

FIFTY-NINTH ORDINARY SESSION

In re VAN DER PEET (No. 5)

Judgment No. 761

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 15 July 1985 and corrected on 12 August, the EPO's reply of 23 September 1985, the complainant's rejoinder of 16 January 1986 and his application of 17 January 1986, as supplemented on 23 January for the disclosure of items of evidence, and the EPO's surrejoinder of 4 April 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 81 and 93(2)(b) of the Service Regulations and Article 46 of the Financial Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence;

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

A. As is recorded in Judgment 692, under A, the EPO transferred the complainant from The Hague to Munich, where he was to take up duty in January 1984. His horse had to be moved by road from Noordwijk aan Zee as part of his "household and personal effects" within the meaning of Article 81 of the EPO Service Regulations. Article 81(3) reads: "A permanent employee shall be required for the purposes of this Article to submit to the President of the Office, for prior approval, at least two estimates from different firms relating to these removal expenses ... Reimbursement will be met only within the approved estimate". The complainant submitted one estimate of 2,850 guilders from a firm called Schenker in Rotterdam, another of 2,520 guilders from "J.J. Meyer" of Noordwijkerhout. On 6 December 1983 the EPO accepted the estimate from Meyer. The horse was moved in December, and on 8 January 1984 the complainant submitted three documents in support of his claim to reimbursement. In a letter to him of 21 February the EPO observed that Article 46 of the Financial Regulations required him to submit "supporting documents showing the creditor's rights", suspended the order for payment on the grounds that only "expenses actually incurred" could be refunded under Article 81(1); and said that two of the papers, not being signed, afforded no evidence of expenditure: a receipt from a veterinary surgeon and one for 2,520 guilders from "G. Meijer", while the third, a certificate from the West German Veterinary Office, was made out to Schenker, apparently the firm whose estimate had been rejected. On 27 February the complainant answered that "G. Meijer" was the son of J.J. Meyer and had transported the horse and that Schenker had dealt with the formalities at the Veterinary Office as G. Meijer's agent. The Chamber of Commerce of the Hague informed the EPO that J.J. Meyer, a firm trading in flower bulbs, had gone out of business in 1975 and that G. Meijer was not on the Chamber register. The EPO was also given to understand that G. Meijer worked part-time for Schenker. On 1 March 1984 the Principal Director of Personnel wrote to the complainant pointing out those things, cancelling approval of the estimate and refusing payment on the grounds that he had submitted, not the "two estimates from different firms" required by Article 81(3) but estimates from one firm and from an employee of that firm; unless he gave some satisfactory explanation he faced disciplinary action. On 26 March the Director also refused to refund the costs of insurance on the grounds that the receipts were only photocopies. On 8 May the complainant filed an internal appeal against the decisions of 1 and 26 March. The Appeals Committee recommended rejecting it, and by a letter of 29 April 1985, the decision impugned, the Vice-President of the Office informed him that the President rejected his appeal. On the grounds of failure to provide a proper explanation and an insulting attitude towards the Committee the President reprimanded him under Article 93(2)(b) of the Service Regulations.

B. The complainant observes that the estimate the EPO accepted was from "Gerard Meyer" of Noordwijkerhout, who advertises the transport of horses, who is the son of the late "J.J. Meyer", and who transported the complainant's horse. The Veterinary Office made out the receipt to Schenker simply because Schenker have an office at the Dutch-German border and Mr. Meyer asked them to carry out the formalities there. He paid Mr. Meyer on delivery of the horse in Bavaria, and he produces written testimony to that effect.

The EPO's refusal to meet his claims is unjustified. As is plain from Article 81(1), he is entitled to reimbursement on his mere affirmation that costs have been incurred. He could not obtain the signatures the EPO wanted unless they returned the receipts to him, which they refused to do. It is immaterial whether Gerard Meyer is registered,

and there is no proof that he was ever employed by Schenker: the name is a common one. The Appeals Committee was dilatory and its attitude toward him improper, and he seeks disclosure of a letter of 26 February 1985 from its Chairman to the President. The EPO was in breach of good faith and his consent to his transfer to Munich being void, he is entitled to go back to his post at The Hague. He seeks (1) the costs of transporting his horse, and interest; (2) reinstatement at The Hague; (3) withdrawal of the reprimand; (4) 50,000 Deutschmarks in moral damages; and (5) waiver of "the immunity of the officers responsible" so that he may assert before other instances his rights under the European Convention on Human Rights.

C. In its reply the EPO submits that the claims are unsound. As to (1) the complainant failed to submit estimates from two firms, as required by Article 81(3). No firm called "J.J. Meyer" exists and "G. Meijer" is not a firm. Nor has the complainant given any proper evidence of expenditure actually incurred, which the EPO may demand under Article 81(1). Claim (2) is unsound because the EPO did not infringe Article 81, because the complainant's interpretation of it is in bad faith and because the matter is not such as to avoid his consent to his transfer. As to (3), the reprimand was warranted because he failed to account for the discrepancies in his claims and because a letter of his was offensive to the Appeals Committee. Claim (4) is irrelevant because the impugned decision is valid. The Tribunal is not competent to entertain (5).

D. In his rejoinder the complainant submits that Meijer was distinct from Schenker and that he got the two estimates required by 81(3); that it is immaterial that Meyer was not registered with the Chamber of Commerce; and that the Schenker that dealt with the border formalities were a West German firm, not the Schenker of Rotterdam. Nor is there any evidence to suggest G. Meijer was ever their employee. Nothing in 81 requires that the removal be carried out by the firm whose estimate wins; indeed staff may carry out the removal themselves provided the approved amount is not exceeded. He has in any event supplied proper evidence of expenditure. No reasons were given for rejecting his explanations as "not convincing". He again alleges flaws in the Appeals Committee proceedings. He presses his claims and his application for disclosure of the letter from the Chairman of the Appeals Committee. He indicates that the amount he claims under (4) is supposed to include costs.

E. In its surrejoinder the EPO develops its case and comments on several issues of fact and answers the arguments in the rejoinder. It again invites the Tribunal to dismiss the complaint as devoid of merit. It submits that in any event the complainant's challenge to the reprimand is irreceivable because he has failed to exhaust the internal means of redress.

#### CONSIDERATIONS:

1. The complainant joined the staff of the EPO on 1 July 1980 and from December 1981 was stationed at Noordwijk in the Netherlands. With effect from 1 January 1984 he was transferred to Munich. Before his removal he submitted two estimates of the costs of the transporting his horse to Munich. The EPO approved the lower of the two in the amount of 2,520 guilders, together with veterinary costs, insurance and value added tax. On 29 December 1983 a veterinary officer at Noordwijk certified that the horse was not suffering from any disease notifiable under the Netherlands Livestock Act. On 30 December 1983, after customs and other formalities at the German border had been completed, the horse was delivered to the complainant in Upper Bavaria.

On 3 January 1984 the complainant submitted his receipts for reimbursement, in accordance with Article 81 of the Service Regulations, of transport costs (2,520 guilders) veterinary costs (55 and 40 guilders and insurance (83 guilders), a total of 2,738 guilders. On 1 March 1984 the EPO replied (i) that the veterinarian's receipt was not signed, (ii) that there was no invoice from the firm submitting the approved estimate, (iii) that a receipt for 2,520 guilders was unsigned and bore the stamp "G. Meijer animal transport" and (iv) that the official German veterinary officer's receipt was made out in the name of another firm. The earlier approval of the estimate was withdrawn and reimbursement was refused. The complainant asked for the return of the documents he had submitted in order that he might have them signed or otherwise regularised. This request was refused because, according to the EPO, the documents "had to remain in the file, of which they are an integral part". The complainant filed an internal appeal.

On 19 February 1985, while the appeal was pending, the complainant wrote to the members of the internal Appeals Committee complaining of the rejection of his request for written proceedings and, inter alia, questioning the Committee's impartiality. On 26 February 1985 the Chairman, with the concurrence of other members of the Committee, asked the President of the Office to require the complainant to withdraw his letter and, if he did not do so, to ensure that disciplinary proceedings be instituted against him without delay. On 29 April 1985 the Vice-President of the Office, in confirming the decision of the Committee to reject the claim to reimbursement, informed

the complainant that his attitude towards the Committee had to be described as insolent and for that reason, and because of the irregularities found in his claim for reimbursement, the Vice-President was imposing on him a reprimand in conformity with Article 93 of the Service Regulations.

The application for oral proceedings

2. The Tribunal will not order oral proceedings under Article 12 of its Rules of Court. The material issues are fully dealt with in the written pleadings and the exhibits tendered with the briefs. Since the evidence before the Tribunal is adequate, oral proceedings would serve no useful purpose.

The claim to removal expenses

3. Article 81 of the Service Regulations provides that a permanent employee shall be entitled to reimbursement of expenses actually incurred for the removal of household and personal effects provided that he is being transferred from one place of employment to another at least 400 kilometres distant and that the transfer is "of indefinite duration exceeding two months". According to the interpretation placed on it by the EPO the scope of the article is wide enough to cover the removal of the horse owned by the complainant.

Paragraph 3 of the article states:

"A permanent employee shall be required for the purposes of this Article to submit to the President of the Office for prior approval, at least two estimates from different firms relating to these removal expenses ... Reimbursement will be met only within the approved estimate."

The purpose of the paragraph is to protect the EPO against claims based on rates which are above the normal commercial rates for removal services. On the submission of estimates the EPO is in a position to investigate the firms supplying estimates and to give or withhold approval, depending on whether or not the estimates are reasonable.

The EPO rejects the complainant's claim to reimbursement of the amount which it had earlier approved as an estimate, on two grounds. The first is that the receipt bearing the printed name "G. Meijer, Veetransport" does not correspond with the name on the estimate, "J.J. Meyer". The second is that two of the receipts and an insurance document are unsigned.

It is not denied that the horse was transported to Munich, and it is not suggested that the sum claimed for removal expenses is unreasonable. The EPO says there is no such firm as J.J. Meyer, because its inquiries show that it was not a removal firm and had been dissolved in 1975. The complainant on the other hand, says that he dealt with a Mr. Gerard Meyer or Meijer who advertises his transport services and gave him the estimate later approved by the EPO. He explains that Mr. Meijer may by oversight have submitted the estimate on stationery marked "J.J. Meyer" his late father. He also explains the part played by another firm acting as Mr. Meijer's agent for the purpose of complying with German customs requirements.

There is no ground for believing that the complainant put forward any document he knew to be false or that he did not deal with Mr. G. Meijer in good faith. His explanations are as plausible as the results of the EPO's inquiries. In these circumstances the withdrawal by the EPO of its approval of the estimate after the complainant had acted on it cannot be supported. In any event the attitude of the EPO seems remarkable since the amount for which reimbursement is sought is within the limit originally approved.

In regard to the second ground for rejecting the claim, the complainant asked for the return of the documents which he had submitted so that he could perfect his claim by having them signed. The reason stated for retaining the documents is not valid because photocopies of the original documents and an acknowledgement of their return by the complainant would have preserved the integrity of the EPO's records. The refusal by the EPO to return the complainant's documents for the purpose of permitting him to take steps to perfect his claim for reimbursement is unfair and the complainant is entitled to relief on the ground that he was improperly prevented from having an opportunity of submitting the appropriate documents in support of his claim.

The reprimand

4. The EPO submits that the claim relating to the reprimand is irreceivable because the complainant has not

exhausted the internal means of redress. He has indeed lodged an internal appeal against the Vice-President's decision of 29 April 1985 to impose a reprimand on him. The appeal was to be heard between 26 and 30 May 1986. The Tribunal does not know whether the competent committee has yet reported, but in any event it knows of no decision by the President on the appeal. The internal means of redress may not therefore be deemed to have been exhausted, and the complaint is irreceivable insofar as it seeks the quashing of the reprimand.

The other claims

5. The complainant requests the Tribunal to waive the immunity of the officers responsible for the appropriation in order that he may pursue his rights under Articles 6 and 13 of the European Convention on Human Rights. His claim is wholly misconceived. His further claims for transfer to his former post and for compensation for pain and suffering are equally without foundation.

DECISION:

For the above reasons,

1. The EPO shall pay to the complainant the sum of 2,738 guilders and interest thereon at 8 per cent from 8 January 1984 until payment.
2. The EPO will pay the complainant 1,000 Deutschmarks as costs.
3. The other claims are dismissed.

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

Delivered in public sitting in Geneva on 12 June 1986.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner