

EIGHTY-SEVENTH SESSION

In re Vollering (No. 15)

Judgment 1884

The Administrative Tribunal,

Considering the fifteenth complaint filed by Mr Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 16 January 1998, the EPO's reply of 2 April, the complainant's rejoinder of 29 April and the Organisation's surrejoinder of 10 June 1998;

Considering Articles II, paragraph 5, and VII 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 Dutch citizen born in 1952, is employed by the European Patent Office, the EPO's secretariat, as a patent examiner at grade A3 in Directorate-General 1 (DG1) at The Hague.

In the spring of 1993, the Administration sent to the complainant his intermediate staff report for the year 1992. His immediate superior had proposed his overall rating as "a weak 'good'" but, on 14 April 1993, the countersigning officer, Mr Phillips, Principal Director, DG1, assigned him the overall rating of "less than good". On 18 September 1993, the complainant completed his part of the staff report asking for the matter to be treated further. A conciliation procedure was instigated.

During this procedure, the complainant learned that the Principal Director had sent the mediator a note, dated 17 December 1993, in which he expressed his concern at the approach adopted by two staff members, one of whom was the complainant, with regard to the conciliation procedure, which they had tended to convert into a negotiation procedure. On 23 December 1993 a reporting expert intervening on the complainant's behalf sent the mediator a letter in which he qualified Mr Phillips' note as unwarranted and considered that it constituted "prejudicial interference" in the conciliation procedure.

Since the complainant and his superior could not reach an agreement, the President of the Office decided on 17 October 1994 to confirm the overall rating proposed by the countersigning officer. On 5 January 1995, the complainant wrote to the President. He requested him to reconsider his decision or otherwise treat his letter as an internal appeal. By a letter of 21 September 1995, the Director of Staff Policy informed the complainant that the President had decided to annul his decision of 17 October 1994 and to change the overall rating from "less than good" to "good".

B. The complainant explains that the decision of 21 September 1995 to award him the assessment "good" did not bring to an end the internal appeal procedure that he had initiated, since his appeal also concerned the prejudice shown by the reporting officers in drawing up his staff report for 1992. He concludes that this part of his appeal is still pending. He states that he is "convinced" that, three years after it was lodged, his appeal will not be treated any more by the Appeals Committee and that he is entitled to appeal directly to the Tribunal.

He contends that the differences in assessment between the 1992 report and his other reports is sufficient to prove the prejudice against him.

He submits that the Principal Director "sabotaged" the conciliation procedure by implicitly instructing his Director not to cooperate any more in finding a solution to the dispute.

The complainant requests the Tribunal:

(1) to condemn the prejudice of the complainant's Director expressed in the complainant's staff report for 1992 and to order compensation to the complainant of 10,000 guilders for the moral damage suffered;

(2) to condemn the prejudice of the complainant's Principal Director expressed in the complainant's staff report for 1992 and to order compensation to the complainant of 20,000 guilders for the moral damage suffered;

(3) to order the EPO to remove Mr Phillips as countersigning officer in and after the staff report for 1992 and/or to pay moral damages of 5,000 guilders for every staff report after the staff report for 1992 in which Mr Phillips acts as countersigning officer;

(4) to condemn the EPO for the prejudice shown and the sabotage done by its officers involved in the appeal procedure about the assessment in the complainant's staff report for 1992 before and during the proceedings of the internal Appeals Committee and to order compensation to the complainant of 50,000 guilders for the moral damage suffered through the EPO's abuse of administrative power and abuse of "good faith" in obstructing the complainant's staff report for 1992;

(5) to condemn the EPO for the "unacceptable" long delay of the reporting and appeals procedure and to order compensation to the complainant of 10,000 guilders for the moral damage suffered;

(6) to order the destruction of the 1992 staff report and of all of its copies which are in the possession of the Administration;

(7) to order the remaking by the complainant's Director of the staff report for 1992 so that it meets the criteria of "neutrality and objectivity";

(8) to award him 10,000 guilders in costs.

C. In its reply, the EPO contests the receivability of the complaint since the matter is out of time. It states that the President's decision of 21 September 1995 constituted an "express final decision" on the one claim made in his appeal, thereby "definitively" ending the internal appeal procedure.

Subsidiarily, the EPO submits that the complaint is unfounded since, in its view, the decision of 21 September 1995 gave full satisfaction to the complainant.

Finally, it observes that the complainant uses the present complaint to restate all his grievances against the EPO. It considers that the "ferocity" with which he attacks the Organisation is certainly designed to damage its reputation and requests the Tribunal to find that the present complaint constitutes an abuse of process.

D. In his rejoinder, the complainant contends that his internal appeal is still pending on the grounds that the President's decision of 21 September 1995 did not explicitly state that it was putting an end to the procedure.

He affirms that no personal offence against staff members was intended, but recalls that the Organisation is obliged to protect its staff members against any prejudice by its officials. He also submits that the EPO is endeavouring to invert the situation by stating that he is prejudiced against some of its staff.

E. In its surrejoinder, the EPO rejects the pleas made by the complainant in his rejoinder.

CONSIDERATION

1. This complaint is manifestly without merit of any sort.

2. The complainant wrote to the President of the Office on 5 January 1995 asking him to reconsider his decision of 17 October 1994 taken on point XI(ii) of the complainant's intermediate staff report for 1992.

In the event that the President did not wish to meet this request he asked that the letter be considered as an internal appeal under Articles 106 to 108 of the Service Regulations.

3. The President by letter of 21 September 1995 informed the complainant that he had decided to annul his decision of 17 October 1994 and change the complainant's overall marking from "less than good" to "good".

4. The complainant claims this decision only dealt with part of his appeal leaving the other part outstanding. He claims he is therefore entitled to come to the Tribunal after a lapse of over three years for lack of an express final

decision even though the internal means of redress have not been exhausted.

5. The complaint is irreceivable. The President's decision of 21 September 1995 definitively ended the internal appeal procedure for the entire dispute. The complainant had merely asked the President to reconsider his decision and the President cancelled it and gave the complainant an improved rating.

6. Under the Service Regulations recourse may only be had to the Appeals Committee if the President considers that a favourable reply cannot be given to the internal appeal. The decision of 21 September 1995 therefore put an end to the internal appeal procedure. The complainant did not impugn that decision.

7. The complaint is also without foundation and is an abuse of the Tribunal's process. The President's decision allowed the complainant's appeal and gave effect to his request that his staff report for the year 1992 be reconsidered. He was upgraded from "less than good" to "good". The complainant's argument that he is somehow injured by the fact that the President did not deal with all the points that he would have made in his internal appeal is simply vexatious. As in a previous case brought by this same complainant (see Judgment 1431, *in re* Vollering No. 4, of 6 July 1995) the redress sought has been obtained, leaving no substance underlying his claim.

8. The Tribunal has never heretofore imposed a costs penalty upon a complainant. However, it asserts unequivocally that it possesses the inherent power to do so as part of the necessary power to control its own process. Clearly, such power must be exercised with the greatest care and only in the most exceptional situations since it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of costs. That said, however, there is another side to the coin: frivolous, vexatious and repeated complaints to the Tribunal absorb the latter's resources and impede its ability to deal expeditiously and fully with the many meritorious complaints which come before it. They are also, of course, costly and time-wasting for the defendant organisation.

9. In the present case the Organisation has not asked for an award of costs but has simply sought a declaration that the complaint is an abuse of process. The Tribunal makes such a declaration and further declares that in future it will award costs against complainants in appropriate cases if they are sought.

DECISION

For the above reasons,

1. The complaint is dismissed; and
2. The complaint is declared to be an abuse of process.

In witness of this judgment, adopted on 7 May 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet