

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

FIFTY-NINTH ORDINARY SESSION

In re FELGEL-FARNHOLZ, HENRIKSON, KITZMANTEL,
RATH and VAN DE PANNE

Judgment No. 762

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr. Wolf-Dieter Felgel-Farnholz, Mr. Olof Per Sven Henrikson, Mr. Peter Kitzmantel, Mr. Robert Rath and Mr. Vitus Nicolaas van de Panne against the European Patent Organisation (EPO) on 18 December 1984, the EPO's replies of 5 March 1985, Mr. Felgel-Farnholz's and Mr. Kitzmantel's rejoinders of 23 April, Mr. Rath's of 30 April, and Mr. Henrikson's and Mr. van de Panne's of 10 May, and the EPO's letters of 4 June 1985 informing the Registrar that it did not wish to file surrejoinders;

Considering Articles II, paragraph 5, and VII, paragraphs 1 and 3, of the Statute of the Tribunal and Articles 108 and 109 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 cases and the pleadings may be summed up as follows:

A. The complainants are EPO staff members stationed in Munich. They were appointed to the staff on 4 April 1983 and at the time their initial grade and step were determined in accordance with a reckoning of their prior experience. By letters of 15 May 1984 the Principal Director of Personnel informed them that according to a "new practice" the reckoning of their prior experience for the purpose of determining their grade and step had been revised. The new reckonings were appended and were stated to take effect as from 1 January 1984. In further letters of 20 June 1984, in reply to earlier inquiries from the complainants, the Director gave them detailed information on the new practice and warned that if they lodged appeals asking that the new reckonings be made retroactive from an earlier date their appeals would be rejected as out of time. On 20 July, however, the complainants and one other staff member lodged a joint appeal against the decisions of 15 May under Article 108 of the EPO Service Regulations, asking that the new determination of their step should take effect not as from 1 January 1984 but as from the date of their appointment. By letters of 2 August the Director informed them that their appeals were provisionally rejected and were referred to the Appeals Committee.

B. The complainants state that their appeal was notified to the Administration on 23 July 1984. They submit that, no decision having been taken on their appeal by the date on which they lodged their complaints, they may, in accordance with Article 109 of the Service Regulations and Article VII(3) of the Statute of the Tribunal, challenge the implied decision to reject their internal appeal.

They argue the merits. They ask that the new determination of their step take effect, not from 1 January 1984, but from 4 April 1983, the date of their appointment, and they claim the additional sums due, plus interest.

C. In its replies the EPO submits that the complaints are irreceivable insofar as they challenge the decisions of 4 April 1983 to appoint them to the staff and the initial determination of their step. Even if the terms of their appointment had been unlawful, as they now allege, the time limits for challenging those terms, whether by an internal appeal or before the Tribunal, expired long ago: later discovery that a decision may have been unlawful does not set off new time limits. Nor did the decisions of 15 May 1984.

The EPO puts forward subsidiary arguments on the merits.

D. In their rejoinders the complainants seek to refute the EPO's objections to the receivability and to the merits of their complaints.

CONSIDERATIONS:

Joinder

1. Before the Tribunal will join two or more complaints two conditions must be fulfilled. The first is that the substance of the claims must be the same, whatever their wording. The second is that the material facts, viz. those on which the claims rest, should be the same.

The complaints the five complainants lodged with the Tribunal on 18 December 1984 satisfy both conditions. They all claim the application as from 4 April 1983 of the EPO's new rules on grade and step and the payment of the additional sums due, plus interest. The material facts, too, are the same. The Tribunal therefore joins the five complaints.

It is immaterial that the complainants advance more or less different pleas since the content of the pleas lays no constraint on the Tribunal's ruling.

Receivability

2. Article VII(1) of the Statute of the Tribunal provides that for his complaint to be receivable the staff member must have exhausted such means of resisting the decision as are open to him under the Staff Regulations.

The five complainants lodged on 20 July 1984 a joint internal appeal against decisions of 15 May 1984 on their grade and step. On 2 August the Principal Director of Personnel told them that after preliminary consideration their appeals had been rejected but that they had been referred to the Appeals Committee. Not until 27 March 1985 did the Committee report. It recommended rejecting the appeal and the Vice-President of the Office endorsed that recommendation on the President's behalf on 29 April 1985. Accordingly at 18 December 1984, the date of filing, the internal means of redress had not been exhausted, under Article VII(1) of the Statute the complainants were not yet free to come before the Tribunal, and their complaints are irreceivable.

3. According to Article VII(3) of the Statute a staff member may appeal to the Tribunal where the Administration fails to take a decision upon his claim within sixty days.

As is said in 2 above, however, the Principal Director of Personnel informed the complainants on 2 August 1984 of the preliminary rejection of their internal appeal and of the referral of their case to the Appeals Committee. That was an express decision which precluded an implied one and hence the application of VII(3).

At best the complainants might have been able to challenge the implied rejection of their appeal had the Appeals Committee not reported within a reasonable lapse of time or had the President of the Office failed to take a final decision within 60 days of receiving the Committee's report. But neither condition is met here. The Committee had a heavy workload, as the complainants well knew, and could not ordinarily have been expected to report by 18 December 1984, the date of filing, on an internal appeal lodged on 2 August 1984. Nor could the President have taken a final decision by 18 December 1984 since he had not yet got the report from the Appeals Committee. He did not take too long over his decision.

DECISION:

For the above reasons,

The complaints are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 June 1986.

(Signed)

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.