

EIGHTY-FOURTH SESSION

In re Vollering (No. 12)

Judgment 1719

The Administrative Tribunal,

Considering the twelfth complaint filed by Mr. Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 4 October 1996, the EPO's reply of 20 December 1996, the complainant's rejoinder of 4 February 1997 and the Organisation's surrejoinder of 11 March 1997;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a Dutchman, is an examiner at grade A3 in the EPO's Directorate-General 1 (DG1) at The Hague. On 25 November 1993 he lodged an internal appeal, in English, against a decision on the output expected from him in 1992. On 14 March 1995 the Administration submitted a reply in French.

In a letter of 2 June 1995 the complainant asked the President of the European Patent Office, which is the EPO's secretariat, to "replace" that brief with one in English and to have the Administration reply in future in the language he had chosen for his appeal. He also wanted the President to treat the request as an appeal in the event of rejection. By a letter of 21 June 1995 the Director of Staff Policy told him that the President had rejected his request and put the matter to the Appeals Committee. In its report of 11 June 1996 the Committee recommended rejection. By a letter of 8 July 1996, which he impugns, the Director of Staff Policy informed him that the President had endorsed the Committee's recommendation.

B. The complainant submits that the EPO was wrong to answer his appeal in French. Had it replied in all three official languages he would have had no cause of action. In the absence of any rules on the language of the appeal proceedings the Administration has a duty to answer in the language in which the staff member has cast his appeal. He alleges misuse of authority, breach of good faith and infringement of his right to be heard by limiting his right to know the reasons for a decision. He also charges the Administration with failing to abide by an unwritten "agreement" in which the Administration's representative for internal appeals said he would reply in English. He accuses the Appeals Committee of partiality.

He seeks the quashing of the impugned decision and payment of 10,000 guilders, including 5,000 to cover the costs of translation, for any failure of the Administration to answer future appeals in the language of his own choosing. He also claims a total of 25,000 guilders in moral damages and 10,000 in costs.

C. The EPO replies that the complaint is devoid of merit. It was under no duty in law to submit its brief in English. Nor has the complainant adduced evidence of any "agreement" on its part to do so. In its submission his allegations of injury are bogus: his knowledge of French was rated "very good" in his latest staff report and he had not protested at getting briefs in French before. His objections about the Appeals Committee turn on his wish to use Dutch, which is not an official language at the EPO.

The Organisation describes his claims as "exorbitant" and the complaint as an abuse of the right to appeal.

D. In his rejoinder the complainant enlarges on his earlier pleas. He relies not on any written rule but on general principles and basic human rights. Since he had already stated a preference for English the Organisation's choice of French amounted to "discriminating or illegal treatment".

E. In its surrejoinder the EPO points out that the rejoinder contains no new substantive facts or arguments. It observes that since examiners are expected to have a "passive" knowledge of the three official languages, it is proper for all staff, including the author of the Administration's reply to the complainant's appeal, to use whichever one they prefer. The use of French being lawful, the Organisation neither impaired his rights

nor discriminated against him.

CONSIDERATIONS

1. This complaint is based on the fact that the complainant's employer, the European Patent Organisation, in replying to an earlier internal appeal filed by him in English, one of its official languages, chose to write in French, another of its official languages.

2. The complainant cites no text which would oblige the Administration to reply in the same official language as the one originally chosen by him. He claims to have concluded an oral agreement with a representative of the Administration which would have obliged the latter to use the English language in dealing with his appeals, but is unable to produce any evidence to support the existence of such an agreement. He also contends, without citing any authority to this effect, that the use by the EPO of one of its other official languages in a written communication is discriminatory and a "misuse of power" and creates a situation of inequality.

3. In the Tribunal's view his complaint is trivial and without foundation. His mother tongue is Dutch. The official languages of the EPO are English, French and German. His post requires at least a "good" knowledge of all three of those languages. His staff report at the relevant time indicated a "very good" command of English and French and a "good" command of German. (In a rather transparent manoeuvre carried out after the fact he asked for and obtained a lowering of the assessment of his French language ability from "very good" to "good"; the Tribunal disregards this change). He has accepted a post in which he is required to assess the rights of others on the strength of applications written in any of the official languages of the EPO, whether his knowledge of the language chosen by the applicant be "good" or "very good": he is unquestionably capable of understanding and assessing the Administration's reply to his own internal appeal when it is written in French. Furthermore, to a number of earlier internal appeals he filed in English the Administration replied in French without prompting any objection from him.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Mark Fernando, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

Mella Carroll
Mark fernando
James K. Hugessen

A.B. Gardner