

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

FIFTY-FIRST ORDINARY SESSION

In re SCHULZ

Judgment No. 575

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Miss Angelika Schulz on 19 January 1983, the EPO's reply of 31 March, the complainant's rejoinder of 7 June and the EPO's surrejoinder of 4 August 1983;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 11(2), 107 and 108(2) and (3) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence, 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, a citizen of the Federal Republic of Germany, joined the Language Service of the EPO in Munich as a reviser on 1 October 1980. She obtained grade LT4 and, with account taken of her previous professional experience, step 3 in that grade, with nine months' seniority. On 11 June 1981 she applied for a four-month increase in her seniority, and this was granted by a letter of 17 July. In March 1982 she realised she was earning less than if she had got the lower grade LT3, in which she would have held a higher step. On 15 March she claimed advancement to a step in LT4 which would bring her at least as much as she would have earned in LT3. This was refused in a letter of 29 April from the Principal Director of Personnel. On 12 May she went to the Appeals Committee. In a report of 25 November the Committee held her appeal to be receivable but recommended dismissing it as devoid of merit. In a letter of 29 November, which is the decision impugned, the President of the Office informed the complainant that he disagreed with the Committee's view that the appeal was receivable and declared the case closed.

B. The complainant contends that because different criteria are applied for determining steps in LT3 and LT4 she is earning much less than an LT3 translator of equal "reckonable experience" and less than even an LT4 reviser of equal experience promoted from LT3 and performing the same duties. This is in breach of the principle of equal treatment, which requires higher, not lower, pay for greater responsibilities and equal pay for work of equal value. She gives figures in support of her contention. To the Administration's argument that the prospect of promotion to LT5 makes up for the lower income she replies that she has no such prospect under the general career system for L category staff. It was a breach of good faith to withhold from her on recruitment the information that she would be worse off in the higher grade. She claims "the step in grade LT4 which [she] would have had in grade LT3".

C. The EPO submits that the complaint is irreceivable. Under Article 108(2) of the Service Regulations an internal appeal must be lodged in three months. The decision she ought to have challenged was the one of 17 July 1981 determining her seniority. Yet she did not file her appeal until 12 May 1982. It was therefore time-barred, and she failed to exhaust the internal means of redress. The reply of 29 April 1982 from the Principal Director of Personnel to her letter of 15 March was not a decision, but merely gave information. It is immaterial that she did not discover the consequences of her grading until March 1982 since she could have done so much earlier. The complaint is also devoid of merit. Normally appointment is to the bottom step in a grade, but Article 11(2) allows a higher step on grounds of "training and special professional experience". Nine years are subtracted from the reckonable experience of an LT4 official, five from that of an LT3 official, these being the minimum periods required for access to the grades. That they should differ was decided by the President of the Office in the proper exercise of his discretion and according to criteria the EPO Interim Committee approved in 1977. The difference is justified. It would be wrong to grant a higher grade because of experience and then a higher step in that grade for the same reason. The higher grade demands greater qualifications, and it is reasonable to require greater experience for

access to it. From step 9 upwards of LT4 an official is much better off than at the top of LT3. LT4 work is more satisfying and carries greater prestige. It is not certain that the complainant would have been promoted to LT4 soon after appointment to LT3.

D. The complainant rejoins that her internal appeal was not time-barred: since the decision of 17 July 1981 to grant her request for full recognition of her professional experience was not "an act adversely affecting" her within the purview of Article 107 of the Service Regulations, she had no reason to appeal against it. What she objects to is an anomaly in pay and, as the Appeals Committee held, her internal appeal against it was receivable. As to the merits, the EPO fails to answer her point that she is three or more steps below an LT4 reviser of similar experience promoted from LT3. Even if she will in time earn more than an LT3 translator, the delayed advantage will not make good past injury. Pay is worth more than job satisfaction or prestige, and the mere prospect of promotion does not make up for lower earnings: it is slight anyway since promotion from LT3 to LT4 is provided for in the career system, but promotion from LT4 to LT5 is not. It is right to require greater experience for a higher grade, but not to discount it in calculating the step.

E. In its surrejoinder the EPO submits that the Tribunal will be even more wary of reviewing a decision when, as here, the President of the Office is applying a legislative act by the Administrative Council, namely the system of salary scales. There is no breach of equal treatment because a staff member recruited at LT4 and one promoted to LT4 are not in the same factual and legal position, the conditions of recruitment and those of promotion not being necessarily the same. The complainant's other arguments either are irrelevant or have been dealt with in the reply.

CONSIDERATIONS:

1. On 24 September 1980 the complainant was appointed to the Language Service of the EPO as a reviser, to take up duty on 1 October 1980. She was given grade LT4, step 3, and nine months' seniority. On 17 July 1981 her seniority was increased to thirteen months, but her grade and step remained the same.

On 15 March 1982 she applied for the step she would have held had she been put in grade LT3, but she was refused this on 29 April.

On 12 May she submitted her claim again to the President of the office, inviting him to treat it, if need be, as an internal appeal. On 15 July the President declared her claim, to be irreceivable as an internal appeal but he nevertheless referred it to the Appeals Committee.

The Appeals Committee dealt with the case on the merits in its report of 25 November 1982 but recommended rejecting it. On 29 November the President wrote informing her that, while not in agreement with the Appeals Committee's view that her appeal was receivable, he took note of its recommendations and declared the case closed.

2. The EPO observes that the complainant is challenging the decision of 17 July 1981 on her grading, that under Article 108(2) of the Service Regulations she had three months from the date of notification of that decision in which to lodge an internal appeal, that, notwithstanding the contrary view taken by the Appeals Committee, the claim submitted to the President on 12 May 1982 was therefore time-barred, and that, the internal means of redress not having been exhausted, the complaint is irreceivable under Article VII(1) of the Statute of the Tribunal.

This plea succeeds. According to Article VII(1) of the Statute of the Tribunal a complaint will not be receivable unless the means of redress provided by the staff regulations have been exhausted. To fulfil this condition it is not sufficient to address an appeal to the internal appeal bodies; the internal appeal must be submitted in time. In this case it was not, since it was not until 12 May 1982 that the complainant submitted to the President of the Office her appeal against the decision taken on 17 July 1981 determining her grade, step and seniority. She therefore failed to respect the three-month time limit set in Article 108(2) of the Service Regulations. Accordingly the internal appeals procedure was not correctly followed, and the present complaint is irreceivable.

It is immaterial that the Appeals Committee considered the complainant's case on the merits. The opinion it expressed does not prevent the President of the Office from putting forward in the Tribunal proceedings the objection of irreceivability which he raised right from the outset.

It is also immaterial that on 29 April 1982 the Principal Director of Personnel answered an inquiry from the complainant. His letter cannot be treated as a decision which replaces that of 17 July 1981, and it therefore did not

have the effect of starting a new time limit for filing the internal appeal.

No doubt the complainant did not notice until March 1982 the inequality of treatment which she pleads. But according to Article 108(3) of the Service Regulations the time limit for filing the appeal in this case began at the date on which the impugned decision was notified to her, not at the later date on which she became aware of the alleged inequality.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner