

SIXTY-FOURTH SESSION

In re NARMINIO

Judgment 881

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Adriano Narminio against the European Patent Organisation (EPO) on 10 July 1987 and corrected on 13 August, the EPO's reply of 22 October, the rejoinder filed by the complainant on 9 December 1987 and the EPO's surrejoinder of 29 February 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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 on 1 May 1985 as an assistant search examiner. New guidelines came into effect as from 1 January 1985 and were issued in circular 144 on the reckoning of professional experience for the purpose of determining starting grade and step and seniority for promotion. On 2 October 1985 a reckoning was made of the complainant's prior professional experience in accordance with those guidelines. The reckoning came to only seven months, the explanation being that it discounted the period between June 1976, when he had been granted a university diploma in technology (DUT) at Metz, and June 1984, when he had graduated in engineering from the Senior Training College for Electricity and Mechanics (ENSEM) at Nancy.

On 31 January 1986 he filed an appeal asking the EPO to count the experience he had gained in the course of those years: from 1976 until 1984 he had been employed as a senior technician at a research centre at Pont-à-Mousson, in France, and from 1982 to 1984 he had done "supplementary studies" at ENSEM. His case went to the Appeals Committee. In its report of 12 January 1987 the Committee recommended rejecting it and by a letter of 8 May 1987, the decision he impugns, the Principal Director of Personnel told him that the President of the Office had done so.

B. The complainant relies on points I.1 and I.2 of the guidelines:

"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.

2. Periods of training and supplementary studies relevant to EPO work may be credited, provided they took place after the documented date on which the study referred to in point 1 was completed."

He contends that his reckonable experience under I.1 began in 1976, when he got his DUT, and ended in 1984, when he left Pont-à-Mousson. The "many years of professional experience" include the whole of that period. The field he has been assigned to at the President's discretion being the one he was employed in at Pont-à-Mousson, not that of his ENSEM diploma, the usefulness of his practical experience has been recognised already and he should benefit accordingly.

For the purpose of applying I.2 he submits that the "documented date on which the study referred to in point 1 was completed" was not the date on which he got his ENSEM diploma but April 1979, the date by which, as the Appeals Committee held, the level of his professional experience qualified him for an EPO post.

He asks that the EPO count his period at Pont-à-Mousson - from 20 September 1976 until 12 December 1984 - and the period of further study he spent at ENSEM - from October 1982 until June 1984.

C. The EPO replies that according to the job descriptions approved by its Administrative Council a post in category A requires a degree awarded on the completion of university education or, in exceptional cases, equivalent knowledge gained over many years of practical experience in a field demanding special skills. That is clear from I.1 of the guidelines.

(a) If the applicant for an A post holds a degree at the required level he plainly has the knowledge needed for the post. In determining step and seniority for promotion account will then be taken only of professional activity after graduation, provided it is at the right standard.

(b) If the applicant does not hold a university degree he may show, instead of the skills such a degree presupposes, "equivalent knowledge acquired over many years of professional experience". But that is an exception and the term "many years of professional experience" is to be strictly construed.

The professional experience the complainant alleges was not long enough to make up for the lack of a university degree. It was his ENSEM diploma that qualified him for appointment. Since the material provision was the first part of I.1 professional experience before his graduation does not count.

Nor may he have the two years he spent at ENSEM treated as a period of "supplementary studies" under I.2. Such studies are to be distinguished from study towards a university degree, and in the complainant's case there is no question of "supplementary studies" within the meaning of I.2.

D. In his rejoinder the complainant enlarges on his earlier submissions. He contends that at Pont-à-Mousson he obtained a grounding which few universities could have given him. The term "many years of professional experience" is too vague and cannot be properly applied to the facts of his case, which show that his training and professional experience were at the right standard as early as 1979.

E. In its surrejoinder the EPO develops its pleas, maintaining in particular that the complainant is not an exceptional case within the meaning of I.1 since he was recruited on the strength of his ENSEM diploma.

CONSIDERATIONS:

1. New guidelines on reckoning the professional experience of EPO staff came into force on 1 January 1985 and were issued in circular 144. The complainant is an assistant search examiner, and the EPO made a new reckoning of his experience under those guidelines. He says that in determining his step in his grade it wrongly discounted a period of some six years.

2. So far as the Tribunal can tell from the evidence before it the complainant has two academic qualifications. One is a university diploma in technology (DUT) which he obtained in 1976 from the University Institute of Technology of Metz. He then spent six years working as a senior technician in canalisation and mechanics at a research centre at Pont-à-Mousson. After two years' further study at the Senior Training College for Electricity and Mechanics (ENSEM) at Nancy he got his second qualification there in 1984, in electrical engineering. After another short spell at Pont-à-Mousson he spent a few months with a company known as SETECA as an electrical engineer.

3. He took up duty with the EPO on 1 May 1985. It is not in dispute that he was recruited on the strength of his diploma from ENSEM and that the Administration did not treat the DUT as equivalent to a university degree. Soon after appointment he was assigned to research in pipelines, joints and accessories.

4. After issuing circular 144 the EPO reviewed the complainant's grading and at some unstated date gave him a new reckoning of his experience at the date of recruitment. It came to seven months, the period after his graduation from ENSEM.

5. On 31 January 1986 he appealed against that decision asking the Organisation to count much of his experience before graduation from ENSEM for the purpose of determining his seniority, and he pointed out that soon after recruitment he had been assigned to search in the field, not of his degree in engineering, but of his practical experience at Pont-à-Mousson.

6. The President of the Office rejected his claims and referred his appeal to the Appeals Committee. In its report of 12 January 1987 the Committee unanimously recommended rejecting it and by a decision of 8 May 1987 the President did so.

7. That is the decision the complainant is challenging. What he wants is recognition under the guidelines in circular 144 of his work at Pont-à-Mousson on the grounds that it required "equivalent knowledge acquired over many years of professional experience" (point I.1) and of his time at ENSEM, which he says was a period of "training and supplementary studies" (point I.2).

8. In its reply the EPO observes that the guidelines have to be read together with the qualifications for access to a category A post, which are based on Article 3(1) of the Service Regulations:

"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."

9. The EPO's argument is that in keeping with Article 3 the Administrative Council has defined the qualifications for access to grade A1 as "completed university education or - in exceptional cases - equivalent knowledge acquired over many years of professional experience" and that in applying I.1 of the guidelines there must be a distinction between the applicant admitted on his degree and the one who gets in on the strength of many years' experience.

10. In its surrejoinder the EPO cites two judgments which the Tribunal delivered on 10 December 1987 - 850 (in re Cannici) and 861 (in re Offmann) - and which it believes bear out its argument.

11. The first point to determine in applying the guidelines to the complainant's case is the date from which he may have his prior experience counted. Indisputably he was recruited on the strength, not of the DUT, but of his ENSEM diploma, which he got in 1984.

12. As the Tribunal held in the judgments cited, professional experience and further studies will count under the guidelines only if subsequent to the date of the degree or diploma that qualifies for recruitment.

13. The Appeals Committee was mistaken: periods of study, training or other experience prior to obtaining the professional qualification required for appointment to the EPO do form part of the qualification for which they constitute preparation and cannot count all over again as professional experience. It is immaterial that the complainant was given work in an area in which he had been trained before he got the degree that qualified him for recruitment and not in the actual subject of the degree. That cannot alter his grading a posteriori.

14. Likewise immaterial are the level and length of the experience he says should count, and how long such experience must be to be treated as exceptional under I.1. Such questions arise only where the applicant has no degree but is recruited on the strength of exceptional practical experience. Since the complainant was recruited on his ENSEM diploma those questions did not arise at the time and according to the express provisions of circular 144 may not arise now.

15. The complaint therefore fails.

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 30 June 1988.

(Signed)

Jacques Ducoux

Mella Carroll
P. Pescatore
A.B. Gardner

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