

EIGHTY-FIRST SESSION

***In re* POPINEAU (No. 10)**

Judgment 1541

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Mr. Gérard Popineau against the European Patent Organisation (EPO) on 28 August 1995, the EPO's reply of 24 November 1995, the complainant's rejoinder of 11 February 1996 and the Organisation's surrejoinder of 2 April 1996;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. Facts relevant to this dispute are set out under A in Judgments 1540 and 1542, also delivered this day, on the complainant's ninth and eleventh complaints.

By a letter of 15 May 1995 he asked the EPO's Director of Staff Policy for written confirmation of remarks he attributed to the Director, including one that he had filed "too many" internal appeals and the European Patent Office, the secretariat of the EPO, would therefore let him put "such appeals" directly to the Tribunal in future.

By a letter of 26 May the Principal Director of Personnel told him that since the Tribunal's judgments had ruled once and for all on his relations with the EPO the Office did not intend to reply to any further internal appeals from him. By a letter of 30 May he asked the Principal Director what was to become of his appeal of 15 May. Also on 30 May he lodged an appeal with the Appeals Committee claiming a reply from the Office to each of his appeals. He is impugning the implied rejection of that appeal.

B. The complainant submits that the implied refusal by the President of the Office to reply to his appeals prevents the Committee from delivering an opinion on them. Under Article 109(1) of the Service Regulations the President takes a final decision "having regard to this opinion". The impugned decision is in breach of that provision. It is also discriminatory and unfair and a violation of his rights.

He seeks the quashing of the EPO's implied decision to stop replying to his internal appeals and awards of 40,000 French francs in moral damages and 5,000 francs in costs.

C. In its reply the EPO invites the Tribunal to join this complaint with his ninth and eleventh ones on the grounds that they serve the same purpose and because the claims and appeals which preceded them prompt the decision he is now impugning.

The President, it contends, is under no duty to refer a case to the Appeals Committee if it is plain from the start that such proceedings would serve no purpose. The complainant's claims and appeals are flagrantly vindictive. By dispensing with the internal procedure the President has not denied the complainant his right of appeal since Article 109(2) of the Service Regulations says that silence implies rejection, against which appeal lies to the Tribunal, the internal proceedings being at an end.

D. In his rejoinder the complainant objects to joinder on the grounds that the claims in his ninth, tenth and eleventh complaints are not the same. It is sheer bad faith, he says, for the EPO to pretend it has forgotten about the President's referring his appeal of 19 February 1995 to the Appeals Committee. The President was under a duty to have the proceedings go ahead.

E. In its surrejoinder the EPO presses its application for joinder. What caused it to change its mind between 9

March and 26 May 1995 was the complainant's filing a whole raft of new claims.

CONSIDERATIONS:

1. Facts with a bearing on this case are set out under 2 and 3 in Judgment 1540, also delivered this day, on his ninth complaint, in which he claims the right to answer an article in the EPO's "Gazette". In his tenth complaint he seeks the quashing of an implied decision by the Office to stop answering any internal appeals he may lodge.

The application for joinder

2. In its reply the defendant applies for joinder of this complaint with Mr. Popineau's ninth and eleventh cases.

3. According to precedent complaints are to be joined only if they raise the same issues of fact and of law. The ninth and tenth complaints do rest on the same facts - the publication of the article in the "Gazette" - and impugn the same decision, albeit each challenges a different part of it. But the issues of law are different. The ninth complaint is about the right of reply to the article whereas the tenth pleads breach of the rules on internal appeal. The eleventh is distinct both in fact and in law from the other two: it is about staff union rights. So the conditions for joinder are not met.

The merits

4. The complainant offers three pleas in support of his claim to the quashing of the EPO's decision to stop answering his internal appeals:

(1) The decision holds up the internal procedure, keeps the Committee from delivering an opinion and offends against Article 109(1) of the Service Regulations.

(2) It is discriminatory and offends against the principles of equality and equity embodied in the Universal Declaration of Human Rights.

(3) It is a violation of his rights.

5. The EPO's answer is that it is under no duty to refer a case to the Appeals Committee if from the outset appeal appears pointless; under Article VII(1) of the Tribunal's Statute a complaint is in any event receivable if the internal remedies are exhausted; and under Article 109(2) of the Service Regulations silence implies rejection and closes the internal proceedings.

6. The Organisation's argument succeeds. Refusal to answer an appeal is not obstruction: the litigant may still appeal to the Tribunal against the implied rejection. Besides, the EPO's attitude would be discriminatory and run counter to the principles of equality and equity only if it failed to adopt the above attitude towards someone else who had lodged many internal appeals on the strength of much the same set of facts, including one in disregard of res judicata. Since no one has, the complainant's plea is mere academic supposition. Moreover, the President of the Office pleads the need to keep down the amount of internal litigation so as not to overload the Administration with pointless work and expenditure. He has thereby assessed the Organisation's interests and made an exercise of discretion with which the Tribunal may not interfere in the circumstances of this case. The complainant's claims fail in their entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 11 July 1996.

(Signed)

William Douglas
E. Razafindralambo
Egli
A.B. Gardner

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