

FIFTY-NINTH ORDINARY SESSION

In re MONDI

Judgment No. 765

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Edoardo Mondì against the European Patent Organisation (EPO) on 18 July 1985 and corrected on 21 August, the EPO's reply of 5 November 1985, the complainant's rejoinder of 27 January 1986 and the EPO's surrejoinder of 14 April 1986:

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 3(1) and (2), 49(1)(c) and (6), 107(1) and 113(1) 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, an Italian citizen, joined the EPO in Munich in 1980 as a general dutyman at grade C3. On 1 March 1982 he was transferred to the Library and Information Service as a record clerk at the same grade. On 10 February 1984 he wrote the Administration a letter stating his view that his duties warranted grade B2 and asking for the upgrading of his post and his own promotion under Article 49(1) of the Service Regulations: "A permanent employee may obtain a higher grade by a decision of the appointing authority ... c) by promotion following reclassification of his post under Article 3, paragraph 2, of these Regulations". Having got no answer, he lodged an appeal on 11 April 1984 under Article 107(1) of the Regulations. On 18 April his supervisor wrote him a minute accusing him of constantly trying to take on extra, more responsible, work, set out his duties as "based on the C2/3 job description" and said that if he wanted a better job he must look elsewhere. On 6 June 1984 the Personnel Department informed him that the Organisation Department had carried out a study and had reported on 8 May that his grading at C3 was correct. His appeal was referred to the Appeals Committee. In its report of 27 March 1985 the Committee recommended rejecting his appeal. By a letter of 29 April 1985 which is the impugned decision, the Vice-President of the Office informed him that the President did so.

B. The complainant submits that, though discretionary, the decision shows fatal substantive and procedural flaws. (1) It rests on mistakes of fact: the President accepted the facts as presented by his supervisor and the Administration and as found by the Appeals Committee and wrongly held that there were certain duties he did not perform. In his own description of his job he includes constituting and maintaining collections of European patents and patent applications, displaying newspapers, keeping a bibliography updating looseleaf publications, listing acquisitions, marking books, forwarding material for binding, the storage of books, providing information on patents granted and replacing category B staff. Those are B2

duties, and they warrant the higher grade. There are no C3 posts in the EPO libraries at The Hague and in Berlin.

(2) The President drew clearly mistaken conclusions from the evidence by failing to take proper account of the changes in his duties since he went to the Library. (3) There is breach of the principle of equal treatment. The post of another staff member in the Library, Mr. Commare, who does similar work, has been upgraded to B2.

He alleges procedural flaws. He was not shown a report made in 1983 by the Organisation Department on the grading of certain B and C posts and the Appeals Committee would not let him see the Department's findings about Mr. Commare's post. That was in breach of Article 113(1) of the Service Regulations, which requires that all necessary material should be submitted to the Appeals Committee and transmitted to the staff member. The Committee also erred in not obtaining a description of Mr. Commare's duties. The complainant was not allowed to cross-examine his supervisor at the hearings.

He seeks disclosure of the Organisation Department's report of 1983, upgrading of his post to B2 as from 10 February 1984, payment of arrears of salary, interest, costs, and 3,000 Deutschmarks "for other expenses".

C. The EPO replies that the complaint is devoid of merit. Under Article 3(2) of the Service Regulations the Administrative Council of the EPO may, on a proposal by the President regrade a post if the level of duties has

changed. What matters is not the incumbent's ability to carry out more demanding duties, nor the nature of those he aspires to, but the duties required of him. The President made no mistake of fact and drew no mistaken conclusions from the evidence. The complainant's duties, though slightly altered since 1982, still warrant grade C3. That is borne out by a report of the Organisation Department's of 22 October 1985 which shows that not even a third of the duties warrant B2; the rest are C3. Nor is there any breach of equality. Mr. Commare's post was rightly upgraded by the Council under 3(2), and a report by the Organisation Department, which is also supplied, shows that three-fifths of his duties warrant B2.

Besides, even if the post were upgraded the claim to promotion is unsound. Under Article 49(6) promotion depends on "the qualifications and the aptitude of the present occupant".

The allegations of procedural flaws are unsound for the reasons set out by the Chairman of the Appeals Committee in a memorandum of 2 October 1985 which the EPO appends. In any event it was not the Committee but the President that rejected the appeal.

D. In his rejoinder the complainant seeks disclosure of the Organisation Department's original report. He applies for the hearing of witnesses. He enlarges on his submissions alleging again procedural and substantive flaws. He gives an analysis of his duties which, he contends, shows the decision to be tainted with fatal mistakes of fact and rebuts the Organisation Department's conclusions. His post has been wrongly graded all along, as he realised only when he learned of Mr. Commare's upgrading. He submits that the grading should be brought into line with the description of his post as from 1 March 1982, the date he took it up.

E. In its surrejoinder the EPO submits that the hearing of witnesses would serve no purpose and that the application for the disclosure of the Organisation Department's report is unfounded. It develops the arguments in its reply, observing that it has already answered the complainant's pleas, to which the rejoinder adds nothing of substance. It takes up several questions of fact raised in the rejoinder. It submits that insofar as the complainant is now seeking promotion as from 1 March 1982 he has altered his original claims and to that extent his claim is irreceivable.

CONSIDERATIONS:

1. The complainant entered the service of the EPO on 1 March 1980 as a general dutyman II at grade C3. On 1 March 1982 he was transferred to the post of paper-keeper II in the Library and Information Service at the same grade. On 10 February 1984 he requested an upgrading and promotion under the terms of Article 49(1)(c) and (6) of the Service Regulations on the grounds that, by comparison with his colleagues, his duties were of B2 level.

2. Article 3(1) of the Service Regulations states:

"The President of the Office shall draw up specific job descriptions for each of the posts to which permanent employees may be appointed. Acting on a proposal by the President of the Office the Administrative Council shall determine the grade justified by each job description, taking into account the nature of the duties involved, the level of responsibility and the qualifications required. In the various fields of activity the job descriptions together with the resultant ranking of grades shall indicate career structures."

Article 3(2) provides that the Administrative Council, acting on a proposal by the President, may reclassify a post where it has been established that the level of duties has changed.

3. Under the Service Regulations dealing with promotion Article 49(1)(c) states that a permanent employee may obtain a higher grade by promotion following reclassification of his post under Article 3(2), and Article 49(6) provides that in the event of a reclassification the President will consult the Promotion Board, which will examine and report on the qualifications and aptitude of the present occupant for the grade of the reclassified post. The effect of these regulations is that promotion of the incumbent does not follow automatically on the reclassification of a post.

4. The job description of the B2 post in the Library and Information Service differs greatly from that of the C3 post. The former envisages duties at the level of a library clerk performing functions in accordance with regulations and established practice. The latter envisages the performance of tasks under the control of a superior and according to oral instructions. It is a matter of assessment, therefore whether there has been a sufficient change in the duties of the lower post to place the President of the Office under an obligation to propose to the Administrative Council that the post be reclassified. According to its jurisprudence the Tribunal will not set aside a decision based

on the President's assessment unless 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 overlooked, or if there was an abuse of authority or if clearly mistaken conclusions were drawn from the facts.

5. On 27 July 1983 the President proposed to the Council that one of the two C3 posts in the Library and Information Service should be reclassified to B2 because one of the two staff members holding C3 posts in the Service was performing duties at the level of B2. This was approved and the former holder of the other C3 post was promoted to the reclassified post.

6. The complainant alleges that there has been in his case an infringement of the principle of equal treatment set out in ILO Convention No. 111. There is no evidence whatever to substantiate that allegation.

7. The complainant also claims that the President's decision was flawed by procedural deficiencies at the level of the Appeals Committee. He says he was refused a copy of the Organisation Department's study on which the reclassification of one of the C3 posts was recommended in 1983. It seems to the Tribunal that that report was a study of the career structure of the B and C staff in the EPO and did not constitute material necessary for the investigation of the complainant's case within the meaning of Article 113(1) of the Service Regulations. He was, however, supplied with a copy of the Organisation Department's report of 8 May 1984 which stated that the duties of the post held by him did not justify reclassification of that post. In regard to the decision of the Appeals Committee not to await a new job description, it will be recalled that the Committee had before it a letter from the head of the Library stating with great precision what the complainant's duties were. Finally, the complainant says that neither he nor his representative was given an opportunity of cross-examining the witnesses. The EPO's response to this is that no new documents or factors were raised during the hearing of the complainant's superiors. The point was not pursued in the rejoinder and the Tribunal has no material before it on which to draw any conclusion on the alleged deficiency. In the result the allegations of procedural deficiencies fail.

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 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 12 June 1986.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner