SIXTY-FOURTH SESSION

In re WEST (No. 10)

Judgment 885

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr. Julian Michael West against the European Patent Organisation (EPO) on 17 October 1987, the EPO's reply of 5 January 1988, the complainant's rejoinder of 5 February and the EPO's surrejoinder of 22 April l988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 14, 93, 107 and 109 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. Since 1982 the complainant has been employed at the EPO's office in Munich. In 1984 he lodged an internal appeal against the determination of his starting grade. The President of the Office rejected it and he filed a complaint with the Tribunal - his second - on 14 January 1985. On 22 January he lodged another appeal seeking a decision on his "original grading". The Principal Director of Personnel answered on 23 January that the President had already rejected his claim. On 25 January he wrote to the President saying that the Director appeared to be "non compos mentis". In a letter of 11 February the Director pointed out that the matter was before the Tribunal. On 11 April he lodged another two appeals about his starting grade. On 22 April the Director answered that they were being referred to the Appeals Committee but were "plainly vexatious". On 26 April the complainant wrote to the Director seeking the retraction of that comment and an apology. In a letter of 22 May the Director again said that his two appeals were the same in substance as the earlier one.

In Judgment 695 of 14 November 1985 the Tribunal dismissed his second complaint as irreceivable. On 28 January 1986 the Chairman of the Appeals Committee wrote to him to say that the matter was res judicata. On 3 February 1986 the complainant lodged another appeal asking that the Chairman be "disqualified" from hearing the case. In a letter of 3 March the President said that, though the appeals of 11 April 1985 were irreceivable under the res judicata rule, he was referring them to the Appeals Committee. In its report of 30 July 1986 the Committee recommended rejecting them as irreceivable.

On 7 August 1986 the President wrote to the complainant observing that, though repeatedly told since April 1985 that the matter was res judicata, he had persisted in his claims. He had thereby abused his right of appeal and acted in breach of his duty to respect the EPO's interests. The President intended to impose a disciplinary sanction under Article 93(1) of the Service Regulations and, in keeping with 93(5), invited him to comment within 15 days. Also on 7 August the complainant wrote two letters to the President: in one he asked again for a decision on his starting grade; in the other he said that the charge was "not clear". In a further letter of 29 August he asked the President to withdraw "the threat of disciplinary proceedings" and described the time limit for his comments as "ridiculously short". In a letter of 26 September the President observed that he had not even tried to defend his behaviour; that his letter of 29 August was "another piece of insolence"; that he had acted in breach of Article 14 of the Service Regulations, which required him to "conduct himself solely with the interests of the ... Organisation ... in mind"; and that a reprimand was imposed on him under 93(2)(b). He lodged an internal appeal against the reprimand and the appeal went to the Appeals Committee. On 4 March 1987 he filed his seventh complaint challenging what he alleged to be implied rejection of the appeal. In its report of 7 August 1987 the Committee recommended rejecting it and the President did so in a letter to him of 9 October, the decision he impugns. On 9 October he withdrew his appeals of 11 April 1985 and on 16 October his seventh complaint.

B. The complainant observes that the President's letter of 7 August 1986 failed to cite any provision of the Service Regulations he had acted in breach of. The time limit of 15 days for his reply was too short because he had already been granted leave on all but 1 1/2 of those days. He was not allowed to answer the President's further letter of 26 September 1986, which first cited Article 14 of the Service Regulations, and so there was breach of 93(5). Besides,

filing an appeal cannot amount to breach of Article 14. His claim was not res judicata since the Tribunal did not rule on the merits. There was nothing improper about asking the EPO to abide by its own rules. He was not insolent. He filed the appeals on the Appeals Committee's own advice and before the Tribunal gave judgment on his second complaint. In any event the appeals he has been punished for filing were not time-barred since they challenged a later decision. Article 93(1) allows disciplinary action only where the employee was in breach of his obligations "intentionally or through negligence on his part": he submits he was neither. He asks that the reprimand be set aside and that he be awarded 10,000 Deutschmarks in moral damages and 2,000 in costs.

C. The EPO replies that the Regulations require it to tell the employee, when informed of charges against him, not what provision but what duty he is in breach of. The breach of duty was clearly stated in the President's letter of 7 August 1986 to the complainant, and the reasons for the reprimand were repeated in the one of 26 September 1986. He was given an opportunity to reply. If the time limit was too short he could have asked for more time. He may not protest later that it was too short when he did not do so then. The reference to Article 14 in the letter of 26 September brought no new charge: it lays a general obligation on the employee, and the earlier letter had already accused him of breach of that obligation.

The obligation does apply to exercise of the right of appeal conferred by Article 107 and precludes any exercise of it which does not serve the purpose for which it is granted. The subject of the complainant's internal appeals and that of his second complaint were one and the same. As he was warned time and again, it was futile for him to pursue his claim - since it was res judicata - and so to cause the EPO further costs. His answer to the plea of res judicata is mistaken. First, his internal appeals were not against any new decision but in substance challenged yet again the decision of 1 February 1982 on his starting grade. Secondly, it is immaterial that the Tribunal did not rule on the merits: res judicata applies whether the prior ruling is on the merits or on receivability. He could not have imagined that the EPO had taken a new and challengeable decision on his starting grade. Had he exercised due care, for example by taking advice, he would have realised his breach of his duty to respect its interests.

D. In his rejoinder the complainant submits that the EPO's pleas are unsound. Its letter of 7 August 1986 did not identify the rules he had infringed and it was not enough for it just to say what he had done to displease it. Article 14 states that an employee "shall neither seek nor take instructions from" anyone outside the Organisation, and it is irrelevant to the allegations in the letter. The passage relied on by the EPO is taken out of context and distorted to suit its own purpose. He was not given the "opportunity to state his case" that he was entitled to under 93(5). There is nothing in the rules to suggest he could have asked for more time in which to reply. He protested in his letter of 29 August, on his return from leave, that he had not had enough time. Besides, he was given no chance to answer the charges of breach of Article 14, which was first mentioned in the letter that actually imposed the reprimand. Refusal to withdraw an internal appeal cannot be an offence. The EPO has offered no proof of any accountable injury. Since he filed his appeals before the Tribunal passed judgment he was entitled under Article 109(1) to have them go ahead, however vexatious the President may have thought them. The EPO has failed to show intent or negligence on his part, as 93(1) requires. He presses his claims.

E. In its surrejoinder the Organisation submits that the complainant's rejoinder does not weaken the force of its reply. Developing its pleas, it reaffirms in particular that it need do no more than state the duty it believes the staff member to be in breach of; that it was plain enough from the President's letter of 7 August 1986 that the duty the complainant was in breach of was that of respecting the EPO's interests; that he could have applied for more time in which to answer the charges; that he misreads Article 14; that he fails to understand that he committed an abuse of right; and that the Administration, the chairman of the Appeals Committee and the President made that quite plain enough for him to be able to avoid the disciplinary sanction.

CONSIDERATIONS:

1. The sole issue in this case is the validity of the reprimand which the President of the Office imposed on the complainant by letter of 26 September 1986 on the grounds of abuse of his right of appeal.

2. An EPO staff member who alleges non-observance of the terms of his appointment or of the applicable staff rules and regulations has the right to submit an internal appeal and, if still dissatisfied, to appeal ultimately to the Tribunal.

The existence of the right is in the interests of both sides since it serves to maintain harmony, general efficiency and good morale in the Organisation.

3. Most staff members exercise the right sensibly. A few may abuse it, however, and that causes the Aministration to spend an inordinate amount of time, energy and expense in defending its point of view. In some instances, as in this case, the staff member's persistence may cause annoyance in some quarters, and understandably so.

But the interests of both justice and sound administration demand that the Organisation endure litigation: it is not for the Organisation but for the Tribunal itself to determine whether the complainant has abused his right of appeal and, if so, what ruling is fitting in the circumstances. The Organisation will simply decide whether the appeal is receivable and, if so, whether there is merit in it. If there is further appeal to the Tribunal it may, besides countering the complainant's case, submit that he has abused the right of appeal and invite the Tribunal not just to dismiss his complaint but to declare it vexatious and, where appropriate, take any further action it thinks fit.

4. For the foregoing reasons the Tribunal holds that it was wrong to impose the reprimand on the complainant and it must be quashed.

In the circumstances of this case the Tribunal makes no award of moral damages. It awards him 500 Deutschmarks in costs.

DECISION:

For the above reasons,

1. The decision of 9 October 1987 is quashed.

2. The EPO shall pay him 500 Deutschmarks in costs.

3. His other claims are dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 30 June 1988.

Jacques Ducoux
Mohamed Suffian
E. Razafindralambo
A.B. Gardner

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