

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

FIFTY-NINTH ORDINARY SESSION

In re BERTE (No. 2)

Judgment No. 764

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Michel Jean Marie Berte against the European Patent Organisation (EPO) on 1 July 1985 and corrected on 2 August, the EPO's letter of 6 September informing the Registrar that it did not wish to reply to the complaint, the complainant's observations of 9 October 1985, the EPO's communication of 24 January 1986 the complainant's further brief of 28 February and the EPO's further submissions of 28 April 1986;

Considering the applications to intervene filed by:

Mr. F. Baert

Mr. F. Bogaert

Mr. C. Godin

Mr. R. Hakin

Mr. M. Leger

Mr. R. Moualed

Mr. L. Peeters

Mr. D. Rieb

Mr. G. van den Meerschaut

Mr. J. van der Plas

Mr. W. van der Wal

Mr. H. Vanhecke

Mr. A. Vereecke

Mr. P. Verelst

Mr. L. Vromman

Mr. R. Wohlrapp; Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 65 and 111 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. In Judgment 566 the Tribunal ruled that, in respect of the strikes held in May and June 1981 by EPO staff at The Hague, the deductions from the complainants' -- Mr. Berte's and Mr. Beslier's -- salaries had exceeded those authorised under Article 65 of the EPO Service Regulations. On 30 March the head of the Personnel Department at The Hague informed the complainant and other staff members they would be paid the difference between twentieths of monthly basic salary and thirtieths of total monthly remuneration if the former were the greater. On

26 March and 26 April 1984 the complainant received payslips indicating "adjustments" made with effect from May 1981 and he found that the EPO had indeed calculated thirtieths not just of his basic salary but of his family, expatriation and housing allowances as well. On 18 June he lodged an appeal, and his and similar appeals by two others were referred to the Appeals Committee. In a circular dated 4 April, which was published at The Hague on 10 April and is the impugned decision, the President of the Office announced that the Appeals Committee could not be properly constituted because the Staff Committee's appointees had a "personal interest" in the appeals within the meaning of Article 111 of the Service Regulations; the President accordingly rejected the appeals.

B. The complainant contends that the decision is unlawful. (1) It disregards past practice, which was to make deductions for strikes only from salary, not from total pay. (2) The construction it puts on Judgment 566 is mistaken and in bad faith. It is in breach (3) of the general rule that social benefits are inviolate; (4) of Article 65 of the Regulations, in which the term "remuneration" is to be taken in its strict sense to mean basic salary; and (5) of the principle of equal treatment, since it bears more heavily on those who get more in allowances. (6) It constitutes abuse of authority since it imposes a disciplinary sanction on all who stood to gain by Judgment 566. The complainant asks that the deductions be based on salary only and that interest at 10 per cent be paid on the sums still due as from the date on which they were withheld. He seeks costs.

C. Under cover of a letter of 6 September 1985 to the Registrar of the Tribunal the EPO supplied the text of a "notice" dated 12 August 1985 and signed by the Principal Director of Personnel: the President intends in future, for each day on strike, to dock one-thirtieth of total pay, but agrees to an exceptional refund of the difference between thirtieths of salary and thirtieths of total pay for past strikes, the decision to set no precedent. In a letter of 9 October 1985 the complainant pressed his complaint. On 24 January 1986 the EPO supplied a further, undated, notice signed by the Principal Director of Personnel: "Without prejudice to any method for docking pay in the event of future strikes that might be applied in the light of [Judgments 566 and 615], the President of the Office has decided exceptionally and considering the small amount involved to refund the difference between 1/30 of basic salary and 1/30 of total remuneration per day on strike plus 10 per cent compound interest per annum". The EPO states that, the sums he claims having been accordingly paid to him at the end of October 1983, the complainant has obtained satisfaction.

D. In a further brief the complainant observes that the notice of 12 August 1985 confirms the EPO's stand and says that payment of the sums due is made by virtue of an exceptional derogation. What he seeks is respect for his rights not a favour, his objections to the lawfulness of the EPO's position therefore hold good, and he has a legitimate interest in obtaining a ruling on his pleas. He presses his claims. He seeks an award of his costs in full.

E. In further submissions the EPO maintains that the claims are without substance. It contends that the claims in the complainant's further brief relating to the notice of 12 August 1985 are irreceivable because they differ from those he submitted in his internal appeal and he has therefore failed to exhaust the internal means of redress. It invites the Tribunal also to reject his application for full costs.

CONSIDERATIONS:

1. A dispute arose in the EPO over the reckoning of the amounts to be docked from the pay of staff members who had taken part in strikes. In Judgment 566 of 20 December 1983 the Tribunal ruled on the complainant's first complaint and on another. It held that the amounts to be deducted should be determined by reference to Article 65 of the Service Regulations and sent the case back to the EPO for calculation of the lump sums and interest to be refunded.

Sums were paid back to the complainant by a decision notified to him on 26 March 1984. But he took the view that they were less than they would have been had Article 65 been properly applied. The difference turned on the construction of the term "remuneration" in the article, a point which had not been material in the original case.

The complainant filed an internal appeal and the President of the Office rejected it on 10 April 1985. The complaint was filed on 1 July.

2. After the filing of the complaint the President issued a notice on 12 August 1985 announcing the refund to those who had taken part in past strikes of the difference between thirtieths of total pay and thirtieths of basic salary. The sums due were later paid and an explanatory notice was appended to the payslips.

It is common ground that the complainant has obtained satisfaction: the lump sums and interest he was claiming have been paid. The Tribunal therefore need not rule on the claims in the complaint.

3. There were comments in the notice of 12 August 1985 and in that of October 1985. The former said that the refund was "exceptional" and that henceforth, in keeping with Article 65, the EPO would dock one-thirtieth of total pay, not just of basic salary, for each day on strike. The notice of October 1985 is not quite so specific: it says that the refund sets no precedent and is without prejudice to any method that may be applied in future.

In view of those observations the complainant is pressing his complaint.

4. His case is that it is a misreading of Article 65 to say that in respect of future strikes any deduction made will be based on the total pay that would have been due.

A decision by an international organisation is challengeable before the Tribunal only if it causes the complainant injury. One that has no effect on his position is not, for example an act which is not operative but a mere declaration of intent.

In this case, though the act is not operative in itself, that is not the decisive point: it does state an intent inasmuch as there is not at present any actual dispute. What matters more is that the statement of intent is of no legal effect. The notice of 12 August 1985 may be obscure, but in its final brief the EPO states that it was never circulated and that it was replaced by a notice of October 1985. What this one says is that the decision taken with regard to earlier strikes sets no precedent.

The material point is that the President wanted to end an old quarrel by satisfying the staff's claims without committing himself for the future. The wording of the notices should be seen as expressing the motives for a decision he took to achieve informal settlement of the dispute. The wording is not binding either on the Organisation or on the complainant. The complainant will be free, should further dispute arise, to challenge the EPO's interpretation if it is maintained.

The claims relating to the interpretation are therefore irreceivable.

5. The complainant has obtained partial satisfaction because the EPO altered its original decision, and he is entitled to an award of costs, which the Tribunal sets at 1,000 guilders.

6. Sixteen EPO staff members have applied to intervene in the complaint, the interventions are receivable, and apart from the award referred to in 5 above the ruling applies to them as well.

DECISION:

For the above reasons,

1. The applications to intervene are admissible.
2. The Tribunal need not rule on the complainant's and the interveners' claim to the quashing of the President's decision of 10 April 1985.
3. The EPO shall pay the complainant 1,000 guilders in costs.
4. The other claims in the complaint and in 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 Mr. Héctor Gros Espiell, 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

H. Gros Espiell

A.B. Gardner

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