

FORTY-FIFTH ORDINARY SESSION

***In re* DE BRUIN, DERBAI, and KELLER**

Judgment No 425

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints brought against the European Patent Organisation (EPO) by Mr. Robert Johannes de Bruin on 16 July 1979, by Mr. Mohamed Abdelfattah Derbal on 20 July and by Mr. François Georges Keller on 16 July, the EPO's reply of 3 October, the complainants' rejoinder of 2 November and the EPO's surrejoinder of 5 December 1979;

Considering that the three complaints relate to the same matters and should therefore be joined for the purpose of a single decision;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the Agreement on the Integration of the International Patent Institute into the European Patent Office, the secretariat of the EPO, and Articles 3 and 11 of the Staff Regulations of the European Patent Office;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainants joined the staff of the International Patent Institute some ten years ago and were employed there as grade C4 library clerks until 1 January 1978, when the Institute was merged with the European Patent Office. On 12 December 1977 the Director-General of the Institute informed them that they would be graded B2 in the European Patent Office and assigned to posts corresponding to post description 3324. On 7 February 1979 they appealed against that decision on the grounds that their duties in the Institute corresponded rather to post description 3323, which was graded B3. They applied for regrading at B3. The President of the Office having failed to answer, they filed an internal appeal on 9 April. On 16 July, having received no decision on their appeal, they appealed to the Tribunal under Article VII, paragraph 3, of its Statute.

B. The complainants contend that the description of their duties in the Institute (No. St/DOC/BIB/C5/11-13) exactly matches EPO post description 3323, whereas some of their duties in the Institute do not appear at all in EPO post description 3324. According to the minute from the Director-General of the Institute - No. 551 of 12 December 1977 - they were to perform in the EPO the same duties as they had in the Institute, and under Article 11.1 of the EPO Staff Regulations the EPO was bound to grant them the grade corresponding to their duties.

C. The complainants are asking the Tribunal to quash the President's implied decision dismissing their appeal and refusing the regrading at B3 with all the legal consequences that would entail, and to award them 100 guilders in costs.

D. In its reply the Organisation explains that the EPO has had serious difficulty in absorbing the 700 Institute officials, particularly in assigning them to posts. A table of equivalents between Institute and EPO grades was appended to the integration Agreement dated 19 October 1977. According to that table EPO grade B2 does correspond to Institute grades C4 and C5. Article 11 of the Agreement stipulates that no former Institute official shall receive in the EPO total net remuneration lower than his final salary immediately before integration. As regards duties, the principle was that former Institute officials would perform the same duties in the EPO except insofar as their gradual revision was required for the efficiency of the new organisation. It was not until months later, on 19 December 1978, that the decision was taken to assign the complainants to posts bearing post description 3324. In any event EPO posts are now under review and the intention is to amend the list of post descriptions and their grading and submit it to the Administrative Council in the autumn of 1980 for final decision. Accordingly the provisional grading of the complainants at B2 was quite proper, at least during the material period, and they are not

entitled to up-grading.

E. The complainants point out in their rejoinder that the EPO has implicitly acknowledged that their former duties in the Institute and the duties bearing post description 3323 in the EPO do correspond and that the latter duties are indeed the duties they are at present performing. In reply to the contention that their assignment is merely provisional they observe that that is not what the text of the decisions notified to them says. In any event post descriptions remain in force until they are amended, and the point is that their main duties, particularly the running of a library, are mentioned only in post description 3323, whereas the duties mentioned in post description 3324 account for only a tenth of their working time. They therefore press all their claims for relief.

F. In its surrejoinder the EPO rejects that reasoning. It maintains that the provisional nature of post descriptions was made clear in the minutes of the inaugural session of the IPO Administrative Council, held from 19 to 21 October 1977. The complainants were well aware of those minutes, which are appended to their complaints, and it is also clear from the wording of decision No. 551 of 12 December 1977 that post descriptions are provisional. Article 3.2 of the EPO Staff Regulations empowers the Administrative Council at any time to amend the duties pertaining to the various grades. Post descriptions had to be provisional to allow for gradual adaptation to the new circumstances created by integration. The present comprehensive review of post descriptions has already revealed the need to amend post description 3324 and to do away with post description 3323 altogether, since it is misconceived. If the complainants were graded B3 they would derive an unfair advantage over other staff members, and solely by reason of a provisional post description. Until the comprehensive review is completed they must simply acquiesce in a small discrepancy between their post description and their actual duties.

CONSIDERATIONS:

The grounds for the complaints

1. According to Article 3.1 of the EPO Staff Regulations the President of the European Patent Office shall draw up a specific description of the duties of all posts to which officials may be appointed and the Administrative Council shall determine on the President's recommendation, the grade warranted by the post description. Article 11.1 of the Staff Regulations also provides⁽¹⁾ that "the appointing authority shall give each official the grade corresponding to the post to which he is appointed". Officials are accordingly entitled to the grade corresponding to the description of the duties they perform.

2. The complainants were formerly officials of the International Patent Institute. On 1 January 1978 they were transferred to the European Patent Office, in which they are performing the same duties as before. On 12 December 1977 the Director-General of the Institute informed them of their transfer and of their grading at B2, with the seniority they had already acquired. On 19 December 1978, in his capacity as Vice-President of the European Patent Office, he informed them of a decision to appoint them as grade B2 library clerks to posts corresponding to post description 3324.

The complainants object to that decision on the grounds that their duties correspond to post description 3323, which is graded B3.

3. The description of the duties which the complainants were performing in the Institute and which they are now performing in the EPO is indeed reproduced in post description 3323 and differs considerably from post description 3324. Accordingly under the Staff Regulation which requires that the grade must correspond to the post description, the complainants may claim grade B3, the grade corresponding to post description 3323.

The EPO's pleas

4. The EPO argues that because of the complex problems of integrating the Institute into another organisation the present post descriptions are only provisional and will be revised no later than the autumn of 1980. In other words the descriptions are not binding on the EPO and officials may derive no rights therefrom.

This plea is at odds with the rule which requires an administration to abide by the rules which it has itself made as long as they remain in force. At its first session, held from 19 to 21 October 1977, the Administrative Council of the EPO approved the post descriptions submitted to it by the President, including post descriptions 3323 and 3324. Those descriptions came into force in accordance with Article 3.1 of the Staff Regulations and are binding on the

EPO until amended. The EPO is therefore wrong to refuse to observe them.

5. The President of the Office did inform the Administrative Council that he had it in mind to amend the post descriptions, and the Council took note of his intention. But, even though the descriptions are subject to amendment, the Office is bound to respect them as long as they remain in force, and it is not the EPO's contention that post descriptions 3323 and 3324 have been changed.

It is true that in his minute dated 12 December 1977 the Director-General of the Institute did warn the complainants that their duties might be altered because of the integration of the Institute into the EPO. That reservation has had no effect however, on the complainants' position. Besides, it applied to duties actually performed, not to post descriptions, and is therefore immaterial.

The merits of the complaints

6. To sum up, the EPO's pleas fail and the complainants are entitled to grade B3 since that grade corresponds to post description 3323, which reflects their actual duties. Their regrading shall take effect from the date on which the post description came into force.

Provided that they do not act ultra vires, it is open to the authorities of the EPO to review the post descriptions and return the complainants to grade B2. Such a decision would not impair their acquired rights since they are not entitled to preserve the position arising under this judgment.

Costs

7. The complainants - whose complaints are allowed - claim a small sum in costs which is suited to the nature of their complaints. Their claim is allowed.

DECISION:

For the above reasons,

1. The decision refusing to grant the complainants grade B3 is quashed.
2. The complainants shall hold that grade from the date on which post description 3323 came into force.
3. Each of the complainants is entitled to 100 guilders in costs.

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

Delivered in public sitting in Geneva on 11 December 1980.

(Signed)

André Grisel
Devlin
H. Armbruster

Bernard Spy

1. Registry translation.