EIGHTY-EIGHTH SESSION

In re Vollering (No. 17)

Judgment 1932

The Administrative Tribunal,

Considering the seventeenth complaint filed by Mr Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 26 February 1999 and corrected on 6 April, the EPO's reply of 14 May, the complainant's rejoinder of 18 June and the Organisation's surrejoinder of 10 September 1999;

Considering Articles II, paragraph 5, and VII 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. The complainant, a Dutch citizen born in 1952, is a patent examiner at grade A3 in Directorate-General 1 (DG1) of the European Patent Office, the EPO's secretariat, at The Hague.

Facts relevant to the present case are set out under A in Judgments 1663 (*in re* Bousquet No. 2, Gourier and Vollering No. 11), of 10 July 1997, and 1931 (*in re* Baillet No. 3) delivered on this day.

On 9 March 1996 the complainant received a copy of the individual declaration entitling him, on condition that he returned it duly signed, to the payment of a lump sum intended as a compromise to settle the collective dispute over the adjustment of pay. By a letter of 31 May the complainant informed the President of the Office that he refused to sign the declaration and requested him to transfer the lump sum to him nevertheless. If the President did not meet this request, he asked him to consider the letter as lodging an internal appeal. In a letter of 19 July 1996 the Principal Director of Personnel informed the complainant that his request could not be granted and that his letter had been registered as lodging an internal appeal. The Appeals Committee issued its opinion on 23 September 1998. It recommended rejecting the complainant's appeal, as well as those to which it had been joined, as being devoid of merit. By a letter of 30 November 1998, which is the impugned decision, the Director of Personnel Development informed the complainant that the President had decided to reject his appeal.

B. The complainant contends that the President's decision to withhold from certain employees the benefit of the "collective agreement" which brought an end to the pay dispute constitutes an abuse of the agreement.

The complainant says that he did not sign the individual declaration because the conditions enumerated therein are unlawful. Citing the case law of the Tribunal, he explains that the President is not empowered to attach to the payment of the lump sum any condition that is not warranted by Article 64 of the Service Regulations of the EPO. He asserts that the above sum forms part of his remuneration. Indeed, under the terms of Article 64, he may not waive his entitlement to remuneration. At the risk of showing misuse of authority, the President could not therefore withhold this sum from him, nor exert pressure on him to waive his entitlement to it. Having been placed under "unacceptable" financial pressure, the complainant considers that he was blackmailed. He adds that the President exerted unlawful pressure on the members of the General Advisory Committee to deliver a decision that was fast, unanimous and favourable to the Administration.

The complainant contends that the staff members who did not sign the declaration were the victims of discrimination. He adds that the staff of the EPO employed in Vienna received the lump sum, even though they had not challenged the salary method applied between July 1992 and 1996. They were therefore "bribed".

He requests the Tribunal:

- to quash the President's decision of 30 November 1998 and order the payment to him of the lump sum, plus interest of 10 per cent per annum;

- to condemn the President for the intentional abuse of Article 64 of the Service Regulations and for requesting the signing of the "illegal conditions" set out in the individual declaration; and to grant 5,000 guilders for the moral injury he suffered;

- to condemn the President for blackmail or bribery, or for attempted blackmail or bribery; and to grant him compensation for the moral injury suffered thereby;

- to condemn the President for discrimination against him, as well as abuse of the collective agreement, and to grant him 10,000 guilders for the moral injury suffered;

- to grant him 10,000 guilders in costs.

C. In its reply the EPO asserts that the complaint is irreceivable. In accordance with the principle *non bis in idem*, the complainant may not continue to claim the payment of the lump sum without first signing the individual declaration. As a party to the case which led to Judgment 1663, he received from the EPO all the sums deriving from the execution of that judgment. His claim therefore shows no cause of action, since the amount of the sums which he received was almost twice what he would have received had he signed the declaration. His claims for compensation are irreceivable because he did not exhaust the internal means of relief within the time limits.

In subsidiary argument, the EPO explains that the complainant's allegations concerning abuse of a collective agreement are irrelevant.

The complainant was not one of the staff representatives on the General Advisory Committee. The alleged pressure exerted on the latter cannot, therefore, have caused him moral injury.

The EPO reaffirms that the individual declaration is lawful. The case law cited by the complainant is not relevant to the present case since it relates to a fundamentally different situation. His contention that the lump sum is a component of remuneration goes against the wording of Article 64 of the Service Regulations. If it had been part of his remuneration, it would have been deducted from the sum that he received as a result of Judgment 1663. The EPO concludes that it was indeed possible to place certain conditions on the payment of the lump sum.

It contends that the complainant was not a victim of discrimination, because he put himself in a situation which was different from that of the staff members who had signed the declaration. It adds that the staff in Vienna only received a reduced lump sum. It also refutes the accusations of blackmail.

D. In his rejoinder, the complainant rejects the explanations made by the EPO. By failing to define clearly the nature of the lump sum, the EPO recognised that it was a component of remuneration.

E. In its surrejoinder the EPO presses its arguments.

CONSIDERATIONS

1. The complainant attacks a decision by which the President of the European Patent Office accepted the recommendation of the Appeals Committee and dismissed his internal appeal against the decision of the Administration to require him, in March 1996, to sign a declaration as a condition of receipt of a lump-sum payment in settlement of an outstanding dispute relating to salary adjustments.

2. At the time of the original decision to require such a signature, the EPO and its staff had been engaged in a continuing dispute over the propriety of the changes, which had been put into effect from 1 July 1992, to the method of salary adjustment which had been in force since 1988. That dispute was already the subject of internal appeals. The present complainant was also a complainant in the proceedings which ensued before the Tribunal. A full history of the dispute and the surrounding circumstances can be found in Judgment

1663 (*in re* Bousquet No. 2, Gourier and Vollering No. 11).

3. While the complainant's internal appeal in the present matter was still pending the Tribunal issued Judgment 1663 in July 1997, which largely upheld the complainants' position, and found that the new method of calculating salary adjustments "infringed the staff's right to the adjustment due" under the 1988 procedure. The matter was remitted to the Organisation with instructions that the latter "take new decisions accordingly, in the complainants' and interveners' favour, as from 1 July 1992". That judgment has now been executed and the complainant has received an amount of 32,694.33 guilders.

4. It might have been supposed that the ruling in Judgment 1663 in his favour would have had the effect of causing the complainant to withdraw his internal appeal in the present matter. The payment of a lump sum was an abortive attempt by the Organisation to settle the then outstanding dispute with its staff, an attempt which the complainant clearly rejected. That dispute was subsequently definitively resolved by the Tribunal in the complainant's favour in Judgment 1663. What possible purpose could be served by determining the wholly theoretical question as to whether the Administration could or could not properly require the signing of the declaration as a condition of settlement of a dispute over salary when that dispute was itself no longer pending but had been finally resolved by the Tribunal? For those, like the complainant, who did not accept the offer of settlement, the latter was now clearly a dead letter and their rights had been determined by the terms of Judgment 1663.

5. Not so, however. The complainant has not only pursued his internal appeal through to a final administrative decision but has now carried that decision before the Tribunal. He seems to think that he is entitled not only to have the benefit of Judgment 1663 but also to take the lump sum which the Administration had previously offered in order to settle the same dispute while not granting it release from his claims, which was the condition it had imposed for such settlement.

6. The complainant is wrong. It is neither necessary for the Tribunal to take up his many pleas, most of which are irrelevant or inconsistent, or his new claims for damages against the President personally, nor to deal with the defendant's plea of irreceivability. It simply does not matter now whether the Administration was right or wrong to require a signature on the declaration. It is equally unimportant to decide whether or not the present complaint, or any part of it, is receivable. Not even the complainant's allegations of improper procedures before the General Advisory Committee can now be of anything more than theoretical interest. It is enough to say that the complaint has become devoid of all object and is a clear abuse of the Tribunal's procedure. For the reasons set out above and in Judgment 1931 (*in re* Baillet No. 3) of the same day, the complaint must be dismissed.

7. Before concluding, the Tribunal would emphasise that it will not tolerate the waste of time and money caused by the pursuit of abusive and unnecessary procedures before it and will take towards those responsible any appropriate action, including awards of costs, if requested to do so.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 November 1999, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

Michel Gentot
Jean-François Egli
James K. Hugessen

Catherine Comtet