

SIXTY-THIRD SESSION

***In re* OFFMANN**

Judgment 861

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Philippe Offmann against the European Patent Organisation (EPO) on 31 March 1987 and corrected on 13 April, the EPO's reply of 6 July, the complainant's rejoinder of 11 August and the EPO's surrejoinder of 21 October 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal and the guidelines of 1 August 1985 published in circular 144 of 2 September 1985 by the President 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. Circular 144 informed EPO staff of new guidelines adopted on 1 August 1985 with effect from 1 January 1985 for the reckoning of prior experience for the purposes of recruitment and promotion. The guidelines define reckonable experience as follows:

I.1. "Professional activity prior to appointment to an established EPO post is credited for step-in-grade assignment purposes if it corresponds in level and type of duties to the post of recruitment and requires completed university education or - in exceptional cases - equivalent knowledge acquired over many years of professional experience."

I.8. "Periods of professional experience after completion of studies may be credited only from the documented date on which university education was successfully completed."

The complainant, a Frenchman and grade A2 examiner with the EPO, was employed in industry from 1972 to 1981 as a draughtsman and designer. He was awarded a degree in engineering in March 1983 and was appointed to the EPO on 1 May 1983 as an assistant examiner at grade A1, step 1. A new reckoning of his professional experience was made in 1985 in accordance with the guidelines in circular 144. It did not count the period prior to his obtaining his degree.

On 27 November 1985 he lodged an internal appeal asking the EPO to take account, at least in part, of his professional experience in the years up to 1981. But by a letter of 18 December 1986, the decision he impugns, the Principal Director of Personnel informed him that the President of the Office rejected his appeal on the recommendation of the Appeals Committee, to which the case had been referred.

B. The complainant submits that his many years' experience of practical work in industry up to 1981 gave him not only the knowledge he needed to get his degree in engineering but also a command of method and a capacity for thinking things out that are of great use to him in his EPO work.

He asks that his experience prior to the award of his degree should count at the rate of 75 per cent for the period from 1977 to 1981 and that his status and pay be altered accordingly as from 1 May 1983, the date of his appointment.

C. The Organisation replies that the complaint is devoid of merit. The qualification required for a post in category A is a degree awarded on the completion of studies at university standard. Paragraph I.1 of the directives allows an exception only where there is proof of "equivalent knowledge acquired over many years of professional experience". But such professional experience must be of a standard comparable to the duties of an A post. The standard of the work the complainant was doing up to 1981 was below that of an examiner's duties. Besides, as

paragraph I.8 of the guidelines makes plain, where someone is appointed on the strength of a degree only the professional experience he gained after obtaining it may count.

D. In his rejoinder the complainant enlarges on his pleas and seeks to rebut the EPO's. He contends that not only does he have a university degree but before graduation he gained equivalent knowledge by dint of long practical experience. He therefore satisfies both the requirements in paragraph I.1 of the guidelines and is entitled to benefit accordingly. Moreover, point I.8 does not cover his own case since it applies to someone who after the end of his studies but before graduation spends a few months working in industry, for example to finish a thesis. Such a period is not comparable to his many years of practical experience in which he gained the knowledge equivalent to that of a graduate engineer in industry.

E. In its surrejoinder the Organisation enlarges on the submissions in its reply and comments on the pleas in the rejoinder. It submits in particular that point I.8 does apply to the complainant's case and that the professional experience he speaks of did not last long enough and was not of a high enough standard to replace a university degree.

CONSIDERATIONS:

1. The complainant, a grade A2 examiner at the European Patent Office, gained some professional experience before he got his degree in engineering. He is asking the Tribunal to set aside a decision the President of the Office took on 18 December 1986 to discount that experience for the purpose of determining his starting step in his grade.

2. The complainant worked as a draughtsman and designer in industry for several years and not until March 1983 did he get the degree that qualified him for appointment. He took up duty on 1 May 1983 as an assistant examiner at grade A1, step 1, with no seniority.

3. Circular 144 announced new guidelines, dated 1 August 1985 and in effect as from 1 January 1985, on the reckoning of experience, and the Administration reviewed the complainant's position. Counting his nine months' military service and the time he had by then spent in the EPO, it put him at step 1 of grade A2, with five months' seniority. A footnote read: "Experience prior to formal grant of diploma not considered".⁴ On 27 November 1985 the complainant lodged an appeal with the President asking that his professional experience from 1972 to 1981 be counted even though he had got his degree later. He pointed out that it was by dint of his many years' practical work that he had gained the knowledge "actually required for the degree in engineering".

5. On 23 January 1986 the Principal Director of Personnel informed him that the President was provisionally rejecting his appeal and referring it to the Appeals Committee. In its report of 18 November 1986 the Committee unanimously recommended rejection.

6. Both the complaint and the internal appeal rely on paragraph I.1 of the guidelines in circular 144, which says that in exceptional cases the Administration may take account not just of prior "professional activity" that "requires completed university education" but also of "equivalent knowledge acquired over many years of professional experience".

7. The EPO's answer is that I.1 is merely the corollary of its rules on qualifying for a post in category A. According to the post descriptions in force an A post requires either a degree awarded on the completion of a full course of studies at university standard or else, in exceptional cases, equivalent knowledge gained over many years from work that demands special skills.

8. In the Organisation's submission I.1 reflects those alternatives. If an applicant for an A post has formal qualifications of the right standard they show that he has the knowledge the post requires so that counting prior professional experience, which may not be up to standard anyway, is neither necessary nor even allowed. The alternative is an exception, the President determining at his discretion the nature and standard of the experience that will do.

9. The Organisation adds that, to judge from a comparative survey of other international organisations, the complainant's experience is not up to category A standard and that it was only his degree in engineering that qualified him for an A post.

10. The Tribunal holds that, as the EPO says, I.1 provides for alternatives which correspond to the two ways of

getting such a post. The point bears stressing since the Appeals Committee seemingly thought that, though the case would be exceptional and uncommon, the two methods of reckoning provided for in I.1 might be cumulative.

11. The complainant was recruited and graded on the strength of his degree. It is clear from I.1, and from I.2 and I.8 too, that those who get in on their university training will be credited only with professional experience gained after the award of the qualifying degree. The provision the complainant is relying on applies only to non-graduates who have got in on the strength of "equivalent knowledge acquired over many years of professional experience". For such staff the guidelines allow taking account of some such experience for the purpose of determining grade and step. But that is not the complainant's case: he was recruited on the strength of his degree and so his practical experience may not count as well.

12. The complaint must accordingly fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux
Mella Carroll
P. Pescatore
A.B. Gardner