

FORTIETH ORDINARY SESSION

***In re* DAUKSCH**

Judgment No. 335

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Patent Institute by Mr. Helmuth Johannes Dauksch on 8 November 1976, the Institute's reply of 14 December, the complainant's rejoinder of 14 January 1977 and the Institute's surrejoinder of 27 January 1977;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and Article 18 of Appendix III to the Institute Staff Regulations;

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

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

A. The complainant, who is a citizen of the Federal Republic of Germany, joined the staff of the Institute on 1 September 1972 as an examiner at grade A7, step 1. At the time his "place of origin" was declared to be Mulhouse, where he had been recruited. On 24 January 1976 he married a resident of Chambéry. By letter of 10 February to the Director-General he asked that his place of origin should be changed to Chambéry on the grounds that the place where he had been recruited was not the real "centre of his interests", that he and his wife had many links with Chambéry, where, for example, she had real property and business interests, that he paid regular visits to Chambéry and that he intended to be buried there. By letter of 9 April he explained that it was not so much his marriage which had prompted his request as the shift in the centre of his interests. By letter of 17 June the Director-General disallowed the request on the grounds that the complainant's marriage and its consequences were not facts of an exceptional nature such as Article 18(3) of Appendix III to the Staff Regulations stipulated were necessary to warrant changing the place of origin.

B. On 1 July 1976 the complainant went to the Appeals Committee. In its report of 9 September the Committee held that "although the complainant's circumstances might have warranted allowing his request ... it had not found any failure to observe a rule of law or any abuse or misuse of the Director-General's discretionary authority". It therefore recommended dismissing the appeal. By a decision of 13 September the Director-General accordingly dismissed the appeal. That is the Decision impugned.

C. The complainant puts forward the same arguments as those he put to the Administration and to the Appeals Committee. He believes that he was unfairly treated because other staff members had had their place of origin changed. He asks the Tribunal to declare the Director-General's Decision to be unfair and an abuse of his discretionary authority and to order the Institute to pay 1,000 guilders as costs.

D. The Institute argues that the Director-General's Decision fell within the scope of his discretionary authority and is therefore subject to only limited review by the Tribunal. Article 18 of Appendix III to the Staff Regulations authorises the Director-General as an exceptional measure to change the place of origin of staff members, but it is for the Director-General and for him alone to determine whether the grounds relied upon warrant that exceptional measure. The complainant's main argument in favour of changing his place of origin is that with his marriage the centre of his interests shifted, because his wife has property in Chambéry. The Director-General took the view that such facts did not warrant changing the complainant's place of origin and that was why he disallowed the claim. The Institute asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS:

As to the defendant:

1. On 8 November 1976 the complainant filed the complaint against the International Patent Institute, which had appointed him to its staff on 1 September 1972. By an agreement signed on 19 October 1977 the Institute was integrated into the European Patent Office, the secretariat of the European Patent Organization (EPO). Having recognised the jurisdiction of the Administrative Tribunal with the agreement of the ILO Governing Body, on 1 January 1978 the EPO replaced the Institute in disputes with its staff members still pending at that date before the Tribunal. Thus in this case the EPO has become the defendant.

As to the Tribunal's power of review:

2. Article 18 of Appendix III to the Institute Staff Regulations reads⁽¹⁾:

"A staff member's place of origin is determined when he takes up his appointment, with due regard to the place of recruitment or the centre of his interests.

The Director-General may, by a special decision, later alter that determination while the staff member is serving under appointment and when he leaves.

While the staff member is still serving, however, such a decision may be made only in exceptional circumstances and after he has produced evidence in support of his request."

While serving on the staff the complainant has applied for a change in the determination of his place of origin. For that purpose he relies on Article 18(2), which requires a special decision by the Director-General, and on Article 18(3), which declares that such a decision is an exceptional measure and one that requires the production of relevant evidence. The provisions do not specify the circumstances which warrant a change in the place of origin and they leave the matter to the discretion of the competent authority. The Tribunal may therefore quash a decision taken in virtue of those provisions only if it was taken without authority or violated a rule of form or of procedure, or was based on a mistake of fact or of law or if essential facts were not taken into account, or if the decision is tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts. Such is the limited power of review which the Tribunal may exercise in this case.

As to the complainant's pleas:

3. The complainant is mistaken in alleging that the Director-General misinterpreted Article 18.

What is generally meant by someone's place of origin is the place to which he belongs or at least where his family has been settled for one or more generations. At the least it may be the place where his family is living. The term would be strained beyond normal usage, however, if the place of origin of a married man were taken to be the place where his wife has relatives or property. Hence, although the complainant's wife owns commercial premises and his parents-in-law live in Chambéry and he himself often goes there, those are not facts which warrant changing his place of origin.

Moreover, the exceptional circumstances required by Article 18(3) do not exist. It happens often enough that a man forms connections with the place where his wife's family lives and where she has material interests. Whether or not it is common among the staff of the defendant organisation is immaterial.

4. The complainant cannot properly allege unfair treatment.

First, there was no inconsistency in taking account of the connections of a staff member's wife in determining his place of origin when new staff regulations came into force and later disregarding those connections in deciding not to change his place of origin in the course of his service. Article 18(1) is applicable by analogy to the former case and lays down less stringent requirements than Article 18(3), which applies to the latter case.

Secondly, as appears from 3 above, although the place of residence of a staff member's family may be regarded as his place of origin, the place which is the centre of his wife's interests need not.

5. The authorities of the Institute are not bound, unless there be a provision to that effect, by the rules which govern the staff of the European Communities. In particular, they are not bound by the rules which correspond to Article 18. There is therefore no need to consider how widely the authorities of the European Communities apply those

rules.

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 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

1. Registry translation.