

## SIXTY-FIFTH SESSION

### *In re* VAN DER PEET (No. 13)

#### Judgment 934

THE ADMINISTRATIVE TRIBUNAL,

Considering the thirteenth complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 18 April 1988 and corrected on 2 May, the EPO's reply of 20 July, the complainant's rejoinder of 26 August and the EPO's surrejoinder of 10 October 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 14(1), 16(1), 93(2)(b), (3) and (5) and 94(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. As Judgment 801 recounted, under A, a letter of 29 April 1985 from the Vice-President of the Office imposed a reprimand on the complainant under Article 93(2) of the Service Regulations - the "first reprimand" - on two grounds: failure to explain irregularities in his claim to repayment of the cost of removing his horse to Bavaria, and offensiveness towards the Appeals Committee. Ruling on his fifth complaint in Judgment 761 of 12 June 1986, the Tribunal awarded him the cost of removing his horse. By a letter of 19 August 1986 the Principal Director of Personnel declared the first reprimand "null and void". In his ninth complaint the complainant asked the Tribunal to declare it void ab initio, but the Tribunal dismissed that claim in Judgment 801.

Meanwhile, in a letter of 7 August 1986, the President of the Office had told the complainant he intended to impose a reprimand because he had made offensive remarks about EPO officers in the rejoinder he had filed with the Tribunal on 17 July 1986 in his seventh case (see Judgment 777); he was asked to comment in accordance with Article 93(5) of the Service Regulations.

Besides withdrawing the first reprimand the Director's letter of 19 August informed him of the President's intention of imposing a reprimand on him because of his behaviour towards the Appeals Committee and invited him, again under 93(5), to state his case. On 25 August the complainant wrote asking about the charges against him and the Director answered on 27 August. On 5 September he made written comments.

By a letter of 29 October 1986 the President imposed a reprimand - the "second reprimand" - again on two grounds, the content and tone of his submissions to the Tribunal, and his behaviour towards the Committee. On 22 December 1986 he lodged an internal appeal. In the Appeals Committee's report of 29 January 1988 the majority observed that though the EPO had cancelled the first reprimand on 19 August 1986 he had had to put up with it for over a year, and that the Appeals Committee had rejected his offer of 7 March 1985 to strike offensive passages out of a brief he had put to it on 19 February 1985 and to apologise. The majority recommended withdrawing the second reprimand. Having received no further decision, he says he is challenging the implied rejection of his claims.

By a letter to him of 26 April 1988 the President withdrew the second reprimand.

B. The complainant submits that as to the first reprimand he failed to get satisfaction because the reason for withdrawing it was not that it had been unfounded. Indeed it was imposed again in the form of the second reprimand. That was in breach of the rule against double jeopardy and of Article 93(3) of the Service Regulations ("A single offence shall not give rise to more than one disciplinary measure"). Since it was also in breach of the law of the Federal Republic of Germany, the Tribunal is not competent and the complainant explains that the only point of his complaint is to safeguard his rights.

The second reprimand, closely bound up with the first, was attributed to his behaviour towards the Appeals Committee. Yet that behaviour was warranted by "procedural and substantial improprieties" the Committee had committed.

He submits that the first reprimand was void ab initio because it was imposed in disregard of his right to be heard under Article 94(1) of the Service Regulations and because it was an abuse of authority, its purpose being to conceal the loss of the bills for the removal of his horse. The second reprimand was also void ab initio for breach of 93(3) and because it had the same malicious purpose.

He asks the Tribunal to declare both reprimands void ab initio, order the EPO - "binding over the defendant in the sum of 100,000 Deutschmarks" - to introduce "penal and disciplinary investigations" against several senior EPO officers he names and to order the waiver of the immunity of the whole staff for the purpose of criminal investigation. He claims financial compensation for "vindictive" treatment and 7,625 Deutschmarks in costs.

C. In its reply the EPO submits that the claim to a declaration that the first reprimand was void ab initio is irreceivable as res judicata: in Judgment 801 the Tribunal held the claim to be devoid of substance because the Principal Director of Personnel had withdrawn the reprimand in his letter of 19 August 1986.

The challenge to the second reprimand is devoid of substance. The Committee was unanimous that special circumstances warranted withdrawing the second reprimand, and the President accordingly withdrew it.

The complainant's demand for investigations and his claim to waiver of the staff's immunity are irreceivable because he has not exhausted the internal means of redress. The claim to waiver of the immunity of named officers is irreceivable for the further reason that it forms part of his twelfth complaint. The claim is, besides, unfounded for the reasons stated in the EPO's observations on the complainant's application for a provisional order in the context of that complaint. His demand for investigation is unfounded for the same reasons.

His claim to damages is unfounded as to the first reprimand: Judgment 801 ruled that he no longer had any valid grounds for complaint. And it is unfounded as to the second reprimand because, as the Committee held, the reprimand was warranted by what he had done and because it has been withdrawn anyway.

His claim to costs is exorbitant.

Lastly, the Tribunal may not rule on the breach of the law of the Federal Republic of Germany and to that extent the complainant's plea that it is not competent is sound.

D. In his rejoinder the complainant develops at length his version of the facts and his accusations against EPO officers. He maintains that the Tribunal is not competent to hear the complaint at all. He finds fault with the Tribunal's rulings and with the attitude of its members. He explains why he regards as grossly unjust the Appeals Committee proceedings and the imposition of the reprimands. He sees a conspiracy behind the EPO's "criminal atrocities" and its "ferocious persecution" of him. He says that he does not want appeasement, but respect for the rules and elementary principles of justice. He presses his claims.

E. In its surrejoinder the EPO refers to its surrejoinder to the complainant's rejoinder in his twelfth complaint, much of which it observes is identical to his rejoinder in this complaint. It points out that the first reprimand was declared void ab initio and the second one has been withdrawn. Insofar as the complainant is not addressing matters that are relevant only to his twelfth complaint his allegations are unfounded. The Organisation enlarges on its observations on the complainant's claim to waiver of the immunity of EPO staff. It accuses him of indulging in polemic, casting discredit on the EPO through the "grotesque image of it that he presents", and failing in his duty to behave with discretion and in his obligations as a staff member under Articles 14(1) and 16(1) of the Service Regulations.

## CONSIDERATIONS:

### Introduction

1. By a letter of 29 April 1985 the Vice-President of the Office imposed on the complainant what is known as the "first reprimand". In a letter of 7 August 1986 the President told the complainant that he intended to impose another reprimand and invited him to state his case. By a letter of 19 August the Principal Director of Personnel declared the first reprimand "null and void" and informed the complainant of the President's intention of imposing a reprimand on him, again inviting him to state his views. A further letter of 27 August from the Director explained the charges against him and on 5 September he submitted written comments. By a letter of 29 October the

President imposed on him what is known as the "second reprimand" and in substance that is the decision he is objecting to.

He lodged an internal appeal. The Appeals Committee reported on 29 January 1988, the majority recommended withdrawing the second reprimand, and by a letter of 26 April 1988 the President withdrew it.

The claims

2. The complainant is asking the Tribunal:

(a) to declare the two reprimands void ab initio;

(b) to bind the EPO over in the sum of 100,000 Deutschmarks to introduce penal and disciplinary investigations against EPO officers whom he names; and

(c) to waive the immunity of all staff for the purpose of conducting the penal investigations.

He further claims:

(d) damages for "vindictive" treatment; and

(e) 7,625 DM in costs.

3. The claim, under (a), to a declaration that the first reprimand was void ab initio is res judicata and therefore irreceivable. It has already been dismissed in Judgment 801 of 13 March 1987 on the complainant's ninth complaint because the Principal Director of Personnel had withdrawn it in his letter of 19 August 1986.

The Tribunal likewise dismisses the further claim under (a) that it declare the second reprimand void ab initio because the President of the Office has withdrawn that reprimand too.

4. Besides, the complainant is mistaken in alleging breach of the rule against double jeopardy. The grounds for the first reprimand were his persistent failure to account for anomalies in his claim to repayment of the cost of moving his horse on his transfer from The Hague to Munich and his offensive behaviour towards the Appeals Committee in the proceedings relating to the internal appeal over that claim.

The second reprimand, however, was based partly on his behaviour in that internal appeal but also on comments he made in his rejoinder to the Tribunal in his seventh case. That is clear, first, from the fact that in his letter of 7 August 1986 the President said that the contents and tone of several passages in the brief the complainant had submitted to the Tribunal on his seventh complaint had gone far beyond proper defence of a staff member's rights and amounted to serious breach of his obligations under Article 14(1) of the Service Regulations; secondly, from the letter of 19 August 1986 from the Principal Director of Personnel informing him that the President considered his behaviour towards the Appeals Committee inadmissible and serious enough to warrant a reprimand; and, thirdly, from the President's letter of 29 October 1986 imposing the second reprimand.

5. For the reasons set out in Judgment 933, under 6, the Tribunal is not competent to entertain claims (b) and (c) and accordingly dismisses them.

6. The complainant's claim, under (d), to damages is unfounded. As the Tribunal ruled in Judgment 801, the EPO declared the first reprimand void ab initio and he no longer has valid grounds for complaint; the second reprimand, too, has been withdrawn; and he produces not a shred of substantive evidence in support of his allegations of vindictive treatment.

7. His other claims having failed, his claim to costs, under (e), must also be dismissed.

The complainant's pleadings

8. The EPO accuses the complainant of indulging in unwarranted diatribes that "sink to a level which does anything but credit to their author", of casting discredit on the EPO through the "grotesque image of it that he presents" and of acting in breach of his obligations as a staff member under Articles 14(1) and 16(1) of the Service

Regulations.

The Tribunal indeed deplures the complainant's manner of pleading. He contends that it is not competent to hear his complaints, yet he has filed fourteen of them. His rejoinder contains accusations and remarks that are offensive to everyone concerned, including members of the Tribunal when they do not agree with him. He speaks of the EPO's "criminal atrocities" and its "ferocious persecution" of him, and other language he uses to put across his point of view is inadmissible.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, 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 8 December 1988.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
H. Gros Espiell  
A.B. Gardner