

SEVENTY-SEVENTH SESSION

In re ANGIUS (No. 2)

Judgment 1344

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Piero Angius against the European Patent Organisation (EPO) on 6 October 1993 and corrected on 14 October 1993, the EPO's reply of 3 January 1994, the complainant's rejoinder of 7 March and the Organisation's surrejoinder of 2 May 1994;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 24 and 106 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

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. Article 24 of the Service Regulations of the EPO reads:

"(1) A permanent employee shall be responsible for the discharge of the duties entrusted to him. The responsibilities of his subordinates shall in no way diminish the responsibilities devolving on him.

(2) Should an order received by a permanent employee appear to him irregular, or should its execution seem to him likely to have undesirable consequences of a serious nature, he shall convey his opinion to his immediate superior, in writing if necessary. If the latter confirms the order in writing the employee shall carry it out, unless its execution would constitute an act contrary to the criminal law in force in the country of which the employee is a national or in the country in which the order is to be executed."

The complainant, an Italian born in 1948, has been on the staff of the EPO since 1980 and is a search examiner in Directorate-General 1 (DG1) at The Hague. He holds grade A3.

In notes of 8 February and 11 March 1991 to the Principal Director of Search he objected to his director's "negative attitude" towards his work. By a letter of 12 March 1991 the Principal Director replied that one duty of his director was "maintaining control over search quality" and advised him to substantiate the serious allegations he had made.

In a note of 20 August 1991 to the Principal Director the complainant objected to his director's amending without his approval a search report that bore his signature. In a note of 5 September to the Principal Director he raised similar objections about another report. In a later undated note he told the Principal Director that his director was putting him under pressure and he asked for help in ending the "persecution".

Having been assigned to another directorate in Search, he asked in a letter of 22 October 1991 to see the Principal Director and accused his former director of "forgery" and "spreading offensive remarks" about him.

On 14 September 1992 he submitted a request under Article 106 of the Service Regulations that the President order an inquiry into the searches that his former director had amended and any effect they might have had on his career; restore them to their original form or, failing that, publish them in someone else's name; and compensate him for "punitive measures". In the event of refusal he wanted his letter to be treated as an internal appeal.

The President referred his appeal to the internal Appeals Committee on 14 October 1992. In a note of 3 September 1993 the complainant informed the chairman of the Committee that unless he received the Administration's brief within three weeks he would go directly to the Tribunal. He is impugning the inferred rejection of his claims of 14 September 1992.

B. The complainant submits that by tampering with his search reports and publishing them in his name the EPO is in breach of the national legislation of its member States and Article 24 of the Service Regulations.

A full year after filing his appeal he was still waiting for a final decision, and such delay is just not acceptable.

The Administration altered reports he was responsible for and then failed to carry out a proper enquiry into the matter. It has dashed his prospects of promotion and disrupted his professional and private life. He claims material and moral damages in an amount not less than one million German marks.

C. In its reply the EPO contends that the complaint is irreceivable. The complainant failed to exhaust the internal remedies available to him. He is wrong to suggest that the internal procedure was taking too long: the Committee had other cases before it - among them some of general interest - and the complainant had to await his turn. Besides, it was reasonable to take his appeal along with a closely related one he filed on 25 October 1993. In any event it was time-barred: although he knew by August 1991 that the EPO had published in his name an amended search report of his he waited until 14 September 1992 to appeal.

In subsidiary argument the EPO submits that his complaint is devoid of merit. As the Principal Director informed him in March 1991 directors have a duty to keep up high standards in their directorates. Although the complainant seems to think he is infallible, others have found flaws in his work. His attitude hampered his supervisors' efforts to take them up with him in the short time available between submission and publication of a report.

He does not try to show that the amendments to his reports were mistaken. Nor does he produce any evidence of damage to his professional standing or private life, apart from wounds to his self-esteem. Indeed he should be grateful to his director for ensuring that his published reports were accurate.

D. In his rejoinder the complainant argues that his complaint is receivable. Falsification of search reports is a matter of "general interest" to examiners and the delay in settling his case is making his life at the EPO more difficult. Not until September 1992 did he learn that the Principal Director was behind his troubles and he lodged his appeal forthwith.

His staff report for 1988-89 showed that the quality of his work was "very good". After that his differences with the Principal Director caused his work to be described as "unsatisfactory". The material issue is not whether he is "infallible" but whether the changes to his search reports were warranted. Other examiners say they were not. The fact that the Administration has not amended any of them since August 1991 is proof that they are accurate.

The Administration has done irremediable injury to his career prospects and further humiliated him by giving him a tutor. The stress he is under has damaged his health.

E. In its surrejoinder the EPO says the rejoinder contains no new arguments to cause a change in its position. On receivability it points out that it told him on 17 January 1994 that the Appeals Committee would take up, on 23 February, four related appeals he had lodged including the one whose outcome he forestalled by going to the Tribunal. The premature filing of his complaint kept the Committee from gathering all the information it needed.

According to their job descriptions the directors are responsible for monitoring and correcting search reports. Whenever possible they consult the examiner about any changes. The many insults and unsubstantiated allegations in the complainant's rejoinder are "typical" of his attitude.

CONSIDERATIONS:

1. The complainant joined the staff of the European Patent Organisation in January 1980. He is a search examiner of patents at grade A3 and is stationed at the Organisation's office at The Hague. Reports appraising his performance up to 1989 described it as "very good".
2. Search examiners are required to write what are known as "search reports". In August 1991 the complainant became aware that a report of his had been changed without his knowledge. On 20 August he protested in writing to the Principal Director of Search. After correspondence he wrote a letter on 14 September 1992 to the President of the European Patent Office alleging various forms of discriminatory and "punitive" treatment by his supervisors, applying, among other things, for a formal inquiry and saying that, if his application was refused, his letter was to be treated as lodging an internal appeal. The President referred his case to the Appeals Committee.
3. By a letter of 21 October 1992 the chairman of the Appeals Committee acknowledged receipt of his appeal and told him that it would be "dealt with as soon as possible, bearing in mind the Committee's caseload and meetings

timetable", that the Administration would need to prepare a dossier on the case and write a brief and that "the next suitable meeting in The Hague" was provisionally scheduled for May 1993.

4. The EPO took no action, however, and by a letter of 3 September 1993 the complainant informed the chairman of the Committee that he found the delay "totally unacceptable" and that if he did not get the Administration's brief within three weeks he would go to the Tribunal. On 6 October 1993 he did so.

Receivability

5. The Organisation pleads first that the complaint is irreceivable because he filed his internal appeal out of time and so has failed to exhaust the internal means of redress as Article VII(1) of the Tribunal's Statute requires. It contends that he knew by August 1991 at the latest that an altered search report had been published in his name and it was up to him then to file an internal appeal.

6. The Organisation's argument fails. Amendment of the complainant's search reports was only one feature of the alleged continuing unfair treatment which formed the subject of his internal appeal, other examples he gave being the assignment of another examiner who had no experience in his own technical field to repeat his searches so as to prove him wrong and impair his reputation; systematic misuse of his signature; requiring him to work with a tutor; and treating him in various discriminatory ways.

7. The EPO pleads, secondly, that his complaint is irreceivable under Article VII(1) of the Tribunal's Statute because in any event he ought to have awaited the outcome of his internal appeal. It observes that the Committee takes up appeals not just in the chronological order of filing but also with regard to the importance of the issues they raise.

8. That plea too fails. The complainant's appeal did raise important issues. A primary purpose of the Service Regulations is to establish and maintain good staff relations and the investigation of charges of discriminatory and punitive treatment of a staff member is a responsibility that the Organisation assumes under those Regulations.

9. The further suggestion by the Organisation that there was a wish to take up the complainant's internal appeal at the same time as a later appeal of his - No. 62/93 - is unconvincing. Since the later appeal was about his staff report for 1990 the two appeals showed different causes of action. Besides, the EPO never communicated to the complainant himself any suggestion that they were to be taken together.

10. The complainant filed his first internal appeal on 14 September 1992. By 3 September 1993 the EPO had not let him have its brief in reply nor even given him any inkling as to when it was likely to do so.

11. It is true that Article VII(1) of the Statute provides that a complaint will not be receivable unless the complainant has exhausted such other means of resisting the decision as are open to him under the applicable staff regulations. But it is plain from the case law that the Tribunal construes that article to mean that when a complainant has done all that is required of him to get a final decision, yet the proceedings appear unlikely to be concluded within a reasonable time, he may appeal directly to the Tribunal: see Judgments 451 (in re Dobosch) and 499 (in re Tarrab No.9).

12. The conclusion is that in the circumstances of this case the complaint must be declared receivable.

The merits

13. In his internal appeal the complainant alleged the following "punitive" measures against him:

(a) the amending of his search reports without consultation;

(b) having his searches done over again in order to find mistakes without affording him an opportunity to defend his work;

(c) publishing the amended reports as if they had come from him; and

(d) treating him in various discriminatory ways.

14. As to the amendment of the reports the Organisation contends that the Principal Director of Search has a duty to ensure that the search standards set in general directives are duly applied. But the complainant is not challenging his supervisors' right to correct any mistakes there may be in his reports. What he says is that he should be consulted about them. The EPO gives pressure of time as a reason for not consulting him: the reports must, it argues, be published as soon as possible after the expiry of eighteen months from the date of filing of the application for a patent, or earlier, if the applicant so asks. The Organisation observes that the complainant was unwilling to co-operate or send in reports before going on holiday. The complainant denies that.

15. Whatever the truth of the matter may be, even if the EPO was short of time it was not justified in changing his reports, in not even discussing the changes with him afterwards nor giving him an opportunity to comment on any amendments, and in publishing them under his name.

16. As to the quality of his work, the Principal Director - anticipating, as he says, the complainant's request for an inquiry - asked the Directorate of Harmonisation and Quality on 27 March 1992 to carry out a study of the quality of the complainant's search examinations in the period from 1 January to 31 December 1990. The resulting study is dated 25 May 1992. But even before that date the complainant was informed that he would have to work under a tutor. It cannot therefore be properly said - as the Organisation makes out in its letter of 17 September 1993 - that it was found advisable on the strength of the findings of the study to require him to work with a tutor. On this point the Organisation states in its surrejoinder that the outcome of the study disclosed no reason to suspend the requirement.

17. The Principal Director asked that a copy of the study should be supplied to the complainant; the complainant says that it was not. If the true purpose of the study was to improve the quality of his work his supervisors had a duty to discuss the findings with him, let him comment and suggest measures for improving the quality of his work. There is no evidence before the Tribunal to suggest that that was ever done. What is clear is that none of his search reports has been amended since he protested to amendment of reports he had done in 1991.

18. The Tribunal is satisfied that the action taken by the complainant's supervisors - ordering the study and requiring him to work with a tutor - was actuated by a desire, not to improve the quality of his work, but to punish him for challenging the amendment of his reports without consulting him.

19. By failing to ensure that the complainant's appeal was dealt with in reasonable time the Organisation is at fault. By failing to act in relation to the manner in which his search reports were amended and in treating him as described above it has further acted in breach of his right to fair treatment. He is entitled to an award of damages for moral injury on that account and the Tribunal sets the amount at 6,000 German marks. But his claim to material damages fails because he fails to show material injury.

DECISION:

For the above reasons.

1. The Organisation shall pay the complainant 6,000 German marks in damages for moral injury.
2. His other claims are dismissed.

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

Delivered in public in Geneva on 13 July 1994.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner