

EIGHTY-FIFTH SESSION

***In re* Beuchat**

Judgment 1740

The Administrative Tribunal,

Considering the complaint filed by Mr. Henri Beuchat against the European Patent Organisation (EPO) on 14 March 1997 and corrected on 13 May, the EPO's reply of 9 September, the complainant's rejoinder of 16 November and the Organisation's surrejoinder of 15 December 1997;

Considering Articles II, paragraph 5, and VII, paragraph 2, 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 Swiss citizen who was born in 1939, joined the European Patent Office, the EPO's secretariat, in 1980. At the material time he was a directorate assistant at grade A4(2) and stationed at its Directorate-General 2 (DG2) in Munich.

In a performance report covering the period from 1 July 1992 to 31 December 1993 and signed on 3 March 1994 his first-level supervisor rated him "good" for "quality", "attitude to work and dealings with others" and "management ability" and "very good" for "productivity" and "aptitude". The "overall rating" was "good". The countersigning officer confirmed those ratings on 23 March. On 5 July 1994 the complainant objected to the report, conciliation failed, and on 30 March 1995 the President of the Office endorsed it as it was.

By a letter of 27 June 1995 the complainant asked to have the ratings for "quality" and "attitude to work" and the "overall rating" changed from "good" to "very good" to match the ratings a previous first-level supervisor had given him in the report for the period from 1 January to 30 June 1992. On 4 August 1995 the Director of Staff Policy told him that the President had rejected his request and referred the matter to the Appeals Committee.

In a report of 28 October 1996 the Committee recommended rejecting his appeal on the merits. By a letter of 12 December 1996, the impugned decision, the Director of Staff Policy told him that the President did so.

B. The complainant objects to what he sees as the policy of lowering the average ratings of staff. He submits that his first-level supervisor failed to consider the quantity as well as the quality of his work and overlooked facts taken into account in his previous report. Since his performance was constant, the only explanation for the change in his ratings is that he had a new reporting officer. The assessment was arbitrary: a reporting officer must take account of earlier reports in forming his opinion. The Organisation impaired his right to a hearing by denying him access to the minutes of the conciliation procedure and to the recommendation of the Vice-President in charge of DG2, which are not in his personal file. The offending report has robbed him of all chance of promotion.

He asks to have the report corrected to "very good" for "quality" and "overall rating" or, failing that, to have someone else report on his performance in the same period.

C. In its reply the Organisation submits that he cannot, as he says in the complaint form, have received the text of the impugned decision on 15 December 1996, which was a Sunday. Nor did he get it on Monday the 16th, as he states in his brief submitted to the Tribunal. In fact he got it on Friday the 13th, the date he himself wrote on the acknowledgement of receipt. The time limit in Article VII(2) of the Tribunal's Statute having expired on 13 March 1997, the complaint is clearly irreceivable. Tampering with dates is unseemly conduct in an international civil servant.

The Organisation's pleas on the merits are subsidiary. It submits that according to the case law reporting officers are free to make their own assessments, whatever earlier reports may have said. The complainant's two reporting officers had different expectations of someone of his grade. Besides, the rules do not say that there has to be a link between the rating for a particular aspect of performance - such as productivity - and the overall rating. There has been no pressure to lower the ratings of staff. Conciliation is confidential; that is why the minutes were not put in the complainant's personal file. He has not lost all chance of promotion. He was given ample opportunity to have his say. The EPO asks the Tribunal to rule that "by filing the complaint late, by refusing to withdraw it though it was clearly irreceivable, and by so making the Organisation incur unwarranted further costs he has wilfully caused it injury in the performance of his duties".

D. In his rejoinder the complainant maintains that he did not see the impugned decision until Monday 16 December 1996. He gave the date of receipt as Friday 13 December because he assumed that the letter had arrived on that day but he had been too busy to see it. The Organisation's "innuendo" is unfounded: he corrected the date he had given on the complaint form before the EPO had even noticed the mistake.

He maintains that Vice-Presidents and Principal Directors were given unwritten instructions about reporting. What is more, his supervisor, a notoriously prejudiced man, discriminated against him on grounds of nationality and language. The EPO's counterclaim shows scant regard for a good official who is simply seeking redress in law.

E. In its surrejoinder the Organisation presses its pleas and claims.

CONSIDERATIONS

1. The complainant has been with the EPO since 10 September 1980. It promoted him to directorate assistant at grade A4(2) on 1 February 1990. His performance report for the period from 1 January to 30 June 1992 rated him "very good" for "overall" performance and "quality", "productivity", "aptitude" and "attitude to work and dealings with others", and "good" for "management ability". A new reporting officer wrote his report for the period from 1 July 1992 to 31 December 1993 and rated him "good" for "quality", "attitude" and "managerial ability" and "very good" for "aptitude" and "productivity". His "overall rating" was "good".
2. On 18 October 1994 the complainant objected to the report and applied for conciliation. Nothing having come of conciliation, the President of the Office endorsed the report unchanged on 30 March 1995.
3. By a letter of 27 June 1995 the complainant asked the President to change the ratings for "quality" and "attitude" and the overall rating from "good" to "very good" or else treat his letter as giving notice of appeal. In a letter of 4 August 1995 the Director of Staff Policy told him that the President had rejected his request and referred the matter to the Appeals Committee.
4. In its report of 28 October 1996 the Committee recommended rejecting the appeal, and the President did so in a decision of 12 December 1996, the one the complainant is impugning. He filed his complaint on 14 March 1997.
5. The Organisation's main plea is that his complaint is irreceivable because it is time-barred under Article VII of the Tribunal's Statute. It notified the final rejection to him on 13 December 1996, not on the 15th, the date he gives in the complaint form, nor the 16th, the date he changed it to in his brief.
6. The complainant retorts that he did not see and open the letter of 12 December 1996 until the 16th because on the morning of Friday the 13th he had had to see about someone's computer and had not had time to look at his in-tray.
7. In line with consistent precedent the Tribunal will take 13 December 1996, the date he himself entered on the text, as the date of receipt of the decision. That he did not look at it until later is immaterial. What counts is the date at which he got it.
8. The complainant received notice on 13 December 1996 of the final decision rejecting his appeal and had ninety days from that date in which to file a complaint with the Tribunal. The time limit expired on 13 March 1997, but he did not file until the 14th.
9. His complaint is therefore time-barred and irreceivable under Article VII(2) of the Tribunal's Statute.

10. The EPO's counterclaim, being in vague terms, must in any event fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Jean-François Egli, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 9 July 1998.

(Signed)

Michel Gentot
Jean-François Egli
Seydou Ba

A.B. Gardner