

THIRTY-FIRST ORDINARY SESSION

***In re* HAKIN (No 2)**

Judgment No. 217

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Patent Institute (IPI) drawn up by Mr. Robert Hakin on 22 September 1972 and brought into conformity with the Rules of Court on 15 January 1973, and the Institute's reply of 27 February 1973;

Considering Article II, paragraph 5, of the Statute of the Tribunal, former IPI Staff Rule 13 and Appendices II and IV-1 to the former Staff Rules and new IPI Staff Regulations 5, 21, 82 and 91;

Having examined the documents in the dossier, the oral proceedings requested by the complainant having been disallowed by the Tribunal;

Considering, that the material facts of the case are as follows:

A. The complainant was appointed to the staff of the IPI by contract dated 17 and 23 December 1966 and started work as a probationary examiner on 1 April 1967. In his contract of appointment he was provisionally granted two "seniority bonuses" to take account of his previous experience, in accordance with Rule 13, paragraph 2, and Appendix IV-1 of the former Staff Rules. He was at first assigned to a technical branch not entirely suited to his professional experience. His probation period was extended by three months and he was transferred to technical work with which he was more familiar. By letter of 10 July 1968 he was informed that his appointment was confirmed from 1 July 1968, the date following that on which he had completed his extended probation period. The two seniority bonuses provisionally granted to him on recruitment were also confirmed. From the date of confirmation of his appointment he was classed at grade 3 on scale I as set out in Appendix II to the Staff Rules then in force, and at the step corresponding to minimum seniority of one year. He neither objected to nor appealed against his grading. On 22 December 1971 the Administrative Council of the Institute adopted new Staff Regulations to replace the Staff Rules under which he had been appointed. The reclassification of staff members at the grades and steps prescribed in the new Regulation was to be based on a scale of equivalence also adopted by the Administrative Council. According to this scale and with due regard to the point which he had by then reached on the old scale, the complainant was regraded on 17 February 1972 at grade A.6, step 1, with effect from 1 January 1971, and his seniority at that step on that date was determined at eighteen months. On 6 March 1972 he wrote to the Director-General asking for the grant of twenty-four months' additional seniority bonus on regrading on the grounds of new Staff Regulation 21. The Director-General dismissed his claim by letter of 18 May 1972, and he lodged an internal appeal by letter of 29 May. The Director-General dismissed that appeal on 26 June 1972 on a recommendation made by the Appeals Committee on 22 June 1972 on the grounds, among other things, that, having been recruited under the former Staff Rules, he could not rely on new Staff Regulation 21, under which the grant of seniority bonuses formed part of the conditions of appointment and was therefore inseparable from the staff member's original grading on recruitment.

B. Mr. Hakin is appealing against the Director-General's original decision of 18 May 1972, the Appeals Committee's recommendation of 22 June 1972 and the Director-General's final decision of 26 June 1972 on that recommendation. He asks the Tribunal to:

(a) quash these decisions;

(b) declare that he is entitled to benefit under the provisions of Article 21 of the Staff Regulations adopted on 20, 21 and 22 December 1971;

(c) order the Director-General of the Institute to pay him twenty-four months' additional seniority bonus as prescribed in the current scales;

(d) order payment of the sums which should previously have been paid to him as twenty-four months' additional seniority bonus, plus the interest accrued, at the date of his original claim, 6 March 1972; and

(e) award him 4,000 French francs towards the costs of his complaint.

C. The Institute concludes its reply by asking the Tribunal:

(a) simply to confirm the dismissal of the complaint notified to the complainant by the Director-General in his letter of 26 June 1972 on the Appeals Committee's recommendations of 22 June 1972;

(b) accordingly to dismiss the complainant's claim for twenty-four months' additional seniority bonus;

(c) to dismiss his claim for payment of the sums which would previously have been paid to him as twenty-four months' additional seniority bonus, plus interest, at 6 March 1972; and

(d) to refuse his claim for payment of 4,000 French francs towards the costs of the complaint.

Subsidiarily, and should the Tribunal decide that the Administration's impugned decision of 18 May 1972 is unlawful, the organisation asks the Tribunal to withhold judgment on the question of awarding the complainant twenty-four months' additional seniority bonus and to refer that question to the Director-General of the Institute for reconsideration.

CONSIDERATIONS:

Article 21 of the present Staff Regulations Under Rule 13 of the former Staff Rules, a staff member could be granted on recruitment a seniority bonus to take account of his previous experience; at the end of the probation period the bonus might, if appropriate, be replaced by a permanent bonus. In accordance with this provision the complainant as a probationer was granted two bonuses which were maintained when his appointment was confirmed on 1 July 1968.

The present Staff Regulations, adopted by the Administrative Council at its session from 20 to 22 December 1971, came into force on 1 January 1972 and became effective at the same date, except for Chapter VI comprising Articles 36 and 37 which were retroactive to 1 January 1971. Article 91 of the new Regulations lays down that the Director-General shall reclassify "on the basis of the scale of equivalence of seniority, grade and step approved by the Administrative Council on the recommendation of the Advisory Administrative Board" (Registry translation) the staff members holding permanent appointments who were in service on 31 December 1971. Consequently on 17 February 1972 the complainant was classified in grade A.6, step 1, as from 1 January 1971, and in grade 6, step 3/0, as from 1 July 1971, his seniority having been determined at eighteen months at 1 January 1971. This decision was subject to a declaration which was duly submitted by the complainant surrendering the advantages of the terms of his contract of employment dated 1 April 1967.

Article 21 of the present Staff Regulations reads as follows:

"An official shall be classified on recruitment at the first step of the basic grade for the post to which he is appointed. The Director-General may, however, grant a seniority bonus to take account of the recruited official's special training and experience which may entail his classification in the grade immediately above, provided that such bonus shall not exceed 48 months." (Registry translation)

The complainant is claiming twenty-four months' additional bonus under the above provision.

It is clear from the provisions cited above that the bonuses form part of the terms of recruitment. In other words, Article 21 of the present Regulations applies only to staff members appointed after that regulation came into force, i.e. after 1 January 1972. It follows that the complainant, who began his probationary period on 1 April 1967 and whose appointment was confirmed as from 1 July 1968, cannot claim an additional bonus under Article 21. He could only do so if that Article was retroactive to the date at which the complainant was recruited, which is not the case.

Even though the complainant has surrendered the advantages of the former Rules he cannot claim to benefit by

Article 21 of the present Regulations. His declaration simply indicated that he accepted the replacement of the old Rules by the new, and did not have the effect of putting him in the position in which he would have been if he had been recruited after 1 January 1972, when Article 21 came into force.

The rejection of the complainant's application for an extra bonus does not violate the principle of equal treatment. That principle, which is laid down in Article 5 of the new Staff Regulations and which would be applicable even in the absence of a specific provision, is intended to ensure that persons who are in similar circumstances in fact and in law are put on the same legal footing. At the time of his recruitment and on the confirmation of his appointment, however, the complainant was subject to the former Staff Rules and was therefore in a different position from staff members recruited under the new Staff Regulations after 1 January 1972. Consequently, the complainant did not suffer unequal treatment in relation to staff members appointed later because he was not in the same position as they were.

There is no contradiction in the fact that all staff members, whatever the date of their appointment, are entitled to the family allowances provided under Article 41 of the new Staff Regulations, even though Article 21 is applied only to staff members appointed after 1 January 1972. To grant family allowances to the whole staff on the basis of Article 41 merely means applying that provision normally to situations existing after it came into force. To grant the complainant an extra bonus under Article 21, on the other hand, would mean giving retroactive effect to that Article in preference to the Rules that were applicable at the time.

2. As to the application of the transitional decision of the Administrative Council

As a transitional measure the Administrative Council decided to grant a fourth bonus to staff members who had received three under the former Rules and who would have deserved one more if the new Regulations had been effective at the time.

While recognising that the above decision does not provide a valid ground for his claim to an additional bonus, the complainant alleges that the Administrative Council encroached on the authority which the Director-General enjoys under Article 21 of the present Regulations. In relying on this provision, however, the complainant is in error and he cannot base his claim on an alleged limitation of the authority it confers. Moreover, his grievance is unfounded. Whereas Article 21 of the new Staff Regulations applies to staff members recruited after 1 January 1972, the decision of the Administrative Council applies to staff members appointed before that date, and the scope of the Article was therefore not restricted by that decision.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet