

The Administrative Tribunal,

Considering the twenty-second complaint filed by Mr J.P.G. V. against the European Patent Organisation (EPO) on 11 August 2004, the Organisation's reply of 7 February 2005, the complainant's rejoinder of 10 March and the EPO's surrejoinder of 16 June 2005;

Considering Articles II, paragraph 5, and VII 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. At the material time, the complainant was employed as a grade A4 search examiner in Directorate-General 1 of the European Patent Office, the secretariat of the EPO.

On 28 November 2001 he received, via the internal electronic mail system "Office Vision" (OV), a note from his director containing a summary of the discussion they had had the day before. It appears from that account that the director had on two occasions passed on feedback to the complainant concerning the content of two different search reports written by him. Each time, however, the complainant had replied that he did not wish to receive that kind of feedback, which he considered to be a "waste of time". In his note the director pointed out that it was essential that the complainant study all such feedback in order to learn from any mistakes so as to ensure they were not repeated. The director also warned him that if the situation did not improve, in the next performance assessment he may receive the rating "less than good", especially with regard to his attitude to work.

In a letter of 11 January 2002 to the Director of Personnel, the complainant gave his views on the aforementioned OV note. The Director of Personnel replied on 22 February that the orders and warnings given by the complainant's director were part of his managerial duties and that he had no reason to consider that the director had gone beyond his responsibilities.

Meanwhile, on 4 February the complainant's director had sent the complainant an OV note asking him if he would volunteer to take responsibility for clearing the floor in the event of an emergency. As he received no reply to that OV note, nor to a reminder he had sent on 11 February, the director decided to put the question to the complainant directly by paying him a visit in his office. Considering that the complainant had responded aggressively and in a rude tone of voice, the director informed him on 12 February that, in view of his lack of politeness and courtesy, he would be marked "less than good" in the next performance assessment with regard to his attitude to work. The director also reserved the right to take additional sanctions foreseen by the Service Regulations for Permanent Employees of the Office. The complainant apologised to him in writing on 13 February.

On 15 February the complainant's director wrote to the Director of Personnel objecting to the complainant's impoliteness, disrespect and lack of courtesy and requesting disciplinary action against him. In a letter of 5 March the complainant gave his views on the matter to the President of the Office. On 12 March the Director of Personnel wrote to the complainant asking him for his comments on the letter of 15 February pursuant to "Art. 94(5)" of the Service Regulations. The complainant replied on 7 May, pointing out that there was no Article 94(5); he asked several questions, and referred to the comments he had made in his letter of 5 March to the President. On 28 June 2002 the Director of Personnel sent a note to the President in which he proposed that a reprimand be inflicted on the complainant, pursuant to Article 93(2)(b) of the Service Regulations. The latter received a copy of that note only in April 2003 during the internal appeal procedure.

In a letter of 9 July 2002 the President informed the complainant that he considered that his behaviour was severely complicating communication with his director and that he had therefore decided to inflict a reprimand on him. The complainant appealed against that decision on 4 September. In a letter dated 22 October 2002 he was informed that, following initial scrutiny, the President had considered that the reprimand was entirely justified and that the matter

had been referred to the Appeals Committee.

On 26 September 2003 the complainant wrote to the President of the Office to inform him, inter alia, that the representative of the Administration for the internal appeal procedure had brought unfounded accusations against him. On 3 October 2003 the complainant drew the President's attention to the note of 28 June 2002, especially to point 3 referring to the comments he had been asked to submit pursuant to "Art. 94(5)" of the Service Regulations, where the number 94 had been crossed out and replaced by 93. He accused the above-mentioned representative, who had admitted that she had corrected what was an "obvious typing error", of having made that change after 18 November 2002, while she was preparing the Office's position paper. He maintained that since the representative had access to the archives, she was in a position to change any piece of evidence. He requested an investigation into the reliability of documents in the Administration's files, since it appeared to him that such documents could be modified "at will".

In its opinion of 10 March 2004, the Appeals Committee recommended that the President review the severity of the disciplinary measure imposed on the complainant and consider changing it to a written warning under Article 93(2)(a). In a letter of 26 May 2004, which constitutes the impugned decision, the Director of Conditions of Employment and Statutory Bodies informed the complainant that the President had agreed to follow that recommendation and, while not admitting that the reprimand was a disproportionate measure, to convert the reprimand into a written warning as a gesture of goodwill.

B. The complainant asks the Tribunal to "quash the disciplinary measure" imposed on him on 26 May 2004. He maintains that the representative of the Administration for the internal procedure "illegally changed" a piece of evidence and made untrue accusations against him, causing him moral damage for which he seeks 20,000 euros in compensation. He also asserts that with the support of the management his director harassed him and also made untrue allegations against him. In view of his director's behaviour and the resulting disciplinary measure, he suffered moral damage for which he seeks 10,000 euros in compensation.

C. In its reply the EPO contends that the complainant's claims for compensation for alleged moral damage are irreceivable insofar as they widen the original claims.

On the merits, it recalls that according to its case law the Tribunal exercises only a limited power of review over the choice of a disciplinary measure. In the case in hand, the disciplinary measure taken against the complainant was fully justified and was taken in the proper exercise of the President's discretionary power. The Organisation further maintains that what the complainant considers as harassment is actually the implementation by the Administration of the regulations concerning disciplinary proceedings and the exercise by his director of his duty to supervise his unit and to remind his staff of their professional duties. The complainant is responsible for the quality of his search reports and, when requested to process feedback concerning his work, it is incumbent on him to do so. The EPO points out that the Appeals Committee concluded that the unreasonable and provocative behaviour of the complainant hampered communication considerably and that his director was right to object to such a fundamentally negative attitude.

The Organisation also recalls that the reference to Article 94(5) of the Service Regulations was obviously a typing error and that the Appeals Committee came to the conclusion that it was particularly "devious" on the part of the complainant to have accused the representative of the Office of tampering with the evidence so that he could claim compensation for moral damage.

D. In his rejoinder the complainant accuses the representative not only of falsifying an important piece of evidence, but also of failing in some instances to "give any proof" of her accusations. He considers that his right to be heard was infringed and that he was not informed in a timely manner of the reasons for the two disciplinary measures successively inflicted on him. He reiterates that he does not wish to process feedback of the kind he received concerning his work because he considers it a waste of time. He asserts that he was never reluctant, however, to accept the authority of his director. He criticises his director's behaviour and that of the latter's supervisor, and he maintains that the Director of Personnel was biased against him.

E. In its surrejoinder the Organisation fully reiterates its position and counters the new arguments put forward by the complainant.

CONSIDERATIONS

1. The complainant entered the service of the EPO on 1 September 1982 as an examiner in Directorate-General 1 at The Hague. His present grade is A4.
2. At the material time, he was employed as a search examiner. On 28 November 2001 he was notified by his then director in an OV note (internal e-mail) that his work was lacking in certain areas, namely that he had missed out highly relevant documents in two search reports. The complainant's response was, and continues to be, that he considers such feedback to be a waste of time, and he did not, and does not, wish to receive such feedback in the future. In the OV note the complainant's director told the complainant that he would continue to forward to him any feedback information concerning his work, and that he should study it in order to assess its relevance. In addition, whenever applicable, the complainant was to learn from his past mistakes to ensure that they were not repeated. The complainant was also warned in the OV note that his performance assessment in the area of attitude was likely to be "less than good" if the situation did not improve.
3. The complainant replied to the aforementioned OV note with a letter dated 11 January 2002, addressed to the Director of Personnel. He included a copy of the OV note, and stated that he considered the feedback to be a waste of time, and was of the opinion that further training courses would be a more effective method of improving the quality of searches.
4. The Director of Personnel replied to the complainant's letter by one of 22 February 2002, which stated:

"In the [OV note of 28 November 2001], your Director gives clear indication that you should take feedback about your searches more seriously, in order to improve the quality of your work. It appears from your [letter] that, although you will take more seriously feedback in the future, there is an obvious reluctance to accept your Director's advice. The orders and warnings given by your Director are part of his managerial duties.

I have found no reason to consider that your Director has gone beyond his responsibilities."
5. There was a further incident regarding volunteers for clearing the floor in an emergency, given that the complainant had failed to respond to an OV note from his director that demanded a reply. On 12 February 2002 the director confronted the complainant with his failure to reply.
6. The failure to reply resulted in a further warning being issued to the complainant by his director that same day, in respect of his professional conduct. In that warning the complainant was accused of: (i) deliberate refusal to respond to notes from his director; (ii) deliberate evasive answers to 'yes or no' questions; and (iii) rudeness of tone when speaking to his director.
7. The complainant apologised on 13 February 2002 for his failure to respond to his director's earlier OV note. As regards the request to volunteer for the floor clearing duties, he stated that he did not "feel that it [was] up to [him] to volunteer for [that task] now".
8. The complainant's director wrote to the Director of Personnel on 15 February 2002, requesting disciplinary action against the complainant.
9. The complainant was given a reprimand on 9 July 2002. He appealed the reprimand internally, and the Appeals Committee recommended, in a report dated 10 March 2004, that the reprimand under 93(2)(b) of the Service Regulations could be changed, in the President's discretion, to a less severe written warning under 93(2)(a). The President of the Office exercised his discretion, and accepted the Appeal Committee's recommendation to impose the lesser written warning on the complainant. The Director of Conditions of Employment and Statutory Bodies wrote to the complainant on 26 May 2004, advising him of the President's decision to change the reprimand into a written warning. That is the impugned decision.
10. The complainant seeks as relief the following:
 - (a) the quashing of the disciplinary measure (written warning) given to him;
 - (b) compensation for moral damage as a result of "the harassment and untrue allegations by his director and supported by the management of the EPO", in the amount of 10,000 euros; and

(c) compensation for moral damage suffered as a result of “the illegal change of evidence and the untrue allegations” against him by the “juridical Representative of the President” during the internal procedure, in the amount of 20,000 euros.

11. In his submissions the complainant asserts that he still maintains that certain feedback from his director, regarding his work, is a waste of time.

The problem is that the EPO, and not the complainant, sets the procedure to be followed by employees of the EPO. Regardless of whether the complainant believes that the feedback is a waste of his time, the EPO has, within its mandate, the ability to require the complainant to receive and address correspondence and feedback on his work. The goal of the feedback, as pointed out by the complainant’s director in the OV note of 28 November 2001, is to draw the staff member’s attention to possible areas for improvement in his or her work. In his letter of 11 January 2002 the complainant acknowledged that, if during his original search he had found the documents referred to him in the feedback, he would have included them in his search reports. That acknowledgment contradicts the complainant’s allegation that the feedback in question constitutes a “waste of time”.

12. The complainant’s allegation that the Administration tampered with the evidence before the Appeals Committee was properly and conclusively rejected by the latter as a “particularly devious” attempt to profit improperly from an obvious typographical error. The Tribunal will not disturb that finding.

13. The disciplinary measure was justified, and the complainant’s attempt to have the written warning quashed should be dismissed. Likewise, his claim for moral damages is unfounded and must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet