

The Administrative Tribunal,

Considering the fifth complaint filed by Mr A. R. against the European Patent Organisation (EPO) on 9 December 2005 and corrected on 23 January 2006, the Organisation's reply of 25 April, the complainant's rejoinder of 11 June and the EPO's surrejoinder of 17 July 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Have examined the written submissions;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Spanish national born in 1959, joined the European Patent Office, the EPO's secretariat, in 1991. He is a patent examiner at grade A3.

Article 29 of the Service Regulations for Permanent Employees of the European Patent Office reads as follows:

“Vocational training

The Office shall facilitate such further training and instruction for permanent employees as is compatible with the proper functioning of the service and is in accordance with the interests of the permanent employees. Such training and instruction shall be taken into account for the purposes of promotion in their careers.”

By e-mails of 16 July and 4 August 2003 the complainant made enquiries with the Personnel Department concerning a request for special leave with a view to sitting examinations – in architecture inter alia – in Spain. By messages of 5 and 7 August the EPO informed him that the special leave request could not be granted for it “in no way reflect[ed] the Office's needs”. A formal request for one day's special leave and two days' travel time, which was submitted by the complainant on 11 August, was rejected by the Administration the next day. The complainant appealed against that decision on 18 August 2003. In its opinion dated 8 August 2005, the Appeals Committee recommended unanimously that his appeal be dismissed. The Director in charge of Personnel Management and Systems, acting on behalf of the President of the Office, rejected the appeal by a letter of 13 September 2005. That is the impugned decision.

B. The complainant takes the Appeals Committee to task for displaying an “amazing power of imagination” in its interpretation of Article 29 of the Service Regulations and for stating that the decision whether or not to grant special leave for training was a matter for the discretion of the EPO. In his opinion there are no grounds for “combining” Article 29, which refers to training in the interests of permanent employees, and Article 59, which refers to training from the Office's point of view. These are two independent articles and both the Administration and the Committee are wrong to take them together. He submits that Article 29 of the Service Regulations clearly indicates that permanent employees' interests and the proper functioning of the service are the sole factors to be taken into account when considering a request for special leave for training. He accuses the EPO of seeking to make savings, whereas the right to training forms part of permanent employees' “social benefits” and the EPO's “systematic refusal” is leading to a whittling away of “benefits recognised in the Codex”, that is the compendium of rules applicable to staff.

The complainant requests the quashing of the impugned decision, the granting of the number of days' leave requested, 1,500 euros in damages and a translation of the Appeals Committee's opinion – which is in German – into “a language of the [International Labour Organization (ILO)]”.

C. In its reply the EPO denies having made any error of judgement. It states that Article 59 of the Service Regulations and Circular No. 22 constitute the basic texts governing the granting of special leave for further

training purposes. Circulars Nos. 242 and 267 also refer to Circular No. 22. The complainant is therefore wrong to refer solely to Article 29 of the Service Regulations, since its provisions must be seen and applied in their overall context. The Organisation refers to Judgments 2262 and 2379 concerning the complainant's second and fourth complaints, in which he challenged the interpretation of the same provisions. It submits that the decision to grant special leave is a matter for its discretion and is subject to only limited review. As the Appeals Committee and the Tribunal have stated, the Organisation is entitled to assess whether or not further training is in its interests. Architectural studies are completely unconnected to the complainant's present professional duties. The EPO denies that the Office systematically refuses to encourage further training, as suggested by the complainant. It emphasises that the complainant was himself given special leave to study economics and that it informed him that it would give him further special leave to sit Japanese examinations. Lastly, it asserts that the complainant's last claim has already been satisfied, as is shown by the copy – in French – of the Committee's opinion which the complainant himself has annexed to his complaint brief.

D. In his rejoinder the complainant accuses the EPO of misinforming permanent employees as to the extent of their rights when they are recruited, since the Service Regulations, which they receive before accepting an offer of employment, do not require that the EPO's interests be taken into account when granting special leave for training. In his opinion, it ought to be possible to obtain such leave for "any examination". He rejects the defendant's arguments, and especially the contention that the decision to grant special leave is a matter for the discretion of the EPO, since Article 59 of the Service Regulations stipulates that the "relevant joint committee" must be consulted. He accuses the Organisation of showing bad faith and of attempting to deceive the Tribunal. He asserts that Circular No. 267 provides a much more open-ended definition of the term "vocational training" and that it contradicts the defendant's position. He adds that the EPO is under an obligation to observe its own rules. He concludes by stating that he presses "all his initial claims", but no longer mentions the claim concerning the translation of the Appeals Committee's opinion, and he requests that the Tribunal issue instructions to the EPO as to how to interpret the texts in question.

E. In its surrejoinder the Organisation draws attention to the fact that in Judgment 2262 the Tribunal considered that a financial contribution on its part – such as the granting of special leave to sit examinations – would only be justified where a definite advantage could be gained by it. It points out that Article 29 of the Service Regulations expressly refers to the "vocational" nature of further training. Lastly, it submits that its interpretation of the provisions of the Service Regulations concerning special leave is sound and that the complainant therefore cannot complain of having been misled about his rights when he took up his duties.

CONSIDERATIONS

1. The complainant, a patent examiner at grade A3, filed a complaint challenging a decision of 13 September 2005 by which the Director in charge of Personnel Administration and Systems, acting on behalf of the President of the Office and in accordance with a unanimous recommendation of the Appeals Committee, dismissed his appeal against the refusal to grant him special leave to sit architecture examinations in his home country.

2. As the parties have entered extensive written submissions, hearings will not be necessary and the complainant's request to this effect is rejected.

3. The challenged decision is based on Articles 29 and 59, paragraph 3, of the Service Regulations.

Article 29, which is reproduced under A, above, provides that the Office shall facilitate further vocational training for permanent employees.

Article 59, paragraph 3, establishes the permanent employee's entitlement to annual leave of 30 working days per calendar year, and to special leave for family reasons, the length of which varies according to circumstances. The second subparagraph of this paragraph confers on the President of the Office the authority to determine, after consultation of the relevant joint committee, the conditions and rules for granting special leave.

4. The scope of Article 59, paragraph 3, of the Service Regulations has been clarified in three circulars, Nos. 22, 242 and 267.

Paragraph 3 of Rule 3 of Circular No. 22 extends the sphere of application of Article 59, paragraph 3, of the

Service Regulations to obligations and activities which are no longer directly related to the family situation of employees. Thus, under subparagraph b) of this provision, employees may be granted upon request up to ten days' special leave per year for further training and/or examinations (special leave for vocational training and further training purposes). It is stipulated in this subparagraph that in granting such special leave, due account shall be taken of the requirements of the service.

According to subparagraph b) of paragraph 3 of Circular No. 242, the granting of special leave for training purposes concerns further training courses and examinations attended or sat by staff members on their own initiative. This circular points out that this special leave will henceforth be granted only to enable staff members to sit examinations, not to prepare for them, and for 50 per cent of the time spent abroad attending language courses in one of the three official languages.

The preamble to Circular No. 267 first explains that the guidelines for basic and further vocational training are intended to assist employees to perform their tasks well, in a rational way and to their own satisfaction. Basic and further vocational training includes all training supplementing school and professional qualifications obtained by a permanent employee prior to taking up his/her appointment with the Office. Article 1 of this Circular states that the objectives of basic and further vocational training are to further the skills and career development of the staff member in order to help him meet the present and future demands of his post and to prepare himself for assuming new duties and/or responsibilities. This provision emphasises that training is an ongoing activity which should be pursued throughout the staff member's career, so as to provide him with opportunities to develop in his professional field. Article 2 indicates that basic and further vocational training chiefly covers explaining the Office's activities and the specific role and task of the staff member concerned, improving language proficiency, supplementing, consolidating and updating professional knowledge and skills and, lastly, broadening professional experience through internal and external contacts. Article 3 states that training can take the form of courses, seminars or lectures inside or outside the Office.

5. The complainant has already asked the Tribunal in two previous complaints to rule on the scope of the provisions examined above. The Tribunal ruled on those complaints in Judgments 2262 and 2379.

First, it found that the decision concerning the granting of special leave for basic or further vocational training purposes is a matter for the discretion of the Office and that it could therefore be set aside only if it was taken without authority or in breach of a rule of form or of procedure, or was based on an error of fact or of law, or overlooked some essential fact, or was tainted with misuse of authority, or if a clearly mistaken conclusion was drawn from the evidence.

It emphasised, however, that in taking its decision the Office must strike a reasonable balance between the interests involved. The Office must ensure that the granting of special leave does not compromise the proper functioning of the service in which the staff member works. However, it must not lose sight of the fact that refusing special leave can also jeopardise the proper functioning of services, since it is plainly in the Office's interest that staff members regularly refresh their skills to meet the demands of their professional duties. This interest, which justifies the granting by the Office of special leave for basic or further vocational training, may not be immediately obvious, to the extent that it may appear secondary compared with the permanent employee's interests. Special leave may therefore be granted, depending on the circumstances, in order to acquire knowledge that is likely at a later stage to promote the staff member's career within the Organisation.

The complainant is therefore mistaken in submitting that Articles 29 and 59 of the Service Regulations are, as far as the granting of special leave is concerned, independent provisions and that Article 29 implies that special leave for further vocational training must be granted provided that it does not jeopardise the proper functioning of the service.

6. In issuing Circulars Nos. 22, 242 and 267, the Office merely clarified the right to special leave under Article 59 of the Service Regulations in the light of Article 29 thereof, which requires it to facilitate the further vocational training of its staff members.

In the present case, these texts could only lead it to refuse the complainant's request for special leave, and its decision does not exceed the bounds of the discretion which these texts confer on it, since the complainant cannot demand that his employer contribute financially towards his architectural training given that it is of no present or foreseeable benefit to the Office, as the EPO underlines in its reply.

7. One of the complainant's claims is for a translation of the Appeals Committee's recommendations, on which the challenged decision rests, into a language of the ILO. This claim is without object because an official translation into French of the Appeals Committee's opinion of 8 August 2005, which is the only one relevant to this case, was submitted by the complainant himself when his complaint was corrected.

8. The complaint must therefore be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 27 April 2007, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet