

FIFTY-SEVENTH ORDINARY SESSION

In re FILTRI

Judgment No. 696

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Giovanni Filtri on 20 April 1984, the EPO's reply of 28 May, the complainant's rejoinder of 10 July, the EPO's surrejoinder of 26 September, the further brief submitted by the complainant on 10 December 1984 at the Tribunal's request, and the EPO's observations thereon of 14 January 1985;

Considering Article II paragraph 5, of the Statute of the Tribunal and Article 49(8) 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 facts of the case and the pleadings may be summed up as follows:

A. In the EPO the seniority of examiners matters in determining grade and step on appointment and fitness for promotion. The professional experience the official has acquired before joining the EPO is reckoned according to rules and standards which the Tribunal has summarised in earlier judgments (see for example Nos. 596, 597 and 598). In particular EPO guidelines CA/16/80 state in paragraph 5: "the following kinds of experience are not taken into account ... (d) military service". The complainant, an Italian born in 1949, joined the EPO as an assistant examiner at grade A2 on 1 January 1982 and was stationed at Rijswijk. On 9 November 1982 the Personnel Department sent him a note reckoning his seniority at two years and five months. For two years, from 24 April 1976 to 23 April 1978, he had been employed as a teacher in a university in Colombia under a programme of technical co-operation sponsored by the Italian Foreign Ministry. The period was discounted on the grounds that it was "equivalent to military service". He protested in a minute of 12 November, but the EPO rejected his objections on 24 November. His case went to the Appeals Committee. In a report of 19 December 1983 the majority of the Committee recommended giving him credit for the two-year period. By a letter of 15 February 1984 the President of the Office informed him that he had decided to reject the recommendation. That is the decision impugned in the complaint. In the light of Judgment 597, which the Tribunal delivered on 12 April 1984, the EPO reviewed the reckoning of the complainant's seniority and sent him a new notice dated 25 April 1984, just after he had filed his complaint. In the new reckoning his teaching experience is rated at 50 per cent, and he has been promoted to step 3 in grade A2, with five months' seniority, as from 1 January 1983. He is not yet satisfied.

B. The complainant submits that the impugned decision is discriminatory and arbitrary and disregards the guidelines in CA/16/80. He believes his teaching experience should count

in full. He accordingly asks the Tribunal to order the EPO to grant him, with retroactive effect from 1 January 1983, step 4 in grade A2, with five months' seniority. He also seeks an award of costs, including the refund of the expenses of travel to Italy "for the unique purpose of collecting useful material for the appeals".

C. In its reply the EPO says it could not give the complainant full credit for the period of teaching experience. As the Tribunal stated in Judgment 597: "Not every form of co-operation service necessarily has to count", and "the President is free to exercise his discretion, having regard to the Council's guidelines". In the exercise of his discretion and "having regard to" paragraph 3 of CA/16/80, and to paragraph 5(ii)(c) of the guidelines in CI/Final 20/77 ("when determining ... previous experience, due account should be taken of ... relevant experience in e.g. industry or university"), the President has rated the teaching experience at 50 per cent, and the step, grade and seniority are right. The claim for costs is unsound: it is the staff member who must bear any expense incurred in obtaining the papers required for reckoning his experience.

D. In his rejoinder the complainant observes that in altering the reckoning the EPO has already admitted that its original decision was wrong. CI/Final 20/77 says in paragraph 9: "... Experience in e.g. industry or university in a relevant technical field should also be counted in full but with an upper limit of five years". The EPO was again

wrong to rate his experience at only 50 per cent. He presses his claim for the refund of expenses he incurred in obtaining in Italy material which, but for the EPO's unfair decision, would not have been needed.

E. In its surrejoinder the EPO observes that the complainant is confusing the calculation of grade and that of step: as prescribed in CI/Final 20/77, the two-year period at issue was correctly counted at 50 per cent in calculating his grade, but at 100 per cent in calculating his step, up to the maximum of five years. The EPO again rejects his claim for repayment of the cost of obtaining an item of legislation readily available at any Italian consulate, and one which had no effect on the President's decision.

F. Since a new decision had been taken after the complaint had been filed and the complainant had therefore had only one opportunity of answering the arguments the EPO had founded on that decision in its reply, the Tribunal ordered an additional exchange of briefs so as to ensure proper equality between the parties, and the complainant and the EPO accordingly made further submissions.

CONSIDERATIONS:

1. The complainant joined the staff of the EPO on 1 January 1982 as an examiner. On 9 November 1982 the EPO decided that the two years' professional experience which the complainant had acquired teaching scientific subjects at a university in Colombia under a programme of technical co-operation should not count towards step evaluation because it was an alternative to compulsory military service and therefore had to be excluded. The President of the EPO confirmed the decision on 15 February 1984.

2. On 20 April 1984 the complainant appealed to the Tribunal seeking an order that the EPO promote him, with retroactive effect from 1 January 1983, to grade A2, step 4, with five months' seniority. He also seeks the reimbursement of expenses incurred in obtaining documents supporting his claim that his service in Colombia should be taken into account.

The evaluation of step |

3. The EPO does not now seek to defend the decision to exclude the complainant's service in Colombia. As a consequence of the Tribunal's Judgment 597, delivered on 12 April 1984, the EPO recalculated on 25 April 1984 the complainant's step in grade A2 from step 2 to step 3, with five months' seniority, with effect from 1 January 1983. The only issue is whether or not the complainant is entitled to step 4 instead of step 3.

4. Article 49(8) of the Service Regulations provides: "... The step upon promotion to Grade A2 shall be determined in the light of the professional experience of the permanent employee". The text upon which the calculation for step is based is CI/Final 20/77 setting out guidelines on the procedure for recruitment and conditions applicable to examiners. This document provides for two different systems for calculating reckonable experience prior to joining the EPO, one for grade, the other for step. The calculation for grade purposes is carried out in accordance with paragraphs 4 and 5 of the document. The calculation of starting step, on the other hand, is carried out in accordance with paragraphs 6 to 11. Under the terms of paragraph 9 experience obtained in a relevant industrial or technical field is taken into account and counted in full, but with an upper limit of five years. The formula for determining starting step is set out in paragraph 10 as follows: $(N1 + N2) \div N3$ where N1 represents the number of years of industrial property experience, where N2 represents the number of years of other approved experience and is equal to or less than 5, and where N3 is 2 at grade A2.

5. In its surrejoinder the EPO states:

"As a result, the two years at issue (24 April 1976 to 23 April 1978) have been taken into consideration correctly as regards both grade (at 50%) and step (at 100%) up to the maximum of 5 years."

That statement is not borne out in the calculation in the EPO's reply, nor in its further statement dated 14 January 1985, in which it asserts that the reason why the complainant was not assigned to step 4, with five months' seniority, is that his two years' service in Colombia "could only be taken into account at 50%" and that "this is in conformity with Article 49 paragraph 8 of the EPO Service Regulations and the Rules laid down in documents CI/Final 20/77 and CA/16/80". The latter document deals with the evaluation of professional experience for the determination of grade, and in particular the minimum amount of experience for entry into grades A2, A3 and A4. It has therefore no relevance to the issue before the Tribunal. As to the calculation of step, inasmuch as CI/Final 20/77 requires in paragraph 9 that experience in a relevant technical field be counted in full up to a maximum of

five years, a correct application of the formula set out in the guidelines cited would show that the complainant's proper classification as of 1 January 1983 is grade A2, step 4, with five months' seniority.

The expenses

6. The expenses incurred by the complainant were the direct result of the EPO's resisting his claim. In the circumstances they are reasonable and his expenses should be included in a global award of costs.

DECISION:

For the above reasons,

1. The EPO shall promote the complainant to grade A2, step 4, with five months' seniority, with effect from 1 January 1983.

2. The EPO shall pay 3,500 guilders as costs.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner.

Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner