

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

FIFTY-NINTH ORDINARY SESSION

In re ALDERS-MEEWIS

Judgment No. 751

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs. Adriana Alders-Meewis against the European Patent Organisation (EPO) on 27 December 1984, the EPO's reply of 22 March 1985, the complainant's rejoinder of 20 June, the EPO's surrejoinder of 6 September 1985, the EPO's further communication of 22 January 1986 and the complainant's observations thereon of 27 February 1986;

Considering the applications to intervene filed by:

Miss A. Anfang

Mrs. M. Attfield

Mr. A. Augustin

Mr. H. Betz

Mr. G. Brahler

Mr. M. Brisson

Mr. C. Cavestri

Mrs. B. Chambers

Mr. F. Chavonand

Miss G. Collins

Miss G. Costabile

Mr. S. Dessena

Mrs. C. Dobler

Mrs. A. Dolezel

Mr. R. Dunstan

Miss J. Fonck

Mr. G. Filser

Mr. G. Fornfischer

Mr. G. Friedenberger

Mr. M. Gagliardi

Mrs. B. Grant

Mr. H. Gruber

Mr. H. Hausmann

Mr. J. Heberger

Miss A. Hector

Mr. T. Herbert

Mr. H. Herzog

Mr. D. Jacobs

Mr. N. Jeger

Mr. K. Jouliardt

Mr. F. Klein

Mr. K. Kenzok

Mr. F. Kottman

Mr. A. Kozmus

Mr. N. Kremer

Miss I. Latke

Mr. J. Lausenmeyer

Mr. L. Lavoue

Mr. F. Leister

Miss C. Lindblad

Mr. A. Lovrecich

Mr. N. Maslin

Mr. M. Mastropietro

Mr. M. Mercier

Miss. G. Michl

Mr. D. Mueller

Mr. K. Naumann

Mrs. M. Nehls

Miss B. Norman

Mr. M. Palladino

Miss F. Pannetton

Mr. I. Rabbetts

Mr. R. Raftl

Mrs. M. Raufer

Mr. M. Repinski

Mrs. E. Rieger

Mr. W. Roepstorff

Mr. G. Roosenburg

Mr. J. Ruckerl

Mr. H. Ruppachter

Mrs. M. Samtmann

Mr. A. Scattone

Mrs. U. Schaller

Mr. L. Schewior

Mrs. W. Schuster-Kächele

Mrs. F. Telari

Mrs. A. Treu

Mr. C. Vullo

Mr. J. Weckerle

Mrs. N. Werner

Mrs. C. Wilson

Mr. H. Winkler

Mr. C. Witt

Considering Articles II, paragraph 5, and VII, paragraph 1, of the statute of the Tribunal, Article 33(2)(b) of the European Patent Convention and Articles 38(3), 64(6), 108 and 109 of the Service Regulations of the European Patent Office, the secretariat of the EPO:

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant belongs to the B category of EPO staff and is stationed in Munich. As is recounted in Judgments 624 and 726, under A, the EPO and other organisations, known as the "co-ordinated organisations", approved in 1979 a new system of adjusting the pay of staff in all categories. The Co-ordinating Committee of Government Budget Experts of the organisations had proposed the new system in its 159th Report. Article 8 of an appendix to the report, headed "New rules" read: "The basic salaries of staff in categories B and C shall be calculated on the basis of surveys conducted by the Inter-Organisations Section in member countries, among the best employers in these countries"; and Article 11: "The surveys ... shall take place every two years in turn in member countries where there are large numbers of staff of the Co-ordinated Organisations", elsewhere every four years.

In the early eighties the financial outlook was bleak in member countries and in the organisations, and in its 191st Report, in 1983, the Committee proposed several amendments in the system as from 1 July 1983. Paragraph 35(a) "recognised that these amendments would have a wage restraint effect", but stipulated that they should not "(i) bring about a reduction in nominal salaries, or (ii) bring salaries down by more than 1 per cent a year for category B staff ...". By decision CA/D 1/83 of 17 March 1983 the Administrative Council of the EPO approved the amendments and the new salary scales appended thereto.

The Committee's 196th Report, dated 9 January 1984, provided that the new scales should be brought into force as from 1 July 1983. The Council approved the 196th Report by decision CA/D 2/84, and by circular 131 of 15 June the EPO informed the staff in Munich that the new scales had come into force as from 1 July 1983.

On 6 August 1984 the complainant lodged an internal appeal under Article 108(tl) of the Service Regulations challenging the individual decision to apply to her the new salary scales for B and C staff approved by CA/D 2/84. The President of the Office took no decision on that appeal within the time limit of two months prescribed in Article 109(2), and the complainant is challenging the implied decision to reject it.

B. The complainant contends that she is challenging an implied final decision in accordance with Article VII(3) of the Statute of the Tribunal and that her complaint is therefore receivable.

As to the merits she observes that the adjustment of staff pay is governed by Article 64(6) of the Service Regulations, which reads:

"The remuneration of the permanent employees shall be subject to periodic review and shall be adjusted by the Administrative Council taking account of the recommendations of the Co-ordinating Committee of Government budget experts of the Co-ordinated Organisations".

She submits that that provision requires a method of adjustment by objective criteria and observes that the 159th Report of the Co-ordinating Committee accordingly prescribes such a criterion for determining the salaries of B and C staff, namely parity with the salaries paid by the best local employers. Adjustment according to that criterion is an acquired right and therefore one that the EPO may not alter at its discretion. CA/D 2/84 constituted a departure from the objective method of adjustment prescribed in the 159th Report and introduced salary scales for B and C staff which were based on subjective criteria. It was an arbitrary decision and one in breach of the complainant's acquired right. She invites the Tribunal to order the EPO to introduce new salary scales as from 1 July 1983 in accordance with the provisions of the 159th Report and to pay her 10 per cent interest on the additional sums due to her, and costs amounting to 2,000 Deutschmarks.

C. In its reply the EPO does not object to receivability.

As to the merits it observes that Article 33(2)(b) of the European Patent Convention vests in the Council authority to alter staff pay and that Article 64(6) of the Service Regulations leaves the Council discretion in determining the method of adjusting pay. The EPO explains that although it is not yet one of the co-ordinated organisations its policy, as decided by the Council in July 1978, is to seek admission and for that purpose to align its own salary scales with those in the other organisations. That is why the Council, in the exercise of its discretion under Article 64(6), decided to introduce the scales now under challenge.

The EPO observes that because of the guarantee proposed in paragraph 35(a) of the 191st Report and approved by the Council in CA/D 1/83 there has been no cut in the basic salaries of B and C staff as at 30 June 1983. The sole effect of the amendments in the method of calculating pay is to reduce the salary increases which would otherwise have been due. There is nothing arbitrary or subjective about the new method: its purpose is to meet the wish of the members of the co-ordinated organisations to keep pay in line with national salaries.

EPO staff have no acquired right to the continuance of any particular method of adjusting their pay. Indeed they must expect slight fluctuations in pay as various relevant factors -- in this instance trends in national salaries -- come into play, and CA/D 2/84 causes no serious disruption in the fundamental terms of their employment.

D. In her rejoinder the complainant enlarges on her submissions that the method of adjusting staff pay must be objective; that the new method is not; that, although the Council may enjoy some discretion in the matter under Article 64(6), it may not act arbitrarily as it has in this case; and that the new scales are in breach of an acquired right. She advances further pleas. First, reasons ought to have been stated for the decision she is impugning: none

has been given. Secondly, Article 38(3) of the Service Regulations required that the General Advisory Committee of the EPO should give a "reasoned opinion" on the introduction of the new scales because it was a proposal that "concerns the whole or part of the staff". Although the Committee did apparently hold a general discussion on the subject of the method of adjusting staff pay, it gave no such "reasoned opinion". The impugned decision is therefore tainted with a procedural flaw.

E. In its surrejoinder the EPO submits that the pleas enlarged on or advanced in the rejoinder carry no weight. It develops its case, submitting that the decision was neither arbitrary nor in breach of any acquired right of the staff, and that there was nothing subjective about the criteria applied, the new scales being based on objective findings as to trends in national salaries and in salaries in the co-ordinated organisations. The allegation that the General Advisory Committee was not consulted is mistaken. At a meeting it held on 1 February 1983, and of which the EPO supplies the record, the Committee fully debated the relevant proposals in the 191st Report. It subsequently gave two opinions -- the texts of which are also appended -- on the general policy of co-ordination and on B and C staff salary. Though it did not discuss the actual figures the scales were merely the outcome of application by the Inter-Organisations Section of the co-ordinated organisations of the new method on which it did express the required opinion.

CONSIDERATIONS:

Adjustment of the salaries of B and C staff

1. Several international organisations known as the "co-ordinated organisations" have set up a joint body known as the Co-ordinating Committee of Government Budget Experts. Though not yet one of the co-ordinated organisations, the EPO intends to be and it follows their proceedings as an observer.

The Co-ordinating Committee has issued three reports containing recommendations about the salaries of B and C staff.

(a) The Committee's 159th Report, dated 16 February 1979, dealt with review of the procedure for adjusting staff pay.

Article 8 of the annex to the report reads: "The basic salaries of staff in categories B and C shall be calculated on the basis of surveys conducted by the Inter-Organisations Section in member countries, among the best employers in these countries."

Article 11 says that the surveys shall take place every two years in member countries where there are large numbers of staff of the co-ordinated organisations, and every four years in other member countries.

(b) The 191st Report, dated 16 February 1983, proposes in paragraph 32 renewing the provisions of the 159th Report "subject to the amendments, additions and details set out in paragraphs 34, 35 and 36".

Paragraph 35(a) proposes amendments which, it is acknowledged, "would have a wage restraint effect", but stipulates that they "should not (i) bring about a reduction in nominal salaries, or (ii) bring salaries down by more than 1 per cent a year for category B staff or 0.5 per cent a year for category C staff".

In paragraph 46(a) the Committee explains that it has also borne in mind "the labour market in general and the present economic and social situation, both of which promise to be difficult over the next few years not only for governments but also for the co-ordinated organisations".

By a decision of 17 March 1983, CA/D 1/83, the Administrative Council of the EPO approved paragraphs 32 to 38 of the 191st Report and adopted new salary scales.

(c) Paragraph 17 of the 196th Report, dated 9 January 1984, reads: "The Co-ordinating Committee therefore recommends Councils (a) to approve, with effect from 1 July 1983, the attached salary scales for category A and L staff, and category B and C staff serving in Belgium, Denmark, France, Greece, Italy, Japan, Luxembourg, Norway, Portugal, Spain, the United Kingdom, the United States, Australia, Canada, Sweden and Switzerland, which reflect the conclusion of the procedures set out in the 159th and 191st Reports by the Co-ordinating Committee, it being understood that any payment of basic salary on the scales approved by Councils and currently in force to certain grades of staff serving in certain countries where the application of the results of the procedure

in the 159th Report would result in a reduction in basic salary on 1 July 1983 should be maintained as a temporary measure pending approval by Councils of a recommendation by the Co-ordinating Committee on the way in which this problem should be treated".

By its decision CA/D 2/84 of 8 June 1984 the Council approved paragraph 17, and circular 131 notified to the staff the salary scales which were to apply insofar as they brought about no reduction.

Consultation of the General Advisory Committee

2. Article 38(3) of the EPO Service Regulations reads:

"The General Advisory Committee shall, in addition to the specific tasks given to it by the Service Regulations, be responsible for giving a reasoned opinion on:

-- any proposal to amend these Service Regulations or the Pension Scheme Regulations, any proposal to make implementing rules and, in general, except in cases of obvious urgency, any proposal which concerns the whole or part of the staff to whom these Service Regulations apply or the recipients of pensions;

-- any question of a general nature submitted to it by the President of the Office,

-- any question which the Staff Committee has asked to have examined and which is submitted to it by the President of the Office in accordance with the provisions of Article 36."

The complainant submits that the EPO acted in breach of that rule by failing to consult the General Advisory Committee before the Council adopted the recommendations on the new salary scales. The adoption of the scales did of course concern many of the staff and was therefore a matter on which there was an obligation to consult the Committee beforehand. But the complainant is mistaken in alleging breach of the rule.

At its 29th sitting, on 1 February 1983, the Committee debated the subject of salaries and addressed to the President of the Office two opinions, one on the proposals in the 191st Report and the other on the working hours of B and C staff. The required opinion was therefore given.

It is immaterial that the Committee's opinion relates only to the 191st Report and not to the 96th as well. Both reports adopt the same approach to the same questions, as paragraph 17(a) of the 196th makes plain.

It is also immaterial that the Committee did not comment on the figures in the new salary scales. What Article 38(3) requires is consultation of the Committee on "any proposal which concerns the whole or part of the staff". In this instance what "concerns the whole or part of the staff" is the rules for calculating the salaries of staff categories, not the actual amounts individual staff members will be paid, and it is those rules that form the subject of the Committee's opinion.

Statement of the reasons for the decision

3. The plea that no reasons were given for the impugned decision is also unsound.

There can be no obligation whatever on the EPO to state its reasons for introducing scales approved by the Council. Such a decision finds its justification quite simply in the Administration's position of subordination to the Council.

Admittedly the Council's approval of the recommendations in the 191st and 196th Reports is not based on any statement of reasons such as will be found in a ruling by a judicial body. But the salary scales are not the less valid for that. At Council meetings its members hold debates before taking decisions. It would be a departure from widespread practice to expect a body like the Council to state each of the reasons that may underlie its decisions. All that is required is that the substance of its decisions be plain from the debates. Besides, representatives of the EPO staff attend Council meetings and know from hearing members express their views which reasons they regard as decisive.

Objective criteria

4. Article 64(6) of the Service Regulations reads: "The remuneration of the permanent employees shall be subject

to periodic review and shall be adjusted by the Administrative Council taking account of the recommendations of the Co-ordinating Committee of Government budget experts of the Co-ordinated organisations".

The complainant argues that such adjustment presupposes the application of objective criteria, that the Council did not apply such criteria and that her rights under the Regulations were therefore infringed.

The plea fails. Article 64(6) says nothing of the criteria for adjusting staff pay and therefore nothing of the objective criteria the complainant says were lacking.

Besides, the meaning she gives to the term "objective" is mistaken. The distinction is between objective and subjective. Objective criteria relate to a given set of facts, subjective ones to the particular circumstances of staff members. In this case there was no departure from objective standards: the Council obviously did not take decisions ad Personam but laid down rules on the pay of several categories of staff regardless of the particular circumstances of each staff member.

What the complainant is really saying is that the Council acted arbitrarily. The Council's policy may be controversial, but it is not arbitrary. Its aims have been to reduce the disparity in salaries between EPO officials and workers in member countries and to introduce the same scales as apply in the co-ordinated organisations, a group in which the EPO is already an observer and which it intends eventually to join. There is nothing arbitrary about that.

Breach of acquired rights

5. An international official has an acquired right to the continuance of such terms of employment as determined him to accept employment with the organisation. The terms of his employment may be altered as the interests of efficiency may require, but only provided that those which originally led him to conclude the contract are not disrupted.

The complainant submits that the conditions of her employment have been altered with regard to (1) hours of work, (2) incidental benefits and the fixed element of her expatriation allowance and (3) the frequency of salary surveys. It is quite plain that such matters were not of decisive importance to her in accepting employment with the EPO and the amendments do not amount to breach of acquired right.

The amendments are more limited in scope. According to paragraph 35(a) of the 191st Report not only may the new method of adjusting salary bring about no reduction in salary but the wage "restraint" may not be more than 1 per cent a year for B staff and 0.5 for C staff. The purpose being merely to check increases in pay without lowering basic salary, there was no alteration of the terms of employment such as to infringe any acquired right.

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 12 June 1986.

(Signed)

André Grisel

Jacques Ducoux

H. Gros Espiell

A.B. Gardner

