

## FIFTY-EIGHTH ORDINARY SESSION

In re MICHAEL

Judgment No. 736

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Aubrey Eric Michael on 25 October 1984 and corrected on 12 March 1985, the EPO's reply of 3 June, corrected on 14 June, the complainant's rejoinder of 6 December, corrected on 27 December 1985, and the EPO's surrejoinder of 20 January 1986;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Articles 13 and 62 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who is British and was born in 1933 in Lahore, was appointed to the EPO's office in the Netherlands as from 1 October 1982 as a project leader at grade A3. He was put on a year's probation in keeping with Article 13(1) of the EPO Service Regulations. Under Article 13(2) a report was made on 28 February 1983 on his performance in his first six months. The report said that the quantity and quality of his work were low, criticised his relations with other staff, and recommended telling him he was "not progressing satisfactorily". On 13 April 1983 he submitted his comments and said he would try to improve. But a second report, dated 6 September 1983 recorded no improvement. He was invited to comment by 15 September. On 14 September he replied that he disagreed with the report and wished to appeal. On 21 September the President of the Office decided to dismiss him as from 1 October, and he was so informed by a registered letter of 27 September, which was sent to his home address -- he was not at work -- but which the post returned undelivered on 25 October. On 30 September he had written asking for a transfer, but this the EPO refused on 21 November. On 28 December he appealed against the decision to dismiss him. His appeal covered several other matters. In February 1984 the President referred the case to the Appeals Committee. In its report of 22 June 1984 the Committee recommended rejecting the appeal and by a letter of 28 July, the impugned decision, the President informed the complainant that he did so.

B. The complainant contends that his dismissal was unlawful. The guidelines on probation reports were not respected. The criticisms in the second probation report were irrelevant because he was assessed not as a project leader but as a programmer. He was never given a proper post description. The criticisms were, besides, tendentious. If he failed to get on with other staff members it was not his fault but theirs. He fell victim to racial discrimination, harassment and petty feuding and jealousy between other staff. It was unfair to assess him in the second part of the probation period since he was often on sick leave. Largely because of suffering from intimidation, between 1 March and 30 September 1983 he took 87 days' and 13 half-days' certified sick leave. He also took 23 days' annual leave. Thus he was at work for fewer than 30 days. It was wrong to dismiss him while he was actually on sick leave. The proceedings in the Appeals Committee were rigged in the Organisation's favour and were not impartial. His terminal entitlements were miscalculated and his health and his ability to fend for his family have been permanently impaired. He claims the equivalent of five years' salary as damages for wrongful dismissal. He seeks compensation for injury to his health and career prospects and reimbursement of "outstanding educational and settlement claims". He estimates his terminal entitlements at 60,645 guilders. He claims damages for moral injury due to racial discrimination, and costs.

C. The EPO replies that the complaint is devoid of merit. The reports accurately recorded the complainant's many shortcomings: he lacked the analytical powers and technical knowledge required for his duties. His first task should have taken only a few weeks, but he wasted time on other matters and when he got round to it proved unfit. He was aggressive towards other staff and incapable of team work. He could not brook authority. He produced no worthwhile work at all. His comments on the assessment gave no satisfactory explanation. There were no grounds for extending the probation period; indeed he could have been dismissed on the strength of his first report. In the second part of the period he was constantly off work. Certificates he produced did not explain the nature of his invalidity. For some periods he failed to produce evidence of illness, in breach of Article 62 of the Service Regulations. The purpose of probation is to find out whether the official had the right qualities and attitude. On

both counts the complainant failed and his dismissal was doubly warranted. His other claims, though put forward in his internal appeal, were never made more specific and, besides, were not addressed to the Administration before being included in the appeal. He therefore failed to exhaust the internal means of redress and the claims are irreceivable. They are in any event unsound: in particular he offers no evidence of invalidity or of the link between it and his employment in the EPO. Lastly, the EPO submits that there was no flaw in the Appeals Committee proceedings.

D. In his rejoinder the complainant enlarges on his earlier submissions and in particular on his allegations of abuse of authority by the reporting officer, racial discrimination, ulterior motives in the Administration, "farcical" reporting procedures, breaches of human rights, denial of due process in the internal appeal proceedings, and irreparable injury to his health and career. He presses his claims.

E. In its surrejoinder the EPO observes that most of the submissions in the rejoinder are irrelevant or repeat unsubstantiated charges in the original brief. The remainder in no way detract from the validity of the arguments in its reply, which it develops.

#### CONSIDERATIONS:

1. The complainant claims "compensation for damages and related financial implications concerning (a) wrongful dismissal while on certified sick leave; (b) invalidity claims; (c) practice of racism; (d) legal expenses of the relevant amounts; (e) reimbursement of outstanding educational and settlement claims; and (f) career damages."
2. The Organisation objects to items (b), (c) and (e) as irreceivable on the ground that the complainant has not obtained any decision upon them as required by Article VII of the Tribunal's Statute. The complainant in his rejoinder does not challenge the objection and no relevant decisions appear in the dossier. The Tribunal holds the claims to be irreceivable.
3. The substantial claim is for wrongful dismissal. The complainant was dismissed under Article 13(2) of the Service Regulations as a consequence of two adverse probation reports. If the reports are correct and fair, they afford adequate grounds for the termination of his employment, which is a matter for the President's discretion. The complainant's case is, however, that he was a victim of racial discrimination, harassment, petty feuding and jealousy. He alleges that the probation reports were rigged by the reporting officer "with everything to gain by my dismissal". He describes "a standard practice ... against British staff in particular" (he was a British national) "who arrive and pose a threat". The alleged practice consisted of "(a) Apparent 'induction' into new duties by 'planted' colleague; (b) Through use of an existing sycophant ensure a negative probation report is made on trumped up charges/rumours, gossip etc. e.g. language difficulties, lack of motivation, assumed technical grounds etc.; (c) Active verballing, threats etc.; (d) Eliminate and or weaken competition from potential 'imagined' rivals".
4. Where such allegations are made, the President -- and likewise the Tribunal -- must attach great importance to the findings of the internal Appeals Committee. Before the Committee witnesses can be heard and questioned, and their evidence recorded; the members of the Committee will have the background knowledge necessary to evaluate the evidence properly. In the present case 17 April 1984 was fixed as the date of the hearing by the Committee and agreed with the complainant's lawyer, Mr. van Leeuwen. Mr. van Leeuwen, who had been told the composition of the Committee, asked for further details with a view to possible challenges and named 21 witnesses whom he wished to be called. On 3 April he was told that the Committee would decide on the preliminary question of challenges and he was asked for details of the witnesses whom he wished to call. On 13 April Mr. van Leeuwen, indicating that the complainant had no confidence in the internal proceedings, waived his right to be heard at the session on 17 April. On the morning of that day the complainant personally confirmed that position in a telephone conversation with the Chairman of the Committee. The Committee heard oral evidence from the reporting officer and from the project leader who had been given the task of inducting the complainant. The Committee unanimously recommended the rejection of the appeal.
5. The above facts are recorded in the Appeal Committee's report and are not specifically challenged. Nevertheless, in his submission to the Tribunal the complainant submits "that the Appeals Committee under the direction and supervision of their Chairman have deliberately chosen to hear in a one-sided and prejudiced way the EPO's side". He makes numerous allegations for which there is no foundation in the dossier and complains that the composition of the Committee was rigged.

6. The Tribunal dismisses as unfounded all allegations of prejudice and impropriety and finds no grounds for interfering with the President's discretion as expressed in his decision to dismiss the complainant. The claims for legal expenses and career damages are also dismissed.

DECISION:

For the above reasons,

All the claims are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner