

**In re BRISSON, DEMETER,
VAN DE VLOET and VERDELMAN**

Judgment No. 303

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints against the International Patent Institute drawn up by Mr. Michel Ghislain Roger Brisson on 3 May 1976, Miss Marie-Paule Demeter on 3 May, Mrs. Micheline Berthe Van de Vloet on 4 May and Mrs. Hetty Elisabeth Verdelman on 4 May 1976, the Institute's single reply of 24 June to the four complaints, the complainant's rejoinders of 24 July, 13 July, 30 August and 14 July respectively, the Institute's communications of 22 July and 12 August 1976 stating that it would not file surrejoinders to the rejoinders of Miss Demeter and Mrs. Verdelman and to that of Mr. Brisson and the Institute's surrejoinder of 29 September 1976 to Mrs. Van de Vloet's rejoinder;

Considering that the four complaints relate to the same matters and should be joined to form the subject of a single decision;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the provisions of the Institute Staff Regulations, particularly Articles 5, 10, 21, 25 to 30, 89 and 90 and the general principles governing promotion adopted by the Administrative Council of the Institute in October 1975;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainants are Institute staff members at grade C3 and were recruited after 1 January 1972, when new Staff Regulations came into force. In 1975 they all had the minimum two years' service at grade C3 which made them eligible for promotion to grade C2. On 5 February 1976 the list of staff members promoted in 1975 was posted on the Institute premises. The complainants found that their names did not appear and they addressed a grievance to the Director-General. Having received no reply, they appealed to the Tribunal early in May 1976. Then, on 26 May 1976, the Director-General sent each of them a copy of a staff circular notifying the careers committees' recommendations.

B. The complainants argue that they were "entitled" to promotion; that the decision not to promote them was irregular; that it did not take account of the "normal career pattern" resulting from a declaration made by the Institute's Administrative Council on 21 December 1971 and accompanying the decision to bring the new Staff Regulations into force; that the "general principles governing promotion" were not respected; and that Article 5 of the Staff Regulations, which stipulates identical career conditions for all staff members, was infringed. One of the complainants, Mr. Brisson, further argues that the Chief of the Personnel Service, a member of the Careers Committee, ought to have withdrawn since in 1973 he had had a part in having the complainant's performance mark lowered.

C. Three of the complainants, Mr. Brisson, Miss Demeter and Mrs. Verdelman, ask the Tribunal to order the Institute to produce the Careers Committee's report on promotions from C3 to C2 in 1975. As was stated in paragraph A above, the Committee's report was communicated to the complainants on 26 May 1976, after the complaints had been filed. Each of the complainants asks that the implied decision of 5 February 1976 not to promote him or her should be quashed and that a new decision be taken after further consultation of the Careers Committee. Miss Demeter, Mrs. Van de Vloet and Mrs. Verdelman claim promotion with effect from 1 May, 16 March and 1 January 1975 respectively. They also ask the Tribunal to order payment of their legal expenses and of interest at 8 per cent a year on arrears of the higher salary due from the date on which they ought to have been promoted. Mr. Brisson asks the Tribunal to find irregular the composition of the Careers Committee instructed in 1975 to report on the fitness of staff members in his category for promotion.

D. The Institute contends that according to the Staff Regulations promotion is the result of a choice and falls within the Director-General's discretionary authority. The decision not to include the complainants' names in the promotions roster for 1975 was proposed by the Careers Committee after it had studied the personal files of all candidates for promotion, and the Director-General accepted the Committee's recommendation in the exercise of his discretionary authority. The Institute refers to the complainants' allegation that the impugned decision did not take account of the "normal career pattern". It points out that the Administrative Council's declaration of December 1971, which sets out the roster of normal career patterns, applies to staff members appointed before January 1972, when the new Staff Regulations came into force, and not to those recruited later, like the complainants. The roster does not have the force of a staff rule, but merely affords guidance. It cannot give rise to any right to promotion, even for the staff members to whom it applies. The complainants cannot properly rely on the general principles governing promotion, which apply only to promotions from A7 to A6, and from A6 to A5. The complainants contend that they fared less well than staff members of the same grade who were promoted in earlier years and they regard such discrimination as a breach of Article 5 of the Staff Regulations. The Institute replies that the term "identical ... career patterns" in that article means that staff members in the same category should be subject to the same staff rules on promotion. Article 5 cannot be construed to mean that any criteria applied in the past and based on length of service and performance marks will continue to be applied automatically year after year. Promotion is a matter of choice based on a comparison of staff members' merits, and the Director-General is in no way bound by the criteria applied in earlier years. In any case, if the complainants' merits are compared with those of staff members belonging to the same grade and promoted in earlier years, it does not appear that in practice the complainants were discriminated against. Lastly, in reply to Mr. Brisson's argument that the Chief of the Personnel Service ought to have withdrawn from the Careers Committee the Institute contends that the fact that in 1973 he had played a part in marking the complainant's performance does not in itself cast doubt on his impartiality. Indeed it is a common and reasonable practice for chiefs of service or the Chief of the Personnel Service to sit on committees required to consider for promotion staff members whose performance they have marked. Mr. Brisson's argument therefore fails: the promotion procedure was quite regular.

E. The Institute asks the Tribunal to dismiss the complainants' claims in their entirety as utterly unfounded.

CONSIDERATIONS:

As to the Tribunal's power of review:

1. The decision not to promote the complainants from grade C3 to grade C2 in 1975 falls within the Director-General's discretionary authority. Hence the Tribunal will interfere with that decision only if it was taken without authority, or violates a rule of form or of procedure, or is based on an error of fact or of law, or if essential facts have not been taken into consideration, or if the decision is tainted with abuse of authority, or if a clearly mistaken conclusion has been drawn from the facts.

As to the alleged procedural flaws:

2. The complainants contend that they were not informed of the criteria and recommendations drawn up by the competent Careers Committee for promotions in 1975. Those texts were circulated to the staff on 26 May 1976, and this grievance therefore now fails. The texts were notified after the original memoranda, but before the rejoinders had been lodged: in other words, the complainants were able to refer to those texts in the course of the proceedings and so their right to a hearing has not been infringed.

3. Mr. Brisson contends that the committee which recommended staff members in his category for promotion included the Chief of the Personnel Service, the official who had determined his performance mark, and that the committee's composition was therefore irregular. But the fact that the Chief of the Personnel Service should sit on such a committee is only normal. That official had a duty of impartiality both in marking the complainant's performance and in serving on the Careers Committee, and the two functions were therefore quite compatible. Besides, there is nothing to suggest that in performing either function he showed any prejudice against the complainant.

As to the alleged errors of law:

4. The complainants are mistaken in contending that the Director-General failed to take account of the "normal career pattern" in studying their cases. It is true that in a declaration of 22 December 1971 the Administrative

Council admitted that the roster of "normal career patterns", though it did not have the force of a staff rule, could guide the careers committees and the Director-General in the matter of promotions. But that declaration was made before the present Staff Regulations came into force and related to those on the staff at the end of 1971. It is doubtful whether the complainants may properly rely upon it, since they did not join the Institute staff until later. In any event the roster merely affords guidance and is not a binding rule.

5. Contrary to what the complainants contend, "the general principles governing promotion", which the Council approved at its 127th Session on the proposal of the Administrative Advisory Committee, do not have absolute force in the present cases. There is no need to consider the Institute's contention that the Council was concerned only with the promotion of staff members in category A, to which the complainants do not belong. In any event, the Council could not have meant to depart from Article 25 of the Staff Regulations, which makes both seniority and performance the criteria for promotion.

6. It is immaterial that the complainants would have been promoted in 1975 had the same criteria been applied as in 1973 and 1974. It is for the careers committees and for the Director-General to adapt the conditions of promotion to the Institute's requirements. Hence those conditions may change from year to year and, since they do so, different staff members are differently treated according to the dates or which they receive promotion. Where there are administrative reasons for such difference in treatment, it is no breach of the principle of equality laid down in Article 5 of the Staff Regulations. The complainants have not shown that in their cases the Director-General acted for any purpose but to serve the Institute's interests.

As to the allegation that mistaken conclusions were drawn from the dossier:

7. By 1975 the complainants had served on the Institute staff for at least two years. They had received performance marks of 17 or 18 for 1973 and the comment "good" or "very good" for 1974. They contend that they therefore met the conditions laid down for promotion from C3 to C2 in 1975. Even if that were so, it would not mean that in refusing to promote the complainants the Director-General abused his discretionary authority.

The Director-General may be led, for financial reasons and from a desire to keep a hierarchy of staff members within a category, to grant promotion to fewer staff members than deserve it. In any event it does not appear from the dossier that the Director-General drew clearly mistaken conclusions in these cases.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 June 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet