

FIFTY-SEVENTH ORDINARY SESSION

In re BUTLER

Judgment No. 700

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. David Richard Butler on 4 March 1985, the EPO's reply of 20 May, the complainant's rejoinder of 15 July and the EPO's surrejoinder of 21 September 1985;

Considering Articles II, paragraph 5, and VII, paragraph 3, of the Statute of the Tribunal, Articles 106(2), 108 and 109(2) of the Service Regulations of the European Patent Office, the secretariat of the EPO, and EPO Circulars 22 on annual leave, 121 on public holidays in 1984 and 136 on public holidays in 1985;

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. Article 59(2) of the EPO Service Regulations reads: "The President of the Office, after consulting the relevant joint committee, shall lay down ... b) the list of public holidays applicable to each place of employment, with a maximum of ten days". On 8 November 1983 the Office issued a circular, No. 121, about public holidays at the EPO in Munich in 1984. The President, it declared, had decided that 14 public holidays would be observed, but since that was four more than the maximum allowed under Article 59(2)(b) a total of 30.5 hours must be made up by extending working hours by half an hour for 61 days. Alternatively, a staff member might ask to have the four days deducted from his annual leave. The Office issued a similar circular, No. 136, about public holidays in Munich in 1985, the only difference from No. 121 being that it declared 15 public holidays, or five over the maximum, and said that 38.5 hours must be made up by working an extra half hour on 77 days in 1985; alternatively, the five days might again be deducted from annual leave. On 1 December 1984 the complainant submitted an appeal against Circular 136 under Article 108 of the Service Regulations. On 19 February 1985 the Principal Director of Personnel wrote to tell him that the President provisionally rejected his appeal but was referring his case to the Appeals Committee. Believing he ought to have received an answer within the two months' deadline set in Article 109(2) of the Service Regulations, the complainant filed his complaint on 4 March 1985 challenging what he submits was an implied final decision to dismiss his appeal.

B. The complainant submits that his complaint is receivable because the President took no decision on his internal appeal within two months of the date on which he lodged it and it is therefore deemed to be rejected under Article 109(2). The express rejection of 19 February 1985 is immaterial since there was already a challengeable implied rejection.

His arguments on the merits are similar to those advanced by Mr. Peter Catchlove (see Judgment 699, under B), though they are stated more briefly. He asks the Tribunal to order the EPO to restore to him the annual leave which he has taken in preference to working the additional hours prescribed in Circular 136.

C. The EPO replies that the complaint is irreceivable. It was not filed until 4 March 1985. By then the President had taken the provisional decision of 19 February to reject the complainant's internal appeal, and it was therefore no longer open to him to challenge an implied decision under Article VII(3) of the Statute of the Tribunal. The Appeals Committee not having issued its final recommendations at the date of filing, he did not exhaust the internal means of redress. In fact the Committee decided on 15 March to take no further action on the appeal until the Tribunal had heard the similar complaint lodged by Mr. Catchlove. That postponement was reasonable in the circumstances and caused no prejudice to the complainant, who will in time be able to go before the Tribunal if he so wishes.

The EPO advances arguments on the merits similar to those set out in Judgment 699, under C.

D. In his rejoinder the complainant submits that his complaint is receivable on the grounds that when he filed it he

had grounds for believing that the Appeals Committee would not report within a reasonable lapse of time. The communication of 19 February 1985 neither explained the delay of over two months nor said when the Appeals Committee would report. In fact the Committee has postponed its recommendations indefinitely. He also enlarges on the arguments in his original brief in answer to several points raised in the reply as to the merits.

E. In its surrejoinder the EPO develops its contentions that the complaint is irreceivable and devoid of merit. It describes the arguments in the rejoinder as misconceived and again invites the Tribunal to dismiss the claims.

CONSIDERATIONS:

On 8 November 1983 the President of the Office issued Circular 121, which contained the list of public holidays for the year 1984. On 12 November 1984 the President by Circular 136 announced the list of public holidays for the year 1985. Mutatis mutandis Circular 136 is in the same terms as Circular 121. By letter of 1 December 1984 the complainant appealed to the President against the decision in Circular 136 and his complaint is mutatis mutandis the same complaint as made by Mr. Catchlove against Circular 121.

Under Article 106(2) the President was required to notify the complainant of his reasoned decision within two months, i.e. by 1 February 1985. He failed to do so. On 19 February 1985 he informed the complainant that he had decided to reject his complaint and to submit it to the Appeals Committee. On 4 March 1985, before the Appeals Committee had reported, the complainant filed a complaint with the Tribunal requesting a decision that Circular 136 was contrary to the Service Regulations. In his summary of facts and arguments he contends that, no reply to his appeal having been received by 1 February 1985, the appeal must be deemed to have been rejected. The Office objects to the complaint of 4 March 1985 as irreceivable. On 14 November 1985 the Tribunal delivered Judgment 699 allowing Mr. Catchlove's appeal against Circular 121.

DECISION:

For the above reasons,

This case is remitted to the President in order that he may reconsider his decision of 19 February 1985 in the light of Judgment 699 and he is ordered to communicate his reconsidered decision to the complainant within one month.

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.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner