

SEVENTY-FIRST SESSION

In re SCHULZ (No. 2)

Judgment 1103

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Miss Angelika Schulz against the European Patent Organisation (EPO) on 19 September 1990, the EPO's reply of 17 December 1990, the complainant's rejoinder of 28 January 1991 and the Organisation's surrejoinder of 19 April 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 106(1) and 107 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. In 1980 the complainant joined the EPO's Language Service at headquarters in Munich as a grade LT4 reviser. There are three sections in the Service, one for English, one for French and one for German. Upon the departure of the de facto head of the German-language section the Director of the Service put the complainant in charge of it on 1 October 1981, and, though still at the same grade, she continuously performed the duties of section head in the years that followed.

At a meeting on 3 August 1989 the Director told the complainant that the heads of section would be replaced, in her own case from 7 August, and by an internal note of the same date the Director informed the staff of a new system of "rotating" the functions of the heads of section and letting the present heads "take a well-earned rest".

The complainant objected to the new policy and on 14 August 1989 applied to the Vice-President of the Office for reinstatement as head of section. In an internal note of 7 September to all staff the Director apologised for failing to consult the heads of section before bringing in the system of rotation. The complainant spoke to the Director on 8 September and to the Vice-President of the Office on 13 September, but to no avail. By a letter of 28 September she asked the President of the Office to reinstate her and, if he refused, to treat her letter as an appeal under Article 107 of the Service Regulations. By a letter of 1 December he rejected her request and referred the matter to the Appeals Committee. In its report of 22 May 1990 the majority of the Committee recommended reinstatement but by a letter of 25 June 1990, the decision she impugns, the President rejected her appeal.

B. The complainant submits that the decision to take away her duties as head of section was flawed. It was in breach of her right to a hearing, having been sprung on her with such haste that the Director had to make a public apology for not consulting her. It was in breach of good faith insofar as the stated aims - to bring in a system of rotation and let others show their skills at administration - were too vague for her to be able to determine whether it impaired her "legitimate interests". No personal reasons were put forward, nor was there any criticism of her eight-year performance as head of section. Besides, rotation was not common practice in the Organisation and there was no telling how it might work. By failing to take account of her seniority, very good staff reports and standing as head of the German-language section the Organisation harmed her reputation and so acted in breach of its duty to treat staff with respect. That the decision was also tainted by prejudice is plain from the haste with which the Director acted, especially when there was no need for job rotation, without even consulting the Vice-President beforehand.

By taking away her duties as reporting officer and other managerial functions, which her job specification of 25 January 1988 says account for two-fifths of her time, the EPO has narrowed the scope of her responsibilities. The damage to her prospects for promotion has caused her material injury.

She invites the Tribunal to set aside the decision, reinstate her as head of section and award her "compensation for humiliation, damaged reputation and loss of promotion prospects".

C. In its reply the EPO contends that the complaint is devoid of merit in that the impugned decision does not affect the complainant adversely. There is no such thing as a post as "head of section". The description of the reviser post she holds is no different from the descriptions of other reviser posts. The Director of the Language Service was free to alter her duties in the interests of the Service and in keeping with the President's policy of staff mobility.

Though the EPO's budget for 1989 does refer to "Heads of Lang[uage] Section", there is no such reference in the 1990 budget. The job specification the complainant mentions has no value in law and is just a list of duties which one reviser happened to perform at one particular time. Her present duties, grade and pay are in line with those of the post she was appointed to. She had no more right to act as head of section than others on reviser posts. Far from disregarding her skills and good performance, the Director praised them in the internal note of 3 August 1989. The decision to have a "system of rotation amongst those holding the same post" was neither hasty nor ultra vires; it came several months after the new Director had taken up duty and after consultation with other competent departments. It was plainly a general managerial decision taken in the interests of the Service and offered greater opportunities for on-the-job training, flexibility and job satisfaction. Since it affected all "heads of section" equally, her charge of prejudice is groundless.

As for the alleged breach of her right to a hearing, she had ample opportunity to put her case before the decision was confirmed and in the internal proceedings. Besides, as the Tribunal has ruled, even an official who is transferred - and the complainant was not - need not be heard beforehand.

The damage she alleges to her prospects for promotion is merely speculative. Even supposing the Director's note of 3 August 1989 did cause her moral injury it was remedied by the public apology of 7 September 1989.

D. The complainant rejoins that there is such a post as head of section and she cites references to it in an array of official documents. If all those references were wrong, why did the Organisation do nothing during the years when she was on the job to make things clear? Though it has never explained what exactly it has in mind, it speaks of rotation "amongst those holding the same post". If, as it contends, incumbents are to be shifted about from one post to another for the sake of "on-the-job training" and "flexibility", the posts must be different ones with different duties and so the post of head of section must be different from other reviser posts.

The rotation was not in the interests of the Service: while it left the former head of section more time for revision, it left the new head less. Other measures could have increased output. The fact that the new Director removed all three heads of section does not rebut the presumption of prejudice against a specific group of people, namely the former Director's closest associates. Pressing her claims to moral and material damages, she refutes the Organisation's denial of injury to her reputation and prospects of promotion.

E. In its surrejoinder the Organisation applies for joinder of the case with that of another EPO staff member on the grounds that the two cases raise the same issues and the two complainants seek the same redress.

The EPO develops the pleas contained in its reply. The gist of its case is that there is no such post as "head of section" and that even if there was the complainant would still have to show that the President of the Office had duly appointed her to it. She cannot do so. The term "head of section" is merely a convenient way of identifying the reviser who at a given time has responsibility for certain administrative tasks. As for her allegations of prejudice, she offers not a shred of evidence in support.

CONSIDERATIONS:

The EPO's application for joinder

1. In its surrejoinder the EPO applies for joinder of this case with the complaint which Miss Elisabeth Galichet filed on 17 November 1990 on the grounds that both complainants seek the same relief and the salient facts are the same. The application is rejected because, whereas on this case the submissions are complete, on Miss Galichet's they are not. Moreover, there is no reason to delay ruling on this case until the other one is ready for hearing.

The background

2. The EPO employs the complainant in the German translation section of its Language Service at headquarters in Munich.

She first joined the Service in 1980 as a reviser at grade LT4. As is recorded above, under A, the Director of the Service put her in charge of the German section in October 1981 and she remained in charge until August 1989, when the Director decided to transfer to someone else her duties as head of the section and left her with only the duties of a reviser.

3. There is only one job description for the post of reviser and such posts are graded LT4. The description, No. 2441, was approved by the EPO's Administrative Council in 1977 (CI/Final 18/77). It determined the nature of the reviser's duties, the level of responsibility and the qualifications required for appointment to the post. It set out a list of linguistic and management duties.

On 6 December 1983 the Administrative Council adopted what are called "new" job descriptions (CA/46/83). As the records of discussion in its Budget and Finance Committee and in the Council itself indicate, those descriptions, being general in character, were to be supplemented by detailed ones to be issued by the President and, until they were, the so-called "old" descriptions approved in 1977 - including No. 2441 - continued to apply. Circular 126 of 12 January 1984 explained the position to the staff.

The claim to a post as head of section

4. In support of her contention that she is entitled to a post as head of section the complainant cites a "job specification" form that was drawn up on 25 January 1988: it gives the title of her post as "head of section" and, in her submission, attributes to her various management functions.

That text is of no effect in law. It merely sets out the duties which one incumbent of a reviser's post was performing at that particular time. Besides, the entry under "Title of post" - "head of section LT4" - is incorrect: opposite it there is a reference to "old" job description 2441, which is the description of a reviser's post. The detailed descriptions of the duties of a reviser not having yet been issued by the President, the job descriptions in CI/Final 18/77, along with those in CA/46/83, are still in force: no "LT4/A4" post exists other than that of reviser.

The letter appointing the complainant in 1980 mentions only her appointment as a reviser. When, the next year, she was put in charge of the German section she received no new letter of appointment because she was still holding the post of reviser. The fact that the term "head of section" appears in her staff reports is immaterial. Indeed she herself referred in her internal appeal to "de facto ... sections [in the Service] and a head of each", thereby acknowledging that the post of head of section had never existed de jure.

A paper written by the Organisation Department of the Office in 1982 about the structure of the Language Service did mention the title "head of section". But it was only a study and the title does not appear in the part of it entitled "Present situation". However favourable the President may have been to the study, the Administrative Council adopted no new job description.

In the circumstances the inclusion of the words "Heads of Lang. Section" in the table of LT4/A4 posts in the Organisation's budget for 1989 must have been the result of an error, and indeed they do not appear in the budget for 1990. Even assuming that the Administrative Council approved the creation of the post of head of section in adopting the budget, the Office would still have had to announce the vacancy and appoint the complainant to it before she might have any right of tenure.

The fact that she wrote staff reports on translators in the section merely shows that she performed one of the management tasks mentioned in the reviser's job description: it does not mean that she held a post different from those of other revisers who were not asked to perform that task. It is clear from job description 2441 that the incumbent does not have the right to perform all of the linguistic and management duties stated therein, though he must be capable of performing them if his immediate supervisor so requires in the Office's interests.

The conclusion is that the complainant's claim to the post of head of section has no basis in law because no such post exists. The term is only a convenient way of denoting a reviser who at a given time has particular responsibility for performing certain management duties.

The alleged breach of the right to a hearing

5. The complainant submits that the impugned decision was in breach of her right to a hearing.

She is mistaken. She had ample opportunity to put her case before the decision was confirmed and in the internal appeal proceedings. And considering the circumstances in which the decision was taken and its limited effect the EPO was not bound to consult her beforehand anyway.

The alleged moral injury

6. She further contends that the decision impaired her dignity and discredited her.

The plea fails.

First, the complainant has not been downgraded. Her present duties and pay are in line with those of the post she was appointed to. She held the same post after the impugned decision as she had before. She had the same opportunities for promotion and her career prospects were in no way diminished. Since she had no greater right to act as head of section than did the other holders of reviser posts her allegation that the decision overlooked her seniority, length of service and good record is unfounded.

Secondly, the Director of the Service offered a satisfactory explanation in her minute of 7 September 1989 and, besides, in another of 3 August 1989 had already paid tribute to the complainant's linguistic skills and to the effort she had put into enhancing the reputation of her section.

Thirdly, the decision to have a "system of rotation among those holding the same post" was not hasty: it came several months after the new Director had taken up duty and after consultation with other competent units. The Director had herself worked in the Service, first as a translator and then as a reviser, and her decision was therefore based on first-hand experience. It simply reflected a different approach to management and was taken in the belief that it would offer greater opportunities for on-the-job training, flexibility and job satisfaction.

The alleged personal prejudice

7. Since the policy of rotation affected all "heads of section" equally the complainant's charge of personal prejudice is groundless.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Mr. Pierre Pescatore, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 3 July 1991.

Jacques Ducoux
Mohamed Suffian
P. Pescatore
A.B. Gardner