

Registry's translation, the French text alone being authoritative.

FORTY-EIGHTH ORDINARY SESSION

In re MAIER

Judgment No. 503

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Johann Maier on 30 January 1981, the EPO's reply of 6 April, the minute communicated on 15 May by the EPO at the complainant's request and the EPO's observations thereon, the complainant's rejoinder of 13 August and the EPO's surrejoinder of 21 September 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 12(4), 13 and 112 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

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 complainant was born in Munich in 1921. On 13 August 1979 the EPO offered him an appointment as general dutyman at grade C3, starting with a six-month probation period. He took up duty on 3 September. A grade C4 post for a head dutyman was vacant, and the complainant was asked to perform the duties provisionally. After about two months, however, he was replaced as acting head by another dutyman, who was younger and graded C2. On 11 January 1980 Mr. Wruck, the complainant's supervisor, wrote an adverse probation report recommending that his appointment should not be confirmed. The report was communicated to the complainant, and on 15 January he appended a minute expressing disagreement. By a letter of 23 January the Principal Director of Personnel informed him that he would be dismissed at the end of the probation period, on 29 February. On 29 January he asked the President of the EPO to review the decision or refer the case to the Appeals Committee. On 30 January he had an interview with the Vice-President in charge of Administration and the Principal Director of Personnel and asked that he be tried in some other branch. His request was rejected, and in a letter of 8 February the President informed him that the case would go to the Appeals Committee. In a unanimous report, which is undated, the Committee held in the complainant's favour. On 3 November, however, the President dismissed the internal appeal, and that is the decision now impugned.

B. The complainant contends that his dismissal was tainted with errors of law and procedure and therefore unlawful. He cites the report of the Appeals Committee, which held among other things that the post of head dutyman did not correspond either to the description of the duties for which the complainant had been appointed or to his aptitudes; that he had no training for the post; that Mr. Wruck, in passing criticism on, among other things, the complainant's temperament, disregarded the especially difficult position in which he had been placed and set too much store by gossip; and that a minute of 3 January 1980 in which Mr. Wruck passed an unfavourable judgment on the complainant ought to have been notified to him before being used against him and filed in his dossier. The complainant accordingly invites the Tribunal to declare that his dismissal was unlawful and to award him damages amounting to not less than 10,000 Deutschmarks plus interest at 10 per cent a year from 3 July 1980.

C. In its reply the EPO points out that the President exercised the broad discretionary authority conferred on him by Article 13 of the Service Regulations and relied on the probation report on the complainant. The EPO rejects his allegations that errors of law and procedure tainted the impugned decision. It also contends that the decision was not based on mistakes of fact and that no essential facts were overlooked. Article 12 of the Service Regulations allowed for a provisional assignment of the complainant to duties carrying a higher grade. Besides, before joining the staff, he applied for C5 and C4 posts and is therefore ill-placed to object to being given C4 duties for a short time. The impugned decision is based on a broad assessment of his ability to perform the C3 duties for which he was appointed. The probation report makes it plain that he had failed to show the right qualifications for his post.

As for the gossip he speaks of, he ought to have behaved in such a way as not to encourage it and not taken it too seriously. The Appeals Committee was not competent to substitute its own assessment for the President's. Besides, the President is in no way bound by the Committee's report (Article 112 of the Service Regulations). The decision was based solely on the probation report, and Mr. Wruck's minute of 3 January 1980, though not notified to the complainant, was not used against him. The complainant had an opportunity to make any oral observations he thought fit in his conversation with the Vice-President and the Principal Director of Personnel. The EPO therefore invites the Tribunal to dismiss the complaint in its entirety.

D. At the complainant's request the EPO produced on 15 May 1981 the text of the minute signed by Mr. Wruck on 3 January 1980. In a further memorandum dated 15 May 1981 the EPO observes that it is for the probationer's immediate supervisor - in this case Mr. Wruck - to write the probation report, and that report contains some elements which appear in the minute. The complainant therefore had a chance to comment when the probation report was notified to him or else during the interview mentioned above.

E. In his rejoinder the complainant points out that the probation report describes him as an enthusiastic worker. The criticisms in the report, which relate, among other things, to his relations with colleagues and to his behaviour, were based on gossip, as the Appeals Committee acknowledged. As is clear from the minute of 3 January 1980, the criticisms to which the EPO refers are merely dubious allegations or exaggerated incidents. The complainant explains the difficulty of the position he was in and in particular his relations with his colleagues who succeeded him as head dutyman and who were younger and held a lower grade. His behaviour was affected by rivalry within the team of dutyman and his awkward predicament. Essential facts were therefore overlooked. There were also two procedural flaws: the minute of 3 January 1980 was not communicated to him before his dismissal, and he was not given a timely opportunity to make his own observations. He therefore presses his claims for relief and explains that he is claiming payment of interest from 3 July 1980 because that is the date on which the Appeals Committee's report was notified to him, or, subsidiarily, from 3 November 1980, the date of the impugned decision. He also claims DM 500 in costs.

F. In its surrejoinder the EPO observes, among other things, that, before confirming the dismissal the President read the Appeals Committee's report. The statement that the President failed to take account of essential facts is therefore quite unfounded. It is clear from the minute of 3 January 1980 that the complainant had many opportunities to speak his mind. Moreover, the interview took place on 30 January, i.e. before the President decided, on 8 February 1980, to uphold the decision of dismissal. The EPO therefore maintains all its conclusions.

It adds that, in accordance with the Service Regulations, it has paid the complainant dismissal compensation equivalent to two months' basic salary, or DM 5,500.

CONSIDERATIONS:

The lawfulness of the decision to dismiss the complaint

1. Article 13 of the EPO Service Regulations states that "Permanent employees for whom the President of the Office is the appointing authority shall serve a probationary period" and that "A probationer whose work has not proved adequate shall be dismissed at the end of the probationary period".

Under this rule and the general principles of international public service the purpose of probation is to discover whether the official has the qualities which warrant keeping him on the staff. It is for the President or the competent director to decide, in the light of the evidence before him, whether to dismiss the official or to grant him a permanent appointment.

2. The Tribunal is competent to review the lawfulness of a decision by the appointing authority to terminate the probation period. Because of the nature of the decision, however, the Tribunal may merely consider whether - apart from any formal or procedural irregularities - the decision should be quashed because of an error of law or of fact or because essential facts were overlooked or clearly mistaken conclusions drawn from the evidence, or because there was abuse of authority.

3. The complainant joined the staff of the European Patent Office as a dutyman. He started work on 3 September 1979 and was dismissed at the end of the probation period. He then filed an internal appeal and, although the Appeals Committee recommended in his favour, the President of the Office rejected the recommendation.

4. It appears from the evidence, in the first place, that the complainant was professionally qualified to perform the grade C3 duties for which he had been recruited. The slight reservations which his supervisor expressed are clearly not enough to justify dismissal, even at the end of the probation period.

5. In any event those are not the grounds which the EPO gives for having refused the complainant a permanent appointment.

The President took the view that there was sufficient evidence of personal incompatibility between the complainant and the other members of his unit. Such a view is in itself legitimate. Unsuitability of an official for work in a particular service, whatever his grade may be, may have lasting effects on the Office's efficiency. The President therefore did not commit any mistake of law.

But the Tribunal will consider whether he drew a clearly mistaken conclusion from the facts.

There is no doubt that the complainant was not on good terms with the other members of his team. For that there were several reasons which the Appeals Committee stated in detail after hearing evidence from Mr. Wruck, the complainant's first-level supervisor, and from the complainant himself.

It is clear from the Committee's report that the disagreements between Mr. Wruck and the complainant were trivial and no more serious than the ordinary frictions of everyday life. The main reason was the difference in age and personality between them. The Tribunal recognises the need for harmony in day-to-day relations between those who perform the same duties. But neither the probation report nor any other item suggests that personal incompatibility made the team's work impossible. There is no evidence of any factor likely to impair the unit's efficiency.

6. The Tribunal accordingly holds that the President drew a clearly mistaken conclusion from the facts in deciding to dismiss the complainant.

Amount of compensation

7. For this reason the complaint is allowed. The complainant is not seeking reinstatement; he has found employment with the Ministry of Transport in Munich, even though he is less well paid.

The Tribunal believes that, on a fair assessment of the circumstances of the case, he should be awarded compensation amounting to DM 4,000, plus interest at 10 per cent a year from 30 January 1981, the date on which he filed his complaint.

DECISION:

For the above reasons,

1. The European Patent Organisation shall pay the complainant compensation amounting to 4,000 Deutschmarks plus interest at 10 per cent a year from 30 January 1981.

2. The Organisation shall pay the complainant 1,000 Deutschmarks as costs.

3. The other claims are dismissed.

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

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

