

EIGHTY-FIRST SESSION

In re GLENN (No. 2)

Judgment 1508

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Joseph Glenn against the European Patent Organisation (EPO) on 3 April 1995 and corrected on 7 June, the EPO's reply of 10 August, the complainant's rejoinder of 19 September and the Organisation's surrejoinder of 13 December 1995;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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. Judgment 1341, on Mr. Glenn's first complaint, explains under A how he came to resign from the European Patent Office, the secretariat of the EPO.

Having learned on 13 August 1993 that the Invalidity Committee had found him fit to go back to work on Monday 16 August, he drafted a letter of resignation, which he dated 16 August. The same day, he says, his own ear-nose-and-throat specialist informed him that, as the "independent" member of the Committee, he had assessed the complainant's invalidity at 40 per cent in a handwritten addendum to its report. By a letter of 17 August the Director of Personnel informed him that the President of the Office had accepted his resignation.

He lodged an internal appeal on 24 October 1993 against the letter from the Director of Personnel. In a report of 21 November 1994 the Internal Appeals Committee recommended rejecting his appeal. By a letter of 10 January 1995, which he impugns, the Director of Staff Policy told him that the President had endorsed that recommendation.

B. The complainant submits that his resignation is invalid because the Administration suppressed a material fact from the Invalidity Committee's report. Had he known at the time that one of the Committee's members assessed his invalidity at 40 per cent, he would, instead of resigning, have applied for "amended duties" under the Service Regulations. So the EPO was in breach of its duty to inform him in full of the Committee's "findings".

He seeks the cancellation of his resignation.

C. In its reply the EPO argues that his complaint is "inadmissible" insofar as it amounts to a challenge of Judgment 1341, in which the Tribunal upheld the Invalidity Committee's report as lawful: such challenge is neither in the proper form nor well-founded. How can the independent member's addendum have escaped the complainant's notice when he submitted his own translation of it as evidence in his first complaint? Had its import been unclear to him he had only himself to blame for not seeking more information before he resigned.

D. In his rejoinder the complainant presses his pleas. Since the impugned decision rests on the Committee's report, the absence of any reference to his partial invalidity in its conclusions constitutes a fatal flaw.

E. In its surrejoinder the EPO says it finds no new material argument in the rejoinder. It had no reason to mention the finding of 40 per cent invalidity to him because benefits under Article 84 of the Service Regulations are payable only when someone suffers from such permanent invalidity as to be unfit for duty.

CONSIDERATIONS:

1. The factual background to the case is fully set out in Judgment 1341, on the complainant's first case. He now seeks the cancellation of his resignation, which he tendered on 16 August 1993, on the grounds that he had been persuaded to offer it because of an irregular report, dated 13 August 1993, by the Invalidity Committee of the EPO. He contends:

"The sole reason for the resignation was a letter from the EPO dated 13 August 1993 which ordered an immediate and unqualified return to work after a long period of illness and examination by an Invalidity Committee. The EPO's letter purported to give effect to the decision of the Invalidity Committee."

The complainant observes that the letter made no mention of a handwritten note by one member of the Committee, an ear-nose-and-throat specialist, who thereby assessed the degree of his invalidity at 40 per cent. He states that not until 18 or 19 August, just after his resignation, did he become aware of that assessment, and he argues that his resignation, having been induced by concealment of a material fact, is invalid.

2.The EPO's letter of 13 August 1993, which was from the Director of Personnel, opens with the words "In accordance with the enclosed decision the Invalidity Committee has decided ...". In his rejoinder the complainant admits that he had received by the date of his resignation a copy of the Invalidity Committee's report, on which the specialist had added the handwritten comment, including two abbreviations, and in his submission it was "unintelligible even to a German, except perhaps for a doctor". He further states in his rejoinder that he saw the specialist on 16 August, not on 18 or 19 August, and then obtained from him an explanation of the handwritten comment. So his plea that his resignation of 16 August was induced by the suppression of a material fact cannot be sustained.

3.As to his contention that the Invalidity Committee's report was irregular, the question was resolved in Judgment 1341 and may not be reopened.

4.The conclusion is that his claims fail in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Julio Barberis
A.B. Gardner