

FORTY-FIFTH ORDINARY SESSION

***In re* HAKIN (No. 4)**

Judgment No. 437

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the European Patent Organisation (EPO) by Mr. Robert Edouard Marie Hakin on 24 September 1979, the EPO's reply of 27 November, the complainant's rejoinder of 17 December 1979 and the EPO's surrejoinder of 25 February 1980;

Considering Article II, paragraph 5, of the Statute of the Tribunal, and Articles 31 to 35 of the Staff Regulations of the International Patent Institute;

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. From 14 until 19 September 1977 a "sit-in" strike took place at the International Patent Institute to express the staff's dissatisfaction with the proposed arrangements for transferring them to the European Patent Office on 1 January 1978, when the Institute was to be integrated into the Office. The strike took the form of a token occupation of the entrance lobby of the Institute building. The complainant took part, but only during the periods of free time allowed under the flexible working schedule and not to the detriment of his work at other times of the day. His supervisors noted that he was on duty. He was nevertheless informed by a circular letter from the Director-General, No. DG-656 dated 12 December 1977, that a sum would be withheld from his salary "for non-performance of duties". On 16 December he applied to the Director-General for review of the decision.

B. The Institute was duly integrated into the EPO and the case was referred to the Appeals Committee of the EPO. The Committee reported on 17 January 1979. It recommended paying to the 261 applicants, including the complainant, the sums withheld from their salary on account of the strike. On 26 April 1979 the complainant wrote to the President of the EPO asking for payment of the sum withheld and interest. Having received no reply, on 24 September he appealed to the Tribunal.

C. In his claim for relief the complainant asks the Tribunal to find that the EPO administration "has failed to offer a shred of proof of any work stoppage or non-performance of duties" by him. The decision taken by the Director-General of the Institute on 12 September 1977 did not affect him. The deduction from his pay was unlawful and a breach of the Staff Regulations. In the appeal proceedings the EPO was time and again in breach of the rules in the Staff Regulations. It is clear from the EPO's consistently adverse attitude, and in particular its imposition of a financial penalty such as is not provided for in Chapter VII of the Staff Regulations, that it has committed an act of injustice and an abuse of authority and should be ordered to pay moral damages for its oppressive behaviour. The complainant also asks the Tribunal to order payment to him of 204.19 guilders, plus interest at 10 per cent a year from 1 January 1978 to the date of payment, and payment of a token sum of one guilder as moral damages.

D. In its reply the EPO observes that, since the filing of the complaint, the President of the EPO has, by a decision dated 5 November 1979, ordered payment to the complainant and to all the other officials of the sums withheld from their salaries and that since the complainant's wishes have been met the Tribunal may wish to dismiss the complaint as being without substance.

E. In his rejoinder the complainant observes that the President's circular of 5 November 1979 constitutes a declaration of general amnesty which draws no distinction between staff members who did take part in the work stoppages and those like himself from whose salaries sums were wrongly withheld. Not only does the circular fail to acknowledge that he was wronged but it frames a new charge against him, namely that he "worked irregularly", which is as groundless as the charge that he was on duty "only part-time" and that he was guilty of "non-

performance of duties". Moreover, the decision to pay him the sum withheld has not yet been carried out, and nothing is said of the payment of interest or of compensation for the loss of purchasing power of the guilder or of damages for the unlawful withholding of salary. The complainant therefore contends that the President's decision of 5 November 1979 does not meet his claims, and he therefore declines to withdraw them.

F. In its surrejoinder the Organisation reaffirms its case in favour of dismissing the complaint: (1) The sums withheld have now been paid. (2) The complainant is not entitled to damages because the EPO made the deduction in accordance with Article 34 of the Institute Staff Regulations, which allow withholding of pay for any unwarranted absence from duty. The complainant's supervisor stated in a minute that the complainant was on duty only part-time on 14, 15, 16 and 19 September 1977 although, because of the flexible working schedule, the supervisor could not say for just how long his absence was unwarranted. (3) The deduction from salary was provisional until the facts were established. But delay was inevitable and in any case not the EPO's fault, because of the integration of the Institute, and the complainant may not allege any wrong on account of the delay. (4) The decision of 5 November 1979 caused him no moral prejudice since it does not say whether the complainant in fact "worked irregularly". It cancelled outright the action taken against the 261 staff members and was therefore a general administrative decision which took no account of the evidence available in each case and which was intended to restore relations with the staff to normal. The complainant is not entitled to have his own case reviewed by way of exception to that general decision.

CONSIDERATIONS:

The deduction from salary

1. The complainant is seeking repayment of the sum of 204.19 guilders which was withheld from his salary on the grounds of his partial absence from work. After he filed his complaint the President of the EPO gave instructions for the repayment of the amount claimed, and he has received it. His claim for repayment is therefore without substance.

The payment of interest on the sum withheld

2. The complainant is also claiming payment of interest on the 204.19 guilders at the rate of 10 per cent a year from 1 January 1978. The claim would succeed only if the reduction in his salary had been unjustified. On this score the explanations he gives are at odds with those given by his supervisor. That the withholding of the sum was unjustified cannot therefore be regarded as established, and the Tribunal disallows his claim for interest.

The depreciation of the currency

3. Only in his rejoinder does the complainant for the first time put forward his claim for compensation for the decline in the purchasing power of the guilder. Since the claim formed part neither of his internal appeal nor of his complaint it is irreceivable.

Moral prejudice

4. The complainant claims one guilder as token damages for moral prejudice. For such a claim to succeed the Organisation's attitude ought to have caused him emotional disturbance beyond that caused by the ordinary setbacks of life. Clearly it did not, since the fault of which he was accused - not keeping proper working hours - is not of a kind which casts any discredit on an official. Besides, to award damages for moral prejudice would be to allow that the charge was false, and that, on the evidence before it, the Tribunal cannot do.

DECISION:

For the above reasons,

The complaint is dismissed.

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

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