

NINETY-FIRST SESSION

In re Criqui (No. 4)

Judgment No. 2069

The Administrative Tribunal,

Considering the fourth complaint filed by Mr Jean-Jacques Criqui against the European Patent Organisation (EPO) on 13 May 2000 and corrected on 29 May, the EPO's reply of 25 August, the complainant's rejoinder of 29 September and the Organisation's surrejoinder of 21 December 2000;

Considering Article II, paragraph 5, 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 Frenchman who was born in 1957, is an examiner at the European Patent Office, the EPO's secretariat; his duty station is The Hague. In 1996 he and several colleagues serving in Berlin, The Hague and Munich filed internal appeals concerning a wage dispute (see Judgments 1931, *in re* Baillet No. 3, and 1932, *in re* Vollering No. 17). The Appeals Committee decided to examine the appeals (all registered as RI/33/96) at its sessions of October 1997 in Berlin and June 1998 in The Hague. On 22 September 1997 one of the appellants, Mr Bousquet, who serves in Berlin, informed the Appeals Committee that he wished to be heard and would be accompanied by the complainant.

On 9 October 1997 the complainant submitted to the Administration, through the chairman of the Staff Committee, a duty travel request so that he could go to Berlin on 15 October in order to assist Mr Bousquet at his hearings. Travel orders are issued for officials deemed to be travelling on EPO business. The expenses incurred are covered by the Office within the limits set in the Service Regulations for Permanent Employees of the European Patent Office. The request was refused on 10 October. The same day Mr Bousquet wrote to the Principal Director of Administration referring to the refusal and asking "officially for the second time" to be assisted by the complainant. He asked the Director to reconsider the position taken by the Administration or else to treat his letter as a notice of appeal. The Director rejected the request in a letter of 13 October (see Judgment 2068, *in re* Bousquet No. 8, delivered this day). On 14 October the complainant again submitted a duty travel request - this time on his own behalf - accompanied by a letter from Mr Bousquet dated 10 October. That request was also rejected. The complainant was present at the hearings, which were held on 15 October.

By a letter of 5 December 1997 the complainant requested the President of the Office to revoke the rejection of his duty travel request or, failing that, to treat his letter as a notice of appeal. In his reply of 30 December 1997 the President explained the reasons for his refusal and asked the complainant to reconsider his decision to file an appeal. The complainant refused and the appeal was registered under the reference RI/106/97. Mr Bousquet having covered his travel expenses, the complainant's only remaining claim was to compensation for the day's leave he had to take to travel to Berlin. In its opinion of 31 January 2000 a majority of the Appeals Committee recommended rejecting the appeal. In a letter of 11 February 2000, which is the impugned decision, the Director of Personnel Development informed the complainant of the President's decision to reject his appeal.

B. In support of his complaint, the complainant cites Article 113(3) of the Service Regulations, which provides that:

"The appellant has the right to be heard. He may be represented or assisted by any person of his choice."

He observes that, to justify its decision, the EPO relied on Article 113(7), which indicates that:

"Any costs incurred by the appellant in the course of the appeal proceedings, in particular fees payable to a person chosen from outside the Organisation to represent or assist him, shall be borne by him, unless the appointing authority acting on a recommendation of the Appeals Committee decides otherwise."

But, the complainant argues, it is plain from the wording that the intent of the provision is to limit the costs incurred in appeal procedures, and particularly to curb the heavy expenditure on enlisting assistance from outside the Office. In his case, the costs were kept to a minimum as he is an employee of the Office and charged no fee. Moreover, he was the only person sufficiently versed in the subject to be of assistance to Mr Bousquet. The choice of venue of the Appeals Committee's session was not his and he cannot be held responsible for the geographical dispersion of the Office. The costs were therefore incurred indirectly by the Office and Article 113(7) does not apply. He submitted the travel request in good faith: the Organisation's practice has always been to meet assistance costs, such as air tickets, hotel expenses and leave. He contends that the discretion allowed the appointing authority gives rise to uncertainty in law.

The complainant asks the Tribunal to join his complaint and Mr Bousquet's eighth complaint, set aside the impugned decision, order the EPO to reimburse the expenses incurred and compensate the day's leave that he had to take, pay Mr Bousquet 2,000 German marks in moral damages and grant Mr Bousquet and himself costs.

C. The EPO replies that the complaint is partly irreceivable. The complainant's claim to reimbursement shows no cause of action since Mr Bousquet met the expenses and was repaid by the Staff Union. As for the claim to moral damages for Mr Bousquet, the complainant lacks standing to act on his behalf.

On the merits, the EPO refers to its reply to Mr Bousquet's eighth complaint (see Judgment 2068, under C). It points out that although appellants may be represented or assisted by any person of their choice, that does not imply automatic reimbursement by the Office of the expenses incurred. It challenges the complainant's interpretation of Article 113(7) and argues that the assistance he gave to Mr Bousquet was not indispensable or even necessary, since there was at least one other employee - in Berlin - conversant with remuneration issues. It submits that, contrary to the opinion of a minority of the Appeals Committee, the complainant did not assist Mr Bousquet as an expert acting on behalf of the Staff Committee: the complainant's appeal concerned the refusal of the request he had made in an individual capacity on 14 October 1997. In any event, the rules governing the competence of the Staff Committee do not apply in the present case and a travel order was out of the question. Furthermore, if it had been in the interest of the Staff Committee to send the complainant to Berlin, he would have been able to deduct the leave from the hours allocated to him for union activities. In any event, whether he assisted Mr Bousquet in an individual capacity or on behalf of the Staff Committee, it was not incumbent upon the Office to grant him a day's leave.

The EPO leaves the issue of the joinder of the complaints to the Tribunal.

D. In his rejoinder the complainant contends that it was the Office and the Chairman of the Appeals Committee who grouped together his appeal and those filed by employees in Berlin, The Hague and Munich and who decided to hold hearings in different places. The costs were therefore incurred by the Office and Article 113(7) does not apply. He points out that the staff member in Berlin who was conversant with remuneration issues had signed the compromise challenged by the appeals registered as RI/33/96, so there was no question of his assisting Mr Bousquet. He explains that the payment made by the Staff Union was only an advance and a token of its support for him, not an obligation. He indicates that he acted on his own initiative and not on the instructions of the staff representatives. Only the second duty travel request, submitted on his own behalf, is valid. In his view, challenging as they did "the fundamental principles and guarantees of the rights of employees", the appeals registered as RI/33/96 were exceptional and warranted reimbursement of costs. He refutes the Organisation's argument that he could have deducted his day's leave from the time allotted to staff union representation. That time may be used only for official union duties, which do not cover the case in point.

The complainant alters his claims: he no longer seeks reimbursement of the expenses incurred or an award of moral damages for Mr Bousquet, and confines the claim to his own costs.

E. In view of those changes, in its surrejoinder the EPO withdraws its objections to receivability.

It observes that, because they were each heard by the Appeals Committee at their own duty stations, the fact that the Office comprises several duty stations caused neither the complainant nor Mr Bousquet any injury. The complainant's presence in Berlin was the result of a personal choice by Mr Bousquet, so it is the latter who must assume the financial consequences. The Appeals Committee grouped together the appeals filed by employees in the same duty station in order to rationalise procedure. The EPO points to the contradictions between the complainant's statements and those of Mr Bousquet in his eighth complaint concerning the capacity in which the former travelled to Berlin. It maintains that the complainant was entitled to use part of the time allocated to staff representation. It denies that the appeals challenged "the fundamental principles and guarantees of the rights of employees"; on the contrary, in view of what the appellants obtained, they were vexatious.

CONSIDERATIONS

1. The complainant serves the EPO at The Hague as an examiner.

In 1996 he and several colleagues serving in Berlin, The Hague, and Munich lodged appeals against a decision concerning a wage dispute. Since they pursued the same claims, the appeals were registered together as RI/33/96. The Appeals Committee decided to hear them at two sittings, one to be held on 15 October 1997 in Berlin and the other, on 24 June 1998 in The Hague.

Mr Bousquet, one of his colleagues, chose the complainant to assist him at the hearings in Berlin. The complainant accordingly filed a duty travel request through the Staff Committee. The request having been rejected, he had to deduct a day from his annual leave in order to travel to Berlin. Deeming the rejection unwarranted, he challenged it in an appeal filed on 5 December 1997.

The President of the Office upheld his rejection by a letter of 30 December 1997. The appeal, registered as RI/106/97, was referred to the Appeals Committee.

On 11 February 2000 the Director of Personnel Development informed the complainant that the President had decided to reject his appeal on the Committee's recommendation. That is the decision he is challenging in this complaint.

2. In addition to joinder of his complaint with Mr Bousquet's eighth (see Judgment 2068 delivered this day), the complainant is asking the Tribunal to quash the decision of 11 February 2000 and to award him full redress in law, and in particular to order the Organisation:

- to reimburse what he spent (air ticket, airport transfers, hotel expenses) on travelling to Berlin to assist Mr Bousquet;
- to grant him an additional day's leave or payment in lieu, to compensate for the day's leave he had to take;
- to award Mr Bousquet moral damages in an amount of 2,000 German marks;
- to pay his and Mr Bousquet's costs.

In his rejoinder, however, he reduces his claims. He no longer seeks reimbursement of expenses or an award of moral damages for Mr Bousquet, and confines the claim to his own costs.

The application for joinder

3. The Tribunal finds that the conditions for joinder are not met in this case.

It is true that the two complaints rest on the same facts. However, they challenge different decisions, the complainants are not the same, and the claims rest on different pleas and are not the same. The complainant limits his claims to an additional day's leave and costs, whereas Mr Bousquet in his eighth complaint claims repayment of the costs incurred in the internal appeal RI/33/96.

The merits

4. The complainant objects that the EPO denied him an extra day's leave in compensation for the day he had to take to assist Mr Bousquet in Berlin.

The case turns on whether it was possible for the complainant to assist his colleague in Berlin without having to deduct the time he needed from his annual leave.

5. The EPO based its rejection of the complainant's request on the reasons it presented before the Appeals Committee and the latter's majority opinion.

In its submissions to the Committee the Office contended that, according to Article 113(3) of the Staff Regulations, the person chosen to assist the appellant may not claim repayment of his expenses, and any such claim must be made by the appellant enlisting the assistance.

Article 113(3) says:

"The appellant has the right to be heard. He may be represented or assisted by any person of his choice."

and Article 113(7) provides that:

"Any costs incurred by the appellant in the course of the appeal proceedings, in particular fees payable to a person chosen from outside the Organisation to represent or assist him, shall be borne by him, unless the appointing authority acting on a recommendation of the Appeals Committee decides otherwise."

The above provisions afford no basis for the rejection of the complainant's claim. Before both the Appeals Committee and the Tribunal, the complainant withdrew some of his claims and maintained only the claims to an additional day's leave and his costs. Article 113(3), establishing that an appellant may be assisted before the Appeals Committee by the person of his choice, applies in this case. But Article 113(7) does not: it deals only with payment of costs incurred, whereas the complainant's only remaining claim was to an additional day's leave.

Relying on Articles 34(2), 77(1) and 113(3) and (7), of the Service Regulations, the Appeals Committee found that: the conditions for granting a duty travel request were not met; an appellant's entitlement to be represented or assisted by a person of his choice in internal proceedings does not imply that the latter's costs would be met or special leave granted; in this case the general principles of international civil service law did not require the Office to grant additional leave; and the complainant failed to show that his presence in Berlin was indispensable or at least necessary.

Article 34(2) states:

"The duties undertaken by members of the Staff Committee and by the permanent employees appointed by the Committee to the bodies set up under these Service Regulations or by the Office shall be deemed to be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned."

Article 77(1) says:

"A permanent employee holding a travel order requiring him to work at or travel to a place other than that at which he is employed shall be entitled to:

- a) a daily subsistence allowance, in accordance with the provisions of Article 78;
- b) the reimbursement of travelling expenses necessarily incurred for such purpose, in accordance with the provisions of Article 79."

Article 113(3) and (7) are cited under 5 above.

Those provisions on their own and in the absence of other reasons afford insufficient grounds for denying the complainant an additional day's leave. Even though the conditions set in Articles 34(2) and 77(1) for treating travel as part of the employee's normal service or as official business were not met, it cannot properly be inferred that the time invested in assisting a colleague before the Appeals Committee, as Article 113(3) allows, must be deducted from annual leave.

The defendant cites Article 113(7), which is about the payment of costs, to justify its refusal of the complainant's claim to an additional day's leave. But that article is immaterial. And although the rules, cited by the defendant, do not require the Office to grant additional leave, they do not bar such leave from being granted in circumstances such as these. Lastly, the provisions cited do not lay down any obligation to show that attendance at the appeal hearings must be indispensable, or at least necessary, in order to assist a colleague and be granted the time necessary to do so.

6. The Organisation states clearly in its brief that paragraphs 3 and 7 of Article 113 constitute the right bases in law for its denial of the complainant's claim.

The above-mentioned provisions of Article 113 do allow an EPO staff member who has filed an appeal to be assisted before the Committee by the person of his choice, whether or not the latter is an employee of the Office. But nothing in those provisions, particularly in Article 113(7), which deals only with costs incurred in appeals, can justify the refusal to grant the complainant an additional day in compensation for the day he had to take in order to assist his colleague.

7. Neither the texts cited, nor the defendant's arguments, nor the circumstances of the case afford proper grounds for the assertion that the complainant had to deduct a day from his annual leave in order to assent to his colleague's request for assistance.

The complainant contends, and the Organisation does not seriously deny, that staff members assisting colleagues before the Committee usually do so during office hours. In the Tribunal's view, such mutual legal assistance is also in the Organisation's interests.

8. In these circumstances, in view of the exceptional nature of the journey the complainant had to undertake to assist his colleague in the hearings before the Appeals Committee, the complainant is justified in asking for the day he spent in Berlin not to be deducted from his annual leave. The impugned decision must, therefore, be set aside insofar as it denies the complainant an additional day's leave.

9. Since the complainant's claims succeed in part, he is entitled to costs in an amount of 400 euros.

DECISION

For the above reasons,

1. The decision of 11 February 2000 of the President of the Office is set aside insofar as it denies the complainant an additional day's leave.
2. The EPO shall grant the complainant an additional day's leave.
3. It shall pay the complainant 400 euros in costs.
4. The complainant's other claims are dismissed.

In witness of this judgment, adopted on 9 May 2001, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 27 July 2001.