

SEVENTY-EIGHTH SESSION

***In re* VOLLERING (No. 5)**

Judgment 1398

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr. Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 14 April 1994, the EPO's reply of 21 July, the complainant's rejoinder of 25 August and the Organisation's surrejoinder of 20 September 1994;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

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 Dutchman, is employed by the EPO as a patent examiner at grade A3 in Directorate-General 1 (DG1) at The Hague.

By a note dated 4 November 1991 and addressed to all officials in DG1 the President of the European Patent Office, the secretariat of the EPO, empowered the Vice-President in charge of DG1 to issue service instructions on the production of search reports using electronic data-processing.

In a note of 13 November the Vice-President required all examiners who had suitable training and equipment to use a computer programme known as CAESAR, which stands for "computer-assisted editing of search and annex reports".

On 1 January 1992 the complainant was transferred to Search Directorate D 1.2.61, where he first had to use CAESAR.

In a letter of 22 April he asked the Director of D 1.2.61 to confirm in writing that he had to use CAESAR, pointing out that the programme was slowing down his rate of work by 15 to 20 minutes a file. He also asked whether his production target took account of that.

At a meeting of members of D 1.2.61 on 15 May the Director explained that every examiner was to use CAESAR barring serious faults in software or hardware; he also said that production standards already reflected time spent on CAESAR.

In a letter of 3 June the complainant asked the President either to release him from the duty to use CAESAR or grant him "reasonable compensation" for the extra time it was taking him, or else treat his letter as an internal appeal under Articles 106 to 108 of the Service Regulations.

In a letter of 29 January the Director of Personnel informed him that the President, having rejected his request, had referred his case to the Appeals Committee.

In a report dated 20 December 1993 the Committee recommended rejecting his appeal. By a letter of 13 January 1994, which he impugns, the Director of Staff Policy told him that the President had decided to endorse the Committee's recommendation.

B. The complainant submits that the Vice-President's imposition of CAESAR on search examiners entailed an unlawful change in his job description. Since it affected all search examiners the Administration was in breach of Article 38(3) of the Service Regulations, which requires the General Advisory Committee to give a "reasoned opinion" on "any proposal which concerns the whole or part of the staff", and of 38(4), under which the Local

Advisory Committee had to give an opinion on "any proposal which concerns solely the whole or part of the staff at the place of employment concerned".

Because of the obligation to use CAESAR he had to enter search data in a computer, "type" search reports, pick up print-outs and check them. Such tasks, formerly the duties of administrative staff, left him less time for "primary duties" and made his production target harder to reach.

He says the Administration ignored the Staff Committee's calls for an enquiry into the value of CAESAR and that the Appeals Committee failed to carry out a "true and neutral investigation" into the damage CAESAR had done.

He wants the Tribunal to "condemn" the Administration for breach of his own and the Advisory Committees' rights; to grant him 5.6 days' annual leave in compensation for time "lost" on CAESAR; to have him released from the obligation to use CAESAR or credited with 20 minutes' "time lost" for each file until the "General Advisory Committee decides on another arrangement by unanimous opinion and the President of the EPO implements this unanimous opinion"; and to award him 15,000 guilders in moral damages. He claims 10,000 guilders in costs.

C. In its reply the EPO contends that the complaint is irreceivable. His claim to be released from the obligation to use CAESAR is out of time: he has been required to use the programme since his transfer to D 1.2.61 on 1 January 1992. The decision to bring in CAESAR dates back to 13 November 1991 and the minutes of the meeting of 15 May 1992 merely confirmed instructions he acknowledges having received before.

His claims to compensation for the use of CAESAR and to credit for time spent using the programme are premature. To know what effect CAESAR might have on his work and whether it warranted changes in his output target he had to wait for the appraisal of his performance over the whole of 1992. He himself has instigated a conciliation procedure to resolve a dispute with his supervisors about his production target.

Being new, his claims about breach of the rights of the General and Local Advisory Committees and about the extra time he has to spend on each file are irreceivable for failure to exhaust the internal means of redress.

In subsidiary pleas on the merits the EPO submits that the President enjoys wide discretion in deciding what resources to make available to the staff. CAESAR is part of a general updating of technology made for the sake of cost-cutting and efficiency. That being a purely organisational measure, the President was under no duty to consult either the advisory bodies or the employees concerned. If Article 38 did apply it would have been for the Local Advisory Committee to take the matter up but there was no such Committee to do so because the Staff Committee had failed to appoint representatives to it. In any event staff representatives - like the complainant himself - had many opportunities to state their views on CAESAR.

The only changes that CAESAR entailed in the complainant's duties were in technical aspects of drafting and data checking. The problems he ran into were "temporary" and once he had got used to CAESAR his speed would pick up.

As to his dissatisfaction with the Appeals Committee, on which staff and management have the same number of representatives, the Organisation is not liable for the Committee's conduct of business.

D. In his rejoinder the complainant disputes the arguments in the reply and develops his earlier pleas. On receivability he submits that it is not the Vice-President's imposition of CAESAR that he is challenging but the injury he later found the system had caused him. Not until he had got used to CAESAR did he realise how much more time it took than pen and paper. He accuses the Administration of meddling in the Appeals Committee's work and he objects, in particular, to the disappearance of a document the EPO had annexed to its brief for the Committee. He claims a further 30,000 guilders in moral damages.

E. In its surrejoinder the EPO says there is no new material argument in the complainant's rejoinder. His allegations of injury from CAESAR turn on his staff report for 1992 and pending the outcome of the conciliation procedure the final version of it is not yet out. The material question is whether the complainant should give up a method which harks back to "the dawn of time" and use an up-to-date one. The EPO denounces his attempt to discredit it, as well as the Appeals Committee, by suggesting that it tampered with evidence. The Organisation in no way interfered with the Committee's files: the material document was the subject of Judgment 1340 (in re Vollering No 3) and is res judicata. The EPO points out that he has already received compensation on that score and doubts that his latest claims are receivable.

CONSIDERATIONS:

1. This is a dispute between the EPO and one of its patent examiners, and it arises out of the decision to bring in a computer programme known as CAESAR at the Directorate-General for Search, DG1. In April 1992 the complainant sent his supervisor a letter asking whether he had to use CAESAR to draft reports on patent searches; if so he wanted the EPO to adjust his output target to allow additional time for the purpose. At a meeting of 15 May the Director of D 1.2.61 confirmed orally that using the programme was compulsory and formed part of an examiner's duties. The complainant wrote to the President of the Office on 3 June 1992 seeking leave not to use CAESAR or "reasonable compensation" for the additional demands on his time. The President was not inclined to grant his claim and therefore referred it to the Appeals Committee. After thorough inquiry the Committee submitted to the President a unanimous recommendation for rejection. The President agreed and the Director of Staff Policy notified his decision to the complainant in a letter of 13 January 1994.
2. The complainant seeks the quashing of that decision. He wants the Tribunal to order the EPO to increase his holiday credit in proportion to the number of years during which he has to use CAESAR; to relieve him of the obligation to use it or, failing that, to acknowledge that the system causes him to waste 20 minutes on each file and to enter that figure in his monthly records until the General Advisory Committee takes a new and unanimous decision on the matter; and to pay him 10,000 guilders for the moral injury he suffered because of the infringement by the EPO of his rights and 5,000 for the moral injury attributable to the flaws in the Appeals Committee procedure. He claims 10,000 guilders in costs. In his rejoinder he makes a further claim to an award of 30,000 guilders in damages for various procedural flaws he alleges.
3. The EPO counters that the complaint is irreceivable. It submits, first of all, that he knew by 1 January 1992, when he was transferred to D 1.2.61, and indeed even earlier, that search examiners had had to use CAESAR since 13 November 1991 and that the decisions he says he is impugning merely confirmed an earlier final one. The Organisation's second plea is that his complaint is premature insofar as he is objecting to the fact that his output target does not allow for additional time taken up by CAESAR. It is only year by year that output can be assessed - in this instance at the end of 1992, a matter which forms the subject of another dispute. Thirdly, the EPO observes that his claims to damages for alleged procedural flaws and to a ruling that CAESAR requires another 20 minutes for each file have not been put to the Appeals Committee; they are therefore irreceivable for failure to exhaust the internal remedies.
4. The complaint is receivable. For one thing, even if it took the complainant some time to realise that CAESAR was a waste of time he was quite free to ask his supervisor in April and the President in June 1992 to relieve him of drafting reports on the computer or grant him compensation. He is also free to appeal to the Tribunal against the rejection of his claims. That is a decision that does not just confirm an earlier final one but refuses the changes in working conditions which he first asked for on 22 April 1992, having learned of the new output targets set on 3 April. So it is not a valid objection that he knew when he took up duty on 1 January 1992 that all examiners had to use CAESAR. The rejection of his claims causes him injury distinct from the appraisal of his performance in 1992, which could be made only at the end of the year. And though he did fail to put some of his claims to the Appeals Committee and did so only after the Committee had reported they are directly linked to the main dispute, which the Committee fully went into, and are therefore receivable.
5. Yet his many claims, set out under 2 above, fail because none of the pleas he puts forward on the merits can be sustained.
6. His first argument is that the Organisation failed to consult either the General Advisory Committee or the Local Advisory Committee before it decided to make search examiners use CAESAR. As the EPO observes, the President has wide discretion over the organisation of work and he is not bound to consult the advisory bodies set up under the Service Regulations before introducing new means of improving staff efficiency. In any event the impugned decision made no change in the rules on work arrangements that required such consultation under Article 38.
7. His second plea is about flaws in the procedure followed by the Appeals Committee. If he succeeded in proving such flaws they would indeed have been fatal and the EPO would, contrary to what it says, be liable. But the Tribunal cannot accept any of his allegations under this head. In particular it will not entertain the fruitless issue as to whether Appendix 6 to the EPO's brief, which contains allegations and insinuations that the Tribunal ruled on in Judgment 1340, was withdrawn from the submissions to the Committee. The Committee's report made it plain that,

as the complainant wished, it had disregarded that text and there is no reason to believe that its opinion was in any way influenced by the adverse comments on him therein. In a broader context there is no evidence to suggest that the Committee was guilty of bias or had bowed to pressure from the Administration. There being not a shred of proof of the complainant's serious charges under this head, they cannot but fail.

8. His third plea is that CAESAR lays a further burden on search examiners. He submits that making it compulsory seriously altered his conditions of work, foisted on him typing duties that junior staff had been performing and by wasting his time put out of his reach the excessive output targets it set. In short he believes that the EPO has arbitrarily and unilaterally changed the job description he got on appointment in 1982. But the Tribunal does not accept his reasoning. All organisations need computer technology and there is nothing wrong with making staff who draft and write search reports and the like work with software and submit their output in a readily usable format. To be sure, with the constant updating of methods management must provide training and proper supervision and make allowance for any difficulties staff may run into. But what is entailed is change in the technical means of carrying out an official's duties, not disruption of working conditions, which for the search examiner still consist in drafting reports and related material. EPO officers have wide discretion over matters of organisation and the EPO is not to be held liable for bringing conditions of work up to date. It thereby infringed none of the safeguards the staff enjoy; nor may it be deemed to have altered the job description of search examiners, which, as the Appeals Committee observed, is cast in very general terms.

9. As for the output targets and the complainant's difficulties in reaching his target for 1992, those are issues that arise in the context of another case and the Tribunal will not entertain them here.

10. The conclusion is that the decision to reject his appeal of 3 June 1992 was lawful and shows no fatal procedural flaws. So his claims to the quashing of that decision, to various forms of relief and to costs must fail.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 1 February 1995.

(Signed)

William Douglas
Michel Gentot
E. Razafindralambo
A.B. Gardner