

SEVENTY-FOURTH SESSION

In re PARUP (No. 2)

Judgment 1222

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Mats Stefan Parup against the European Patent Organisation (EPO) on 3 January 1992 and the Organisation's reply of 20 March 1992;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 45 and 111 of the Service Regulations of the European Patent Office, the secretariat of the EPO, and Articles 7 and 11 and Rule 19/1(ii) of the Rules implementing the Office's Pension Scheme Regulations;

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. The complainant, a Swede, joined the EPO in 1981 on a grade A2 post as "Lawyer I" and was later promoted to grade A3/A4. On 22 October 1987 the EPO granted an application from him under Article 45 of the Service Regulations for unpaid leave on personal grounds to last two years from 1 January 1988. It later extended the period by one year up to 31 December 1990. From January 1988 to February 1990 he served in a United Nations specialised agency and in February 1990 he took up duty in another intergovernmental organisation. By a letter of 28 September 1990 to the President of the European Patent Office he tendered his resignation and by a letter of 15 October 1990 the EPO accepted it as from 1 January 1991.

Article 7 of the EPO's Pension Scheme Regulations says that "An employee who has completed ten or more years actual service ... shall be entitled to a retirement pension".

Article 11 reads:

"An employee whose service terminates otherwise than by reason of death or invalidity and who is not entitled to a retirement pension nor to the benefit of the provision Article 12, paragraph 2,* (*Article 12 is headed "Inward and outward transfer of pension rights".) shall be entitled upon leaving the service to payment of:

(i) the aggregate amount deducted from his salary in respect of his pension contributions, together with compound interest at the rate of 4% per annum;

(ii) a severance grant equal to one month and a half of his last salary multiplied by the number of reckonable years of service ...

..."

From a statement dated 14 January 1991 the complainant learned of the EPO's repayment to him of his pension contributions, plus interest and a severance grant. In a letter of 24 January 1991 to the Remuneration Department of the Office he sought clarification and asked what the grounds were for reckoning his severance grant according to salary levels in force at 1 January 1988. Having got no answer, he lodged an internal appeal on 22 March 1991 against the reckoning of his severance grant. In its report of 12 August 1991 the Appeals Committee unanimously recommended rejecting his appeal. By a letter of 7 October 1991, the decision he challenges, the Principal Director of Personnel endorsed the Committee's recommendation on the President's behalf.

B. The complainant submits that his severance grant should have been reckoned according to the salary scale that was in force when he resigned. The EPO's reliance on salary scales in force when he went on unpaid leave is in breach of Article 11 of the Pension Scheme Regulations.

He contends that the reference to the last day of employment in Article 11 of the Pension Scheme means the actual last day, which in his case was 31 December 1990. Besides, even by the Organisation's interpretation he would

only have had to go back to the EPO for a single day to qualify for a rise in the amount of his severance grant. While on leave he arranged to become a voluntary member of the EPO's social security scheme by paying its and his own contributions according to a notional figure of what his salary would have been had he been in active service.

The members of the Appeals Committee were prejudiced in that as members of the Pension Scheme they had a stake in the outcome of his appeal.

He invites the Tribunal to order the reckoning of his severance grant on the strength of the salary scales in force at 31 December 1990 as his last day of employment. He also seeks 500 Swiss francs in costs.

C. In its reply the EPO submits that the impugned decision is lawful. It points out that the material provision of the Pension Scheme Regulations does not refer to "last day of employment" but to "last salary". There being no explicit definition of "last salary", the meaning must be inferred from the broader context. Since the ordinary meaning is the last salary actually paid - that of December 1987 in this case - there are no grounds for taking the complainant's last salary to be the sum he would have been paid if he had not been on unpaid leave. Rule 19/1(ii) of the Rules implementing the Pension Scheme Regulations bears that out by analogy: it says that the rights of an employee who is not entitled to a retirement pension and who dies while on unpaid leave shall be worked out by reference to his "salary at the date of going on leave". The complainant must bear the consequences of the acceptance of his own application for unpaid leave.

If he objected to any of the members of the Appeals Committee the proper time for him to protest under Article 111 of the Service Regulations was before, not after the Committee reported.

CONSIDERATIONS:

1. The complainant joined the EPO on 27 April 1981. He was a permanent employee. He was granted unpaid leave on personal grounds for three years from 1 January 1988 on his own application under Article 45 of the Service Regulations. Having resigned as from 1 January 1991 he was paid a severance grant under Article 11 of the Pension Scheme Regulations, which is reproduced in A above. The amount purported to be equivalent to one-and-a-half months' "last salary multiplied by the number of reckonable years of service", which in his case came to six years and eight months ending at 31 December 1987.

2. The only material issue is the construction to be put on the words "last salary" in Article 11. The complainant argues that they mean the salary pertaining to the post he held immediately before resignation, whereas the Organisation maintains that they mean the salary pertaining to his post at the start of his unpaid leave.

3. Article 45 makes unpaid leave on personal grounds subject to several conditions:

(i) during such leave a permanent employee is not entitled to advancement to a higher step or promotion in grade (Article 45(3));

(ii) his membership of the social security scheme is suspended one month after the start of such leave unless he makes other arrangements (45(4));

(iii) someone else may be appointed to the post he held before the leave (45(5)(c));

(iv) at the expiry of leave the permanent employee shall be reinstated in his post or, if it has been filled, in the first post corresponding to his grade that falls vacant provided he satisfies the requirements for it (45(5)(d)); and

(v) if he declines the post offered he retains the right to reinstatement when the next vacancy occurs (45(5)(d)).

So the position in law according to Article 45 was that for as long as the complainant was on unpaid leave he was not occupying either his former post or any other in the European Patent Office. It is therefore immaterial that he made arrangements to become a voluntary member of the social security scheme by paying the employer's and employee's contributions on the basis of some notional salary.

4. The primary rule of interpretation is that words are to be given their obvious and ordinary meaning: by that criterion the term "last salary" in Article 11 must mean the last salary actually paid in the course of active service.

Indeed, that construction is, as the Organisation argues, borne out by the analogy of Rule 19/1(ii) of the Rules implementing the Pension Scheme Regulations. That provision requires that the severance grant of an employee who dies while on leave on personal grounds shall be reckoned according to his salary at the date of going on leave, not to some notional figure of salary he might have been entitled to at the date of death had he been in active service at the time.

The Organisation was therefore correct in basing the complainant's severance grant on the salary applicable to his former post at the start of his unpaid leave. His complaint is therefore devoid of merit.

5. Lastly, the complainant adduces no evidence in support of his allegations that the members of the Appeals Committee were not impartial. The plea fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Mark Fernando, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 February 1993.

William Douglas
Mark Fernando
Michel Gentot
A.B. Gardner