

EIGHTY-SIXTH SESSION

In re Stöckle

Judgment 1837

The Administrative Tribunal,

Considering the complaint filed by Mr. Wolfgang Stöckle against the European Patent Organisation (EPO) on 12 February 1998 and corrected on 25 March, the EPO's reply of 10 June, the complainant's rejoinder of 30 August and the Organisation's surrejoinder of 1 October 1998;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a German who was born in 1932, joined the European Patent Office, the secretariat of the EPO, in 1978 and was appointed to its office in Berlin. In 1981 he was transferred to Munich. At the material time he was employed as a grade A4 examiner of patents.

On 20 July 1995 he claimed payment under Article 71 of the Service Regulations of an education allowance for his son, who was studying engineering at the University of London. In its 1993 version Article 71 reads in part;

"(1) Permanent employees entitled to the expatriation allowance - with the exception of those who are nationals of the country in which they are serving - may request payment of the education allowance in respect of each dependent child, within the meaning of the Service Regulations, regularly attending an educational establishment on a full time basis.

(2) By way of exception, permanent employees who are nationals of the country in which they are serving or who are not entitled to the expatriation allowance may request payment of the education allowance provided that the two following conditions are met:

a) the permanent employee's duty station is not less than 80 km distant from any school or university corresponding to the child's education cycle;

b) the permanent employee's duty station is not less than 80 km distant from the place of domicile at the time of recruitment."

By a letter of 11 September 1995 an official of the Remuneration Department refused the complainant's claim on the grounds that he met neither of the conditions in 71(2). By a letter of 8 December 1995, he appealed to the President of the Office. He argued that he met both conditions: the University of London was offering combined courses, dubbed "Mechatronics", in electronics and mechanical engineering, that were not available at Munich, and at the time of recruitment he had been living in Berlin. By a letter of 11 November 1997, which is the impugned decision, the Director of Personnel Development told him that on the Appeals Committee's unanimous recommendation of 30 September the President was rejecting his appeal.

B. The complainant contends that he meets the two conditions set in Article 71(2). He argues that in 1995 the University of Munich was offering courses only in mechanical engineering and not until 1997 did it start teaching "Mechatronics", another discipline altogether. As for the second condition, he was at the time of recruitment living in Berlin, he then intended to make his permanent home there, and that city is over 80 kilometres from Munich, where he was stationed at the time he made his claim.

He maintains that his case should be treated as an "exception" within the meaning of 71(2) because the two

conditions are seldom met. The Appeals Committee acted *ultra vires* by "making up implementation guidelines" for giving effect to the provision, though that is the business of the Administrative Council. He feels discriminated against in that employees who qualify under 71(1) may choose where their children are to study. It is immaterial that the EPO narrowly construes the term "education cycle" since "Mechatronics" is a distinct discipline and a distinct degree. In any event the construction should not be so narrow as to cover only "basic studies": for courses in engineering Article 71(2) would then have no effect at all.

The complainant claims the quashing of the impugned decision, the grant of the education allowance as from September 1995, when his son's courses began, and until they end, the payment of 600 German marks a month until "the decision is effective (because for the past the exact expenditures are difficult to ascertain)", interest at the rate of 10 per cent a year on any sums due, and 2,000 marks in costs.

C. In its reply the EPO submits that the President's decision, being a discretionary one, is subject only to limited review. Article 71(2) applies only "by way of exception" when suitable education is unavailable at the duty station. Since Munich is an important university city the EPO puts a narrow construction on the rule: it takes the term "education cycle" to refer to the level and broad field of study, not to "subjective" criteria such as quality or substance of courses or the method of teaching.

The EPO denies both that the Appeals Committee acted *ultra vires* and that the complainant was discriminated against. Those who get the expatriation allowance are entitled to the education allowance as well to cover the additional costs of educating their offspring in their home country.

The complainant failed to qualify under 71(2). For one thing Munich does have a "university corresponding to the child's education cycle": it offers courses in both mechanical engineering and electronics. For another, he is wrong to say that he was living in Berlin at the time of recruitment. The EPO submits the text of a letter of 26 May 1978, signed by the President and offering him the appointment: at the time he was living in Munich, and his family stayed there until he went back in 1981.

D. In his rejoinder the complainant submits that the President does not have discretion in the matter. He names several employees who did get the education allowance even though they did not qualify for it. His own case is out of the ordinary and sets no precedent. It is immaterial in applying 71(2)(a) that Munich is now offering courses of the kind his son wanted: it was not offering them in 1995. To go by the EPO's argument, which the Appeals Committee endorsed, his son would have to take two courses, one in mechanical engineering and another in electronics, and get a degree in each discipline. The complainant was living, working and resident in Munich from 1 July 1968 to 28 May 1978 and in Berlin from 29 May 1978 to 25 April 1981. By the time he was recruited - and the date given in the President's letter of 29 May 1978 was 1 June 1978 - he was already resident in Berlin.

E. The Organisation presses its case in its surrejoinder and rebuts the complainant's. It explains that the others he names were entitled to the education allowance and that in any event he may not rely on any breach there may have been of the Service Regulations. It is immaterial that his son would have had to take two courses in Munich to get the equivalent of the degree offered by London. The only relevance of that is the length of the courses, which is a "subjective" matter.

CONSIDERATIONS

1. The complainant joined the staff of the European Patent Office on 1 June 1978. He was stationed in Munich in February 1997, when he retired.

Article 71(1) and (2) of the Service Regulations are reproduced in A above.

On 20 July 1995 the complainant claimed payment of the education allowance provided for in Article 71(2) towards the costs of his son's studying "Mechatronics" at the University of London. He said that he met the two conditions in 71(2) because courses in that subject were not available in Munich and because at the time of recruitment his "place of domicile" had been Berlin and not Munich.

2. On 11 September 1995 the Remuneration Department refused to pay him the allowance on the grounds that he met neither of the conditions. He filed an internal appeal on 8 December 1995 and by the decision of 11 November 1997 that is now under challenge the President of the Office rejected it.

3. The complainant argues that in 1995 the University of Munich was not offering a degree in "Mechatronics" and only in 1997 did its technical university approve a curriculum combining courses in mechanical engineering and electronics. He further contends that from 29 May 1978 until 25 April 1981 he was living in Berlin.

4. The defendant's case is that at the time of recruitment his place of residence was Munich; that only after recruitment did he move to Berlin; and that the term "the child's education cycle" in Article 71(2) refers to basic university studies such as medicine, architecture or engineering, not to specific disciplines.

5. The rule allows the grant of the allowance in exceptional circumstances, and how it is to be applied is at the discretion of the President of the Office. So the Tribunal will ordinarily interfere with his decision only in the exercise of its limited power of review. It will do so where the decision shows a procedural flaw or a mistake of fact or law, or overlooks some material fact, or amounts to misuse of authority, or rests on mistaken findings of fact.

6. Here the complainant is contending that the President made a mistake of law and acted arbitrarily in interpreting Article 71(2) in his case. The Tribunal is satisfied that the impugned decision does not show either of those fatal flaws: the EPO's interpretation is the right one.

7. The conclusion is that the EPO acted lawfully in rejecting the complainant's claim to the allowance on the grounds that he failed to meet the condition in 71(2)(a). There is therefore no need to entertain his plea - which the defendant rebuts - that he met the one in 71(2)(b).

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

James K. Hugessen

A.B. Gardner