

EIGHTY-FIRST SESSION

In re GOETTGENS (No. 3)

Judgment 1518

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Johannes Karl Wilhelm Goettgens against the European Patent Organisation (EPO) on 28 September 1995, the EPO's reply of 20 December 1995 and the complainant's letter of 16 January 1996 informing the Registrar of the Tribunal that he did not wish to rejoin;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. Facts relevant to this case are set out, under A, in Judgment 1517 on the second complaint of Mr. Goettgens, also delivered this day.

Since 1 March 1992 the complainant has drawn a retirement pension from the EPO. Since 1 January 1993 he has also been receiving a pension he earned as an official in the German civil service. His German entitlements include the "Ortszuschlag", or local weighting allowance, part of which is known as the "Ehegattenanteils", or spouse's share.

By a letter of 9 March 1993 an officer in the Remuneration and Pensions Department informed him that the Administration was reducing his household allowance as from 1 January 1993 by the amount of the spouse's share of his local weighting.

The complainant objected in letters dated 13 March and 24 May to the Administration. The pension officer answered his objections in two letters, of 24 March and 29 June. In the latter he stated the basis in law for the reduction.

On 22 September 1993 the complainant lodged an internal appeal, which the President of the European Patent Office referred to the Appeals Committee. In its report of 12 April 1995 the Committee unanimously recommended allowing the appeal.

In a letter of 4 August 1995 the Director of Staff Policy informed him that the President had rejected his appeal. That is the decision under challenge.

B. The complainant submits that the reduction of his household allowance is unlawful. He alleges misappraisal of the facts. Since the household allowance from the EPO and the so-called "spouse's share" of the local weighting are not granted for the same reasons the Organisation is wrong to treat them as "of like nature". Under German law he is entitled to a spouse's share for reasons of age alone, whether he has a wife or not. In any event the only lawful reason for reducing his household allowance would be on account of his wife's earnings, and she has none.

He seeks the quashing of the decision of 4 August 1995 and payment in full of the household allowance as from 1 January 1993 plus interest on the amounts wrongfully withheld. He claims costs.

C. In its reply the Organisation contends that the complaint is irreceivable because the complainant's internal appeal was time-barred. Since the letters of 9 and 24 March 1993 gave him "sufficient" explanation of the reasons for reducing his allowance the three-month time limit in Article 108 of the Service Regulations ran from the date at which he received the letter of 24 March.

In subsidiary argument the EPO contends that the complaint is devoid of merit. There was nothing improper in docking from his household allowance amounts which he receives and which are of like nature from another source. Contrary to what he makes out, it is because he is married that his local weighting includes a spouse's share.

CONSIDERATIONS:

1. The complainant has been receiving since March 1992 a retirement pension from the EPO; since January 1993 a civil service pension from the German Patent Office, which employed him before he went to the EPO; and since August 1993 a German social insurance pension. His EPO pension also includes a household allowance: Article 28(1) of the Pension Scheme Regulations entitles the recipient of such a pension to the family allowances provided under Article 67(1) of the Service Regulations.
2. Under Article 67(2) a staff member in receipt of family allowances must declare any allowance "of like nature" paid "to him, to his spouse or to his dependants from other sources", and it is to be deducted from those paid under the Service Regulations.
3. In February 1993 the Regional Finance Office in Munich informed the EPO that the German civil service pension that the complainant had been receiving since January 1993 was supplemented by a local weighting allowance, known as an "Ortszuschlag", which included a married person's component, or "Ehegattenbestandteil". When that component is paid the allowance is said to be at "level 2"; when it is not, it is at "level 1".
4. By a letter of 9 March 1993 the Remuneration and Pensions Department of the European Patent Office informed the complainant that since that component of the local weighting allowance - 81.42 German marks a month - was attributable to his having a wife the amount must be deducted from his EPO pension, in accordance with Article 67(2), as from 1 January 1993, the date at which his German civil service pension had become payable.
5. In a reply of 13 March the complainant protested that Article 67(2) did not apply to pension payments. On 24 March the Department wrote again pointing out that according to Article 28 of the Pension Scheme Regulations family allowances were "granted under the Service Regulations". By a letter of 24 May 1993 the complainant continued to question the lawfulness of the deduction and the correctness of the figure to be deducted. By a letter of 29 June 1993 the Department said that they had consulted "the Office's lawyers", quoted the lawyers' opinion, explained why it was necessary to deduct the married person's component and enclosed the text of the Department's letter of enquiry of 15 February 1993 to the Regional Finance Office. On 22 September 1993 the complainant lodged his internal appeal.
6. The Appeals Committee reported on 12 April 1995. It held that the grant of the household allowance depended on "family status"; that the difference between levels 1 and 2 of the local weighting allowance was paid automatically, "regardless of family status", to any German civil servant who, like the complainant, had been born before 1 January 1936; and that that difference was not "of like nature" to the EPO's household allowance and was therefore being "wrongly deducted from the appellant's household allowance". The Committee recommended that the President of the Office allow his appeal and reimburse the sums wrongfully deducted.
7. By a letter of 4 August 1995 the Director of Staff Policy informed the complainant that the President rejected his appeal. That is the decision he impugns in his complaint, which he filed on 28 September 1995.

Receivability

8. The EPO contends that the complaint is irreceivable under Article VII(1) of the Tribunal's Statute because the complaint has failed to exhaust the internal means of redress. Its final decision was in its letter of 9 March 1993 or at the latest in its letter of 24 March, and he should have filed his internal appeal against that decision within the time limit of three months in Article 108(2) of the Service Regulations. Not having appealed until 22 September, he was out of time.
9. The Organisation's plea fails. Its letters answering the complainant's objections show that not until 29 June 1993 did the head of the Remuneration and Pensions Department, after consulting the Office's lawyers, take the final reasoned decision that was subject to internal appeal.

The merits

10. After the Appeals Committee had reported the Remuneration and Pensions Department wrote a letter dated 26 June 1995 to the German Regional Finance Office asking whether the allowance in dispute was being paid to the complainant because he was married or because he had been born before 1 January 1936. The Regional Finance Office answered on 11 July 1995 that the complainant did not benefit under the provisions that entitled an

unmarried civil servant who had reached the age of 40 by 1 January 1976 to payment of the married person's component of the local weighting allowance: the complainant was already married by that date. In conveying the impugned decision the Director of Staff Policy stated that the Regional Finance Office had confirmed that it was because he was married that he was getting the "Ortszuschlag" paid at level 2.

11. The decision by the President of the Office on the complainant's internal appeal was made on the strength of the letter of 26 June 1995 and the reply of 11 July - mentioned in 10 above - which the complainant had never seen and which the Appeals Committee had not considered. That constituted a gross breach of due process. Article 113(1) of the Staff Regulations, which is about the procedure before the Appeals Committee, reads:

"The papers submitted to the Appeals Committee shall include all the material necessary for the investigation of the case. They shall also be transmitted to the appellant."

Article 113(3) gives the appellant "the right to be heard" and 113(4) states:

"The appellant shall be informed of any document or new factor produced during the investigation. If such information is given after he has been heard, the appellant may ask to be heard again or state his attitude in writing."

12. Because of the breach of due process the President's decision must be set aside. The EPO's letter of 26 June 1995 to the Regional Finance Office was badly drafted and failed to elicit a clear answer to the relevant question: was the complainant entitled to the payment of the local weighting allowance at level 2 because he had been born before 1 January 1936, whether he was married or not? The case will be sent back to the President of the Office for a new decision after resubmission of the case to the Appeals Committee, which should consider the complainant's contention that Article 28(3) of the Pension Scheme Regulations permits deductions from pension payments only in respect of allowances received from other sources for children.

13. The complainant is entitled to an award of costs.

DECISION:

For the above reasons,

1. The decision of 4 August 1995 by the President of the Office is quashed.
2. The case is sent back to the President for a new decision after resubmission of the case to the Appeals Committee.
3. The Organisation shall pay the complainant 1,000 German marks in costs.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner