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

FIFTY-SIXTH ORDINARY SESSION

In re VAN VOORTHUIZEN

Judgment No. 669

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Jan Andries Hans van Voorthuizen on 13 May 1984 and corrected on 14 June, the EPO's reply of 3 September, the complainant's rejoinder of 12 November 1984 and the EPO's surrejoinder of 4 February 1985;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Articles 84 and 109(2) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence, 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. Article 84 of the EPO Service Regulations relates to benefits payable in the event of invalidity. The provisions setting the conditions for award of a lump-sum benefit were amended by the Administrative Council's decision CA/D.7/83 of 10 June 1983. On 8 September 1983 the complainant submitted an appeal against that decision to the Administrative Council. Mr. Gérard Giroud and Mrs. Hildegard Caspari submitted internal appeals against the same decision to the Council and the President of the Office and later lodged complaints which the Tribunal dismissed in Judgment 626. For the present complainant the "appointing authority" is not the President of the Office, as it was for the other appellants, but the Council itself. He received no answer to his appeal and is challenging the rejection which he stated was implied, under Article 109(2) of the Service Regulations, two months after the closing date of the Council's session of December 1983, viz. on 9 February 1984.

B. The complainant observes that the effect of the amendments to Article 84 is, in particular, to delete certain benefits in the event of permanent invalidity, in other words to reduce the protection which the former text allowed. Unilateral amendment of the article, without express explanation, runs counter to the principle of good faith and infringes an acquired right of the complainant, since financial protection, including financial benefits, is one of the decisive factors which led him to accept an appointment with the EPO. He invites the Tribunal to quash Council decision CA/D.7/83 and award him 1,000 United States dollars in costs.

C. In its reply the EPO contends that the complaint is irreceivable insofar as it seeks the quashing of the amendments to Article 84. What it challenges is a quasi-legislative act by the Administrative Council and the Tribunal may not entertain a complaint of that kind, but only one impugning an individual decision directly affecting an official's rights. The fact that the Council is the appointing authority for the complainant does not make his complaint receivable since the objections to receivability obtain whoever the appointing authority may be. The EPO submits subsidiarily that the complaint is devoid of merit. The reasons for the amendments were set out in several papers submitted to the Administrative Council. Moreover, the benefits prescribed in the article are merely incidental to the award of an invalidity pension, which is unaffected. The amendments to Article 84 are lawful and do not infringe the complainant's acquired rights.

D. The complainant rejoins that his complaint is receivable: what he is challenging is not a quasi-legislative act by the Council but an act by the "appointing authority" which alters his potential entitlements under Article 84. He submits that the distinction the EPO seeks to draw between general and individual decisions is not a valid one. He also answers the EPO's submissions on the merits.

E. In its surrejoinder the EPO presses the submissions in its reply, which it believes to be confirmed by the Tribunal's reasoning in Judgment 626.

CONSIDERATIONS:

1. The Tribunal will first determine whether the present complaint raises issues similar to those on which it ruled in Judgment 626 (in re Giroud No.3 and Caspari).

In that judgment, which it delivered on 5 December 1984, the Tribunal dealt with two cases which raised the same issues and were therefore joined to form the subject of a single decision. There were 151 applications to intervene in both complaints, five in Mr. Giroud's and two in Mrs. Caspari's.

In its reply to the present complaint the EPO asks that it be joined with Mr. Giroud's. In his rejoinder the complainant objects on the grounds that the facts are not the same: according to Article 11 of the European Patent Convention it is the Administrative Council of the EPO which is the "appointing authority" in his own case, whereas in the previous two cases it was not.

As it happened, by the time the EPO filed its surrejoinder, on 4 February 1985, the Tribunal had already delivered judgment on the other two cases.

That the Council is the appointing authority in this case is not a material point of distinction from the previous ones because it is not one which affects the issues raised by the Council decision of 10 June 1983 (CA/D.7/83) which the complainant is impugning. Whatever the appointing authority may be, his objections to the decision to amend Article 84 of the Service Regulations are the same, and the Tribunal's ruling will be the same.

The Tribunal concludes that this case raises the same issues of law as those it dealt with in its previous judgment.

2. The impugned decision being a general one taken by the Council, the Tribunal holds that for the following reasons the complaint is not receivable.

The mere fact that the impugned decision affects several categories of staff and is therefore general in character is not in itself sufficient to make the complaint irreceivable. Decisions which may be challenged before the Tribunal do not have to be individual in nature. That they may also be general is plain from Article VII, paragraph 2, of the Statute of the Tribunal, which sets the time limit for filing a complaint against a "decision affecting a class of officials", that is to say, a general decision. But a complaint against a general decision will not perforce on that account be receivable. There is also the rule in Article VII(1) of the Statute that the internal means of redress must have been exhausted.

Article VII(1) reads: "A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations." The rule does of course cover mainly cases in which direct appeal lay against the decision within the organisation. But it also means that the Tribunal will declare irreceivable a complaint impugning a general decision against which there can be no direct internal appeal, but which must ordinarily be followed by individual decisions against which such appeal does lie. There are two reasons for so construing Article VII. The first is that the Tribunal is relieved of ruling on the validity of a general decision to which it may be unable to foresee exactly how effect will be given. The second is that the Tribunal will not be acting on an application from a single complainant to set aside a general decision which other staff may not object to.

The general decision impugned in this case puts no exact figure on the entitlement of the staff members concerned. That will be determined only when the Administration comes to take individual decisions in pursuance of the general decision viz. the Council's approval of the new text of Article 84.

Before filing a complaint the complainant must, as the Tribunal ruled in Judgment 626, await an individual decision by the Administration and exhaust the internal means of redress. To declare the complaint irreceivable causes the complainant no prejudice since he may appeal against a future individual decision, first inside the Organisation, and then, if necessary, to the Tribunal.

3. Since the complaint is irreceivable the Tribunal will not rule on the merits.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 19 June 1985.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner

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