

NINETY-THIRD SESSION

Judgment No. 2132

The Administrative Tribunal,

Considering the complaint filed by Miss P. T. against the European Patent Organisation (EPO) on 7 February 2001 and corrected on 7 March, the letter of 26 April which she sent to the Registrar enclosing a supplement to her complaint, the EPO's reply of 14 August, its letter of 23 August to the Registrar enclosing a supplement to its reply, the complainant's rejoinder of 16 October and the EPO's surrejoinder of 6 November 2001;

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

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

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

A. The complainant, a French national born in 1961, joined the staff of the European Patent Office - the EPO's secretariat - in November 1991 at grade B3. She is currently employed at grade B4. On 1 February 1992 she was transferred to the EPO's Vienna sub-office. Since 1997 she has been working in the Co-operation Programmes Department and is involved in the organisation of conferences held annually in one of the member States. In 1999 the conference was held in Lucerne (Switzerland) from 26 to 28 May.

By a letter of 30 April 1999 the director of the above-mentioned department informed the staff members selected to participate in that conference, including the complainant, of their duties and areas of responsibility on that occasion. The complainant was responsible in particular for registering all participants and organising evening programmes. By an e-mail message of 4 May, the complainant's immediate supervisor reminded the director of the department that, in order to organise the conference, certain B grade staff members would be required to work overtime. He asked the director whether such overtime would be compensated in the same way as in previous years. By an e-mail message of 10 May, the director replied that he agreed to compensation in principle, provided that the overtime was justified. He proposed that the staff members involved should draw up a detailed list of their extra hours together with a description of the work done.

On 8 June the complainant sent the Principal Director of the Vienna sub-office a detailed breakdown of all the hours she claimed to have worked from 20 to 29 May 1999, which amounted to 93.85 hours. On 30 September the Administration sent its own breakdown to the complainant, together with a letter stating that each hour worked after 10 p.m. would be compensated with 1.5 hours and that, in accordance with Article 57(4) of the Service Regulations, travel time would not be considered as overtime. The Administration agreed to compensate the complainant for 87.75 hours, but refused to grant her compensation for 12.35 hours that she had declared, broken down as follows: 7.85 hours of travel time for the Vienna-Lucerne return journey and 4.5 hours of attendance at an evening reception on a boat on 26 May, from 6.30 p.m. to 11 p.m.

By a letter of 14 October 1999 the complainant asked the President of the Office to grant her a further 1.5 hours' compensation for one hour worked after 10 p.m. during the reception on the boat. She also sought compensation for the remaining 11.35 hours which had not been taken into account by the Administration. She asked that, in the event that her request was rejected, her letter be treated as initiating an internal appeal. On 13 December 1999 the Director of Personnel Development replied that the President of the Office could not allow her request and that the matter had been referred to the Appeals Committee. Although she sent two follow-up letters, at the date when the complainant filed her complaint with the Tribunal, she had still not been informed of the Administration's position

regarding her internal appeal.

B. The complainant asserts that, since 1992, the practice of the Organisation had been to compensate the additional hours worked by B grade staff during the conferences organised by the Vienna sub-office, including hours worked during evening events, travel, etc. She therefore considers that the decision of 30 September 1999 introduces a change to that practice without prior warning.

The complainant emphasises that, in accordance with Rules 3 and 4 of circular No. 22 concerning guidelines for leave, the EPO grants compensation for travel time occasioned by special leave with pay and by home leave. She argues that it is inconceivable that time spent travelling for work purposes outside working hours should be deducted from a staff member's free time, as had been requested of her in this case.

With regard to the further 4.5 hours for which she received no compensation, the complainant explains that she had to attend the reception on the boat, and that her role was to ensure that each participant boarding the boat had an access badge. In the course of the evening she also had to answer questions both general and specific from participants, and in a sense assumed the role of a public relations officer.

The complainant asks the Tribunal to order the Organisation to grant her compensation, in the form of leave, for the 12.35 hours which were not taken into account by the Administration.

In the supplement to her complaint, the complainant explains that by a letter of 18 April 2001 the Employment Law Department informed her that her appeal had been partially accepted, and she would therefore receive financial compensation for one hour of attendance during the embarkation of the boat passengers.

C. In its reply the EPO states that the Appeals Committee issued its opinion on 1 August 2001. The Committee recommended that the claim concerning travel time should be allowed, but the President had yet to take a final decision.

Rules 3 and 4 of circular No. 22 are not relevant because they concern compensation for travel time in connection with special leave and home leave, respectively. The complainant's claim for travel time compensation is clearly contrary to the provisions of Article 57(4), which state that: "If an employee is travelling on mission, the time taken to reach the place of assignment shall not be treated as overtime".

The EPO, and the Appeals Committee too, considers that the hours of attendance on the boat were not working hours: the complainant was entitled to attend the reception but was not obliged to. The aim of the reception was to provide an evening of entertainment and leisure for the participants. The fact that the complainant may have had to answer questions from certain participants does not alter the nature of the occasion.

The EPO contends that the complainant's request that her extra hours be compensated with leave rather than remuneration must be rejected pursuant to Article 57(3) b) of the Service Regulations.

In the supplement to its reply, the Organisation explains that on 23 August 2001 the President decided to allow the complainant's claim concerning travel time. The decision to abandon the practice of treating travel time as overtime was taken in June 1999. Since the complainant had begun her mission in May 1999, that decision was not applicable to her. However, her claim for compensation of hours worked during the evening was rejected.

D. In her rejoinder the complainant reiterates that she was obliged to attend the reception on the boat. Indeed, in a memorandum sent to her on 13 July 2001, her supervisor acknowledged that he had asked her to be on duty that evening; he had also given her a list of tasks to perform throughout the evening. The complainant also refers to the content of a letter to her supervisor, dated 6 March 2000, in which the Swiss Federal Institute of Intellectual Property thanked her in particular for her assistance to the participants during that evening.

E. In its surrejoinder the EPO maintains that the fact that the complainant was responsible for organising evening programmes, which included social events, did not mean that she necessarily had to participate in those events. It reiterates that the reception on the boat was a leisure event.

CONSIDERATIONS

1. The origin of the dispute before the Tribunal lies in the complainant's involvement in the organisation of a conference held in Lucerne from 26 to 28 May 1999, during which she was required to work additional hours. She contests the fact that in calculating the compensation for these additional hours, the EPO did not take into account 12.35 hours comprising 7.85 hours of travel time for the Vienna-Lucerne return journey and 4.5 hours of attendance (from 6.30 p.m. to 11 p.m.) at an evening reception on a boat.

2. By a letter of 14 October 1999 to the President of the European Patent Office, the complainant asked to be compensated for the above-mentioned 12.35 hours, which she classed as hours worked during the period from 20 to 29 May 1999. In the event that the President refused her request, she asked that her letter be treated as initiating an internal appeal.

On 13 December the complainant was informed that, following an initial examination of her case, the President could not allow her request and had referred her case to the Appeals Committee for an opinion. On 15 December 1999, the Chairman of the Appeals Committee informed her that her appeal would be processed as soon as possible.

On 29 November 2000 the complainant inquired as to when she could expect to be informed of the position of the Administration. The reply, given on 8 December 2000, was that it would be sent to her around the middle of the following year. On 13 December the complainant indicated that this period was unreasonable. Furthermore, since she considered the deadline to be "very vague", she asked for a more precise date. By a letter of 20 December 2000, she was told that the Administration would endeavour to inform her of its position as quickly as possible.

On 7 February 2001 the complainant filed a complaint before the Tribunal, considering that the Committee had not reached a decision within a reasonable period of time. In her complaint, she asked the Tribunal to order the EPO to grant her compensation, in the form of leave, for the 12.35 hours which the Administration had refused to take into account.

Receivability

3. According to the Tribunal's case law, the requirement to exhaust the internal remedies cannot have the effect of preventing complainants from exercising their rights. Consequently, an official may come straight to the Tribunal where the competent bodies are not able to decide on an issue within a reasonable period of time, the latter being determined in the light of circumstances (see Judgments 2039, 1968, 1829 and the numerous precedents cited therein).

These conditions are clearly satisfied in this case. After the steps taken by the complainant to no avail, she could not reasonably be expected to wait any longer, and there was no indication that the Appeals Committee would decide on the case in the near future. Consequently, the Tribunal considers that in this case the internal remedies have been exhausted.

The merits of the case

4. Since the filing of the complaint, the EPO has decided partially to allow the claim for compensation of the hours corresponding to the complainant's participation in the evening reception of 26 May 1999. It has treated as overtime the complainant's additional hour of attendance during the embarkation of the passengers, that is to say between 6.30 p.m. and 7.30 p.m. The complainant was informed of this decision by a letter of 18 April 2001.

5. The EPO has also decided to allow the complainant's request that the duration of the Vienna-Lucerne return journey be taken into account in calculating the compensation for her additional hours. The complainant was informed of this by a letter of 23 August 2001.

6. As a result of these decisions, the complainant's claims now partially show no cause of action. However, they do show a cause of action insofar as the EPO has not allowed the complainant compensation for the hours that she claims to have worked between 7.30 p.m. and 11 p.m.

7. In its reply, the EPO acknowledged that the complainant was responsible for organising evening programmes for the conference held between 26 and 28 May 1999 in Lucerne, and that she participated in the evening reception held on the boat on 26 May. It has also acknowledged that social events were an integral part of those programmes.

It argues that the evening event of 26 May was an evening of entertainment and leisure. The fact that the complainant was responsible for organising these programmes did not mean that she was obliged to participate in evening leisure events, and the expression "evening programmes" referred to work programmes after 6 p.m. It further asserts that the complainant participated in the reception of 26 May, not because of any obligation, but because she chose to do so. Consequently, the hours spent by the complainant on the boat did not count as working time and therefore were not subject to compensation.

8. The only relevant question is whether the time spent by the complainant on the boat (between 7.30 p.m. and 11 p.m.) should be considered as working hours to be taken into account in calculating the amount of overtime that she worked.

9. The letter of 30 April 1999 from the Director of the Co-operation Programmes Department indicates that the complainant was responsible, in particular, for the registration of all participants, accommodation and evening programmes.

In a letter of 6 March 2000 the Swiss Federal Institute of Intellectual Property expressed its gratitude for the help and support provided by the staff of the Office during the organisation of the Lucerne conference, and specifically thanked the complainant for the help she had given to conference participants, "particularly during the dinner ... on the boat".

In a memorandum to the complainant dated 13 July 2001 her supervisor wrote that, at the time of the conference, he had asked her to be on duty on the evening of 26 May and to perform several tasks, which included carrying out checks prior to embarkation, ensuring that the dinner proceeded smoothly and checking at the end of the evening that all passengers had disembarked without leaving anything behind.

That memorandum shows that the tasks allocated to the complainant for the evening of 26 May not only obliged her to carry out checks before the embarkation and after the disembarkation of the passengers, but also required her to board the boat and remain on it throughout the cruise on Lake Lucerne in order to perform the tasks and responsibilities allocated to her for that evening by her supervisor. The fact that the cruise may have been an evening of leisure for the conference participants did not mean that it was an evening of leisure for the complainant. The Tribunal considers that the complainant was bound to participate in that evening event in order to carry out her duties properly. Her supervisor's memorandum of 13 July 2001 leaves no doubt on this issue. Furthermore, there is no evidence to support the view that the evening reception of 26 May, which was a social event, could be considered as not being part of the evening programmes, and it has been established that one of the complainant's tasks at the conference was to organise those programmes.

The Tribunal therefore agrees with the complainant's argument that in order to do her work properly she had to remain on the boat until the disembarkation of the guests. Consequently, the hours that she spent on the boat must be considered as overtime and be taken into account as such, since, as the EPO has pointed out without challenge from the complainant, it is not possible to compensate these hours with additional leave.

10. Consequently, the complainant's claim is allowed.

11. Since she succeeds, the complainant is entitled to costs, which the Tribunal sets at 500 euros.

DECISION

For the above reasons,

1. There is no need to rule on the claims concerning compensation of travel time.
2. The EPO shall grant the complainant the compensation she requests for the hours worked on the boat between 7.30 p.m. and 11 p.m. during the reception of 26 May 1999.
3. It shall pay the complainant 500 euros in costs.

In witness of this judgment, adopted on 15 May 2002, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mrs Hildegard Rondón de Sansó, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

(Signed)

Michel Gentot

Jean-François Egli

Hildegard Rondón de Sansó

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 22 July 2002.