

SEVENTY-FIFTH SESSION

***In re* ERRANI (No. 2)**

Judgment 1270

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Carlo Errani against the European Patent Organisation (EPO) on 10 October 1992 and corrected on 19 November 1992, the EPO's reply of 8 February 1993, the complainant's rejoinder of 25 March and the Organisation's surrejoinder of 30 April 1993;

Considering Articles II, paragraphs 5 and 6(a), and VII of the Statute of the Tribunal and Articles 28 and 106 to 113 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. As is stated in Judgment 1269 delivered this day, under A, the complainant, an Italian, joined the EPO as an examiner of patents in 1983 in Directorate-General 1 (DG1) at The Hague. He was granted unpaid leave for personal reasons from 1 January 1988 to 31 August 1989. On 17 June 1991 the EPO promoted him from grade A2 to grade A3 as from 1 July 1990. He resigned on 1 November 1991.

On his return from leave in September 1989 he and his supervisors clashed over the setting up of a local section of the Italian national trade union federation known as the UIL. He filed internal appeals and then his first complaint, on which the Tribunal rules in Judgment 1269.

In an appeal filed on 19 July 1991 he claimed assistance from the Organisation under Article 28(1) of the Service Regulations(*) (* Article 28(1) says: "If, by reason of his office or duties, any permanent employee, or former permanent employee, or any member of his family living in his household is subject to any insult, threat, defamation or attack to his person or property, the Organisation shall assist the employee, in particular in proceedings against the author of any such act.") in bringing an action against EPO officers who had allegedly caused him physical, material and moral injury. He went over events that he saw leading up to a plot to get him out of the Office; he complained that he had been subjected to personal affronts, libel and threats of disciplinary action, had the gravity of an illness questioned and received poor staff reports; and he objected to being kept at grade A2, step 6, when he was senior enough to qualify for A3, and to the EPO's taking until 17 June 1991 to put the mistake right.

In the report it submitted on 22 May 1992 the Appeals Committee unanimously recommended rejecting his appeal as devoid of merit. In a letter of 30 June 1992, the impugned decision, the Director of Staff Policy informed the complainant that the President of the Office had decided to endorse the Committee's recommendation.

B. The complainant points out that in March 1990 he became an elected member of the Staff Committee, a body provided for in the Service Regulations. Along with other staff members he wanted to break what he saw as the monopoly which the Staff Union of the EPO had long enjoyed. Ever since the Office had been set up the Staff Union had had special privileges, including promotion for its leaders, and that curbed the exercise of freedom of association. It was the Union's leaders who ran the Staff Committee, and both bodies shared the same premises. Insofar as management treated the Union as the only body worth consulting it had taken over from the Committee. After announcing that a local section of the UIL had been set up the complainant ran into stiff opposition and was so victimised that he was deeply upset and driven to resign.

The Personnel Department made difficulties when he went back to his own country on sick leave and his former supervisor advised him in the course of conciliation over his staff report for 1988-89 to think of making his career elsewhere.

He claims (1) an award of damages for the physical, material and moral injury he allegedly sustained at the hands of officials who forced him to resign to escape "persecution for political reasons", (2) assistance from the EPO under Article 28 of the Service Regulations in proceedings against the offending officials and (3) an award of costs.

C. In its reply the EPO contends that the complainant's internal appeal afforded no grounds for any award of damages since he sought only assistance under Article 28(1) in bringing an action against officials for alleged victimisation. Insofar as the claim to damages is unrelated to the rejection of his appeal and he has failed to exhaust the means of redress open to him it is irreceivable.

Article 28(1) applies only to assistance in proceedings against the authors of insults, threats and so on from outside the Organisation, not in internal proceedings against fellow staff members. In such cases the proper procedure is set out in the rules on disciplinary action.

He offers not a shred of evidence to suggest that he was forced to resign: he freely tendered his resignation and bears full responsibility for it.

His charge of collusion between the Staff Union and the Administration is a figment of his imagination, as is plain from the many complaints that members of the Union have lodged with the Tribunal. The list of former leaders of the Union promoted to senior posts shows that, far from victimising staff union activists, the EPO assesses them solely on merit.

D. In his rejoinder the complainant maintains that the President of the Office failed to conduct an inquiry into the wilful harassment and discriminatory treatment he had suffered. If his allegations were devoid of merit, what kept the Organisation from taking disciplinary action against him? He refers to the EPO's treatment of two colleagues in like case as evidence of its bad faith.

He presses his claims and makes a subsidiary claim to damages in the amount of two years' salary at his last grade, A3, step 1.

E. In its surrejoinder the EPO enlarges on its pleas, maintaining in particular that it neither victimised the complainant nor drove him to resign.

CONSIDERATIONS:

1. The complainant, who used to be on the staff of the European Patent Office, is seeking damages for moral and professional injury and for the harm to his health which he attributes to the behaviour of several senior officers of the Organisation. He alleges that they subjected him to persecution because of his staff union activity and in the end drove him to resign. He asks the Tribunal, insofar as it may not itself rule on his allegations of fact, to order the Organisation to grant him the assistance it owes an employee under Article 28 of the Service Regulations in the event of "insult, threat, defamation or attack to his person or property" to which he has been subject "by reason of his office or duties".

2. The complainant first stated those grievances in an internal appeal which he filed on 19 July 1991 under Articles 107 and 108 of the Service Regulations. In that appeal he alleged that he had been harassed because of his staff union activity, that he had been given a less favourable staff report for the period from September to December 1989, that the promotion he might reasonably expect had been held up, and that the Personnel Department had questioned his statement that he was ill and put pressure on him to resign.

3. The President of the Office referred his case to the internal Appeals Committee. After examining his grievances in detail the Committee unanimously recommended rejecting his appeal on the grounds that there was no serious basis for it in fact or in law. In answer to the plea he had founded on Article 28 of the Service Regulations the Committee said that the purpose of that article was to protect the staff member against attacks from outside the Organisation, not to clear up an internal dispute.

4. The President thereupon rejected the complainant's appeal by a letter of 30 June 1992 and that is the decision he is impugning.

5. The grievances he has put to the Tribunal show his utter ignorance of the appeal procedure as set out in the Service Regulations. In accordance with Articles 106 to 113 the filing of an appeal presupposes that the Organisation has already taken a decision that adversely affects the staff member or that he has submitted to it a request for a decision he is entitled to under the Regulations. So the essence of the prescribed procedure is that it affords a means of having a decision reversed. The staff member may not secure a right of appeal by putting forward a claim to compensation that is unconnected with an express or implied decision challengeable under Article 106.

6. The complainant's various claims, put forward first in his internal appeal of 19 July 1991 and then in this complaint, are unconnected with the appeal procedure provided for in the Regulations. Article 28 confers on the staff member the right to assistance against any attacks a third party makes on him by reason of his office or duties: its purpose is not to settle a dispute that has arisen within the Organisation itself. In this case the complainant is objecting to actions by several senior EPO officers which they were competent to take and which were challengeable only under the appeal procedure set out in the Service Regulations. In fact this complaint is just an attempt to revive false rows he carried on with management until he himself realised what his own behaviour required and duly resigned. As for the quarrel with the Organisation over his staff union activity, it suffices to refer to Judgment 1269, also delivered this day.

7. The conclusion is that the complaint is the outcome of an abuse of the appeal procedure provided for in the Service Regulations and must fail because it is irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. José Maria Ruda, President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

José Maria Ruda
P. Pescatore
Michel Gentot
A.B. Gardner