

In re GUYON and NICOLAS

Judgment No. 305

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints against the International Patent Institute drawn up by Mr. Roger Henri Guyon and Mr. Hervé Jacques François Nicolas on 7 May 1976 and brought into conformity with the Rules of Court on 24 May, the Institute's single reply of 17 June to both complaints and the complainants' rejoinders of 21 July 1976;

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

Considering Article II, paragraph 5, of the Statute of the Tribunal and the provisions of the Institute Staff Regulations, particularly Articles 5 and 82 and following;

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. The complainants, who had served on the Institute staff since 1971, were promoted from grade A7 to grade A6 on 1 September 1974 by a decision of 11 November 1974 notified to them on 13 November. By two letters to the Director-General dated respectively 5 and 6 November 1975 they asked that their promotion take effect from 1 January 1974 and in support of their claim relied upon the Tribunal's judgment in the case of Lamadie versus IPI, No. 262 of 27 October 1975. By letter of 5 December 1975 the Director-General told them that he upheld his decision of 11 November 1974 as to the effective date of their promotion to grade A6. They then appealed to the internal Appeals Committee, which allowed their claims. The Director-General nevertheless held to his original decision and so informed them on 29 April 1976. They thereupon filed complaints with the Tribunal.

B. In their complaints they argue that their position is the same as that of Mr. Lamadie as determined by the Tribunal in Judgment No. 262 and that the Institute's refusal to allow them to benefit under that judgment causes them prejudice within the meaning of Article 5 of the Staff Regulations, which lays down the principle of equality. They therefore ask the Director-General to set the date of their promotion to grade A6 at 1 January 1974.

C. The Institute contends that the complainants' internal appeals were irreceivable, even though the Appeals Committee took a different view: the complaints ought to have been Directly lodged with the Tribunal within ninety days after the date of notification of the decision to promote them, i.e. from 13 November 1974, in accordance with Article 82, paragraph 2, of the Staff Regulations, which means that such a decision, taken after consulting a careers committee, cannot form the subject of an internal appeal. Since the complainants have failed to respect the time limits for appealing to the Tribunal their complaints are time-barred. In any event they cannot properly claim a change in the effective date of their promotion inasmuch as the date of promotion does not depend on the criteria for promotion applied to a staff member but is determined in the light of the Careers Committee's appraisal of the facts of each case. The Institute therefore asks the Tribunal to declare the complaints irreceivable in all respects; subsidiarily, to declare them unfounded; and consequently to dismiss the complainants' claims in their entirety.

CONSIDERATIONS:

As to receivability:

1. According to Article VII of the Tribunal a complaint shall not be receivable unless the internal means of

redress have been exhausted and the complaint was filed within ninety days after the notification of the impugned decision. Hence only a final decision may prompt a complaint and the period of ninety days runs from the date of notification.

Under Article 82(2) of the Institute Staff Regulations a staff member may not appeal to the internal appeals committee against any decision taken after consulting one of the joint bodies mentioned in Article 10. In the present case it was on the recommendation of such a body, the Careers Committee, that the Director-General decided that the complainants' promotion from A7 to A6 should take effect on 1 September 1974. That decision was taken on 11 November 1974 and notified to the complainants on 13 November. Since no appeal lay to the appeals committee, the internal authority which took the decision was the last instance. Hence any complaint impugning that decision ought to have been lodged within ninety days after 13 November 1974. The present complaints were not lodged until 7 May 1976 and are therefore clearly time-barred.

They would still be time-barred if the period of ninety days were taken to run from 5 December 1975, the date on which the Director-General dismissed the appeals submitted by the complainants on 5 and 6 November 1975. That decision, like that of 11 November 1974, which it merely confirms, should be regarded as having been taken after consultation of the Careers Committee. Hence, in so far as the complaints purport to impugn the decision of 5 December 1975, they would have been receivable only if they had been filed - and they were not - within ninety days after that date.

It is true that the complaints would not be time-barred if the decision they impugned were the one taken by the Director-General on 29 April 1976. But that further decision was a refusal to reconsider that of 5 December 1975 and is therefore a mere confirmation: it cannot give rise to a new ninety-day period when the first was allowed to lapse.

It is immaterial that in its report of 3 February 1976 made on the complainants' application the appeals committee declared itself competent and so apparently overlooked Article 82(2) of the Staff Regulations. It is for the Tribunal to see whether Article VII of its own Statute is applicable; that means that in particular it must determine, with reference to the Institute's rules, the date on which the internal body of last instance took its decision and from which the ninety-day period therefore began to run.

As to the merits:

2. Even if they were receivable the complaints would have to be dismissed.

In support of their claims for relief the complainants rely upon Judgment No. 262, delivered by the Tribunal on 27 October 1975 on a complaint by Mr. Lamadie akin to their own. But a judgment by the Tribunal on a dispute between an organisation and a staff member affects only the parties to that dispute: it cannot alter a decision affecting third parties which is already in force. The stability of legal relationships would be impaired if staff members were entitled to rely upon new case law to cast doubt on the validity of earlier and final decisions.

In the present case the complainants are mistaken in relying upon Judgment No. 262 in seeking review of the decision of 11 November 1974. Unlike Mr. Lamadie, they failed to impugn in time the decision that their promotion should take effect from 1 September 1974, and they must bear the consequences of that failure.

DECISION:

For the above reasons,

The complaints are dismissed.

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 6 June 1977.

(Signed)

**M. Letourneur
André Grisel
Devlin**

Roland Morellet

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