

THIRTY-FIRST ORDINARY SESSION

***In re* HEROUAN (No. 2)**

Judgment No. 220

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the International Patent Institute (IPI) drawn up by Mr. Emile Hérouan on 4 January 1973 and brought into conformity with the Rules of Court on 23 February 1973, the Institute's reply of 10 May 1973 and the complainant's rejoinder of 21 June 1973;

Considering the applications to intervene lodged by:

Mr. Jacques Armspach,
Mr. Constant Braems,
Mr. Christian Charbonnieras,
Mr. Luc Cuypers,
Mr. Daniel de Lameillieure,
Mr. John Dimitry Fux,
Mr. Robert Hakin,
Mr. Joannes Herijgers,
Miss Annick Martin,
Mr. Guido van den Meerschaut,
Mr. Geert Pauwels,
Mr. Lucien Steinmetz;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 37, 39, 63 (before amendment), 82, 86, 89 and 90 of the new Staff Regulations;

Having examined the documents in the dossier, oral proceedings having been neither requested by the complainant nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. Before being amended Staff Regulation 63 provided, amongst other things:

"In so far as exchange regulations and the rules governing Institute accounts opened abroad may allow, a staff member may ask for the regular remittance of part of his remuneration to an account opened in his name with a bank in his home country, provided that the Institute itself has a bank account in that country. Subject to these conditions, the remittance will be made at current official monetary exchange rates and any expenses incurred by the Institute shall be borne by the staff member." (Registry translation).

By a minute of 28 July 1972, which was notified to part of the staff on 4 August the Director-General informed staff members who were nationals of Belgium, France and Luxembourg that because of exchange regulations and the rules governing the Institute's accounts in those countries it would not be possible until further notice to transfer part of their remuneration from those accounts. The minute was read out at a meeting of the Administrative Advisory Committee (AAC) at about 11 a.m. on 4 August. Staff representatives protested at the minute in the AAC and elsewhere, but to no avail, and on 4 September the complainant wrote to the Director-General asking him either to revoke the impugned decision or to regard the letter as an application to lodge an internal appeal. In his reply of 13 September the Director-General said that he could not revoke the impugned decision and that he was therefore submitting the complainant's claim to the Appeals Committee. On 26 October the complainant received a copy of the Committee's report and on 2 November a letter from the Director-General dated 31 October informing him that for the reasons given in that report he refused the claim. In its report the Committee held the appeal to be irreceivable on the grounds that it impugned a decision taken after consultation with the Administrative Advisory

Committee. The complainant maintains that the consultations required by the staff rules were not properly carried out.

B. The AAC has since redrafted Staff Regulation 63 to bring it into line with the corresponding provisions of staff rules in the European Economic Community, and Staff Regulation 63 as amended became applicable as from 15 March 1973.

C. The complainant asks the Tribunal to quash the decision contained in the minute of 28 July 1972 and impugns the Director-General's decision in the letter of 31 October 1972. He asks the Tribunal to:

(a) declare that the Director-General's decision contained in the minute of 28 July 1972 was not preceded by the consultations prescribed in Staff Regulation 89, fourth paragraph, and is therefore unlawful and should be quashed;

(b) declare that that decision was not preceded by consultation with the Administrative Advisory Committee in accordance with Staff Regulation 90 and is therefore unlawful and should be quashed;

(c) declare that the AAC's meeting of 4 August 1972 at which the minute was read out to the staff representatives was not valid since the quorum required by Staff Rule 90, fourth paragraph, was not attained and that the impugned decision was therefore not preceded by valid consultations, is unlawful and should be quashed;

(d) declare that before the decision had been notified to the staff representatives the minute announcing it had been circulated to at least some of the staff and that the impugned decision was therefore put into effect without prior consultation, is unlawful and should be quashed;

(e) declare that the Director-General may not exercise any discretionary authority conferred on him by Staff Regulation 63 contrary to Staff Regulations 89 and 90 and that the impugned decision was taken without any consultation, was a misuse of discretionary authority, is unlawful and should be quashed;

(f) declare that the Appeals Committee was remiss, particularly in failing to take the opportunity afforded under Staff Regulation 86 for conducting an inquiry and ascertaining the circumstances in which the impugned decision was put into effect and in accepting the worthless evidence of at least one witness and failing to question others, and that the recommendation made to the Director-General and accepted by him is therefore tainted with irregularity and should be quashed;

(g) declare that before suspending the provisions of Staff Regulation 63 the Director-General should have asked the AAC to study other possibilities and that the decision to bring the text of Staff Regulation 63 into line with the corresponding provisions of staff rules in the European Economic Community should therefore take effect from the date of the impugned decision, 28 July 1972;

(h) award the complainant the token sum of 1 guilder as damages; and

(i) award him 500 guilders as the costs of the present complaint.

D. The Institute maintains that since Staff Regulation 63 has been repealed and replaced the complaint is without foundation. The adoption of the new Rule has made it possible for the complainant to ask for transfer of his remuneration in accordance with that Rule, and he has in fact done so. The Administration informed the complainant that, since Staff Regulation 63 had been amended, it considered his claims to be settled in substance. The complainant replied that he would agree to withdraw the suit provided the Institute admitted the validity of his claims. He sent the Institute the draft of a letter (appended to the Institute's reply) to be addressed to the Director-General, which stated that the complaint "has the sole purpose of securing a declaration from the Tribunal that the decision of 28 July 1972 concerning the transfer of part of a staff member's remuneration was contrary to the provisions of the Staff Regulations regarding consultation of the staff representatives".

E. The Institute contends that a suitor before a court must above all show some interest in the suit. It points out that the complainant, whose home country is France never claimed the advantages of former Staff Regulation 63. The minute of 28 July 1972 cannot be regarded as detrimental either generally or to the complainant as an individual, since he never claimed the advantages of former Staff Regulation 63, and cannot therefore give rise to any complaint. Only the Institute's refusal to grant an application based on Staff Regulation 63 would have given rise to a valid complaint. In any case, since the repeal and replacement of former Staff Regulation 63 any interest which

the complainant might have had in the present suit at the time of lodging the complaint has disappeared. The complaint is therefore without foundation.

F. The Institute therefore asks the Tribunal to declare the complaint irreceivable since the complainant has suffered no detriment as an individual and has no interest in the suit and, subsidiarily and as to the merits, to dismiss the complainant's claims and his application for costs.

CONSIDERATIONS:

As to the interventions by Mr. Armspach and others

The complainant, who is of French nationality, has referred to the Tribunal the Director-General's decision of 28 July 1972 in so far as it affects him as a French national.

Staff members of the Institute of French nationality whose interests are identical with those of Mr. Hérouan accordingly have an interest in intervening in his complaint. Their intervention is therefore receivable.

Staff members of the Institute of Belgian and Luxembourg nationality, who are subject to different national laws and regulations, have not the same interests as Mr. Hérouan, and accordingly their intervention is not receivable.

As to the complaint by Mr. Hérouan

Before amendment IPI Staff Regulation 63, paragraph 2, provided as follows:

"Insofar as exchange regulations and the rules governing Institute accounts opened abroad may allow, a staff member may ask for the regular remittance of part of his remuneration to an account opened in his name with a bank in his home country, provided that the Institute itself has a bank account in that country. Subject to these conditions, the remittance will be made at current official monetary exchange rates and any expenses incurred by the Institute shall be borne by the staff member." (Registry translation)

By a minute dated 28 July 1972 the Director-General of the Institute informed staff members who were nationals of Belgium, France and Luxembourg that "because of exchange regulations and the rules governing the Institute's accounts in those countries it will not be possible until further notice to transfer part of their remuneration through those accounts" .

Mr. Hérouan, an official of the Institute acting on his own behalf, has referred to the Tribunal the Director-General's decision of 31 October 1972 dismissing the internal appeal he had lodged against the minute cited above.

As to the receivability of the complaint

Although Mr. Hérouan had never availed himself of the provisions of the second paragraph of former Staff Regulation 63 before the minute of 28 July 1972 was issued it had been open to him to do so at any time, and therefore he had a direct and personal interest in seeking the quashing of a decision which deprived him of that possibility.

As to the subject of the complaint

The minute of 28 July 1972 was actually applied up to 15 March 1973, when Staff Regulation 63 came into force in its amended form. The new provision, not being retroactive, affects future circumstances alone and cannot have the effect of nullifying a complaint impugning a decision which was in fact applied from August 1972 to 15 March 1973.

It follows from what has been said above that the complaint is receivable and has not become purposeless.

As to the legality of the minute

It is clear from the terms of former Staff Regulation 63, second paragraph, that staff members of the Institute may ask that part of their remuneration should be regularly transferred to a bank account opened in their name with a bank in their home country, but only insofar as the exchange regulations and rules governing Institute accounts

abroad allow.

Having regard to the imperative requirements of exchange regulations which may call for the taking of urgent measures, the Director-General of the Institute has authority to decide whether the condition laid down in former Staff Regulation 63 is fulfilled and, if he decides that it is not, to take such measures as the exchange regulations may require at any time; in this matter he necessarily has discretionary powers.

It follows that the competence of the Tribunal to review the legality of that decisions taken by the Director-General within his discretionary powers is restricted to ascertaining whether the decision impugned is based on incorrect facts or an error of law and whether it constitutes a misuse of authority.

In the case at issue, having received a circular from the Minister of Finance of France indicating that all transactions concerning wages and salaries must in future be conducted in financial francs, the Director-General, after the Institute's financial franc account had been exhausted, decided by the minute impugned that exchange regulations and the rules governing the Institute's accounts abroad no longer allowed the application to officials of French nationality of the possibility provided under former Staff Regulation 63.

That Regulation in fact conferred a right on staff members of the Institute and specified that it could not be withdrawn unless the exchange regulations and the rules governing the Institute's accounts abroad no longer made it possible.

The new regulations introduced by the French Government did not in themselves impede the exercise by staff members of the Institute of their rights under former Staff Regulation 63; its effect was merely to oblige the Institute to obtain a supply of financial francs which it was neither impossible nor particularly difficult for it to do.

It follows that in refusing to allow officials of French nationality the benefit of former Staff Regulation 63 as from August 1972, the Director-General misunderstood the effects of the Regulation and also violated the principle of equal treatment for staff members who are on a similar legal footing in relation to the Institute. The decisions impugned must therefore be quashed.

As to the claim for compensation

The complainant has not produced evidence of any moral injury justifying the award of compensation.

Moreover, it does not appear from the documents in the dossier that he himself actually applied for and was refused the advantages provided by former Staff Regulation 63, and therefore he cannot establish a claim to any material injury.

DECISION:

For the above reasons,

1. The interventions of Mr. Armspach and Mr. Charbonnieras and of Miss Martin are receivable. The other interventions are not receivable.
2. The decision of the Director-General of the International Patent Institute dated 28 July 1972 is quashed in so far as it affects the complainant and the recognised interveners. The decision of 31 October 1972 is quashed.
3. The remaining claims in the complaint are dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 22 October 1973.

(Signed)

M. Letourneur

André Grisel
Devlin

Roland Morellet

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