

EIGHTY-FOURTH SESSION

In re Moran

Judgment 1688

The Administrative Tribunal,

Considering the complaint filed by Mr. Stephen Anthony Moran against the European Patent Organisation (EPO) on 6 February 1997 and corrected on 18 March, the EPO's reply of 6 June, the complainant's rejoinder of 11 July and the Organisation's surrejoinder of 18 September 1997;

Considering Articles II, paragraph 5, and VII of the Statute of 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. The complainant, who is British and was born 1956, joined the staff of the EPO on 1 April 1982 as a clerk at grade B2. On 1 February 1989 he was promoted to B3. He is employed at Directorate-General 5 (DG5) of the European Patent Office, the secretariat of the EPO.

On 24 January 1994 he had a talk with his reporting officer about his staff report for the period from 1 July 1992 to 31 December 1993. The report was signed neither by the reporting officer nor by the countersigning officer, the Vice-President in charge of DG5. It assessed as "very good" the "quality" of his work, his "productivity", "aptitudes", "dealings with others" and "attitude to work". His "overall rating", too, was "very good". His two previous staff reports had given him the same general rating.

The text that the reporting officer eventually signed on 23 February 1994 and the Vice-President on 21 March assessed him as only "good" under each of the headings mentioned above. On 29 July he said he was challenging the report. On 3 November 1994 the reporting officers refused to change it and he applied for "conciliation" in accordance with section D of the General Guidelines on Reporting. On the conclusion of that procedure the President of the Office decided, on 24 February 1995, to confirm the report.

On 24 May the complainant filed an internal appeal against that decision. By a letter of 21 June 1995 he was told that the President had rejected his appeal and put it to the Appeals Committee. In its report of 4 November 1996 the Committee recommended by a majority that the President reject his appeal. By a letter of 19 November 1996 the Director of Staff Policy told him that the President had followed the Committee's recommendation, and that is the decision now under challenge.

B. The complainant contends that the countersigning officer asked the reporting officer to alter the original text and give him only a "good" rating on the grounds that "very good" ones were being handed out to too many staff in DG5. That is tantamount to having quotas for different ratings. The pressure put on the reporting officer is contrary to the terms of a circular, No. 188, which determines the duties of the reporting and countersigning officers. The circular calls for an interview before the staff report is drafted and the interview must be in good faith. It was a fatal procedural flaw for the reporting officer not to interview him after altering the report. Any alteration must be discussed with everyone concerned, and first and foremost with the official himself.

The complainant asks the Tribunal to order the EPO to change his assessment for the period in question from "good" to "very good" and to grant him any redress it sees fit.

C. In its reply the EPO contends that the claim to redress is irreceivable on the grounds that the complainant failed to put it to the Appeals Committee.

On the merits it submits that the complainant has failed to show that the countersigning officer put any pressure on the reporting officer to change the report. In fact the reporting officer merely changed his mind and altered the text accordingly. The defendant says that the Office sets no quota for "very good" ratings. It is the comparison of staff in the reporting procedure that explains why someone, like the complainant, whose performance has not declined may get a different rating in successive periods. In the previous reporting period another reporting officer rated him "very good". There is nothing in the General Guidelines on Reporting that requires a further inter-view when the reporting officer changes his mind. The complainant's charge of breach of good faith does not rest on any valid plea. The reporting procedure shows no fatal flaw.

The Organisation concedes that it would have been preferable not to let the complainant see a draft of the report which might lead him to expect a higher assessment than the one he eventually got. But since he was no raw recruit he cannot make out that he believed the original draft to be the final text.

D. In his rejoinder the complainant observes that he is seeking redress for the injury that he sustained on account of the President's final decision of 19 November 1996. That claim is subsequent to the filing of his internal appeal and so could not have been made in that appeal.

On the merits he repeats that the countersigning officer put wrongful pressure on the reporting officer. He not only maintained but actually improved the quality of his performance. For want of any text that required a further interview, good faith did so. His previous supervisors always called him in to see the final text of the staff report and discussed the final assessment. His new reporting officer misled him over the text he saw at the interview on 24 January 1994.

E. In its surrejoinder the defendant presses its objections to the receivability of the complainant's claim to redress. The President's final decision merely upheld the challenged staff report and it is hard to see how that decision could have caused him any damage distinct from such as he attributes to the report itself.

The EPO presses its pleas on the merits. It regrets that some reporting officers do show staff members at the interview the final signed texts of reports. In any event the complainant may not rely on such practice. He has failed to offer any evidence to show that his performance had improved. According to section C of the General Guidelines on Reporting one of the countersigning officer's duties is to ensure consistency in applying them. In this case, therefore, he did not abuse his authority in raising the matter with the reporting officer.

CONSIDERATIONS

1. This complaint against the European Patent Organisation is about a report on the complainant's performance from 1 July 1992 to 31 December 1993.

Article 47 of the Service Regulations reads:

"The ability, efficiency and conduct in the service of each permanent employee ... shall be the subject of a report made at least once every two years under the conditions established by the President of the Office."

Those conditions are laid down in the "General Guidelines on Reporting".

2. According to the General Guidelines the reporting officer must have a "prior interview" with the official he is to report on. In this case the interview took place on 24 January 1994. The complainant says that in the course of the interview his reporting officer showed him the text of a draft report with which he agreed. But, he says, when he got the text duly signed and countersigned he found that it was not the same; some ratings had been changed from "very good" to "good". The reporting officer had signed the report on 23 February 1994 and the countersigning officer on 21 March. On 29 July the complainant protested. On 3 November 1994 the reporting and countersigning officers confirmed their ratings after the former had spoken to him.

The complainant filed an internal appeal. The final decision rejecting it was taken on 19 November 1996.

3. In this complaint, which he filed on 6 February 1997, he claims the amendment of the report and an award of moral damages.

4. He pleads the following procedural flaws in the report:

(a) The reporting officer changed her original assessment under pressure from the countersigning officer, who should instead have allowed the reporting officer to make her comments and then recorded her own disagreement.

(b) The second flaw was the reporting officer's failure to interview the complainant in good faith. Since their interview of 24 January 1994 was not in good faith there should have been another.

(c) A third flaw is evident from the Administration's reply of 10 June 1996 to his internal appeal. The English version states that a reporting officer may change his report "after discussion with all other parties involved". Though the complainant was one such party he was not consulted.

5. The Tribunal has already made many rulings on staff reports of EPO employees. Firm precedent has it that issues raised by such reports are discretionary and the Tribunal will set aside or amend a report only if there is a formal or procedural flaw, a mistake of fact or law, or neglect of some material fact, or misuse of authority, or an obviously wrong inference from the evidence. Those criteria are the more stringent because the EPO has a procedure for conciliation on staff reports and the Service Regulations entitle officials to appeal to a joint body whose members are directly familiar with the workings of the Office.

6. The criteria are too narrow to allow the Tribunal to entertain the argument that the complainant founds on assessments of him in earlier staff reports.

7. Before taking up his pleas about procedural flaws it is worth observing that at various points in his submissions he seems to be under the mistaken impression that he got two staff reports: one at the time of the interview and another signed by the reporting officers. In fact there was a single report, the duly signed text.

8. As to the first of the three procedural errors he alleges, there is no evidence before the Tribunal to support his charge that the reporting officer gave in to pressure from the countersigning officer. Likewise, he offers not a shred of evidence of the second error, breach of good faith. Besides, the lack of a second interview does not denote bad faith. There is no rule in the "General Guidelines on Reporting" that requires the reporting officer to carry out more than one interview with a staff member.

As for the EPO's reply of 10 June 1996 to his internal appeal, the signed original was, as he himself acknowledges, in French. It read:

"Lors de l'entretien préalable, le projet de rapport n'est pas encore finalisé car l'entretien a lieu lors de la phase de la procédure au cours de laquelle le formulaire est établi. Le premier notateur a donc encore la possibilité d'y apporter des modifications, après des entretiens avec l'ensemble des personnes concernées."

Whatever the authority of the English translation, the words "l'ensemble des personnes concernées" denote the reporting officers, not the employee.

9. According to a fundamental principle of procedure the Tribunal's ruling depends on proof of the parties' submissions. The complainant having failed to adduce any evidence to bear out his pleas, his main claim fails.

10. That being so, his claim to moral damages cannot succeed either.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot
Julio Barberis
Jean-François Egli

A.B. Gardner

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