

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

FIFTIETH ORDINARY SESSION

In re MAUGAIN

Judgment No. 552

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Christian Paul André Maugain on 5 February 1982 and brought into conformity with the Rules of Court on 11 May, the EPO's reply of 2 August, the complainant's rejoinder of 21 October and the EPO's letter of 12 November to the Registrar stating that it did not wish to file a surrejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 47 and 109 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, a French citizen, joined the staff of the former International Patent Institute in 1970; since 1978 he has been employed by the European Patent Organisation, first at The Hague and since April 1981 in Munich. He is a grade A6 examiner. The Director-General of the Institute rejected an appeal he made seeking review of his performance report for 1974 and redress for "unfair treatment". On 10 June 1981 he wrote to the President of the European Patent Office filing two internal appeals. One alleged failure to complete the procedure in Article 47 of the EPO Service Regulations for establishing his "staff report" for 1979 and to take account of his performance in 1978. The other alleged "unfair treatment". At the EPO's request he sent an explanatory letter on 14 July 1981 alleging a general atmosphere of hostility towards him which, he said, had harmed his health. The Appeals Committee recommended rejecting his first appeal as irreceivable and his second as devoid of merit. In a letter of 9 November 1981, which he received on 12 November, and which is the decision impugned, the President accepted those recommendations. After further correspondence the complainant filed a third but similar internal appeal on 18 January 1982. On 5 March the President informed him, in accordance with Article 109(1) of the Service Regulations, that this appeal too was rejected.

B. The complainant contends that the appraisal in his report for 1979 overlooks changes in his working conditions which inevitably reduced his productivity. For years he has been the victim of unfair treatment, and it has impaired his health (he suffers from chronic insomnia). In support of his allegations he refers to unfair appraisals he received for 1974 and 1979; failure to complete the procedure for establishing the report for 1979 and to take account therein of his performance in 1978; malicious pressure by his supervisors and a desire on their part to cause him prejudice; his difficulties on transfer from the Institute to the EPO; the thwarting of his legitimate career prospects; and ill feeling on the part of the staff caused by his not taking part in staff union activities in 1978. He asks the Tribunal to order the EPO to ensure that there is no appraisal which is tendentious and harmful to his reputation and that from now on he is treated fairly; to give him every means of restoring his health and particularly of curing his insomnia; to award him 600,000 guilders in compensation for the prejudice suffered by him and his family; to give him promotion in compensation for damage to his career prospects; and to pay his costs.

C. The EPO contends that the complaint is devoid of merit. As the Appeals Committee held - and the Committee had ample material before it - the complainant's allegations of unfair treatment are vague and unsupported, despite many attempts to get him to be more specific. All he has had to cope with are the normal day-to-day difficulties of working life, and it is up to him to overcome them. The medical certificates he supplies show that the EPO is not to blame for the state of his health. As for his other claims, some go back many years and are time-barred; some were in any case disposed of in his internal appeal when he was at the Institute. As to his staff report for 1979, he has partial satisfaction in that the mark he was given for productivity in 1978 has been included. His working

conditions are mentioned, and there is no reason to think that they were overlooked in determining his mark for 1979. His productivity is actually stated to be above average. The general mark is fully justifiable and the report causes him no prejudice. Lastly, there is nothing to suggest that the EPO has ever prevented him from getting the medical treatment he wants.

D. The complainant develops his case in his rejoinder. While acknowledging the lack of firm proof of his allegations of unfair treatment, he cites facts, dating back to his time with the Institute, which in his view bear out his accusations. What he has had to face is not just the ordinary difficulties of working life but a malicious pattern of obstruction by supervisors and other staff. He describes his difficulties in restoring his health to normal. He again invites the Tribunal to allow his claims for relief.

CONSIDERATIONS:

1. The main dispute between the complainant and his employers, the International Patent Institute and its successor the European Patent Organisation, goes back some years. In 1976 he submitted an appeal to the Appeals Committee of the Institute seeking review of his annual performance report - his "staff report" - for 1974 and an end to the unfair treatment of which he believed he was the victim. The Board held that his claims were unfounded and the Director-General concurred. At the time he did not challenge the decision.

2. Dispute arose again over his staff report for 1979. He lodged an internal appeal with the President of the Office and then three appeals with the Appeals Committee. He abandoned the first a month and a half later; in the second he protested against "the failure to complete the procedure for making his staff report for 1979 and to take account of 1978"; in his third appeal he sought an end to what he described as ten years' direct and indirect pressure and its adverse consequences, and he claimed compensation for injury. The Committee recommended dismissing the second appeal on the grounds that there was no prior decision and the third as devoid of merit. On 9 November 1981 the President endorsed the Committee's recommendations without qualification.

3. The complaint cannot be construed as contending that any particular measure was unlawful. The facts the complainant relies on are intended to show that for years he has been the victim of hostility and it has affected his career, his day-to-day life at work and even the state of his health.

4. It is with such general matters that the Tribunal will deal, and it will not determine whether some of the decisions taken have become final or whether the internal appeal procedure was correctly followed. The sole point at issue is whether the EPO's treatment of the complainant over the last ten years or so was inspired by personal prejudice.

The Tribunal has before it all the complainant's staff reports from 1972 to 1979 and a report on his training at the French National Institute for Industrial Property (INPI) in 1977. It has also the staff report for 1980-81, which the complainant did not produce until he filed his rejoinder. There is not a shred of proof of his allegations of arbitrary and hostile treatment. In fact the appraisals of his performance are on the whole favourable, and no basis for the complaint is to be found in these reports.

5. The complainant also refers to his transfer to Munich. The few difficulties he describes are of a kind that is inevitable whenever there is a change of residence and duty station. He has overcome them, and there is no injury whatever he may complain of.

6. He asks the President of the Office to provide him with every means of restoring his health and particularly of curing his chronic insomnia and its consequences, which he attributes to the unfair treatment he has received.

There is not a suggestion that the President has prevented him from obtaining medical attention. Nor is there any evidence whatever to bear out his contention that the EPO's treatment of him is to blame for the poor state of his health.

7. The Tribunal concludes that the complainant has failed to establish any injury due to personal prejudice on the EPO's part. It accordingly rejects his application for damages for alleged moral and material injury.

His application for promotion to grade A4 is clearly devoid of merit.

In the circumstances it will award him no costs.

DECISION:

For the above reasons,

The complaint is 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 30 March 1983.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner