

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

FIFTY-FOURTH ORDINARY SESSION

In re GIROUD (No. 3) and CASPARI

Judgment No. 626

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed against the European Patent Organisation (EPO) by Mr. Gérard Giroud on 2 March and by Mrs. Hildegard Caspari on 27 March 1984, the EPO's replies of 23 May and 12 June, Mr. Giroud's rejoinder of 17 July and Mrs. Caspari's of 14 September, and the EPO's surrejoinders of 5 and 22 October 1984;

Considering the applications to intervene in both cases filed by:

J. Ainscow,

A. Alders-Meewis,

F. Andres,

R.W. Andrews,

C.A.J. Andries,

M. Attfield,

H. Auer,

H. Bandelin,

J. Barthl,

G.L. Beaven,

A. Bergentall,

H. Betz,

C. Biggio,

C. Black,

J.N. Blancard,

C. Bournot,

S. Brett,

A. Burkhart,

A. Cadeddu,

G.D. Carruthers,

P.E. Catchlove,

R. Cecchini,

M. Ceyte,
D. Chalret,
B.E. Chambers,
H. Chavonand,
F. Chevallier,
A. Clelland,
E. Colonnella,
G. Costabile,
E. Crab,
S. Crane,
M. Dancer,
D.W. Drummond,
P. Ehrenreich,
R.P. Eliot,
S. Fabiani,
G. Fornfischer,
J. Fouchy,
M. Freundl,
G. Friedenberger,
L. Galligani,
B. Gellie,
C. Germinario,
M. Graham,
B. Grant,
J. Griffiths,
H. Gruber,
K. Grundkowski,
M. Haertle,
I. Harris,
R. Hartinger,
F. Heinlein,

O. Henrikson,
U. Hild,
B. Hjelm,
G.J. Hoefner,
I.A. Holliday,
D.S. Jacobs,
G. Janc,
N. Jeger,
K. Jouliardt,
H. Kadavy,
B. Karet,
L. Karlsson,
M. Kellner,
E. Kirschbaum,
F. Klein,
G. Knesch,
R. Knöpfle,
L. König,
A. Kozmus,
A. Kronester-Frei,
B. Lefèvre,
F. Leister,
A.M. Leonard,
M.J. Loades,
J. Lortal,
A. Lovrecich,
H. Luitz,
D. Mader,
H. Maierl,
J.B. Manton,

M. Marandon,
A. Maroscia,
M. Marston,
E. Mathys,
C. Maugain,
H. Möderndorfer,
R. Nasser,
G. Natus,
K. Naumann,
M. Nehls,
R. O'Connell,
E.K. Ostling,
W. Oettinger,
H. Payer,
N. Phillips,
W. Piepenbrink,
H. Prokscha,
R. Randes,
R. Rath,
E. Reisinger,
M. Repinski,
E. Rieger,
K. Rippe,
W. Roepstorff,
G. Roosenburg,
B. Rotteveel-Kley,
N. Sabinine,
J. Salmonson,
A. Samtmann,
S. Sandri,
A. Scattone,

L. Schewior,
S. Schödel,
P. Schoon,
W. Schuster-Kächele,
F. Searle,
J.W. Sinnamon,
L. Smétankine,
R. Spangenberg,
R. Stempfle,
L.M. Stone,
A. Stoos,
J. Straker,
B. Stübner,
K. Stürzenberger,
W. Sussbauer,
A. Tangocci,
A. Tannerfeldt,
F. Telari,
D.X. Thomas,
L. Tissot,
E. Turrini,
H. van der Peet,
R. van Voorst tot Voorst,
P. Vermeesch,
B. Waar,
A. Walch-Colling,
I.B. Wallinder,
J.M. Weckerlé,
G. Weidmann,
A. Wells,

A. Wenzel,

N. Werner,

W. Wheeler,

C.T. Wilson,

C.D. Witt,

H. Würges,

R. Zottmann; Considering the applications to intervene in Mr. Giroud's complaint filed by:

J. Coquelin,

E.P. De Haan,

C. Gerardin

P. Kitzmantel;

Considering the applications to intervene in Mrs. Caspari's complaint filed by:

G. Woods,

H.R. Ziegelbauer;

Considering the EPO's comments of 25 October 1984 on the applications to intervene;

Considering Articles II, paragraph 5, and VII of the Tribunal and Article 84 of the Service Regulations for permanent employees of the European Patent Office, the secretariat of the EPO;

Considering that the complaints raise the same issue and should be joined to form the subject of a single decision;

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. Article 84 of the EPO Service Regulations relates to benefits payable in the event of invalidity. The provisions setting the conditions for award of a lump-sum benefit were amended by the Administrative Council's decision CA/D 7/83 of 10 June 1983. On 1 September 1983 Mr. Giroud submitted an appeal against that decision to the Administrative Council. He also lodged an appeal with the President of the Office, as did Mrs. Caspari on 27 October. They received no answer to their appeals to the President. At a meeting held from 6 to 9 December 1983 the Administrative Council decided that the Service Regulations did not offer any internal means of redress against quasi-legislative acts of the Council.

B. The complainants observe that the effect of the amendments to Article 84 is, in particular, to delete certain benefits in the event of permanent invalidity, in other words, to reduce the protection which the former text afforded. Unilateral amendment of the article, without express explanation, runs counter to the principle of good faith and infringes an acquired right of the complainants, since financial protection including financial benefits, is one of the decisive factors which led them to accept an appointment with the EPO. They accordingly invite the Tribunal to quash decision CA/D 7/83 of the Administrative Council and award them costs: 3,000 Deutschmarks for Mr. Giroud, 1,000 for Mrs. Caspari.

C. In its reply the EPO submits that the complaints are receivable only insofar as they seek a ruling that the new text of Article 84 shall not apply to the complainants themselves. The complaints are irreceivable insofar as they seek the quashing of the amendment to Article 84. The EPO observes that the reasons for the amendments were set out in several papers submitted to the Administrative Council. Moreover, the benefits prescribed in the article are

merely incidental to the award of an invalidity pension, which is unaffected. The amendments to Article 84 are lawful and do not infringe the complainants' acquired rights. The complaints should therefore be dismissed as devoid of merit.

D. Mr. Giroud submits in his rejoinder that his complaint is receivable because the decision is an administrative act, amending as it does a provision of the Service Regulations, whose adoption was itself an administrative act. The Council's decision is directly applicable since all that the President of the Office may do is put it into practice. Mrs. Caspari refers to that line of argument but adds that she is also objecting to the President's decision to introduce the challenged rule. Both complainants maintain that their acquired rights have been infringed. The right to an invalidity pension has no effect on the amendment made to the rules in Article 84 about award of a lump-sum benefit. The complainants therefore press their claims.

E. In its surrejoinders the EPO states, as regards receivability, that the rules laid down by the Administrative Council have no effect as such on a staff member's legal position and unless they cause him prejudice cannot form the subject of an internal appeal. As to the merits, the amendment has to be seen in the general context of social benefits. Because of improvements in this area the amendments cannot be described as infringing acquired rights.

CONSIDERATIONS:

1. The complaints raise the same issue of law, namely the validity of the decision of the Administrative Council to amend Article 84 of the Service Regulations. The Tribunal therefore joins the two cases and delivers a single decision.

2. The EPO's objections to receivability are sound insofar as the complaints impugn the Council's decision.

The mere fact that the impugned decision affects several categories of staff and is therefore general in character is not in itself sufficient to make the complaints irreceivable. Decisions which may be challenged before the Tribunal do not have to be individual in nature. That they may also be general is plain from Article VII, paragraph 2, of the Statute of the Tribunal, which sets the time limit for filing a complaint against a "decision affecting a class of officials", that is to say, a general decision. But a complaint against a general decision will not perforce on that account be receivable. There is also the rule in Article VII(1) of the Statute that the internal means of redress must have been exhausted.

Article VII(1) reads: "A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations." The rule does of course cover mainly cases in which direct appeal lay against the decision within the organisation. But it also means that the Tribunal will declare irreceivable a complaint impugning a general decision against which there can be no direct internal appeal, but which must ordinarily be followed by individual decisions against which such appeal does lie. There are two reasons for so construing Article VII. The first is that the Tribunal is relieved of ruling on the validity of a general decision to which it may be unable to foresee exactly how effect will be given. The second is that the Tribunal will not be acting on an application from a single complainant to set aside a general decision which other staff may not object to.

The decision impugned in this case puts no exact figure on the entitlement of the staff members concerned. That will be done only when individual decisions come to be taken, ordinarily by the President of the Office or a subordinate, on the strength of the general decision. Accordingly, the complainants may not yet challenge the validity of the general decision. Before filing complaints they must await individual decisions.

To declare irreceivable the complaints challenging the Council's decision causes the complainants no prejudice since they may appeal against future individual decisions, first inside the Organisation, and then, if necessary, to the Tribunal.

3. The EPO's other plea is that the complaints are receivable on the grounds that they challenge not just the Council's decision but also an implied decision by the President to dismiss their internal appeals. The plea fails. It disregards the wording of the claims for relief, which challenge solely the Council's decision or relate to costs.

4. Accordingly, however they may be viewed, the complaints are irreceivable in their entirety, and the Tribunal need not rule on the merits.

DECISION:

For the above reasons,

The complaints and the applications to intervene are 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 have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 5 December 1984.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner