

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

FIFTIETH ORDINARY SESSION

In re MICHL

(Preliminary question)

Judgment No. 558

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Miss Gertrud Michl on 3 August 1982 and brought into conformity with the Rules of Court by 1 November, the EPO's reply of 19 January 1983, the complainant's letter of 28 February and the EPO's observations thereon of 9 March 1983;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Articles 11, paragraph 1, and 19 of the Rules of Court, and Article 32 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence;

CONSIDERATIONS:

1. The complainant joined the staff of the EPO in 1977. On 19 February 1981 she was assigned with effect from 1 January to a new post which was graded B3.

On 3 May 1982 the President of the Office refused to upgrade the post to B4. He based his decision on a report which he had asked for from the Organisation Directorate and of which he did not indicate the contents.

The complainant has filed with the Tribunal a complaint seeking the quashing of the decision, the grading of her duties at B4 with effect from 17 September 1979 and the payment of interest, token damages and costs.

The EPO invites the Tribunal to dismiss the complaint.

2. On 28 February 1983, in the course of the written proceedings, the complainant applied to the President of the Tribunal for an order for the production of the report on which the impugned decision was based.

The EPO objects on the grounds that this is an internal document not included in the items which Article 32 of the Service Regulations requires to be put in a staff member's personal file.

3. Article 19 of the Rules of Court of the Tribunal empowers the President to make provisional orders. He may do so, however, only in the interval between sessions. Thus when in session the Tribunal itself will order measures of investigation, and the President has communicated the complainant's application to the Tribunal, which is holding its 50th Session.

4. The report of the Organisation Directorate relates to the post which the complainant held and not directly to her personal situation and is indeed not something which under Article 32 of the Service Regulations has to be included in the complainant's personal file. But this does not mean that the Tribunal may not order the disclosure of the item in the present proceedings.

There are two reasons why the complainant's application should succeed. First, it concerns a report which deals with the point in dispute and which has a bearing on the Tribunal's decision. Secondly, the impugned decision does not give the reasons set out in the report, even though it does not describe the report as confidential. The Tribunal accordingly orders the EPO to file with the Registry the item on which the President of the Office based his decision.

DECISION:

For the above reasons,

1. The EPO shall file with the Registry of the Tribunal, within ten days from the date of notification to it of this order, the report of the Organisation Directorate cited in the decision which the President took on 3 May 1982.
2. The Registry shall communicate the text to the complainant and set the time limit for filing her rejoinder.

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