

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

**B., B., B., B., C. L. S., C., C., E., F. G., F., G., G. L., H., H.,
H., J., K., K. D., L., L.,
M., M., O. B., Ö., P.-V.,
P.-K., R.-T., R. M., S., S.-H., S., W.,
W.-P. and Z.**

v.

EPO

122nd Session

Judgment No. 3690

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms C. B., Ms B. B., Ms C. B., Ms C. B., Ms C. I. C. L. S., Ms C. A. C. C., Ms M. D. C., Ms K. E., Ms L. F. G., Ms L. R. A. F., Ms T. G., Ms A. G. L., Ms U. H., Ms S. H., Ms A. H., Ms A. S. J., Ms M. K., Ms G. M. K. D., Ms A. M. M. L., Ms Z. L., Ms P. V. M., Ms S. A. M. M., Ms J. O. B., Ms S. Ö., Ms A. I. P.-V., Ms K. D. E. P.-K., Ms S. R.-T., Ms M. R. M., Ms A. S., Ms C. S.-H., Ms C. G. S., Ms M.-F. W., Ms A. W.-P. and Ms A. M. Z. against the European Patent Organisation (EPO) on 23 September 2013 and corrected finally on 11 April 2014, the EPO's reply of 16 January 2015, the complainants' rejoinder of 22 April and the EPO's surrejoinder of 28 July 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainants' application for oral proceedings;

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

The complainants challenge the Administrative Council's decision to redirect their requests for review to the President of the Office for decision.

The complainants are permanent employees of the European Patent Office, the EPO's secretariat. Each of them was on maternity leave for some time in 2011.

On 11 December 2012 the Administrative Council adopted decision CA/D 17/12 on the payment of a collective reward to staff of the Office in active service during 2011. It provided that permanent or contract employees who were in active service during 2011 should be paid a collective reward, which would amount to 4,000 euros for each full-time staff member. Article 3 provided *inter alia* that reduced presence at work in 2011 due to absence other than part-time work would result in a correspondingly reduced individual reward. Any form of absence other than annual leave, home leave, leave taken on the basis of flexitime or compensation hours, would be deducted from the basic amount of 4,000 euros proportionally *pro rata temporis*.

In December 2012 each complainant was informed of the amount that she would receive pursuant to decision CA/D 17/12. As deductions were made in respect of their periods of maternity leave, they received, with their salary for December 2012, an amount that was less than 4,000 euros.

On 6 March 2013 they wrote to the Chairman of the Administrative Council requesting a review of decision CA/D 17/12. They alleged that deducting the period of maternity leave from the total time taken into consideration for the purpose of calculating the amount due to them pursuant to that decision was discriminatory. They asked the Administrative Council "to correct the total time used for the calculation of the reward, so that the periods of maternity leave are not deducted [from] the total working time" and to ensure that they be paid the corrected amount as soon as possible.

During its meeting held on 26 and 27 June 2013 the Administrative Council decided to refer to the President of the Office the requests for review of decision CA/D 17/12 which, as in this case, alleged adverse personal effects, and to reject as manifestly irreceivable those that merely contested the general decision, i.e. decision CA/D 17/12. That is the decision the complainants impugn before the Tribunal. By a letter of 12 July 2013, each complainant was informed of the Administrative Council's decision.

On 13 September 2013 the Principal Director of Human Resources, on behalf of the President, wrote to the complainants to inform them that their requests for review were rejected. She added that the decision could be contested by way of an internal appeal to the Appeals Committee.

The complainants ask the Tribunal to quash the Administrative Council's decision to redirect their requests for review to the President, to order the EPO to reimburse the deducted amounts for each of them, and to grant them moral damages and costs.

The EPO was authorised by the President of the Tribunal to reply only on the issue of receivability. It considers that the complaints are irreceivable, because the complainants do not impugn a final decision and have not exhausted the internal means of redress. The EPO also asks the Tribunal to make an award of costs against the complainants.

CONSIDERATIONS

1. One of the complainants, Mrs B., is a staff member of the EPO. She impugns what she describes in the complaint form as "the decision by which the request of the claimant for payment of the collective reward without deduction of the periods of special, sick and/or maternity leave in particular has been declined by referring it from the Administrative Council of the [EPO] to the President of the [Office]". Thirty-three other complainants are also staff members and have lodged complaints in the same terms. Their complaints are joined by the Tribunal. The decision authorising the deduction in respect of which the complainants are aggrieved was taken by the Administrative Council of the EPO in December 2012 and was embodied in decision

CA/D 17/12. They filed a request for review of decision CA/D 17/12 before the Administrative Council, which decided to refer the complainants' requests for review to the President.

2. The complainants seek by way of relief that the Administrative Council's referral decision mentioned in the preceding consideration be quashed. They also seek an order for the payment of the amount deducted together with moral damages for the breach of what are described as fundamental rights together with moral damages for delay plus costs. As a result of a decision of the President of the Tribunal communicated to the parties by the Registrar, the issue addressed in the reply, rejoinder and surrejoinder is confined to the receivability of the complaints.

3. The EPO submits that the complaints or aspects of them are not receivable on a number of bases. One is that the referral decision is not a final decision. The second is that internal means of redress have not been exhausted. The first proposition is correct as is the second. The parties, when formulating their pleas, did not have the benefit of the Judgment 3517 of the Tribunal dealing, effectively, with the same issues, which was delivered in public on 30 June 2015. That judgment addressed the same subject matter (the referral of a request to review decision CA/D 17/12), the question of whether the referral decision was a final decision and the question of whether the complainants, in that case, had exhausted the internal means of redress. For the reasons given in Judgment 3517, the complainants are not impugning a final decision and, in addition, have not exhausted the internal means of redress.

4. Central to the complainants' case in the present matter were the observations and conclusions of the Tribunal in Judgment 3053. In that case the Tribunal concluded that the decision of the Administrative Council to refer an appeal to the President of the Office was a final decision and that the Council had declined jurisdiction to hear the appeal. In Judgment 3517 the circumstances of Judgment 3053 were distinguished:

“However, in the present case, it cannot be said with the certainty evident in the earlier case [Judgment 3053], that the only body competent to hear

the complainants' request for review was the Administrative Council. In the earlier case, the decisions impugned were decisions to amend Implementing Regulations which were decisions which did not require implementation by their application to individual circumstances. However, in the present case, the impugned decision (CA/D 17/12) was a general decision that required implementation and was, in fact, applied with adverse effects on each of the complainants. Accordingly it is not correct to say, in this case, that the only body competent to hear the complainants' requests for review was the Administrative Council. Thus the decision to refer the requests to the President was not a decision by the only body competent to hear an appeal (in this case, a request to review), to decline jurisdiction. Rather it was a procedural decision to place the request to review before the appointing authority which, at least in the Administrative Council's opinion, was the appropriate body to determine the request for review. Approached this way, it also cannot be said that the Administrative Council made a decision on the outcome of the review."

5. For the preceding reasons, the complaints will be dismissed as irreceivable. The EPO seeks an order that the complainants pay some of their costs. This is inappropriate particularly given the fact that Judgment 3517 was not available to the complainants when they filed their complaints.

6. However, as the Tribunal noted in Judgment 3517, consideration 11, there is an argument that the approach of the EPO to adjust the reward to the disadvantage of the complainants by reference to periods of maternity leave is questionable.

DECISION

For the above reasons,

The complaints are dismissed, as is the EPO's counterclaim for costs.

In witness of this judgment, adopted on 9 May 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ