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

THIRTY-SEVENTH ORDINARY SESSION

In re CHARBONNIERAS

Judgment No. 277

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Patent Institute (IPI) drawn up by Mr. Christian André Noël Charbonnieras on 21 August 1975 and brought into conformity with the Rules of Court on 28 August 1975, the Institute's reply of 25 September 1975 and the complainant's rejoinder of 3 October 1975;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal, Institute Staff Regulations 60, 69, 82, 83 and 84, articles 1, 4, 5 and 6 of the pension and welfare scheme rules, articles 1(c) and 10 of the internal, rules of the Appeals Committee, and the statement made by the Administrative Council of the Institute on 17 December 1970;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

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

A. The complainant joined the staff of the Institute as an "examiner" on 1 December 1971. He resigned and left on 27 March 1975. While conceding that under the pension and welfare scheme rules he had no right to the sums paid on his behalf by the Institute, by letter of 19 February 1975 the complainant appealed to the Director-General's generosity and asked for payment of the Institute's contributions. In his reply of 13 March the Director-General said he could not make an exception to the relevant rules laid down by the Administrative Council. On leaving the Institute the complainant received the total of his own contributions plus simple interest at 3.5 per cent. In a letter of 19 April to the Director-General he expressed dismay at the low rate of interest, at the fact that even a dismissed official was paid compound and not just simple interest and at the withholding of the Institute's own contributions. He claimed payment of those contributions plus compound interest at 3.5 per cent and of 3.5 per cent compound, instead of simple, interest on his own contributions. Finally, he asked that, if refused, his claims should be referred to the internal Appeals Committee. By letter of 29 April 1975 to the complainant the Director-General confirmed his letter of 13 March. By letter of 11 May the complainant repeated his request to have the matter referred to the Appeals Committee. The request was met, and the complainant was so informed on 26 May. In its report of 27 June 1975, which was sent to the complainant, the Committee recommended the Director-General to dismiss the appeal. By letter of 2 July the Director-General told him that after examining the Committee's report he had decided to abide by his decision of 13 March. Although the complainant takes 27 June 1975, the date of the Committee's report, as that of the decision he impugns, it is in fact the final decision of 2 July 1975 he is appealing against.

B. The complainant maintains that the decision was at odds with the Administrative Council's statement of 17 December 1970 on the alignment of the remuneration and related benefits of Institute staff with those enjoyed by European Communities staff, whose Staff Regulations prescribe compensation for 1088 of the employer's contributions in the event of termination short of ten years' service. In his claims for relief he accordingly asks the Tribunal to order the Institute to pay him the termination indemnity prescribed in the Staff Regulations of the European Communities, which is equivalent to the contributions paid by the employer and is aligned with the cost of living.

C. The Institute points out that the complainant's internal appeal consisted of two claims: one for payment of the difference between simple and compound interest on the sums paid to him; the other for payment of the Institute's pension contributions. The Institute differs from the Appeals Committee and takes the view that the second claim was irreceivable as being time-barred. It therefore considers that the Tribunal cannot hear this claim. It further contends that the complainant's claim for relief is irreceivable on the grounds that the Tribunal is the first instance to hear it. Should the Tribunal find itself competent "ratione temporis", however, it is not competent "ratione

materiae" within the meaning of Article II of its Statute, in particularly paragraph 1 thereof. The complainant does not infer from any provision in the Staff Regulations an obligation to pay him the sums he claims and in his letter of 19 February 1975 he actually concedes that he has no right under the pension and welfare scheme to payment of the Institute's contributions. The Institute therefore takes the view that the Tribunal is not competent to order that the complainant's claim be met. Lastly, the Institute argues that the complaint is unfounded on the merits.

D. The Institute asks the Tribunal:

1. to declare time-barred and therefore irreceivable the claim for payment of the Institute's contributions to the pension and welfare scheme;

2. to declare irreceivable the claim for payment of the termination indemnity prescribed by the Staff Regulations of the European Communities on the grounds that that claim has been submitted to no other instance before the Tribunal;

3. as to the claim to payment of the difference between simple and compound interest on the complainant's own contributions to the pension and welfare scheme, refunded to him on termination, and, subsidiarily, as to the other claims, should the Tribunal declare those claims receivable, to declare itself not competent to hear them;

4. further subsidiarily, to declare the complaint quite unfounded; and accordingly, to dismiss the complainant's claims in their entirety.

CONSIDERATIONS:

As to the receivability of the complaint:

1. In his letter of 19 April 1975 to the Director-General of the Institute the complainant claimed: first, payment of the pension contributions paid by the Institute, plus compound interest at 5.5 per cent a year; secondly, payment of the difference between simple and compound interest on his own contributions. Since the complaint does not include the latter claim, the Tribunal is called upon to settle only the former. None of the Institute's three procedural objections thereto is valid.

First, the Institute argues that the complainant failed to appeal to the Appeals Committee against the Director-General's decision of 13 March 1975 until 23 April, i.e. after the expiry of the thirty-day time limit laid down in Article 83 of the Staff Regulations. In other words, it contends - contrary to the Committee's own view - that the appeal to the Appeals Committee was time-barred and therefore irreceivable. The Tribunal need not settle this point. According to Article VII, paragraph 1, of its Statute it is required to consider merely whether the internal means of redress have been exhausted - in this case whether the Director-General's original decision led to a recommendation by the Appeals Committee. That condition is undoubtedly fulfilled, and the complaint is therefore receivable. It is immaterial that the Appeals Committee may have erred in hearing the appeal. The fact is that it gave its views and consequently the complainant had recourse to the internal means of redress available to him. Although the Tribunal must determine whether its own time limit for filing a complaint has been respected, it will not review the observance of procedural rules in internal bodies. It merely notes that such bodies have heard the appeal. The most that can be said is that matters would have been different had the Director-General in his final decision expressed reservations on the propriety of the appeals procedure. But he did not do so.

Secondly, the Institute observes that this is the first time the complainant has made the claim contained in his complaint. This argument is irrelevant. In claiming payment of "the termination indemnity prescribed by the Staff Regulations of the European Communities, which is equivalent to the contributions paid by the employer and is aligned with the cost of living", the complainant merely repeats in different terms the claim made in his letter of 19 April 1975 for "payment of the administration's contributions ... plus 3.5 per cent interest a year".

Thirdly, the Institute contests the Tribunal's competence "ratione materiae" on the grounds that the complainant does not contend that the duty to pay him the sums claimed derives from any provision of the Staff Regulations. Here again the Institute's reasoning is too formalistic. It appears from the summary of facts appended to his complaint that the complainant is alleging infringement of a resolution adopted on 17 December 1970 by the Governing Council, i.e. a text which, in his view, replaces the provisions of the Staff Regulations and so has the same legal force.

As to the merits:

2. Article 6 of the pension and welfare scheme rules reads as follows (Registry translation):

"Any staff member who terminates his service at the Institute and has not contributed to the present scheme for at least 10 years is entitled to repayment of his own contributions to the scheme plus simple interest at 3.5 per cent a year. The other provisions of these rules cease to apply to him.

However, any staff member who has been terminated on the grounds of inadequate employment and has not contributed for at least 10 years shall have his own contributions to the scheme refunded plus compound interest at 3.5 per cent a year unless he chooses to avail himself of the provisions laid down in Article 5...".

According to the Institute the reference in the second paragraph to "inadequate employment" means lack of employment, that is in effect the abolition of a post. Since that construction is not questioned it follows that the second paragraph is not applicable to the complainant, who of his own accord left a post which continued to exist after his departure. Thus the complainant can lay valid claim only to the contributions referred to in the first paragraph, i.e. his own contributions plus simple interest at 3.5 per cent a year. Since he has already had those contributions refunded, he cannot properly base any further claim on the pension and welfare scheme rules.

It is true that, to support his claim for repayment of the contributions paid by the Institute on his behalf, he relies upon the statement adopted by the Administrative Council on 17 December 1970. But that statement merely says that the Council has adopted a series of proposals to be submitted to the administrative committee it has decided to set up at the request of the staff and the purpose of which is to bring the salary scales and related benefits of Institute staff in line with those applicable in the European Communities. That is a mere statement of intent which did not imply any firm undertaking by the Institute and which consequently did not create rights upon which the staff may rely. Hence the complainant cannot rely upon that statement to support his claim to entitlement under the provisions applicable to the staff of the European Communities.

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 4 October 1976.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

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