

SEVENTY-SECOND SESSION

In re GALICHET

Judgment 1146

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Elisabeth Galichet against the European Patent Organisation (EPO) on 17 November 1990, the EPO's reply of 1 March 1991, the complainant's rejoinder of 28 May and the Organisation's surrejoinder of 14 August 1991;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 12(2), 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 1981 the complainant joined the EPO's Language Service at headquarters in Munich as a reviser at grade LT4 (later converted to A4). There are three sections in the Service, one for English, one for French and one for German. When the head of the French-language section resigned, the complainant took over in September 1984 and, though still at the same grade, she continued to act as head of section in the years that followed.

At a meeting on 3 August 1989 the newly appointed Director of the Language Service told the complainant that the heads of section would be replaced, in her own case from 7 August, and by an internal note of 3 August the Director informed the staff of a new policy, which was to "rotate" the functions of the heads of section and let 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 the 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 7 September, but to no avail. By a letter of 1 October 1989 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 7 June 1990 the majority of the Committee recommended reinstatement but by a letter of 29 August 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. By failing to take account of her seniority, very good staff reports and standing as head of the French-language section the Organisation overlooked essential facts and acted in breach of its duty to treat staff with respect.

The decision is based on incorrect facts. Output figures show that, contrary to what the Administration says, the Service did benefit fully from her language skills during her tenure as section head. Official EPO documents establish that the Language Service has been split into three sections. The duties of heads of section are of a higher order than those of other A4 officials. The decision was not in the interests of the Service since it benefited only one official and disrupted the work of translation.

What had been decided was not a system of rotation but a covert transfer. Assigning the duties of section head to another official for an unlimited period under the guise of rotation was a misapplication of procedure. Besides, the Service Regulations make no provision for rotating staff members' duties and no other department has followed suit.

That the decision was also tainted with prejudice is plain from the haste of the Director, who did not even consult the Vice-President beforehand.

The complainant alleges a mistake of law in that the competent authority had no say in her transfer. Since there had

in practice been a post for head of section for twelve years but no question of filling it by rotation, she had an acquired right to it.

Putting her under the supervision of a former subordinate has harmed her reputation. The Director's apology for not consulting her beforehand was no remedy for the moral injury caused by announcing that her replacement was in the interests of the Service.

By taking away her duties as reporting officer and other managerial functions the EPO has narrowed the scope of her responsibilities and barred her way to grade A4(2). 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 damages for material and moral injury. She also seeks an award of costs.

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 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.

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. In any event the complaint is not about the lawfulness of her failure to gain promotion; that would be the matter of a separate complaint. 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 does exist such a post as head of section and she cites references to it in an array of official documents, including post descriptions whose legal validity is not open to question. It is also plain that the Language Service is divided into three sections, whose heads are above the other A4 officials they supervise.

The rotation was not in the interests of the Service: in the two years since it came in mean output has fallen sharply. It has not brought new skills or responsibilities to any of the staff inasmuch as her successor had already served as section head during her absences and he is the only one with duties as head of section. She has been left to do work that is both familiar to her and less responsible than before. Other methods might have increased output; the Director's purpose in bringing in rotation appears to have been to dodge the requirements of Article 12(2) of the Service Regulations on transfer. The complainant rejects the Organisation's denial of injury to her reputation and prospects of promotion.

E. In its surrejoinder the Organisation points out that in Judgment 1103 (in re Schulz No. 2) of 3 July 1991, which was about a similar case, the Tribunal dismissed a claim to the post of head of section on the grounds that it "has no basis in law because no such post exists". The term "head of section" is merely a convenient way of identifying the reviser who at any given time has responsibility for certain administrative tasks. The complainant's pleas are much the same as those the Tribunal rejected in Judgment 1103. Her allegations about the Director's ulterior motives are gratuitous.

CONSIDERATIONS:

1. The complainant joined the Language Service of the European Patent Office on 1 October 1981 as a reviser at grade LT4. Of the three sections in the Service - English, French and German - the Director put the complainant in charge of the French one in September 1984 as de facto head with no change of grade.

When the Director of the Service retired her successor decided to introduce a policy of rotation of the revisers as heads of section. She announced the new policy on 3 August 1989 without consulting the acting heads of section and, having received protests from them, issued an internal note to the staff on 7 September to apologise for not having consulted those concerned before taking the decision and to promise to talk matters over with them. In the meantime the decision to apply the policy of rotation to the heads of section was to be regarded as merely provisional. Discussion with the complainant took place also on 7 September, and the Director of the Service confirmed her decision on 5 October 1989.

The complainant appealed to the Appeals Committee. The Committee recommended by a majority allowing her appeal but the President of the Office decided on 29 August 1990 to reject it for the reasons stated in the minority opinion. That is the decision she impugns.

2. This case is similar to that of Miss Schulz, which the Tribunal dismissed in Judgment 1103. As former de facto head of the German section of the Language Service Miss Schulz had filed a complaint challenging the removal of her duties as head of section. As the Tribunal said, however, there is no post as head of section: the term is only a convenient way of denoting a reviser who at a given time has particular responsibility for performing management duties. There is no new evidence adduced in the present case which warrants any different finding on that issue of fact.

3. The complainant objects to the President's decision on the following grounds:

(i) It failed to take essential facts into consideration in that the Director of Personnel had asked to be kept informed.

(ii) It was based on two mistaken assumptions of fact: that the Service was less likely to benefit from her language skills while she was head of section and it had not been formally split into three sections. She argues that there is not just a division of duties but an actual difference in level of responsibility between what a head of section does and what the other revisers do and that the interests of the Service is irrelevant.

(iii) There was abuse of procedure in that there was a disguised transfer and her replacement by rotation is not provided for in the Service Regulations.

(iv) There was abuse of authority prompted by personal prejudice and the decision was taken with unwarranted haste.

(v) The decision is flawed with errors of law in that the transfer was decided by an incompetent authority and the post was not vacant. The post of head of section was recognised de facto by the Organisation for twelve years and the Organisation must acknowledge its existence.

(vi) Lastly, there was breach of her acquired rights because the post of head of section had existed in practice for twelve years without rotation.

4. The Tribunal's ruling on each of those pleas must rest on the fact that no post of head of language section exists or ever existed. The complainant was appointed as a reviser. When acting as head of the French section she held the same post as she had held before and as she holds now. The Director of the Language Service was entitled to alter her duties and those of other revisers. Rotation among those who hold similar posts is a tool of management, its purpose being to foster training, mobility, flexibility and job satisfaction. Even though it is not explicitly provided for in the Service Regulations there is no reason why there should be no system of rotation. Since all the revisers have management duties included in their official post descriptions, it is not only the complainant but the others as well who have the right to be given the opportunity of showing their capacity for management.

5. As to plea (i), there is no evidence to suggest that any essential fact has been overlooked. The text of a decision does not have to cite every fact that has been taken into account, and the facts that have been will ordinarily be

apparent from the pleadings and evidence before the Tribunal. Though the new Director of the Language Service took the initial decision on 3 August 1989 while the Director of Personnel was absent on leave it was later treated as merely provisional and did not become final until 5 October 1989, long after the Director of Personnel had returned. The final decision by the President of the Office - the one impugned - was not taken until 29 August 1990, and the Tribunal finds no reason to suppose that in reaching it the President was unaware, or failed to take account, of any material fact that appears on the evidence.

6. As to plea (ii), the complainant's contention that the Service was no less able to benefit from her language skills while she was acting as head of section is a mere expression of opinion and raises no material issue of fact.

She is also mistaken in her view that the Language Service had been formally split into three sections each with a post of head of section. As was said in Judgment 1103, no such posts ever existed. Though the work is in practice divided according to language, there is no formal division into three sections, and since there is no such thing as a post as head of section the complainant may not claim that the de facto head of section is at a higher level than the other revisers. All revisers are at the same grade, the only distinction being that the de facto head has management functions. Lastly, it is quite wrong to say that the interests of the Service are irrelevant: it must always be an important consideration in any management decision.

7. The answer to plea (iii) - that the rotation was a disguised form of transfer - is that there was no transfer because there is no post as head of section as such. There was merely redivision of duties between the revisers, and the Director of the Service was the proper person to take the decision.

8. As to pleas (iv) and (v), the decision by the Director became final, as was said above, on 5 October 1989. She referred to discussion with the former heads of section and said that she had taken into account a number of objections raised. Being convinced that the change was in the Service's interests she confirmed her earlier provisional decision. Though she had made an error in announcing the decision on 3 August, that was remedied by her apology on 7 September and by her declaring that decision to have been merely provisional. There was no abuse of authority: the decision was not directed at the complainant personally but affected all three heads of section.

9. There was no breach of her acquired rights, as she makes out in plea (vi), because there had never been such a thing as a post for head of section.

10. The conclusion is that since none of the complainant's objections is sustained the President's decision must stand and, that being so, the complainant's claims to damages for material and moral injury and to costs must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Tun Mohamed Suffian, Vice-President of the Tribunal, Miss Mella Carroll, Judge, and Mr. José Maria Ruda, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

Mohamed Suffian
Mella Carroll
José Maria Ruda
A.B. Gardner