

NINETY-FIFTH SESSION

Judgment No. 2264

The Administrative Tribunal,

Considering the seventh complaint filed by Mr C. M. against the European Patent Organisation (EPO) on 11 April 2002, the Organisation's reply of 1 July, the complainant's rejoinder of 12 August and the EPO's surrejoinder of 24 October 2002;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

A. Details of the complainant's career are provided in particular in Judgment 1144 delivered on 29 January 1992, in which the Tribunal dismissed the complainant's sixth complaint, concerning his staff report of 6 May 1988. The complainant is employed as a chief examiner, at grade A4, in Directorate-General 2 (DG2) of the European Patent Office, the EPO's secretariat, and specifically in one of the directorates for physics and electricity.

In the present case he challenges his staff report for the period 1996-97. He signed this report on 25 May 1998, adding comments to the effect that the quality of his work, which had been rated "good", had not been "assessed at its proper value". On 16 June the supervisor responsible for countersigning the report endorsed the opinion of the reporting officer and stated that these comments did not warrant the awarding of a rating higher than "good". On 1 July 1998 the complainant indicated in the relevant part of the report that he felt compelled to submit an appeal under section D of the General Guidelines on Reporting. The conciliation procedure which was then initiated failed to resolve the dispute. On 28 April 1999 the President of the Office decided to confirm the disputed rating.

On 28 June, considering that the quality of his work ought to have been rated "very good", the complainant submitted an internal appeal to the President. In a letter of 13 July 1999 the Director of Personnel Development informed him that the President did not endorse that view and that the matter had been referred to the Appeals Committee. In its Opinion of 23 January 2002 the Committee recommended that the appeal be dismissed on the grounds that there had been no error of assessment. By a letter of 6 February 2002, which constitutes the impugned decision, the Principal Director of Personnel informed the complainant that the President had decided to reject his appeal.

B. The complainant expresses various criticisms concerning the EPO's staff reporting system. For example, he asserts that the system is arbitrary insofar as it depends on the "unfettered, broad and sovereign power of assessment" of the reporting officers, most of whom are subject only to the will of their supervisors and to the "sovereign authority of the President". He submits that his reporting officers misused their authority by deliberately omitting to take into account the quality of his work and the genuine difficulty of the tasks he performed, particularly since he had to process patent applications in fields for which other directorates were responsible.

He also alleges that he suffered professional harassment, within and sometimes outside the Organisation, and that he was placed under pressure even in his private life. According to him, the EPO's aim was to "destroy him psychologically or destroy his morale" and to compromise his productivity and the quality of his work. He considers that only "undesirables" are subjected to this type of treatment, and he also suspects several senior officials of having wanted to put an end to his career. He asserts that he endured a "nightmare" at the EPO. By way

of example he refers to an anonymous letter that he received in November 1993 which, in his opinion, reveals the hatred displayed towards him by its author and his or her associates. Until 1996 nothing was done to prevent any form of active and/or passive harassment directed at him, despite his "cries for help". He emphasises that only his current director took the trouble to listen to him, and he denounces the lack of independence of the members of the Appeals Committee.

The complainant seeks the annulment of the disputed staff report, and particularly of the rating "good" applied to the quality of his work, and likewise the annulment of his previous reports, for the same reasons. He wants the Tribunal to determine the consequences of such annulment for his eligibility for promotion to grade A5, by his appointment to a director's post in the principal directorate to which he is attached, or as a member of a Technical Board of Appeal, or by promotion to grade A4(2). He asks the Tribunal to declare that the system of reporting and promotion in DG2 is arbitrary and to acknowledge that he has suffered harassment of an active and/or passive nature both inside and outside the Organisation. Lastly, he claims moral and material damages.

C. In its reply the EPO submits that certain claims are irreceivable for failure to exhaust the internal remedies. Indeed, hitherto the complainant has never challenged the staff reports drafted after 1988 and prior to the period 1996-97; moreover, his internal appeal against the report for the period 1996-97 did not mention a request for appointment to a post at grade A5 or A4(2). The latter claim must equally be rejected on the grounds that such appointments are at the discretion of the President of the Office.

On the merits, the EPO contends that the impugned decision is not tainted by any of the flaws which would justify setting it aside. The complainant has failed to show any grounds on which the reasoning of the Appeals Committee or of the President can be criticised. His allegations of bias on the part of Committee members are not supported by any evidence liable to raise the slightest suspicion of the individuals concerned. It considers that the complainant has merely put forward arguments which have already been dismissed, either by the Committee in its Opinion, or by the Tribunal in Judgment 1144. He has not substantiated the accusations that he levels at his reporting officers or colleagues, some of which pertain to a time prior to the disputed reporting period. No direct causal link can be established between his supervisors and the troubles he allegedly suffered in his private life. Lastly, the existence of an anonymous letter of 1993 can hardly constitute proof that the reporting officers for the period 1996-97 committed an obvious error of assessment or acted unlawfully.

D. In his rejoinder the complainant asserts that the EPO's position displays obvious bad faith. He refers to the Organisation's objections to receivability as evidence of its "cynicism" and invites the Tribunal to dismiss them. Despite a difficult working environment and nervous disorders caused by years of harassment, at no time could the quality of his work be faulted. However, the Organisation never acknowledged this, thus displaying bias against him.

Addressing the Tribunal, he submits that the "unjust" judgments delivered in his previous cases reinforce "unfair and arbitrary practices" since they set no limits to the very broad power of assessment vested in supervisors. He considers that the position adopted by the Tribunal is "serious and irresponsible". Lastly, he asserts that all facts mentioned by him are accurate and not simply gratuitous statements.

E. In its surrejoinder the EPO emphasises that the procedural rules governing disputes before the Tribunal must be observed. Consequently, its partial objection to receivability cannot be considered to be an abuse of the legal process. In the absence of tangible and objective evidence, neither the behaviour of the complainant's supervisors nor his rating can be called into question.

CONSIDERATIONS

1. In the context of the dispute which led to Judgment 1144, the complainant sought the annulment of his staff report for 1988. Although he was dissatisfied with the appraisals he obtained in subsequent years, he has challenged only his staff report for the period 1996-97. In his internal appeal, he explained that the quality of his work warranted the rating "very good", rather than "good". The Appeals Committee dismissed his pleas, referring in part to Judgment 1144. It considered that the staff reporting system, the legality of which has been upheld by the Tribunal, affords staff members the necessary guarantees; that the complainant's appraisal had rightly been carried out on the basis of a comparison with the performance of other examiners of the Office, so that the

complainant's views as to the high quality of his work and his comparison with the work of examiners in national offices were irrelevant; that the complainant's observations concerning his working conditions do not cast doubt on the legality of the rating he was given; that most of the facts on which he relied relate to a period prior to the reporting period; and that his appraisal was carried out not by his former supervisor, whom he criticises, but by his current supervisor.

2. The complainant's claims are set out under B, above.

The complainant's arguments are based on the view that there exists, within the EPO, a desire to destabilise certain able but unpopular officials by means of professional harassment. He asserts that he has suffered the effects of this. Although the complainant acknowledges that such practices are difficult to prove, he provides two examples: firstly he states that on 30 November 1993 he received an anonymous letter urging him to leave his job, and secondly that the comparison of the quality of his work with that of other colleagues was distorted because he had been assigned tasks going beyond the normal scope of his duties and specialisation, which increased his workload. Moreover, although he was on bad terms with his previous supervisor (who was also his reporting officer), that is not the case with his current supervisor.

The Organisation submits that the complaint is unfounded and that some of the complainant's claims are irreceivable.

Receivability

3. (a) The claims for annulment of staff reports issued after 1988 and prior to the 1996-97 period are irreceivable, either because they are time-barred, where the reports have been the subject of an internal appeal but have not been challenged in due time before the Tribunal (Article VII(2) of the Statute of the Tribunal), or because the internal remedies have not been exhausted, where they have not been challenged internally (Article VII(1) of the said Statute).

(b) The complainant wants the Tribunal to determine the consequences of the annulment of his staff reports for his eligibility for promotion by appointment to the post of Director or to membership of a Technical Board of Appeal.

This claim was not submitted during the internal appeal and is therefore irreceivable before the Tribunal. Furthermore, appointments to membership of a Technical Board of Appeal are the prerogative of the Administrative Council. There is no need to refer this claim to the competent authorities, since it is in all likelihood irreceivable (see Judgment 1832).

(c) The complainant also seeks compensation for the fact that his suitability for certain posts was not recognised. This is a new claim and it is irreceivable on that basis. There is no need to determine whether it is also irreceivable in other respects (on these various issues see also Judgments 1559, 1832, 1891 and 2040).

(d) The complainant asks the Tribunal to declare that the system of reporting and promotion in DG2 is arbitrary and to acknowledge that he has suffered harassment of an active and/or passive nature both inside and outside the Organisation.

These pleas may be examined as arguments in support of substantive claims relating to the appraisal of his performance. Were they to be considered in their own right, as claims to a ruling in law, they would be deemed irreceivable for failure to exhaust the internal remedies.

(e) In his written submissions the complainant refers in part to explanations he provided in other documents.

Under Article 6(1)(b) of the Rules of the Tribunal, the arguments of fact and law must appear in the complaint itself (supplemented, if need be, by the rejoinder). Those arguments may not consist of a mere reference to other documents, since this would be contrary to the provisions of the Rules and would not enable the Tribunal and the other party to apprehend the complainant's pleas with sufficient ease and clarity.

Consequently, the complainant's references are acceptable only as illustrations, but not as an extension of the arguments contained in the complaint.

The request for hearings

4. Since the complainant has presented his case extensively in his written submissions, the Tribunal sees no need to order hearings. The complainant's request for hearings is therefore rejected.

The legality of the staff reporting system

5. The complainant challenges the EPO's staff reporting system.

He is entitled to challenge the validity or legality of the general rule in the context of an appeal against a decision applying it. However, he fails to establish why he considers the reporting system to be arbitrary or contrary to the principle of equal treatment. Moreover, a similar claim by the complainant has already been dismissed in Judgment 1144, to which reference may be made.

The complainant appears to object to the fact that promotions and appointments are decided on the basis of staff reports. However, this criticism concerns the conditions governing promotions and appointments, and not the appointment itself. Besides, the quality of any previous service, as evidenced by staff reports, is undoubtedly an objective criterion which should be taken into account.

The complainant also contends that the reporting officers and supervisors, and likewise the members of the bodies responsible for hearing appeals on this issue, are neither independent nor impartial.

The Tribunal considers that the staff reporting system instituted at the EPO does not merit such criticism and that the rules adopted in this domain are intended to prevent, as far as possible, any inequalities in the appraisal of staff members' performance. From a formal point of view, the involvement of various staff members performing different functions in the staff reporting process avoids any obvious inequality by favouring the application of uniform rules. The fact that they are all staff members of the Office offers the advantage of an improved knowledge of the subject-matter and ought not to entail any serious risk of abuse, particularly in view of the reciprocal review inherent in this system and the freedom of thought and expression enjoyed by the consultative bodies. From a substantive point of view, very precise rules have been established concerning the way in which staff appraisals should be carried out, and these are likewise designed to avoid arbitrary results as far as possible.

The allegation of unequal treatment

6. The complainant contends that he has suffered unequal treatment, since other staff members have received more favourable treatment. However, he provides no details on this issue and his plea is therefore factually unfounded.

Misuse of authority and harassment

7. (a) According to the Tribunal's case law, the party who pleads misuse of authority bears the burden of proving it (see, for example, Judgments 1392 and 2116, under 4(a)).

For the same reasons as those set out under 6, above, the requisite proof is lacking.

It cannot be inferred from the fact that the complainant received an anonymous letter, or from the fact that certain colleagues behaved unpleasantly towards him, that the various individuals involved in the appraisal process intended to penalise him whilst neglecting the interests of the Organisation. The complainant asserts that the comparison with other staff members relied on by the reporting officer was distorted by the fact that he was asked to process patent applications in fields pertaining to other directorates; this rendered his work more difficult than that of his colleagues and was not taken into account sufficiently by the reporting officer. These assertions have been contested by the reporting officer, who states that the report was drafted taking into account that which can reasonably be expected of an experienced examiner at grade A4 and by comparison with all colleagues in his directorate. In the complainant's view, the position adopted by the reporting officer (namely his new supervisor, with whom he is on good terms) can be explained by the fact that he does not have sufficient knowledge of his abilities. The truth of the complainant's argument has not been established either during the internal appeal or before the Tribunal.

(b) In connection with the foregoing plea, the complainant also alleged that he had been subjected to professional harassment by supervisors and colleagues.

This plea need only be examined insofar as the alleged harassment may have affected his appraisal. The burden of proof lies with the staff member who asserts that he has been a victim of harassment (see Judgments 2067, under 5, and 2100, under 13).

It cannot be inferred from the facts presented above that the conduct of those responsible for drafting the staff report or of other supervisors of the complainant amounted to harassment.

Although the complainant asserts that the attitude of certain colleagues may have been calculated to destabilise him, he does not sufficiently establish what specific effect this might have had on the disputed staff report.

As regards the said report, the complainant reiterates the arguments put forward in his internal appeal, namely those discussed above and a further argument based on false and inaccurate assessment.

According to the Tribunal's case law, a decision concerning a staff appraisal, like any other discretionary decision, may be set aside only on limited grounds such as a mistake of fact or of law or failure to take account of some material fact (see Judgment 1463, under 14, and the cases cited therein; and Judgment 2040, under 5).

During his internal appeal, the complainant compared his work to that of examiners in national patent offices. Rightly referring to the General Guidelines on Reporting, the complainant's supervisors explained to him that his comparison was not valid, that the comparison needed to be made with other EPO examiners of the same grade and that, according to the Guidelines, a majority of staff could be expected to obtain an average rating, with higher or lower ratings applying to a smaller number. Since the quality of the complainant's work was considered to be comparable to that of a majority of staff members in equivalent positions, the average rating "good" was justified.

The complainant has not attempted to dispute these explanations, which appear to be convincing. He asserts that he was the only person performing additional tasks, but this was not established during his internal appeal, nor has it been proved before the Tribunal.

8. Since it is ill-founded in every respect, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 21 May 2003, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet