

## **EIGHTY-FIRST SESSION**

### ***In re* POPINEAU (No. 11)**

#### **Judgment 1542**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eleventh complaint filed by Mr. Gérard Popineau against the European Patent Organisation (EPO) on 28 August 1995, the EPO's reply of 24 November 1995, the complainant's rejoinder of 11 February 1996 and the Organisation's surrejoinder of 2 April 1996;

Considering Article II, paragraphs 5 and 6(a) of the Statute of the Tribunal;

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. Facts that have a bearing on this case appear under A in Judgment 1244 on the complainant's fifth complaint.

As that judgment says, the complainant was in the employ of the European Patent Office, the secretariat of the EPO, when he set up a staff union known as the European Search Federation (FER). On 17 February 1995 he asked the President of the Office what facilities the EPO would, in keeping with its rules, afford the new union and its representatives for staff union work; where the rules were silent, he wanted to see suitable measures taken.

By a letter of 13 March 1995 the Director of Staff Policy informed the complainant of the President's view that the complainant had already raised in his fifth complaint the question of letting the FER function on EPO premises and the Tribunal had ruled that out in Judgment 1244. By a letter of 16 March the complainant pointed out to the Director that Judgment 1244 had nothing to do with the arrangements for letting the FER carry on staff union business.

In a letter of 15 May the complainant asked the Director for written confirmation of the statement attributed to him that the President would not answer the complainant's request for a decision on facilities for the FER.

By a letter of 26 May 1995 the Principal Director of Personnel told the complainant that since the Tribunal's judgments had determined his status once and for all the Office would be answering no further internal appeal he lodged. In a letter dated 30 May the complainant asked the Principal Director what was to be done about his appeal of 15 May. By a letter of 7 June 1995 he appealed to the Appeals Committee pressing his claim to facilities for the FER and its representatives. He is impugning the implied rejection of that appeal.

B. The complainant says that as a former EPO official and a member of the FER he has a legitimate interest in knowing what the rules are and what has been done to enable the FER's representatives to carry on staff union work. Citing Judgment 1244, he submits that to recognise a union and then deny it facilities is inconsistent. It is also discriminatory since other unions get facilities.

He wants the Tribunal to send the case back so that the Organisation may provide a meeting room and notice board for the FER and allow its representatives time off. He claims one French franc in token moral damages and 5,000 francs in costs.

C. In its reply the EPO contends that the complaint is irreceivable because the Tribunal lacks competence *ratione materiae*. The complainant may not rely on Article 30 of the Service Regulations on freedom of association: the article does not expressly apply to former officials. Besides, even supposing that the FER did exist and the complainant belonged to it he would not be entitled to claim facilities on that account alone.

D. In his rejoinder the complainant maintains that the EPO has recognised the FER, it is a union that may represent

him, and it should have facilities: that is his cause of action.

E.The EPO observes in its surrejoinder that the complainant does not say whether the FER exists.

#### CONSIDERATIONS:

1.This dispute is about the EPO's refusal of the complainant's request for the grant of facilities to the European Search Federation (FER) of the EPO. The complainant founded that union on 4 July 1990, while he was still in the EPO's employ. Earlier he had set up an EPO branch of the French National Union of Research Scientists, an affiliate of the National Education Federation (SNCS-FEN). His fifth complaint challenged the Organisation's refusal to let the SNCS-FEN have staff union facilities. Judgment 1244 dismissed it, but noted that on 17 February 1992 the President of the Office had lifted a ban he had laid on the FER.

2.By a letter of 17 February 1995 the complainant, as a member of the FER and a former employee of the EPO, asked the Organisation to tell him what steps the rules prescribed to let the FER's representatives carry on staff union business and, if need be, to make good omissions in those rules. The Director of Staff Policy pointed out in a reply of 13 March 1995 that the complainant had raised the matter in his submissions on the complaint dismissed in Judgment 1244. Taking the view that that judgment dealt only with the SNCS-FEN, the complainant put claims to which he demanded a reply. The EPO did reply, in a letter of 26 May 1995: it would not be answering his claims or internal appeals. On 7 June 1995 he lodged an internal appeal against the decision of 13 March 1995 not to reconsider the matter of the FER. It is the implied rejection of that appeal that he is impugning in this complaint.

3.The EPO pleads that his complaint is irreceivable on three counts:

(1)the Tribunal lacks competence *ratione materiae*;

(2)the complaint has no substance;

(3)he has no *locus standi* and no cause of action.

4.The gist of pleas (1) and (3) is that, not being an official, the complainant may not rely on Article 30 of the Service Regulations on freedom of association; he purports to be acting, not for himself, but on behalf of the local section of the FER; and on dismissal he lost all ties with the EPO and so has no cause of action.

5.The reference to the complainant's dismissal suggests a plea of lack of competence *ratione personae* rather than *materiae*. As the EPO can scarcely deny, this complaint, which seeks the grant of staff union facilities to the FER, does concern the exercise of the freedom of association that Article 30 of the Service Regulations guarantees. So the Tribunal is competent *ratione materiae* under Article II(5) and (6)(a) of its Statute, whereby it is open to any official - even one whose employment has ceased - who alleges breach in substance or in form of the staff regulations.

6.But may the complainant file suit about the exercise of freedom of association by representatives of the FER? To that question the answer is no. As was held in Judgment 1392 (in re Raths No. 2) - to cite but one - Article 106 of the EPO's Service Regulations declares the system to be one of individual appeal. That, too, is the essence of a complaint under Article II(5) of the Statute. So a complaint is receivable only if it is about an individual official's status as an employee of the organisation, not about the collective interests of trade unionists. Insofar as the complaint purports to be made on behalf of the FER it is irreceivable.

7.Moreover, as the EPO contends, the complainant has no *locus standi* to make a claim against his former employer. After dismissal he no longer had any connection with the EPO in law. Nor, since he was in the EPO's employ for under ten years, is he entitled under Article 7 of the Pension Scheme Regulations to draw a pension: he can therefore derive no cause of action from the breach of any provision of the EPO's rules and regulations. On that score too his complaint is irreceivable.

8.For the foregoing reasons the complaint must fail, there being no need to entertain the plea that it has no substance, an issue that goes rather to the merits than to procedure.

9.Since his complaint must be dismissed so too are his claims to moral damages and to costs.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas  
E. Razafindralambo  
Egli  
A.B. Gardner

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