

EIGHTY-NINTH SESSION

***In re Vollering* (No. 20)**

Judgment No. 1967

The Administrative Tribunal,

Considering the twentieth complaint filed by Mr Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 30 June 1999, the EPO's reply of 23 September, and the complainant's letter of 21 October 1999 by which he waived his right to rejoin;

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, in The Hague. Facts relevant to the present case are set out under A in Judgment 1663 (*in re* Bousquet No. 2, Gourier and Vollering No. 11) of 10 July 1997, and Judgments 1931 (*in re* Baillet No. 3) and 1932 (*in re* Vollering No. 17) of 3 February 2000.

On 15 February 1996, with a view to settling a salary dispute at the EPO, the President of the Office and staff representatives signed a joint statement agreeing several measures. They formed the subject of a proposal for a compromise settlement which was submitted to the Administrative Council. By decision CA/D 4/96 of 8 March 1996 the Council approved the measures that had been proposed, which included the payment of a lump sum for the period from 1 July 1992 to 31 December 1995 and the addition of two new steps at the start of each grade on the salary scale.

On 30 November 1998 the President of the Office rejected the complainant's internal appeal No. 33/96 regarding the one-off lump-sum payment. The complainant challenged that decision on 26 February 1999 when he filed his seventeenth complaint with the Tribunal, and the same day lodged a new appeal with the President, claiming that the lump-sum payment was only one part of a "package deal" which the President had not implemented in full. In a letter of 12 April 1999 the Director of Personnel Development informed him that he could not appeal internally against a final decision of the President; such a decision could only be appealed before the Administrative Tribunal. The complainant impugns that letter.

B. The complainant argues that the President of the Office was "bound by his decision to implement the package deal". Payment of the lump sum was an essential part of the "package deal", and in denying him payment of that sum the President is implementing the settlement agreed with the staff representatives in an arbitrary manner.

He moreover deplors the consequence of the implementation of the compromise settlement because the two new steps at the start of each grade are negative steps. He was opposed to the introduction of the steps because "he did not want to take the moral responsibility for the betrayal of his future ... colleagues".

The complainant asks the Tribunal: to declare the President's implementation of the package deal arbitrary, particularly the part relating to the "declaration" which "inherently contains the introduction of two new steps at the beginning of the salary scale for each grade"; and to order that the package deal be annulled or at least to order the annulment of the two new steps. He also seeks damages for the moral injury he has suffered as a result of the "arbitrary implementation of the package deal"; and compensation for costs incurred.

C. In its reply the EPO requests the Tribunal to dismiss the complaint as being irreceivable, superfluous and

unfounded. Because it considers that the present complaint represents a serious abuse of process, it asks the Tribunal to exceptionally order the complainant to bear his own costs and those of the Organisation.

On the receivability of the complaint, the Organisation argues that the letter of 12 April 1999 merely informed the complainant that the proper procedure for challenging the President's final decision of 30 November 1998 was to file a complaint with the Administrative Tribunal and the complainant has already availed himself of that means of redress by filing his seventeenth complaint which led to Judgment 1932. Consequently, in the present case, he has not only challenged the same decision for a second time, but he has also filed his complaint out of time. He has used this complaint "to present new claims which he apparently forgot to formulate when challenging for the first time the decision of 30 November 1998". The complaint is, therefore, clearly irreceivable.

On the matter of the two new incremental steps, it states that a decision was taken at the time of the adoption of the compromise settlement to the effect that the new steps would not apply to staff then in service. Therefore, the complainant is not personally affected by their implementation and his complaint is unfounded.

CONSIDERATIONS

1. With a view to resolving a dispute concerning the salary of staff in the European Patent Office, the President of the Office and the staff representatives agreed on the text of a compromise settlement approved by the Administrative Council on 8 March 1996.

Among other measures, the joint statement provided, as regards the past, for the payment of a lump sum and, for the future, the addition of two new steps at the start of each grade in the salary scale. The new steps would only be applicable to new staff.

Staff members wishing to receive the lump-sum payment envisaged as part of the settlement were invited to sign an individual declaration in which they undertook not to pursue any appeal relating to the salary dispute.

2. By a letter of 31 May 1996 to the President, the complainant requested payment of the lump sum without having signed the individual declaration and, in the event that his request was not met, asked that his letter be treated as an internal appeal.

His request was rejected by the Principal Director of Personnel by a letter of 19 July 1996. The President followed the opinion of the Appeals Committee and rejected the internal appeal in a letter of 30 November 1998.

3. By a letter of 26 February 1999, the complainant acknowledged receipt of the decision of 30 November refusing him payment of the lump sum. He also requested the restoration of the situation that prevailed before 1996 or, failing that, the removal of the "negative" steps from the salary scale as from 1996. In the event that his request was not met, he asked that his letter be treated as an internal appeal.

On the same day he filed a complaint with the Tribunal against the decision of 30 November 1998.

In a letter dated 12 April 1999, the Director of Personnel Development replied to the complainant that, as the filing of an internal appeal against the President's final decision was not allowed, the only course open to him was to refer the matter to the Tribunal.

4. The complainant indicates that the impugned decision is the one contained in that letter of 12 April 1999. He asks the Tribunal: to declare the President's implementation of the package deal arbitrary, particularly the part relating to the "declaration" which "contains the introduction of two new steps at the beginning of the salary scale for each grade"; and to order that the package deal be annulled, or at least to order the annulment of the two new steps. He also seeks compensation for moral injury and compensation for costs incurred.

5. The Organisation contends that the complaint is irreceivable on the grounds that, in particular, the letter of 12 April 1999 which is challenged by the complainant only contained information and did not constitute a decision which could be challenged before the Tribunal. It argues that the decision which in fact the complainant is impugning is the decision of 30 November 1998 rejecting his earlier internal appeal and that the present complaint, which was filed on 30 June 1999, is therefore time-barred.

6. If the impugned decision is the one contained in the letter of 12 April 1999, as the complainant suggests in the

complaint form, the complaint is receivable. That letter, however, which simply informed the complainant that an internal appeal was not allowed and that the only recourse open to him was to refer the matter to the Tribunal, cannot be interpreted as a decision within the meaning given to that term by the Tribunal (see Judgment 1203 *in re* Hosman and others, under 2).

7. If the impugned decision is in fact the decision of 30 November 1998 rejecting the complainant's first internal appeal, the Tribunal has already dismissed a complaint against that decision in Judgment 1932 and the complainant cannot challenge *res judicata*.

8. In his claims the complainant requests that the addition of two new steps at the beginning of each grade in the salary scale be annulled. However, since these provisions do not apply to him he has no cause of action.

9. The complaint must therefore fail. The Tribunal, however, finds no reason to uphold the EPO's claim that the complainant should pay costs.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The EPO's counterclaim is dismissed.

In witness of this judgment, adopted on 12 May 2000, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

(Signed)

Michel Gentot

Seydou Ba

James K. Hugessen

Catherine Comtet