

THIRTY-NINTH ORDINARY SESSION

Registry's translation, the French text alone being authoritative.

In re PELTRE

Judgment No. 330

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Patent Institute by Mr. Christian Peltre on 3 May 1976, the Institute's reply of 21 January 1977, the complainant's rejoinder of 12 March and the Institute's surrejoinder of 21 April 1977;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal, the Institute Staff Regulations, particularly Articles 5, 10, 25, 82 and 87, and the "general principles governing promotion" for 1975;

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

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

A. The complainant joined the staff of the Institute as an examiner on 1 September 1971, when the former Staff Rules still applied. When new Staff Regulations came into force the complainant was graded at A8, step 1, with effect from 1 September 1971, in accordance with a table of equivalents approved by the Administrative Council. When his appointment was confirmed he was promoted to grade A7, step 1, with effect from 1 September 1972.

B. On 5 February 1976 a list of promotions for 1975 was posted up on the Institute premises. Promotions to A6 and other grades were said to be governed by the "general principles" which the Administrative Council had adopted at its October 1975 session. The complainant saw that he was not one of those promoted from A7 to A6 and on 4 March 1976 appealed to the Director-General. The Administration did not answer and, as he was entitled to do under Article 87 of the Staff Regulations, he lodged a complaint with the Tribunal on 3 May 1976.

C. By letter of 26 May 1976 - after the complaint had been lodged - the Director-General wrote to the complainant enclosing a copy of a staff circular of the same date which gave a list of promotions proposed by the Careers Committee on 27 January 1976 and saying that his case would be reviewed under the procedure set out in the circular. On 1 December 1976 the Careers Committee adopted a new list of promotions which, says the Institute, "put in order of merit the 41 officials, including the complainant, who had already been proposed for promotion to A6". As a result of this review by the Careers Committee the Director-General promoted another six officials to A6 for 1975 by a decision of 24 December 1976 posted up on the staff notice board on the same day. The complainant was not one of the six.

D. The complainant alleges that a method introduced in May 1975 for marking performance in 1974 was "an absolute system which compared a staff member's actual merit over the past year with the notional performance of a model examiner of like grade and like seniority in that grade". Under the old system a staff member's mark had increased in step with seniority and there were many anomalies in the marks given for 1974 because different units were applying different criteria. The complainant therefore believes that his mark was tainted with error and that denying him promotion in 1975 was an act of discrimination and a breach of Article 5 of the Staff Regulations. He was unfairly treated because, according to the "general principles governing promotion" for 1975, he was entitled to promotion even though his work was only "satisfactory". He was also less fairly treated than "those promoted who had four years' actual seniority and whose work was assessed as 'good'".

E. In his further memoranda the complainant asks the Tribunal to allow his claims; to quash the decision of 5 February 1976 not to promote him and restore his rights by promoting him to A6 from 1 September 1975; subsidiarily, to quash the decision of 5 February 1976 on the grounds that mistakes of law and of fact were made, essential facts overlooked and clearly mistaken conclusions drawn from the facts; to declare that a new decision should be taken on a new recommendation which the Careers Committee should make after correction of the

anomalies in the marking or in the light of the mark he should have been given and not the one he was actually given; subsidiarily, to quash the decision of 24 December 1976 not to promote him on the grounds that mistakes of law and of fact were made and clearly mistaken conclusions drawn from the facts; to declare that the list of 1 December should be amended and a new decision taken and to order the Institute to pay him 1,000 guilders in damages plus interest at 8 per cent a year on salary arrears, due from 1 September 1976.

F. The Institute points out that according to the Staff Regulations promotion is a matter of choice and a decision which falls within the Director-General's discretionary authority

The Tribunal may exercise only a limited power of review over such a decision. In answer to the complainant's contention that, according to the "general principles governing promotion" for 1975, he ought to have been promoted even though his work was only "satisfactory", the Institute observes that the normal career pattern referred to in the first paragraph of the "general principles" does not have the force of a rule: it is merely a point of reference and confers no "right" to promotion. Nor do the "general principles" themselves confer any such right: they cannot limit the Director-General's discretionary authority and the Tribunal may not put its own judgment in place of his. The Institute then answers the complainant's argument that, the general assessment of his work in 1974 being "satisfactory, he was less fairly treated than the promoted staff members who had four years' actual seniority and whose general assessment was good": although the Director-General accepted the Reports Committee's recommendation for amending the assessment of the complainant's output in 1974 from "satisfactory" to "good", he saw no reason to amend the general assessment of the complainant, which was only "satisfactory". Even if the complainant's work had been good" in 1974, putting staff members in order of merit is not just a matter of comparing the general assessments of their work in any given year. The Director-General takes many other criteria into account - not just general assessments but the whole series of assessments made in staff members' performance reports in the course of their career.

G. The Institute accordingly asks the Tribunal to dismiss the complaint.

CONSIDERATIONS

As to the production of documents:

1. The complainant asks for the production of "the Careers Committee's recommendations for promotions from A7 to A6 and the documents in his file which may have prompted his exclusion". The Institute appends to its reply two reports by the Careers Committee recommending staff promotions in 1975, one dated 27 January and the other 1 December 1976. The complainant was free to comment on those reports, of which he was no doubt already aware. His first point has therefore been met. As to the second, for want of clearer information the Tribunal supposes that the documents the complainant means are his performance reports, but since he himself signed them he must have been fully aware of their contents.

As to the Tribunal's power of review:

2. A decision on promotion is generally discretionary, and as a rule the Tribunal may quash it only if it was taken without authority or violated a rule of form or of procedure, or was based on a mistake of fact or of law, or if essential facts were not taken into account, or if the decision is tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

3. This case concerns the question of promoting the complainant from A7 to A6 and the Tribunal has no grounds for broadening the scope of its customary power to review decisions on promotion. Indeed Article 25 of the Staff Regulations states that promotion is a matter of choice and so qualifies it as a discretionary decision - in other words, one over which the Tribunal may exercise only a limited power of review. It is immaterial whether the complainant met the conditions of promotion set out in the table of "normal career patterns". According to the Administrative Council's declaration of 22 December 1971 that table "does not have the force of a rule but merely affords guidance". Not being binding, it cannot limit the Director-General's discretionary authority. Nor is there any binding force in the "general principles" drawn up by the Administrative Advisory Committee and approved by the Administrative Council at its 127th Session. Their very title, the vagueness of their wording and the exceptions they admit show an intention not to put any close restraint on the Director-General. They give him guidance, but they also respect his discretionary authority and the Tribunal must acknowledge that by not going beyond the scope of its minimum power of review.

As to the complainant's pleas:

4. First, the complainant contends that the assessments of his work entitled him to promotion. In fact, his promotion may have been warranted but was by no means mandatory.

Secondly, it appears from the dossier that the complainant's case was given careful consideration. After studying the table of promotions drawn up by the Careers Committee on 27 January 1976 the acting Director-General published a list of staff members promoted from A7 to A6. True, the table included the complainant, but the list did not. Objections having been raised however, the Careers Committee was asked to put in order of merit the staff members who qualified for promotion and to publish a new table. Again the new Director-General excluded the complainant.

The complainant's performance report for 1974 included twenty assessments - four "very good", six "good" and ten "satisfactory". The general assessment read⁽¹⁾: "Examiner: does satisfactory work and is keen to do better. Has learned his job well. Needs to organise his work more efficiently". The general assessment was "satisfactory". He appealed and the Reports Committee changed the assessment of the complainant's output from "satisfactory" to "good", but confirmed the other assessments.

The complainant's work therefore appears to be of somewhat average quality. Hence in deciding not to promote him from A7 to A6 the Director-General did not abuse his discretionary authority. In particular, he did not draw clearly mistaken conclusions from the facts.

5. The complainant is wrong to allege unfair treatment.

In the first place, there appears to be no unfairness to him in the treatment of another staff member, Mr. Lemerrier, who, though he had no better qualifications, did have greater seniority.

Secondly, a Mr. de Gussem came 34th in the list of 1 December 1976, whereas the complainant came only 37th; so there was nothing unfair to the complainant about the promotion of Mr. de Gussem.

Thirdly, there were three staff members in the Careers Committee's list of 27 January 1976 who did not have four years' seniority in category A - Mr. Coucke, Mr. Verdoodt and Mr. David. But they had shown "exceptional merit". The complainant had not.

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 21 November 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

1. Registry translation.