

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T. (No. 21)

v.

EPO

123rd Session

Judgment No. 3808

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-first complaint filed by Mr P. O. A. T. against the European Patent Organisation (EPO) on 2 May 2016 and corrected on 23 September 2016;

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

Having examined the written submissions;

CONSIDERATIONS

1. On 29 June 2007 the EPO's Administrative Council adopted decision CA/D 25/07, abolishing Implementing Rule 42/6 to the Pension Scheme Regulations. This had the effect of transferring the obligation to fund the tax adjustment paid to EPO pensioners from the EPO Member States to the EPO. That same day, the Administrative Council also adopted decision CA/D 18/07, which eliminated the tax adjustment provided for under Article 42 of the Pension Scheme Regulations for employees joining the EPO after 1 January 2009.

2. In September 2007 the complainant and three other EPO officials filed internal appeals with both the President of the Office and

the Administrative Council challenging the decision to shift the financial burden of the tax adjustment from the Member States to the EPO. Two of the other appellants subsequently filed complaints with the Tribunal impugning the implied decision to dismiss their appeals and asking the Tribunal to annul decisions CA/D 25/07 and CA/D 18/07. Their complaints were dealt with by the Tribunal in Judgment 3426, delivered in public on 11 February 2015.

3. In that judgment the Tribunal found, firstly, that there was nothing in the internal appeals that could reasonably be construed as an appeal against decision CA/D 18/07, and that the complaints were therefore irreceivable to the extent that they were directed against that decision, the complainants having failed to exhaust the internal means of redress as required by Article VII of the Tribunal's Statute.

4. Secondly, the Tribunal dismissed the complainants' claims concerning decision CA/D 25/07, after having found that "the complainants have not shown that decision CA/D 25/07 has caused them or is liable to cause them any injury".

5. The Appeals Committee's opinion, which was endorsed in the impugned decision in the present case, made a specific reference to Judgment 3426. The complainant, in his brief tries to rely on "new facts and developments which could not be considered" in Judgment 3426. However, what he tries to do is a veiled attempt to relitigate the Tribunal's decision in Judgment 3426. He relies on so called "new facts and developments" as means of doing so. At the outset, it must be observed that they are no more than speculative assertions.

6. He states first that there is real risk that the tax adjustment paid to him by the EPO may be reduced or abolished in the future. His main argument is that the budget of the EPO has received an additional burden, and that he, as a creditor for the pension, was not consulted when the debtor changed. Those "new facts and developments" are not new at all. The Tribunal has already considered them in Judgment 3426 and found that:

“the complainants have not shown that decision CA/D 25/07 has caused them or is liable to cause them any injury. The effect of the decision was budgetary only. The shift of the financial responsibility for the tax adjustment did not in any way adversely affect either of the complainants and will not have any adverse effect in the future. The alleged negative impact due to loss of the right of recourse to the relevant Member State is without merit. The contractual responsibility for the payment of the tax adjustment has always rested with the EPO and not with the Member States. The complainants did not have a right of recourse to the Member States at any time. The allegation that the payment of their pensions may be addressed them less secure given the additional financial burden on the EPO is without any evidentiary foundation and amounts to no more than conjecture.”

7. Secondly, the complainant argues that the change regarding the payment of the tax adjustment upon evidence of the amount of tax paid as opposed to the amount shown in the tax declaration, affects him as his planned investment in renovating his home with the aim of reducing his tax burden will influence the tax adjustment paid by the EPO. If anything has to be said about this argument, it is that it is purely speculative.

8. The complainant does not establish any present cause of action and the Tribunal sees no argument that would require departing from findings regarding the lack of cause of action in Judgment 3426. The complaint, which is clearly devoid of merit, must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

9. As the complainant does not demonstrate the cause of action to challenge decision CA/D 25/07, his argument about the lack of consultation of the General Advisory Committee before its adoption by the Administrative Council, is irrelevant.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ