

FIFTY-SEVENTH ORDINARY SESSION

In re CATCHLOVE

Judgment No. 699

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Peter Ernest Catchlove on 11 February 1985, the EPO's reply of 29 April, the complainant's rejoinder of 4 June and the EPO's surrejoinder of 23 August 1985;

Considering the applications to intervene filed by:

Mr. J. Ainscow

Mrs. A. Alders-Meewis

Mr. P. Alting von Geusau

Mrs. R. Assogna

Mr. H. Aumer

Miss A. Bergentall

Mr. C. Biggio

Mr. A. Bittner

Mr. C. Black

Mr. C. Bonvin

Mr. D. Butler

Mr. B. Cannici

Mr. G. Carruthers

Mr. B. Cinquantini

Mr. R. Cecchini

Mr. A. Clelland

Mr. M. Ferranti

Miss S. Flintoff

Miss J. Fonck

Mr. G. Fornfischer

Mr. G. Friedenberger

Mr. M. Gagliardi

Miss S. Gees

Mr. C. Gerardin

Mr. A. Goggins

Mr. J. Grötzinger

Mr. V. Habernickel

Mr. J. Heberger

Mr. U. Hild

Mr. C. Hjelm

Mr. G. Kellner

Mr. K. Klingen

Mr. G. Knesch

Mr. R. Knöpfle

Mr. S. Knowles

Mr. G. Krail

Miss I. Latke

Mr. P. Lesniak

Mr. M. Loades

Mr. L. Li Voti

Mr. A. Lovrecich

Mr. P. Lockett

Mr. C. Lutz

Mr. N. Maslin

Mr. J. Mellado y Mellado

Mr. M. Mercier

Mr. P. Mieszkowski

Mr. T. Mosedale

Mr. D. Mueller

Mr. H. Nentwich

Mr. H. Payer

Mr. D. Philippon

Mr. C. Philpott

Mrs. C. Pilsl

Mr. G. Pischtiak

Miss J. Pixius

Mr. G. Raths

Mr. A. Rauter

Mr. N. Reeves

Mr. H. Rudolph

Mr. H. Ruth

Mr. A. Samtmann

Miss A. Schulz

Mrs. W. Schuster-Kächele

Mr. P. Smith

Mr. E. Stern

Mr. J. Straker

Mr. W. Strassen

Mr. E. Turrini

Mr. H. van der Peet

Mr. W. van Laarhoven

Mr. R. van Voorst tot Voorst

Mr. C. Vullo

Mr. P. Watz

Mr. A. Wenzel

Mr. G. Williams

Mr. E. Winzinger

Mr. W. Woods

Mr. R. Zottmann; Considering the EPO's comments of 26 March 1985 on Mr. van der Peet's application and its comments of 23 August on the others;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 10(2) of the European Patent Convention, Articles 55, 57, 59 to 62, 108 and 109(2) of the Service Regulations of the European Patent Office, the secretariat of the EPO, and EPO Circulars 22 on annual leave and 121 on public holidays in 1984;

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. Article 59(2) of the EPO Service Regulations reads: "The President of the Office, after consulting the relevant joint committee, shall lay down ... (b) the list of public holidays applicable to each place of employment, with a maximum of ten days." On 8 November 1983 the Office issued a circular, No 121, about public holidays at the EPO in Munich in 1984. The President, it declared, had decided that 14 public holidays would be observed, but since that was four more than the maximum allowed under Article 59(2)(b) a total of 30.5 hours must be made up by extending working hours by half an hour for 61 days. Alternatively, a staff member might ask to have the four days deducted from his annual leave. On 7 February 1984 the complainant submitted an internal appeal against the circular under Article 108 of the Service Regulations. On 30 May the President rejected his appeal and referred it to the Appeals Committee. In a report dated 15 October the majority of the Committee recommended rejecting the appeal, and the President informed the complainant by a letter of 22 November 1984, which is the impugned decision, that he did so.

B. The complainant submits that the President has misconstrued Article 55 of the Service Regulations, which does not empower him to set the number of weekly hours of work at over forty for long periods. Article 55(3) relates to the length of the working day, not of the working week. The normal working week may exceed forty only when voluntary overtime is done or some emergency requires extraordinary work. The staff should not suffer because the President chooses to declare more holidays than Article 59(2) allows. The duration of the normal working week should not be affected by the number of public holidays. There is no sound basis in law for the option of taking annual leave. Article 2 of Circular 22 on annual leave says that it "may be taken at the convenience of the permanent employee concerned and with due regard to the requirements of the service". That means that a staff member may be refused leave because his attendance is required, not that the President may require him to take leave when it suits the Office. There is no such practice in any Western European country. Moreover, 24 and 31 December, which the President declared to be holidays, are not statutory public holidays in Bavaria. So in any event the President cannot require the staff to make up the hours not worked on those days. Lastly, the President is requiring the staff to work the compensatory hours. In advance the making up of lost hours starts early in the year, whereas the limit of ten days' public holidays is not exceeded until late in the year. The complainant asks the Tribunal to quash the decision, or, subsidiarily, to order the EPO to compensate him appropriately for the additional hours worked, for example by the award of leave or payment. He claims costs.

C. In its reply the EPO observes that the President is prevented by Article 59(2)(b) from closing the office in Munich for more than ten public holidays a year. He based his decision on Article 10(2)(a) of the European Patent Convention, which requires him to take "all necessary steps ... to ensure the functioning" of the office and confers discretion on him to determine the EPO's interests. To keep the office open on public holidays and on days close to public holidays, such as 24 and 31 December, is not economical: heating and other services have to continue even though most of the staff are absent anyway and output is low. It is therefore a lawful exercise of the President's discretion for him to require the staff to make up the lost hours of work.

The methods of making up the hours are also lawful. Under Article 55(3) of the Service Regulations the President may determine the length of the working day and, for limited periods, set the number of hours a week at over 40 without affecting the "normal" 40-hour week prescribed in 55(2). The alternative, the taking of annual leave, is not contrary to Article 2(a)(i) of Circular 22 because the staff member keeps his freedom of choice. The EPO is asking Munich staff to work extra hours, not to make up for recognised public holidays, but to make up for time lost on days, over and above the permitted ten public holidays, on which the office is closed but which should be ordinary working days. The President may not grant more than ten public holidays without requiring compensatory work.

D. In his rejoinder the complainant enlarges on the arguments in his original brief in answer to several points raised in the reply as to the merits.

E. In its surrejoinder the EPO develops its contention that the complaint is devoid of merit. It describes the arguments in the rejoinder as misconceived and again invites the Tribunal to dismiss the claims.

CONSIDERATIONS:

1. Article 59(2) of the Service Regulations provides that the President shall lay down the list of public holidays applicable to each place of employment with a maximum of ten days. Accordingly, this regulation requires the President to ascertain the days that in each place are observed as public holidays and, if they exceed ten in number, to select from them ten days to make up his list. In June 1980 the President proposed to the Administrative Council, as under Article 10(2)(c) of the European Patent Convention he was authorised to do, that Article 59(2) should be

amended by the removal of the limit of ten days. The proposal was not accepted.

2. On 8 November 1983 the President in Circular 121 issued a list of 14 public holidays to be observed in Munich in 1984. In the circular he announced also his decision to extend the working hours by half-an-hour on a number of days sufficient to make good the loss of four working days. Staff members were offered the alternative of a deduction from their annual leave. The Organisation does not contend that under Article 59(2) he was authorised to take this course. It relies upon other sources of authority as set out below.

3. The EPO relies, first, upon Article 10 of the European Patent Convention, which provides that the Office shall be directed by the President, who is responsible to the Administrative Council, and in particular upon paragraph 2(a) of this article, which says that he shall take all necessary steps to ensure the functioning of the Office. The Organisation relies, secondly, upon Article 22 of the Service Regulations. This article provides that permanent employees are at the disposal of the Office, but that the normal working week shall not exceed 40 hours and that within these limits the President shall determine the hours of the working day. The effect of the President's decision is to require staff to work 42 hours per week for three-and-a-half months in the year.

4. The conclusion of the Tribunal is as follows. The Service Regulations contain the obligations towards the staff which the EPO undertakes to fulfil. The general power given to the President by Article 10 of the Convention cannot be read as authorising the President to break any obligation undertaken by the EPO towards the staff. In so far as the decision of 8 November 1983 ignores the limit of ten days in Article 59(2) it does not break any obligation towards the staff. The question is whether the second part of the decision, i.e. to increase the hours of the working week, is in breach of Article 55.

What is meant by "the normal working week"? Article 22 must be read in conjunction with Article 57, which provides for overtime in certain cases. The primary meaning to be attached to the word "normal" is that it is intended to draw the line between that part of the week which is remunerated by the weekly wage and that part which may attract overtime. If that be the meaning, the President's power to "determine the hours of the working day" is subject to the proviso that the total for the week must not exceed 40 hours unless he is prepared to pay overtime where it is required by Article 57 and following. An alternative interpretation -- one which the President evidently adopted in this case -- is that the President may exceed 40 hours for any week which he decides to be abnormal. But, even if this interpretation be permissible, the Tribunal concludes that the circumstances which prevail for more than a quarter of any year cannot be regarded as abnormal.

DECISION:

For the above reasons the appeal is allowed.

The decision by the President of 22 November 1984 is quashed and it is ordered that the complainant be compensated either by the award of additional leave or by payment of an appropriate sum, and further, that he be paid 1,000 Deutschmarks as costs.

There being no objection to the interventions, it is ordered that each of the interveners be compensated in the manner aforesaid and that all claims for further relief be dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

