

In re KARSKENS

Judgment No. 304

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Patent Institute drawn up by Mr. Jacques Karskens on 5 May 1976 and brought into conformity with the Rules of Court on 14 June, the Institute's reply of 7 July, the complainant's rejoinder of 13 August and the Institute's surrejoinder of 15 September 1976;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Institute Staff Regulations 5, 15 and 25 to 30 and the general principles governing promotion adopted by the Administrative Council of the Institute in October 1975;

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. On 16 October 1973 the complainant joined the Institute staff at grade D4 on an appointment governed by the Staff Regulations which had come into force on 1 January 1972. He received two years' seniority benefit and was therefore graded D4, second step, on appointment.

B. The complainant objects to his omission from the list of promotions in 1975 which was posted on Institute premises on 5 February 1976, the date of the decision he impugns. The lists drawn up by the Careers Committee, including the list of promotions from D4 to D3, were notified to the staff by the Director-General in a circular dated 26 May 1976, i.e. after the complaint had been lodged but before it had been brought into conformity with the Rules of Court.

C. In the complainant's view the decision he impugns failed to take account of the "normal career pattern" prescribed in a statement by the Administrative Council of the Institute on 22 December 1971 and of the "general principles governing promotion" approved by the Council in October 1975. In support of his contentions he refers to the criteria recommended by the Careers Committee for promotion to grade D3 in 1975 and to the criteria applied in earlier years. Lastly, he points out that two staff members with lesser seniority and merit received the promotion he was denied.

D. The complainant asks the Tribunal to quash the Institute's implied decision of 5 February 1976 not to promote him from D4 to D3; to decide that he should be promoted to D3 with effect from 1 October 1975; subsidiarily, to order the Institute to reconsider promoting him; and to order it to pay his costs estimated at 1,000 guilders and interest at 8 per cent a year on the sums payable by the Institute from the date on which he should have been promoted.

E. The Institute points out that the roster of normal career patterns was intended to give an idea of staff members' normal career expectations up to 1 January 1972. The new Staff

Regulations which came into force on that date replaced the old system of automatic advancement with promotion by selection. The complainant was recruited after 1 January 1972 and cannot therefore rely on the careers roster, which in any case merely afforded guidance and conferred no "right" to promotion even on those to whom it applied. The "general principles governing promotion" also relied upon by the complainant were intended to apply only to staff members at grades A7 to A6 and are of no relevance to other categories of staff including D4 staff members like the complainant. As regards the criteria recommended for promotion to grade D3 in 1975, the Institute observes that the Director-General is in no way bound to adopt any criteria chosen by the Careers Committee, a purely advisory body. The Staff Regulations say nothing of "criteria" and in deciding on promotions in 1977 the Director-General did not adopt criteria but put staff members in order of merit after studying their personal files. The complainant cannot therefore impugn the decision not to promote him by relying on the criteria

for promotion chosen by the Careers Committee. "In fact it is because the Director-General considered the complainant to be less well qualified than other staff members that he reached the same conclusion as the Careers Committee and decided not to put the complainant's name on the list of promotions to D3 for 1975." As to the argument that he was entitled to promotion according to criteria applied in earlier years, the Director-General is free to decide each year which staff members to promote in view of their qualifications and if he regarded himself as bound by the criteria applied in earlier years he would in fact be divesting himself of his own discretionary authority.

F. The Institute therefore asks the Tribunal to dismiss the complainant's claims in their entirety as being utterly unfounded.

CONSIDERATIONS:

As to the Tribunal's power of review:

1. The decision not to promote the complainant from grade D4 to grade D3 in 1975 falls within the Director-General's discretionary authority. Hence the Tribunal will interfere with that decision only if it was taken without authority, or violates a rule of form or of procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if the decision is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the dossier.

As to the alleged flaws in the impugned decision:

2. The complainant is mistaken in contending that the Director-General failed to abide by the "normal career pattern", according to which staff members are promoted from D4 to D3 after two years' service in the Institute. It is true that in a statement of 22 December 1971 the Administrative Council admitted that the roster of "normal career patterns", though it did not have the force of a staff rule, could guide the careers committees and the Director-General in the matter of promotions. It is also true that the general principles approved by the Council at its 127th Session on the proposal of the Administrative Advisory Committee "mean that the 'normal career pattern' should be borne in mind in respect of all staff members". But the roster of "normal career patterns" is not on that account unconditionally applicable to each case. For one thing, does the statement of 22 December 1971 apply to those like the complainant who joined the Institute staff in 1973? And do the general principles approved by the Council affect staff members not in category A? These are moot points. In any event the Council itself said that the "normal career pattern" merely affords guidance and is not a binding rule. Clearly the Council did not mean to depart from Article 25 of the Staff Regulations, which makes both seniority and merit the criteria for promotion.

3. The competent Careers Committee adopted the following criteria for promotion in 1975:[\(1\)](#)

"1. A staff member will be recommended for promotion to D3 provided he joined the staff not later than 1973, had reached the highest step in D4 by 1 December 1975 and had given evidence of at least satisfactory performance, for example in the form of his performance mark for 1974 entered in his file.

2. A staff member will also be recommended for promotion to D3 if he joined the staff in the first few months of 1973 and has given evidence of sufficient merit, for example in the form of his performance mark for 1974."

The complainant did not meet these conditions. First, he had not reached the last step of grade D4 by 1 December 1975. Secondly, he joined the staff on 16 October 1973, not "in the first few months of 1973". He argues that his merits made up for his failure to meet the conditions relating to step and seniority. But of that he offers not a shred of proof.

4. The complainant alleges that he did not fare so well as two staff members who, though they had been appointed two months later than he and received performance marks lower or no higher than his own, were promoted to D3. In reply the Institute points out that unlike the complainant those staff members were at the last step of grade D4 by 1 December 1975; had they not been promoted they would have had no salary increase. That explanation is enough to rule out any breach of the principle of equality, which guarantees like treatment only of staff members in like case.

5. It is immaterial that by the criteria formerly applied the complainant would have qualified for promotion in 1975.

It is for the careers committees and for the Director-General to adapt the conditions of promotion to the Institute's requirements. Hence those conditions may change from year to year and, since they do so, different staff members are differently treated according to the dates on which they receive promotion. Where there are administrative reasons for such difference in treatment, it is no breach of the principle of equality laid down in Article 5 of the Staff Regulations. The complainant has not shown that in his case the Director-General acted for any purpose but to serve the Institute's interests.

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 6 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

1. Registry translation.