

THIRTY-SIXTH ORDINARY SESSION

***In re* STEIJN, VAN TUIJL-
VAN DEN HARST, VOORN,
DEN OUDEN-DE MAN
and LAKWIJK**

Judgment No. 275

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints against the International Patent Institute (IPI) drawn up on 19 June 1975 by Miss Margaretha Hermana Helena Maria Steijn, Mrs. Helena Barendma van Tuijl-van den Harst, Mr. Jacobus Hendricus Maria Voorn, Mrs. Theodora Anna den Ouden-de Man and Miss Martha Emma Lakwijk, the Institute's reply of 24 July 1975, the complainants' rejoinder of 4 September 1975, the complainants' further memorandum of 16 September 1975, the Institute's surrejoinder of 16 October 1975 and the complainants' communication of 27 October 1975;

Considering that the five complaints relate to the same matter and should be joined to form the subject of a single decision;

Considering Article II, paragraph 5, and Article VII of the Statute of the Tribunal and Articles 3, 5, 25, 82, 83, 84 and 91 of the Institute Staff Regulations;

Having examined the documents in the dossier, oral proceedings having been neither requested by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. On 17 December 1970 the Administrative Council of the Institute decided to align the remuneration of Institute staff with that of the staff of the European Communities and establish new Staff Regulations to replace the contractual system of staff employment. On 22 December 1971 the Council decided that the new Staff Regulations should come into force on 1 January 1972, the provisions of Book VI ("Financial rules and social benefits") to be retroactive to 1 January 1971.

B. Aligning the remuneration of Institute staff with that of the European Communities staff entailed adopting the same salary and grading scales as applied to the latter, and the Institute authorities decided to use the same tables of standard job description and classification as the Communities. The process of alignment was begun at the outset of 1972. Some anomalies occurred, however, and at the end of the year the Advisory Administrative Committee of the Institute was instructed to review the process of alignment and draw up a job description table. The posts of multicopying machine operators were graded at C3-C2 in the standard job description tables used in the communities, but at C5-C4 in the Institute. In October 1973 the Chairman of the Advisory Administrative Committee drew the anomaly to the Committee's attention. Meanwhile the correction of other anomalies was made retroactive to 1 January 1971 as the Council had decided on 22 December 1971.

C. By the end of 1973 there remained fifteen cases of alignment or regrading to be reviewed, including those of the five complainants, all of whom were punch-card operators still graded at C5-C4. Only ten of the fifteen cases under review were ready for prompt decision since the complainants' dossiers were not complete. Of the ten officials then upgraded five were promoted with effect from 1 January 1974 as the result of a review of their posts consequent upon changes in their duties; the other five, whose regrading was due to the correction of an anomaly, were upgraded with retroactive effect from 1 January 1971.

D. In 1974 the Institute authorities sought to remove the anomaly which had occurred to the detriment of the five complainants. In a proposal submitted to the Council the Administration pointed out that the grading of punch-card

operators at C5-C4 had been mistaken in that in the European Communities they had always been graded C3-C2. The Administration invited the Council to authorise an amendment to the budget "to end the present injustice to the five punch-card operators on the staff". At its October 1974 session the Council approved the grading of the five complainants at C3-C2 and decided that "the regrading shall take effect from 1 January 1974". On 12 December 1974 the Director-General promoted the complainants to grade C3 with effect from 1 January 1974.

E. On 25 November 1974 the complainants submitted a letter for the attention of the Council expressing surprise that their regrading should take effect only from 1 January 1974 and not from 1 January 1971; in their view the decision discriminated between staff members in the same category and should be reviewed. On 19 December 1974 they reminded the Director-General of their earlier letter. On 29 January 1975 the Director-General replied pointing out that their objections really related to his decision of 12 December 1974 inasmuch as the Council's decision had led "merely to the provision of budgetary resources allowing the grading of punch-card operators at C3". In accordance with Article 83 of the Staff Regulations the Director-General accordingly referred the case to the Appeals Committee.

F. On 17 March 1975 the Appeals Committee unanimously held that the Director-General's decision of 12 December 1974 should be reviewed and that the five complainants should be regraded on the same terms as all Institute staff members in accordance with the Council's decision of 22 December 1971: the regrading at C3-C2 should take effect in the case of Miss Steijn from 1 January 1972, the date of her appointment; in the case of Mrs. van Tuijl-van den Harst from 1 January 1971; in the case of Mr. Voorn from 1 January 1971; in the case of Mrs. den Ouden-de Man from 1 June 1971, the date of her appointment, until 31 December 1974, the date of her separation; and in the case of Miss Lakwijk from 1 December 1972, the date of her appointment. By letters of 18 April 1975 the Director-General informed the complainants that he did not endorse the Committee's recommendation. The complainants are now impugning the decisions in those letters.

G. Apart from the differences in the periods of retroactive effect for the different complainants indicated in paragraph F above, their claims for relief are as follows: they ask the Tribunal to quash the Director-General's impugned decision of 18 April 1975; to declare that the complainant ought to have been graded at C3-C2 with effect from [the appropriate date in each case]; should the Institute fail to upgrade the complainant from C5-C4 to C3-C2 with retroactive effect from that date, to order it to pay compensation equivalent to the difference between the remuneration actually received between that date and 1 January 1974 and the amount which would have been due in the course of that period had the complainant been graded at C3-C2; and to order the Institute to pay interest of 8 per cent a year on the amount of compensation with effect from 9 January 1975, the date on which the case was referred to the Appeals Committee.

H. The Institute notes that the complainants are asking the Tribunal to quash the decisions of 18 April 1975. In fact, it maintains, the complaints relate to the decisions to promote or appoint the complainants to grade C3 with effect from 1 January 1974. Those decisions were taken on 12 December 1974 and the complainants lodged internal appeals against them by letter of 19 December 1974. In accordance with Article 83 of the Staff Regulations those appeals were deemed to be dismissed on the expiry of the time limit of sixty days after notification of the appeal to the Director-General, i.e. on 18 February 1975. According to the Institute that dismissal, which was implicit in the Administration's silence, constitutes the final internal decision which entitles the complainants to appeal to the Administrative Tribunal and which marks the beginning of the period of ninety days prescribed in the Statute for the filing of complaints. The appeals of 19 December 1974 should be regarded as the complaint referred to in Article VII, paragraph 3, of the Statute. According to that article the complainant ought to have lodged their complaints with the Tribunal within the ninety days following the sixty days during which the Administration had failed to reply, i.e. 19 May 1975 at the latest. Since the complaints were despatched under cover postmarked 19 June 1975 they are not receivable. The Director-General's letter of 18 April 1975 informing the complainants that in his view the Appeals Committee's conclusions did not warrant reviewing the decisions of 12 December 1974 should not be regarded as a decision giving rise to a new ninety-day time limit, but as confirmation of the decisions of 12 December 1974, which became final within the Institute on the expiry of the sixty-day time limit.

I. As to the merits, the Institute notes that the complainants impugn the decisions to grade them at C3 only with effect from 1 January 1974. It contends that those decisions fall within the Director-General's discretionary authority and that hence the Tribunal may interfere only in exercise of its power of limited review. The complainants afford no proof of any of the flaws which entitle the Tribunal to interfere. The upgrading (or regrading) of the punch-card operators is in no way connected with the "process of alignment", nor does it reflect enhances in their duties: it is merely an upgrading of the duties of punch-card operators within the staff structure,

i.e. a measure of formal re-organisation which the Director-General was free to introduce with effect from whatever date he thought fit.

J. The Institute asks the Tribunal to declare "that the complaints are not receivable; subsidiarily, should the Tribunal unaccountably differ, that the complaints are unfounded".

CONSIDERATIONS:

As to the receivability of the complaints:

The complainants have submitted to the Director-General of the Institute administrative appeals against the decisions of 12 December 1974 classifying them at grade C3 with effect from 1 January 1974. Those appeals were dismissed by decisions of 13 April 1975. The complaints to the Administrative Tribunal were posted on 19 June 1975, that is, within the ninety-day time limit prescribed by the Statute of the Tribunal. They are therefore receivable. It is not necessary to consider whether the internal time limit was respected since the Appeals Committee decided on the merits.

As to the lawfulness of the impugned decisions:

By decisions of 12 December 1974 taken in accordance with a ruling of the Administrative Council of 11-13 September 1974 the Director-General promoted the complainants with effect from 1 January 1974.

It appears from the documents in the dossier, and particularly from the recommendations of the Appeals Committee dated 17 March 1975, that those decisions may not be treated as granting promotion to the complainants, but should be regarded as giving effect to their reclassification in consequence of the entry into force of the new Staff Regulations. In view of the circumstances of the case this reclassification having been delayed for reasons for which the staff members are not responsible should be put into effect at the date on which the complainants took up their duties but, like the Staff Regulations themselves, not before 1 January 1971.

DECISIONS:

For the above reasons,

1. The Director-General's decisions of 12 December 1974 are quashed.

2. The reclassification at grade C3 should take effect:

- for Miss Steijn from 1 January 1972;

- for Mrs. van Tuijl-van den Harst from 1 January 1971;

- for Mr. Voorn from 1 January 1971;

- for Mrs. Ouden-de Man from 1 June 1971;

- for Miss Lakwijk from 1 December 1977.

3. The remainder of the claims for relief is dismissed.

4. The complainants are awarded a total sum of 2,500 guilders as costs.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 12 April 1976.

(Signed)

M. Letourneur

André Grisel
Devlin

Roland Morellet

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