

## SIXTY-FIFTH SESSION

### *In re* VAN DER PEET (No. 12)

#### Judgment 933

THE ADMINISTRATIVE TRIBUNAL,

Considering the twelfth complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 26 February 1988 and his application dated 18 April, the EPO's reply of 18 May to the complaint and its observations of even date on the application, the complainant's rejoinder of 4 July and the EPO's surrejoinder of 21 September, the complainant's application of 3 October for oral proceedings and the EPO's comments thereon of 14 October 1988;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Article 28(1) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence and dismissed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. On 17 July 1986 the complainant asked the Principal Director of Personnel to return to him bills and receipts he had submitted in support of his claims to reimbursement of the expenses of his two removals, one in 1981 to the Netherlands and the other in 1983-84 to Munich. On 23 July he was sent copies. In a letter of 30 July he asked the Director for the originals and said that if they were refused he wished to lodge an internal appeal. On 12 August 1986 the Director refused and referred the matter to the Appeals Committee. In its report of 11 November 1987 the Committee held that the Organisation had no authority under the Service Regulations and no good reason to keep the original bills. It recommended allowing the appeal and returning the originals to the complainant "so far as possible". It submitted its report to the President of the Office on 18 December 1987. Having received no decision, the complainant filed his complaint on 26 February 1988 challenging the implied dismissal of his claim. On 14 April 1988 the Personnel Department wrote him a letter enclosing the originals of several invoices in its possession, which, on the Appeals Committee's recommendation, the President had decided to return, even though he maintained that the original refusal to do so had been lawful, and on the understanding that the decision set no precedent.

B. The complainant accuses the Administration of waging an "unprecedented vendetta" against him and sees proof of it in the reprimand which he challenges in his thirteenth complaint (see Judgment 934) and in the failure to let him have his papers. He names several EPO officers whom he accuses of theft, abuse of public office and perversion of justice and he calls for a criminal inquiry. He demands satisfaction "in order to preserve the integrity of [his] records" and on grounds of principle. He asks the Tribunal (1) to order the President of the Office (a) to waive the diplomatic immunity of the officers, (b) to report "the theft or illegal appropriation" of his property to "the competent Office of Public Prosecutions" and (c) to provide him with assistance under Article 28(1) of the Service Regulations; (2) to order the return to him of "all original documents submitted in evidence of my two removals"; and (3) to award him 5,640 Deutschmarks in costs. Being unable to estimate "the financial damages and the time spent on the present legal battle", he reserves the amounts of his claims to "these costs" and to moral damages.

In his application dated 18 April 1988, addressed to the President of the Tribunal, he comments on the Personnel Department's letter of 14 April 1988. He observes that he has not been given any of the bills for his removal to the Netherlands in 1981 nor the original of the bill for the removal of his horse to Bavaria, which the Tribunal referred to in Judgment 761 under 3. He asks that action be taken forthwith to waive the EPO officers' immunity, to instigate the criminal inquiry and to grant him the assistance he claims under Article 28.

C. In its reply the EPO submits that the complaint is unfounded insofar as it has already met the complainant's request for the return of the original bills. Since the other bills are lost, to that extent it cannot meet his claim, but he gives no evidence of any material or moral injury. It has already refunded to him the amounts he was entitled to. Not until 1986 did he ask for the original bills for his removal in 1981, and the photocopies he has serve his purpose as well as the originals. The amount he claims in costs is exorbitant.

His application is irreceivable because the claims set out therein did not form the subject of any internal appeal and he has failed to exhaust the internal means of redress. Besides, it is unfounded. The officers he names were performing their duties and his charges against them are absurd. There are no grounds for waiver of immunity or for the grant of assistance under Article 28.

D. In his rejoinder the complainant develops at length his version of the facts and his accusations against EPO officers. He submits that the Tribunal is not competent to hear his complaint. He finds fault with the Tribunal's rulings and with the attitude of its members. He explains why he regards as unjust the Appeals Committee proceedings and the imposition of the reprimands. He sees a conspiracy behind the EPO's "criminal atrocities" and its "ferocious persecution" of him. Pressing his claims, he asks the Tribunal to order waiver of the immunity of twelve EPO officers he names so as to allow criminal investigation by the Director of Public Prosecutions of Bavaria. He submits that his claim to costs is reasonable. He reserves the amount of damages he claims for the alleged injury.

E. In its surrejoinder the EPO asks why the complainant has filed so many complaints if he believes that the Tribunal is not competent to hear them. In his rejoinder he makes remarks in language that is offensive and even inadmissible. The reprimands have no bearing on this case, which is about the return of papers. Since the Financial Regulations require the disclosure of original invoices in support of claims to repayment of expenditures, the EPO's refusal to return the originals the complainant had supplied was warranted. The officers he names are immune to indictment as international civil servants performing their duties.

#### CONSIDERATIONS:

1. The case in dispute is about papers which the complainant submitted to the EPO in support of his claims to the reimbursement of expenses he had incurred on account of his transfers to the Netherlands in 1981 and to Munich in 1983-84. His purpose in submitting those papers was to enable the Organisation to check the genuineness of his claims and the amounts that were due to him under the Service Regulations. Although at first the EPO refused to return the papers he appealed to the Appeals Committee and the President of the Office accepted the Committee's recommendation of 11 November 1987 that they be returned to him "so far as possible". Thus, though he got back the originals of some, he was given only copies of the others because, as the Appeals Committee had discovered on checking the files, the originals were "missing for the time being". In a letter of 14 April 1988 to the complainant the Personnel Department wrote that a search was being made and he would be sent the other papers if they turned up.

The claim to the return of papers

2. The complainant is asking the Tribunal to order the return of all the original papers, which he says are his property, and to award him material and moral damages and costs.

3. The complainant himself has shown lack of diligence: though the papers he wants related to his two transfers, one in 1981 and in 1983-84, he did nothing whatever to get them back until July 1986.

4. The Tribunal has no reason to doubt that the papers, which were passed from department to department, simply went astray or that, if they turned up, the Organisation would return them to the complainant.

His claim is trivial. Besides, he fails to offer evidence of any material or moral injury he may have suffered because of his failure to recover the originals. The copies the EPO has given him serve the purpose of preserving his records as well as would the originals and in any event the EPO has long since repaid him the transfer expenses he was entitled to. His claim to an award of damages therefore has no substance.

The claims to waiver of EPO officers' immunity and to assistance

5. The complainant accuses several senior EPO officers of having stolen the missing papers and in the application of 18 April 1988 referred to in B above he asks that the President waive the immunity of those officers, that a criminal inquiry be instituted and that he be granted "assistance" in accordance with Article 28 of the Service Regulations, which reads: "If, by reason of his office or duties, any permanent employee ... is subject to ... attack to ... his ... property, the Organisation shall assist the employee, in particular in proceedings against the author of any such act".

6. The Tribunal's competence, unlike that of national courts, is limited. Article II(5) of its Statute provides that it shall be competent to hear complaints alleging non-observance, in substance or form, of the terms of appointment of officials of international organisations that have recognised its jurisdiction. Its competence is further limited by Article VIII of the Statute to ordering the rescission of the decision impugned or the performance of the obligation relied upon or to awarding compensation for injury.

Neither those two articles nor indeed any other provisions of the Statute or Rules of Court make the Tribunal competent to consider the application for an order to waive the immunity of the EPO officers the complainant accuses or for an order that a criminal inquiry or indictments be instituted by the authorities of the Federal Republic of Germany. The claim is accordingly dismissed.

7. As to the complainant's further claim to assistance under Article 28(1) of the Service Regulations, there is no reason to question the Organisation's statement that the senior officers came into possession of the papers in the performance of their official duties and that, as was said in 4 above, the papers simply went astray. Accordingly this claim too is dismissed because there has been no attack on the complainant's property within the meaning of 28(1).

The claim to costs

8. Since his claims are dismissed, so too is his claim to costs, which is in any event excessive.

The complainant's pleadings

9. The Tribunal deplors the complainant's manner of pleading. He contends that it is not competent to hear his complaints, yet he has filed fourteen of them. His rejoinder contains accusations and remarks that are offensive to everyone concerned, including members of the Tribunal when they do not agree with him. The language he uses in seeking to put across his point of view is sometimes inadmissible.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, 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 8 December 1988.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
H. Gros Espiell  
A.B. Gardner