Registry's translation, the French text alone being authoritative.

THIRTY-FIRST ORDINARY SESSION

In re HAKIN (No. 3)

Judgment No. 218

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 Rules 13, 14, 15, 34 and 37 and Appendices II and IV-1, and Regulations 5, 24, 91 and 98 of the new Staff Regulations;

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 on 1 April 1967 as an examiner on probation. He was at first assigned to a technical branch (the physics division) not entirely suited to his professional experience. The Institute says that this was because of the limited choice of available posts, but the complainant claims that the Institute made a mistake. His probation period was extended by three months and he was transferred to technical work with which he was more familiar (the mechanics division). 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 to take account of his previous experience 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 Regulations 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. By letter of 25 February 1972 he appealed against the regrading on the grounds that according to the scale of equivalence the seniority on which regrading was based should be the actual period pent in the service of the Institute, and the delay in his advancement due to the extension of his probation period should not therefore be taken into account in regrading him. The Director-General dismissed his appeal in a minute of 23 March 1972, and he lodged an internal appeal by letter of 25 April. On 23 June the Director-General dismissed that appeal on the Appeals Committee's recommendation of 19 June. The Committee had held that the purpose of the scale of equivalence used in regrading was to translate the staff member's position on the old scale at the time of regrading into the grades and steps prescribed by the new Staff Regulations and that it was not the actual period of service that should be taken into account in regrading a staff member but the period of service corresponding to his final position on the old salary scale.

B. Mr. Hakin is appealing against the Director-General's decision of 23 March 1972, the Appeals Committee's recommendation of 19 June 1972 and the Director-General's final decision of 23 June 1972. He asks the Tribunal to:

(a) quash these decisions;

(b) declare that in regrading him the Director-General of the Institute should grant him seniority of twenty-one months from 1 July 1971, i.e. three months' additional seniority;

(c) order payment of the sums which should previously have been paid to him as three months' additional seniority bonus, plus the interest accrued, at the date of his original claim, 25 February 1972; and

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

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

(a) to declare the complaint irreceivable in that, though ostensibly contesting his regrading of 17 February 1972, the complainant is really impugning the decisions taken in 1968, which he failed to impugn in time;

(b) to declare the complaint receivable in so far as it impugns the decision of 17 February 1972;

(c) simply to confirm the dismissal of the complaint notified to the complainant by the Director-General in his letter of 23 June 1972 on the Appeals Committee's recommendation of 19 June 1972;

(d) accordingly, to dismiss the complainant's claim for recognition of three months' additional seniority in his regrading under the new Staff Regulations;

(e) to dismiss his claim for payment of the sums which would previously have been paid to him as three months' additional seniority bonus, plus the interest accrued, at 25 February 1972;

(f) to dismiss his claim for the award of 4,000 French francs towards the costs of the complaint.

CONSIDERATIONS:

1. The Institute contends that, though ostensibly contesting the Director-General's decision of 17 February 1972 concerning his regrading, the complainant is really impugning decisions taken in 1968 which had become final. It therefore questions whether the complaint is receivable inasmuch as it impugns the decision of 17 February 1972, and, if it is, whether the arguments advanced against the consequences of the 1968 decisions can be taken into consideration. These doubts are only partly justified. There is nothing to prevent a staff member from lodging a complaint against one decision while at the same time discussing the validity of an earlier one, or claiming the cancellation of its effects, provided that it has not become final.

2. Article 91, paragraph 1, of the present Staff Regulations lays down that "the Director-General shall appoint as officials staff members holding permanent appointments who are in service on 31 December 1971 and shall reclassify them 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). Acting under this provision, the Director-General on 17 February 1972 classified the complainant in grade A.6, step 1, as from 1 January 1971 and in grade A.6, step 3/0, as from 1 July 1971, his seniority having been determined at eighteen months at 1 January 1971.

In his memorandum to the Tribunal the complainant expressly states that he "has no quarrel with the machinery for grading in the new scales", nor does he contest the fact that "the purpose of the scale of equivalence used in regrading was to translate the staff member's position on the old scale at the time of regrading into the grades and steps prescribed by the new Staff Regulations". He thus recognises that in assessing his seniority on 17 February 1972 with due regard to the situation created by the decision confirming his appointment on 10 July 1968, the Director-General correctly applied the present Staff Regulation 91. It follows that in the light of the complainant's own statements his claims appear to be without merit.

3. It is true that in the same memorandum the complainant contends that the decision regrading him on 17 February 1972 ought to have had regard to his real seniority, and not to that resulting from the decision of 10 July 1968, since the withholding of part of his salary due to the three-months' extension of his probation had affected his subsequent remuneration from year to year up to the time when the new Staff Regulations came into force. This argument is in contradiction to the complainant's own statements, and is moreover irrelevant. New Staff Regulation 98, paragraph 4, does indeed provide that the appeals committees are competent to consider disputes arising out of the application of the former Staff Rules, but it cannot apply to disputes which have been closed by a final decision and the reopening of which the authors of the new Regulations never intended to authorise. The complainant cannot therefore now rely on the above-mentioned provision to contest the validity of the decision of 10 July 1968 which became effective immediately, or to obtain compensation for the alleged salary deductions resulting from it.

He states, indeed, that he never "questioned the propriety of the 1968 decisions".

It is therefore immaterial whether in 1968 the complainant was or was not entitled to refer to an appeals committee the decisions taken at that time. As from the entry into force of the amended Rule 37 of the former Staff Rules, i.e. as from 1 May 1970, it was open to the complainant, although he alleges the contrary, to submit to an appeals committee the claims he is now making.

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

Updated by PFR. Approved by CC. Last update: 7 July 2000.