12 July 2013 both complainants filed a complaint with the Tribunal. The Tribunal will order that the two complaints be joined. The complainants challenge the rejection of their appeals and seek the quashing of CA/D 15/12. The EPO argues before the Tribunal that the complaints are irreceivable. The Tribunal notes that in the last paragraph of its letters of 11 April 2013, the EPO encouraged the complainants to file complaints with the Tribunal but it now challenges the reivability of their complaints.

2. It is convenient to deal with this issue of receivability at the outset. In their brief and anticipating the argument about receivability, the complainants simply say:

“According to established case law of the [Tribunal], staff representatives possess a legal status enabling them in that capacity to challenge regulatory decisions causing or likely to cause injury to a broad category of staff members, as in the present case. The present [complaints] should therefore be deemed admissible.”

3. In its reply the EPO develops an argument that the complainants cannot challenge CA/D 15/12 “because it is a rule of general application that has not yet been individually applied in a manner that [was] prejudicial to them”. The EPO extracted in its reply quotations from several judgments supporting, in various ways, this proposition (Judgments 1618, consideration 4; 1852, consideration 3; 2953, consideration 2; 1979, consideration 4; and 2953, consideration 3).

4. The complainants filed no rejoinder seeking to argue that this proposition was not correct. It is correct. Accordingly, the complaints are not receivable and should be dismissed.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 6 November 2015, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, 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 3 February 2016.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ