Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

B. (No. 16)

v.

EPO

134th Session **Judgment No. 4553**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixteenth complaint filed by Mr K. B. against the European Patent Organisation (EPO) on 8 October 2018, the EPO's reply of 21 January 2019, the complainant's rejoinder of 10 June and the EPO's surrejoinder of 25 September 2019;

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 decision to recover sums which were unduly paid to him as dependent child allowance.

The complainant joined the European Patent Office, the EPO's secretariat, on 1 November 1985 and was assigned to Berlin. He has a son, born in 1990, for whom at the material time he received a dependants' allowance for a child under Article 69 of the Service Regulations for permanent employees of the European Patent Office. Under the relevant provisions, when a dependent child reaches 18 years of age, an employee may continue to receive that allowance on application with supporting evidence if the child is receiving educational or vocational training and if she or he has not reached 26 years of age. After graduating from university in 2011, the complainant's son, then aged 21, started a

vocational training course known as a "voluntary environmental year" on 1 September 2011. The course was discontinued on 29 February 2012. On 1 October 2012, the complainant's son began a new course, namely educational training in garden design.

By email of 10 March 2014, the human resources department responsible for salaries, pensions and administrative services informed the complainant that the documents provided in support of his application for the allowance in 2012 did not show that his son had received educational or vocational training between March and October 2012. He was therefore requested to provide the relevant documents, otherwise the payments would have to be corrected.

In a letter of 17 March 2014, the complainant explained that the project in which his son was participating as a volunteer as part of his vocational training had ended on 29 February 2012 for reasons beyond his control. He stated that his son's attempts to find a replacement project had been unsuccessful and that he could provide documents evidencing the monthly payments made to support his son, who was dependent on him. In an email sent the same day, the Administration informed the complainant that his son did not fall within the scope of Article 69(4) of the Service Regulations. He was also told that his case could be reconsidered if he could prove that he was under a legal or judicial obligation to support his son. The complainant replied by email on 20 March, stating that his son's enforced break should be equated with the situation where a dependent child is on holiday and that he would be seeking a lawyer's assistance to establish that he had a legal obligation under German law to support his child in such circumstances.

The complainant's salary slip for April 2014 showed a deduction of 3,252.73 euros. That amount corresponded to the dependent child allowance paid to him for the period from 1 March 2012 to 30 September 2012.

On 6 June 2014 the complainant submitted a request for review on the basis of his salary slip for April 2014. The Administration rejected his request by letter of 23 June 2014. The complainant lodged an appeal with the Internal Appeals Committee (IAC) on 22 September 2014. Following a hearing on 19 April 2018, the IAC delivered a unanimous opinion in its report of 14 June 2018. It recommended that the internal

appeal be rejected as unfounded but that the sum of 200 euros be awarded in moral damages for the length of the procedure.

By a letter of 5 July 2018, the Principal Director of Human Resources decided, by delegation of power from the President of the Office, to endorse the IAC's findings and reject the complainant's internal appeal, while awarding him 200 euros as compensation for the length of the procedure. That is the impugned decision.

The complainant requests the Tribunal to order the EPO to pay him the sum of 3,252.73 euros, which corresponds to the amount deducted from his April 2014 salary in respect of the allowance paid for March to September 2012. He seeks compensation for the moral injury he considers he has suffered, in particular for the "length of the procedure in general", at the rate of 300 euros per month until the allowance is reimbursed, in redress for the Office's repeated breaches of its duty of care. He also claims the sums of 749.70 euros and 369.86 euros in material damages for the costs incurred in respect of expert assessment and translation. Lastly, he requests the Tribunal to order that compound interest be paid on all sums due at the rate of 0.5 per cent per month.

The EPO asks the Tribunal to dismiss the complaint as entirely unfounded.

CONSIDERATIONS

1. In the present case, the impugned decision taken by the Principal Director of Human Resources on 5 July 2018 was based on the IAC report of 14 June 2018. In that report, the IAC justified its recommendation that the complainant's internal appeal be rejected as follows:

> "14. The [complainant], having a son older than 18 and younger than 26 years, was in general eligible for dependants' allowance under Article 69(4)(b) [of the Service Regulations]. According to Article 69(4)(b) [of the Service Regulations] dependents' allowance is granted on application by the permanent employee, with supporting evidence, for children who have not reached 26 years of age and are receiving educational or vocational training. The [complainant] himself submitted that his son was receiving neither during the disputed period of time. Additionally, the [complainant's]

comparison to the vacation between two semesters is also not tangible. The vacation between two semesters is a transitory break (often accompanied by mandatory internships or term papers); whilst presently the [complainant's] son interrupted his studies in order to change from one field of study to another. The lack of continuity of the [complainant's] son's studies is the problem here. Moreover, the fact that under German law a parent is obliged to support a child until the finalisation of the first professional training (*Erstausbildung*) does not create an obligation for the Office to pay dependents' allowance under Article 69 [of the Service Regulations] if the conditions of this provision are not met.

15. The [complainant] further submits an interpretation of Article 70 [of the Service Regulations] according to which dependents' allowance should have been granted under this provision if the Office considers that the conditions of Article 69 [of the Service Regulations] are not met. However, there are no elements on the file which would justify the application of Article 70 [of the Service Regulations] in the present case. Additionally, the interpretation given by the [complainant] is not in line with the context and the aim of the relevant provisions [of the Service Regulations]. The [Service Regulations] differentiate between dependents' allowance for children (Article 69 [of the Service Regulations]) and dependents' allowance for other persons (Article 70 [of the Service Regulations]). Due to this differentiation, children covered by Article 69 [of the Service Regulations] in general do not fall under the scope of Article 70 [of the Service Regulations]). This follows the generally accepted rule of legal interpretation according to which specific provisions take precedence over general provisions ('*lex specialis derogat legi generali*').

16. The [IAC], thus, unanimously concludes that the [complainant's] request for reimbursement is dismissed as unfounded."

2. The relevant parts of Articles 69 and 70 of the Service Regulations provide:

"**Article 69**
Dependants' allowance - Children

(1) A dependants' allowance shall be payable, under the conditions laid down in this Article, to a permanent employee who has:

I. one or more dependent children;

II. one or more dependent handicapped children.

I. Dependent children

[...]

(4) The allowance shall be granted:

(a) for all children under eighteen years of age;

(b) on application by the permanent employee, with supporting evidence, for children who have not reached twenty-six years of age and are receiving educational or vocational training.

[...]

(6) The amount of the allowance shall be as set out in Annex III.

II. Dependent handicapped children

[...]

Article 70
Dependants' allowance - Other persons

An allowance for dependants as set out in Annex III may be granted by the President of the Office on the basis of supporting evidence where a permanent employee or his spouse mainly and continuously supports a parent or other relative, by blood or marriage, by virtue of a legal or judicial obligation."

3. The complainant firstly submits that he was entitled to a dependent child allowance for the period from 1 March to 30 September 2012, even though his child's educational or vocational training had been discontinued against his wishes during that period, when he was aged over 21 years. He argues that the words "receiving educational or vocational training" in aforementioned Article 69(4)(b) of the Service Regulations are vague and allow for a broad application of the situation depending on the characteristics of the training. The provision therefore applies to any situation in which the child concerned may be that, in any way or form, sooner or later, over an undetermined period, has the effect of preparing him or her for an occupation or employment generally. There is thus an obligation to "receive" vocational training, but not a requirement to "participate continuously" in such training. According to the complainant, this is clearly apparent from the German version of the aforementioned provision. In his view, the EPO therefore committed a first error of law in not accepting this interpretation of Article 69(4)(b) of the Service Regulations. The complainant contends that the Organisation committed a second error of law in considering that only holidays could be recognised as a transitional period between two years of training for the purposes of the aforementioned provision.

4. The Tribunal finds that Article 69(4)(b) of the Service Regulations is clear, regardless of the language version considered. It necessarily implies that a dependent child who has reached the age of 18 years but not yet 26 years cannot confer an entitlement to a dependants' allowance unless that child is still "receiving" educational or vocational training (*"reçoit une formation scolaire ou professionnelle"* in the French version; *"sich in Schul-oder Berufsausbildung befinden"* in the German version). In the present case, the complainant's child stopped attending vocational training in ecology on 29 February 2012, albeit for reasons outside his control, and he did not start educational training in garden design until 1 October 2012. He was not therefore "receiving" educational or vocational training between 1 March 2012 and 30 September 2012. Interpreting Article 69(4)(b) of the Service Regulations as the complainant proposes would be tantamount to considering that entitlement to the dependent child allowance could be retained beyond the age of 18 years, even if the child is not attending any educational or vocational training, whatever the length of the break between two courses, until she or he reaches the age of 26 years, which would be contrary to both the wording and the objective of the provision.

The Tribunal also considers that the break between the vocational training in ecology and the separate educational training in garden design cannot, as the complainant maintains, be equated with a period of "holiday" in the usual meaning of that concept. Interpreting Article 69(4)(b) of the Service Regulations in this way would again be contrary to the objective pursued by granting a dependent child allowance. Lastly, the complainant's reference to German law is irrelevant since Article 69(4)(b) of the Service Regulations is intended to apply and be interpreted autonomously and independently of provisions of national law (see, for example, Judgment 4401, consideration 6).

Similarly, the complainant's argument that the term "training" within the meaning of Article 69(4)(b) of the Service Regulations should be interpreted broadly and therefore also covers "all life experiences" because they contribute to forming the dependent child's intellectual make-up and in some way train her or him for an occupation is also irrelevant. The Tribunal considers that the aforementioned

subparagraph (b) applies only to "educational or vocational training", as its wording in fact states.

The complaint's first plea is therefore unfounded.

5. In his second plea, the complainant submits that the EPO was wrong to reject his argument that, if Article 69(4)(b) of the Service Regulations was not applicable in the present case, then Article 70 of the Staff Regulations should have been applied, with the result that the dependent child allowance should have been paid for the whole of the period in question pursuant to that provision. He contends that entitlement to the dependants' allowance should have been granted since his son should have been recognised as a "relative" for the purposes of Article 70 of the Service Regulations.

In the Organisation's view, the two situations referred to in Articles 69 and 70 of the Service Regulations are mutually exclusive, Article 70 being unambiguously applicable only to dependants who are not children.

6. However, without it being necessary to rule on this question of interpretation of the Service Regulations, the Tribunal observes that, in the present case, the complainant does not argue either in the complaint or the rejoinder that he was obliged to provide for his son during the period in question "by virtue of a legal or judicial obligation" as provided in Article 70 of the Service Regulations. On this point, the Tribunal notes that the legal opinion produced by the complainant, which relates only to the application of Article 69 of the Service Regulations and not to that of Article 70, does not in any event establish that the complainant is in the position covered by Article 70.

The complaint's second plea is also unfounded.

7. The complainant further contends that the IAC opinion was biased. According to him, the two representatives appointed to the IAC by the staff representation and their alternates were under an ever-present threat of disciplinary measures if they complained to the Organisation about their high workload on the IAC.

The Tribunal observes, however, that the complainant does not adduce the evidence of such a lack of impartiality required under its case law (see, for example, Judgments 4422, consideration 17, and 4097, consideration 14). Mere suspicions and unproven allegations are plainly insufficient in this regard.

8. Lastly, although the complainant takes issue with the slowness of the internal appeal procedure, he has not shown in his submissions that he thereby suffered injury warranting higher compensation than the sum of 200 euros already awarded to him under that head in the impugned decision.

9. It follows from all the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 April 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 6 July 2022 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLÉMENT GASCON

DRAŽEN PETROVIĆ