

## FIFTY-SEVENTH ORDINARY SESSION

In re WEST (No. 2)

Judgment No. 695

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Julian Michael West against the European Patent Organisation (EPO) on 14 January 1985 and corrected on 22 January, the EPO's reply of 10 April, the complainant's rejoinder of 10 June and the EPO's surrejoinder of 26 August 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 106(1) and 108 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 facts of the case and the pleadings may be summed up as follows:

A. Information on the complainant's career in the EPO and before joining it appears in Judgment 694, under A. On 11 January 1982 he was appointed to the staff of the EPO in Munich as an examiner of patents. He was put in grade A3. On 18 April 1984 he filed internal appeals under Article 108 of the EPO Service Regulations. In one of them he appealed against his starting grade. He observed that up to 31 December 1980 no minimum age had been set for calculating the experience of examiners recruited from national offices, whereas afterwards the minimum age was 25; moreover, counting research experience at only half rate was not authorised under paragraph 9 of the guidelines approved by the Administrative Council of the EPO and embodied in CI/Final 20/77. He asked that the same method of determining the starting grade be applied to all examiners, whether recruited before or after the end of 1980, and that his research experience count in full. By the letter of 19 December 1984 which is challenged also in the first complaint the President informed the complainant that he endorsed the Appeals Committee's recommendation to reject the appeal.

B. The complainant observes that examiners like himself recruited from national patent offices are subject to different rules on the determination of their starting grade according as they joined the EPO up to or after 31 December 1980. Since at least one examiner recruited after that date has been graded according to the earlier rules, there is breach of the principle of equal treatment. He asks that he be regraded at A4 as from 11 January 1982, the date on which he took up duty at the EPO, or that the others be downgraded to A3.

C. The EPO replies that the complaint is irreceivable. The decision on the complainant's starting grade was dated 1 February 1982. Not being lodged until 18 April 1984, his internal appeal against that decision was out of time and he failed to exhaust the internal means of redress correctly. Moreover, he may not ask the President to take a decision affecting the rights of other staff, and his claim for the downgrading of A4 examiners is irreceivable on that account as well.

In any event, for reasons the EPO explains, the complaint is devoid of merit.

D. In his rejoinder the complainant submits, in answer to the plea of irreceivability, that the EPO was in breach of good faith in failing to make it clear to him that the reckoning of his experience notified to him on 1 February 1982 was a challengeable decision under Article 106(1) of the Service Regulations. He develops his pleas on the merits, maintaining that he is the victim of a breach of the principle of equality.

E. In its surrejoinder the EPO enlarges on its pleas, again inviting the Tribunal to dismiss the complaint as irreceivable and, subsidiarily, as devoid of merit.

### CONSIDERATIONS:

On 11 January 1982 the complainant was appointed as a substantive examiner. On 1 February it was decided that he should start at grade A3, step 8, with 16 months' seniority. From that decision Article 108(2) of the Service Regulations permitted the complainant to appeal to the Appeals Committee within three months.

On 18 April 1984 he appealed to the Appeals Committee against the decision of 1 February 1982 on the ground that it gave less favourable treatment to him than to examiners appointed before 1 January 1981. The Committee dismissed the appeal as out of time as well as on the merits.

Article VII of the Tribunal's Statute provides that a complaint shall not be receivable unless the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. By failing to appeal under Article 108(2) of the Service Regulations within the time permitted the complainant failed also to exhaust the means open to him of resisting the decision he now challenges.

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 the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner