Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

G. (No. 6)

v.

EPO

135th Session **Judgment No. 4627**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr W. G. against the European Patent Organisation (EPO) on 18 June 2019, the EPO's reply of 13 January 2020, the complainant's rejoinder of 6 February 2020, the EPO's surrejoinder of 13 May 2020, the EPO's further submission of 27 October 2021, the complainant's letter to the Registrar dated 28 January 2022 and his final comments of 17 February 2022;

Considering the applications to intervene filed by Mr A. E. on 11 July 2019 and Mr H. L. on 24 July 2019, and the EPO's comments thereon dated 13 January 2020;

Considering the applications to intervene filed by Mr W. R. H. on 25 August 2019, Mr A. S. J. on 26 August 2019, Mr J. T. on 5 September 2019, Mr R. H. on 16 September 2019, Mr S. É. on 18 September 2019, Mr K. B. on 23 September 2019, Ms É. E. R. on 19 October 2019 and Mr L. C. on 19 November 2019, and the EPO's comments thereon dated 20 February 2020;

Considering the application to intervene filed by Mr W. R. on 19 March 2021 and the EPO's comments thereon dated 28 July 2021;

Considering the application to intervene filed by Mr H. H. on 26 July 2021 and the EPO's comments thereon dated 15 April 2022;

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 accept only part of the recommendations of the Appeals Committee on his appeal against the postponement of a strike ballot by the President of the European Patent Office (the EPO's secretariat).

Facts relevant to this case may be found in Judgment 4432, delivered in public on 7 July 2021. As explained in that judgment, in June 2013 the EPO's Administrative Council adopted decision CA/D 5/13, creating a new Article 30a of the Service Regulations for permanent employees of the European Patent Office concerning the right to strike and amending the existing Articles 63 and 65 concerning unauthorised absences and the payment of remuneration. Paragraph 10 of Article 30a authorised the President to lay down further terms and conditions for the application of Article 30a, including with respect to the maximum strike duration and the voting process. Relying on that provision, the President issued Circular No. 347 containing "Guidelines applicable in the event of strike". Circular No. 347 relevantly provided that, upon receipt of a call for strike, the Office was responsible for organising a strike ballot, which had to be completed within one month from the date of the call for a strike.

On 16 May 2014 the Central Staff Committee (CSC) notified the President of a call for strike by a group of staff members calling themselves the "UNITY initiative", who had designated the CSC as their representative or interlocutor. The complainant was one of the 903 signatories. Strike actions were foreseen on 25 and/or 26 June 2014, which would have coincided with the meeting of the Administrative Council at which the extension of the President's appointment was to be discussed. On 28 May the President announced in Communiqué No. 54 that it would not be possible to organise a ballot before the beginning of July, for two reasons. Firstly, the election process for

electing staff representatives (including the CSC members) was under way, and the newly-elected CSC members would not take up their functions until 1 July. In the meantime, according to the President, it was impossible to conduct meaningful discussions with representatives who would not be in a capacity to do so throughout the process. Secondly, he argued that the organisation of a strike ballot during the ongoing electoral campaign would create confusion and could create inequality between the candidates. He proposed to meet with the CSC on 4 July to discuss the matter.

In the event, the planned strike action did not take place. On 2 July 2014 the complainant lodged a request for review, contending that the failure to organise a ballot within one month of the call for strike by the UNITY initiative, as required by Circular No. 347, constituted a violation of the right to strike. His request for review was rejected and the complainant then appealed to the Appeals Committee. A hearing took place in April 2018 and the Committee issued its opinion on 11 April 2019. It found that the President ought to have discussed with the designated interlocutor (that is, the outgoing CSC members) at the outset the perceived problem arising from the fact that the strike would coincide with the staff representation elections. The Committee unanimously concluded that, by failing to enter into any dialogue and effectively presenting the signatories of the UNITY initiative with a *fait accompli*, the President had taken disproportionate action and had violated their right to strike. A majority of the Committee (two of its three members) considered that this finding would provide "sufficient satisfaction" to the complainant and that no damages should be awarded for the violation of the right to strike, whereas the third member considered that an award of at least 3,000 euros in moral damages would be appropriate. The Committee unanimously recommended an award of 450 euros for delay.

By a letter of 12 June 2019, the Vice-President of Directorate-General 4 (DG4), acting by delegation of authority from the President, informed the complainant that she had decided to allow his appeal in part. Specifically, she accepted the Appeals Committee's unanimous recommendation to award him 450 euros in moral damages for delay,

as well as the majority's recommendation not to award damages for breach of the right to strike, and rejected his remaining claims. That is the impugned decision.

In his complaint filed on 18 June 2019 the complainant asked the Tribunal to set aside Circular No. 347 and CA/D 5/13 and to award him moral damages in the amount of 20,000 euros for not organising the strike ballot within the time limit provided for in Circular No. 347. He also claimed 5,000 euros in moral damages for delay in the internal appeal proceedings and 1,000 euros in moral damages for breach of his right to be heard in those proceedings. Lastly, he claimed 1,000 euros in costs.

On 7 July 2021 the Tribunal delivered several judgments dealing with various other complaints challenging the strike rules introduced by CA/D 5/13 and Circular No. 347. In Judgment 4430, the Tribunal found that Circular No. 347 was unlawful and set it aside on the grounds that it violated the right to strike in several respects. In Judgment 4432, the Tribunal ruled on a complaint filed by a staff member who had likewise challenged the President's decision to postpone the strike ballot following the call for strike by the UNITY initiative. The Tribunal noted that the EPO had conceded, in the course of the internal appeal proceedings, that the postponement of the strike ballot was unlawful, but it awarded the complainant in that case 8,000 euros in moral damages (including 2,000 euros for delay) and 500 euros in costs.

By a letter of 24 September 2021 the complainant was informed that, in view of the similarity between his pending sixth complaint and the complaint that was the subject of Judgment 4432, the EPO had decided to apply the outcome of that judgment to him as well. The EPO therefore paid him 7,550 euros in moral damages (that is to say, 8,000 euros less the 450 euros already paid to him following his internal appeal) and 500 euros in costs, and it invited him to withdraw his complaint. However, for the reasons set out in his letter of 28 January 2022 addressed to the Registrar of the Tribunal, to which he refers in his final comments, the complainant chose not to do so.

CONSIDERATIONS

1. The following discussion proceeds against the background emerging from the facts just described. Before dealing with the specifics of this case, one general observation (also made in other cases determined this session) should be made. In proceedings brought by a complainant in which one or several individuals apply to intervene, the complainant has no legal or other relevant interest in the applications to intervene. In contrast, the defendant organisation does have such an interest as successful applications to intervene can multiply both the legal and practical effect of a judgment in favour of the complainant.

2. In September 2021, the complainant was invited to withdraw his complaint having regard to steps the EPO had taken to implement, in relation to him, judgments concerning actual or proposed strike action of EPO staff. Specifically, he was paid 7,550 euros in moral damages (having already been awarded 450 euros in the impugned decision) and 500 euros in costs. In his letter of 28 January 2022, the complainant says that the "only remaining point [is] [...] the claims of the interveners". It is tolerably clear from the letter that he does not now seek, for himself, any relief arising from his complaint. None is identified. Accordingly, the appropriate order to make is to dismiss the complaint. In accordance with the Tribunal's case law, it follows that the applications to intervene must also be dismissed.

DECISION

For the above reasons,

1. The complaint is dismissed.

2. The twelve applications to intervene are dismissed.

In witness of this judgment, adopted on 19 October 2022, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ