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

SEVENTY-FOURTH SESSION

In re SCHOOFS

Judgment 1211

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Georges Gaston Schoofs against the European Patent Organisation (EPO) on 27 April 1992 and corrected on 22 May, the EPO's reply of 17 August, the complainant's rejoinder of 4 September and the Organisation's surrejoinder of 7 October 1992;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, Articles 84 and 108(2) of the Service Regulations of the European Patent Office, the secretariat of the EPO, and Articles 7, 10(2), 11, 12(1), 40(1) and 41(1) and (2) of the Office's Pension Scheme Regulations;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a Belgian who was born in 1929, joined the staff of the International Patent Institute on 1 July 1955. On the Institute's integration into the EPO in 1978 he became an official of the European Patent Office. As an EPO staff member he contributed to the Office's Pension Scheme. Having accumulated by 1 July 1990 35 years of reckonable service he became entitled to a pension at the maximum rate allowable under Article 10(2) of the Pension Scheme Regulations. The EPO continued thereafter to dock pension contributions from his monthly salary.

By a letter of 14 February 1991 to the Head of Personnel he claimed the refund of the contributions he had been making since July 1990 and said that if the Administration refused he wanted his letter to be treated as an appeal.

In a letter of 22 March 1991 the Principal Director of Personnel replied that the President of the Office had rejected his claim and referred it to the Appeals Committee. In its report of 21 February 1992 the Committee recommended rejecting it as time-barred. The President having endorsed the recommendation, the Director of Staff Policy informed the complainant of the President's decision to reject his appeal in a letter of 23 March 1992. That is the decision he impugns.

B. On receivability the complainant submits that the EPO failed to give him a formal decision stating that it would continue to subtract pension contributions from his salary after his completing 35 years of service. A monthly salary slip was not a decision as to future monthly payments. Judgments 672 (in re Hunter) and 1106 (in re Saunoi No. 5), which the Appeals Committee cited, were about cases where the complainants had got express decisions.

On the merits he points out that the Pension Scheme is not a pay-as-you-earn system but is based on a capital reserve. According to Article 40(1) of the Pension Scheme Regulations pensions are charged to the EPO's own budget and it was in the Organisation's interest for the assessment of his pension to be deferred. So why should he suffer by having to go on paying into the Scheme? Any contributions that confer no further entitlements are wrong. Article 41(2) of the Pension Scheme Regulations says:

"Contributions properly deducted shall not be recoverable. Contributions wrongly deducted shall confer no rights to pension benefits; they shall be refunded without interest at the request of the employee concerned or of those entitled under him."

Other rules rest on the "no contribution, no benefit" principle, such as Article 84 of the Service Regulations and Articles 7 and 11 of the Pension Scheme Regulations.

He seeks the refund of his contributions since July 1990.

C. In its reply the EPO submits that the complaint is irreceivable because the complainant filed his internal appeal out of time and has therefore failed to exhaust the internal means of redress. It was in July 1990 that he got his first pay slip after completing the 35 years of reckonable service required to qualify for a pension at the maximum rate. Under Article 108(2) of the Service Regulations he had three months in which to appeal, but he did not act until 14 February 1991. His pay slip for July 1990 contained an implied decision to go on docking pension contributions. Later salary slips, being mere confirmation of that, set off no new time limits.

The EPO's subsidiary plea is that the complaint is devoid of merit. Article 41(1) of the Pension Scheme Regulations provides for the deduction of employees' contributions from monthly salary. That is a hard-and-fast rule, and any exemptions from it must be explicit. The Pension Scheme being based on a "collective" capital-reserve system and the notion of mutual aid, each member must contribute for as long as he draws a salary.

The rules the complainant relies on are not material. Article 84 of the Service Regulations is about the payment by an insurance broker of a lump-sum benefit for invalidity. Article 11 of the Pension Fund Regulations covers the cases of officials who on leaving the Organisation have under ten years' reckonable service and so get the aggregate of their contributions. The complainant might have his pension already if he so wished and is not in like case.

D. In his rejoinder the complainant observes that his pay slips, though they contained several headings, said nothing of any decision to go on docking pension contributions.

In answer to the EPO's plea about mutual aid he points out that if the Organisation applied Article 41(2) of the Pension Scheme Regulations it could spare its own budget the charge of its own contributions for him. Moreover, Article 84 of the Service Regulations says that no benefits for invalidity shall be due to an official over the age of 60 unless he pays a premium; and Article 41(2) of the Pension Scheme Regulations provides for the refund of contributions docked from salary if they confer no corresponding benefit.

E. In its surrejoinder the EPO presses its pleas, observing in particular that there was no bar to the complainant's acting as early as July 1990 to safeguard his alleged rights.CONSIDERATIONS:

1. On 1 July 1955 the complainant joined the staff of the International Patent Institute, which was merged in 1978 with the EPO. By 1 July 1990 he had served for 35 years and was therefore entitled to payment of a pension at the maximum rate allowed under the Pension Scheme Regulations of the European Patent Office.

The monthly pay slip notified to him on 26 July 1990 showed that he was still having contributions to the Pension Scheme docked from salary. On 14 February 1991 he wrote to the Head of Personnel asking for the refund of the contributions he had paid since July 1990. The Principal Director of Personnel refused, and he went to the Appeals Committee. The Committee recommended rejecting his appeal, the President of the Office did so, and that is the decision he is challenging.

2. When a staff member is entitled to payment of a pension at the maximum rate because he has 35 years' service, must he go on contributing to the Scheme?

The complainant says not. His main argument is that the Scheme is not based on any notion of distribution requiring the immediate use of contributions to pay pensions; according to Article 40(1) of the Pension Scheme Regulations benefits are charged to the Organisation's yearly budget; contributions are supposed to finance the future payment of pensions, and that means that the whole concept of the Scheme is capitalisation.

The EPO demurs. It cites Article 41(1) of the Pension Scheme Regulations, which says that "The employees' contribution ... shall be deducted monthly" from salary, and Article 41(2), which says that "Contributions properly deducted shall not be recoverable". In the EPO's submission there is no exception to the rule about monthly deduction, whether on the grounds of years of service or of the rate of pension due. So someone who has already served long enough to qualify for the maximum rate may not stop contributing. And the justification for that is the notion of mutual aid.

3. The Organisation is right in holding that there is no exception to the rule about monthly deduction.

There is therefore no need to entertain its plea about mutual aid.

The complainant is also mistaken in relying on Article 84 of the Service Regulations, which deals with insurance against death or permanent disability and is therefore irrelevant to the issues in this case.

There is no merit in the inverse plea he founds on Article 41(2) of the Pension Scheme Regulations, namely that contributions improperly deducted shall be recoverable. Article 41(2) covers, among others, the case where someone leaves the EPO before completing ten years' service, which, according to Articles 7 and 11 cited by the complainant himself, is the minimum period of qualification for a pension.

4. The conclusion is that the complainant is not entitled to recover contributions docked from his pay since July 1990 and that his complaint is devoid of merit. There is therefore no need to rule on the issue of receivability.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice- President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

(Signed)

William Douglas
E. Razafindralambo
Mark Fernando
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.