

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T. (No. 41)

v.

EPO

(Application for review)

127th Session

Judgment No. 4133

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 3956 filed by Mr I. H. T. on 20 March 2018;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. On 24 January 2018 the Tribunal delivered in public Judgment 3956, summarily dismissing the complainant's forty-first complaint against the European Patent Organisation (EPO) in accordance with the procedure set out in Article 7 of the Rules of the Tribunal, on the ground that he had not exhausted the internal means of redress available to him, as required by Article VII, paragraph 1, of the Tribunal's Statute. The reason for that decision was explained as follows in consideration 6 of the judgment:

“[...] The possibility of filing a complaint against an implied rejection is governed solely by the provisions of Article VII, paragraph 3, of the Statute, which states that an official may file such a complaint '[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it'. However, firm precedent has it that when an organisation forwards a claim before the expiry of the

prescribed period of sixty days to the competent authority, this step in itself constitutes ‘a decision upon [the] claim’ within the meaning of these provisions, which forestalls an implied rejection which could be referred to the Tribunal (see, on these points, Judgments 532, 762, 786, 2681 or 3034).

Given that the decision which the Administrative Council had taken on the complainant’s request for review was withdrawn and that the complainant was informed on 13 February 2017 that the said request for review had been referred to the President, the complainant cannot rely on Article VII, paragraph 3, of the Statute in order to file a complaint with the Tribunal on the assumption that his request for review has been implicitly rejected.”

2. In his application for review of Judgment 3956, the complainant submits that the Tribunal made a mistake of fact involving no exercise of judgement and failed to take into account particular facts. Referring to Judgment 3819, he points out that, according to the Tribunal’s case law, these are admissible grounds for review. It should be noted that the case law also establishes that, in order to be admissible, such pleas must be likely to have a bearing on the outcome of the case (see Judgment 3333, consideration 4, and the case law cited therein).

3. The alleged “mistake of fact involving no exercise of judgement” relates to the following statement in consideration 4 of Judgment 3956:

“By a letter dated 12 April 2017, that he claims he received on 27 April, the complainant was informed that the President had decided to reject his request for review as manifestly irreceivable and, in any event, unfounded.”

The complainant asserts that this statement is not supported by the facts, as he did not receive any letter conveying a decision of the President of the European Patent Office, the EPO’s secretariat, concerning the request for review underlying his forty-first complaint. In so doing, he is in fact contesting the Tribunal’s assessment of the evidence presented in support of his complaint, which included both the letter of 12 April 2017 and the email by which it was sent to him. This does not constitute an admissible ground for review of the Tribunal’s judgment.

Moreover, even if, as the complainant now contends, he received no decision on the request for review underlying his forty-first complaint within the prescribed time limit, he should then have filed an

internal appeal against the implied rejection of his request. Given that he did not do so, the outcome of the case would have been the same, as his complaint would have been irreceivable for failure to exhaust internal remedies.

4. Regarding the alleged failure by the Tribunal to take into account particular facts, the complainant's arguments are premised on the misconceived idea that, as no decision was taken on his request for review within the 60-day period following its referral to the President of the Office, he was entitled to bring the matter directly before the Tribunal. For the reason indicated above, this assumption is incorrect. In the result, none of the matters that he raises in his application for review has any bearing on the Tribunal's finding in Judgment 3956 that he had not exhausted the internal means of redress when he filed his forty-first complaint.

5. The complainant's application does not raise any admissible ground for review. It is therefore clearly devoid of merit and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,

The application for review is dismissed.

In witness of this judgment, adopted on 9 November 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ