

SEVENTEENTH ORDINARY SESSION

***In re* WALTHER**

Judgment No. 106

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United International Bureaux for the Protection of Intellectual Property (B.I.R.P.I.) drawn up by Mr. Roland Walther on 23 April 1965, the reply of the Organisation of 7 July 1965, the rejoinder of the complainant of 15 December 1965, and the further observations of the Organisation of 24 February 1966;

Considering Article II of the Statute of the Tribunal and Articles 2.1 and 2.1(T), 3.1, 12.5 and 12.5.1 of the Staff Regulations of B.I.R.P.I.;

Having heard in oral proceedings on 3 May 1967 Mr. Jean-Flavien Lalive, counsel for the complainant, and Professor Philippe Cahier, agent of the Organisation;

Considering that the material facts of the case are as follows:

A. Mr. Walther entered the service of B.I.R.P.I. on 1 March 1943 and became successively Deputy Secretary, First-class Secretary, Deputy Chief of the Trade Marks Division, and Deputy Chief of the Industrial Property Division, holding the latter post from 1953 until 1 June 1963. By decision of 8 February 1955 the Swiss Federal Council, which is the supervisory authority of B.I.R.P.I., preferred to defer the Director's proposal to promote Mr. Walther to the grade of Counsellor having regard to the high proportion of Swiss officials in that grade, but approved the granting of a post allowance to Mr. Walther on the grounds that he was performing the duties of a Counsellor.

B. By order of service dated 10 May 1963, Mr. Walther was transferred as from 1 June 1963 from the post of Deputy Chief of the Industrial Property Division, described in a "post description" of 3 November 1961, to the post of Chief of the Periodicals and Publications Service, which was set up experimentally, the duties of which were laid down in general terms by the aforesaid order of service and specified in detail in a post description. After some hesitation complainant accepted this transfer.

C. Mr Walther's reclassification in the new grading system provided for in the Staff Regulations of B.I.R.P.I. of 1 July 1963 was referred for consideration, as in the case of the other staff members, to the Integration Committee provided for under Article 2.1(T) of the Staff Regulations, which was furnished with a detailed description of the duties of the Chief of the Periodicals and Publications Service and with a memorandum summarising some of the former duties performed by Mr, Walther and inviting the Integration Committee to state the grade it considered appropriate to these former duties if it was higher than that corresponding to the post of Chief of the Periodicals and Publications Service.

D. In its first report of 20 November 1963, the Integration Committee, basing itself on post descriptions drawn up on 1 October 1963, but considering that its proposals were valid for 1 April 1963, had classified Mr. Walther's post as P.3, step 2. Following objections to the Integration Committee's recommendations on the part of the staff, the Committee, at the request of the Director, met a delegation from the Staff Association and agreed that those officials who felt themselves injured by the recommendations might submit a written complaint to the Committee giving reasons why they considered that the classification of their post should be reconsidered. Complainant availed himself of this opportunity and submitted a memorandum to the Integration Committee, to which he appended the post description of 3 November 1961 on which he based his arguments for a higher classification than had been assigned to him on account of his duties as Chief of the Periodicals and Publications Service, which he contested in any case.

E. In a second report of 22 April 1964, the Integration Committee, stating that it had taken account of all the arguments advanced by the officials concerned whether in writing or orally, and that only in the cases in which

facts or responsibilities that had not been taken into consideration in the course of the earlier examination and that were of sufficient importance to justify a change in classification would detailed explanations be given, came to the conclusion that in the absence of any new evidence the case of Mr. Walther, like that of three other professional category officials, did not call for any change in the classification recommended in its first report.

F. By decision of 15 May 1964 the Director accepted the Integration Committee's recommendation, and after asking the Director to reconsider his decision Mr. Walther submitted his case to the Appeals Board, on whose recommendation the Director decided on 25 January 1965 to maintain complainant's classification as Grade P.3/2. In his complaint to the Tribunal Mr. Walther submits that the aforesaid decision should be quashed and that he should be reclassified in Grade P.5 or, subsidiarily, in Grade P.4, and awarded costs. The Organisation submits that the complaint should be dismissed.

CONSIDERATIONS:

1. Under Article 2.1 of the Staff Regulations of B.I.R.P.I., which in virtue of Article 12.5.1 of the Regulations came into force on 1 July 1963, "(a) The Director shall determine the scope of the duties and responsibilities of each grade in the light of the standards adopted by the other international governmental organisations with headquarters in Geneva, and in agreement with a committee consisting of three persons experienced in the staff matters of international governmental organisations. These persons shall be members neither of the Inter-Union Co-ordination Committee nor of the staff of B.I.R.P.I. The staff shall be informed of the standards used in determining the level of duties and responsibilities and the qualifications required. (b) The Director shall determine the position of each post within the following classification: Deputy Director: unclassified; Special category: D.1; Professional category: P.5, P.4, P.3, P.2 and P.1; General Service category: G.7, G.6, G.5, G.4, G.3, G.2 and G.1". (Unofficial translation from the original French).

Article 2.1(T) provided further that in integrating the staff of B.I.R.P.I. into the new system introduced by the Regulations, the Director should hear the opinion of a special committee appointed for this purpose in regard to the assignment of a suitable grade to each post or the basis of the post description, and in regard to the determination of the appropriate step within each grade for the proposed incumbent of each post.

By decision of the Director dated 10 May 1963 and effective on 1 June 1963, Mr. Walther, who since the end of 1953 had held the post of Deputy Chief of the Industrial Property Division, was put in charge of a new service, the Periodicals and Publications Service. For the purpose of applying the new Regulations he was to be integrated in accordance with the procedure laid down in Article 2.1(T) referred to above and in the light of the principles laid down by Article 2.1.

2. Mr. Walther contends, on the one hand, that the ad hoc committee was not in possession of all the particulars necessary for an informed consideration of his case, and that in consequence the integration procedure was not correctly followed; secondly, that the duties assigned to him since 1953 had been changed on 10 May 1963 for the sole purpose of permitting his post to be reclassified less favourably than would have been the case if he had kept his former post, this leading in practice to his down-grading; and lastly, that his classification as P.3/2 was in any case inadequate.

3. On the first point:

It appears to be unquestionable, particularly in the light of the observations presented on behalf of the Organisation, which were not seriously contested in complainant's rejoinder, that in the course of its work, and in particular when drawing up its second report, the Integration Committee, which did moreover give complainant a hearing, was fully informed of the former duties performed by complainant and that it was specifically requested by the Director to consider whether these duties justified a higher classification than had been assigned to the post held by complainant since 1 June 1963. It follows that the facts do not bear out complainant's contention.

4. On the second point:

It is established by the documents in the dossier that the change in Mr. Walther's duties was the result of the reorganisation of some of the Organisation's services, and specifically of the establishment of a Periodicals and Publications Service; and that Mr. Walther freely accepted the post of chief of this new service, the real importance of which does not depend on whether it was of a permanent or temporary character. Hence complainant's argument

that the change in his situation from 1 June 1963 was not justified by the interests of the service and constituted down-grading is not well founded.

5. On the third point:

(a) Under Article 2.1 and 2.1(T) of the Regulations, in determining the grade to be assigned to each post on the basis of the post description the Director had the twofold obligation to hear the opinion of the ad hoc committee and to base himself on the standards used by the other international organisations.

On the one hand, the ad hoc committee gave its opinion in this case in accordance with the regulations, as already stated above.

On the other hand, the obligation to make the determinations "in the light of the standards adopted by the other organisations" was not intended to and cannot have the effect of depriving the Director of the right to adapt these standards to the specific nature and special characteristics of B.I.R.P.I., and in particular of obliging him to assimilate staff members of B.I.R.P.I. automatically to the officials holding the same titles in the other organisations, which as a general rule have very much larger staffs. Whatever the titles used he must compare the duties actually performed in B.I.R.P.I. with those in the other organisations and must draw the necessary conclusions from this comparison.

It does not appear from the evidence in the dossier as a whole that the Director, who accepted the opinion of the ad hoc committee, incorrectly interpreted the meaning and scope of his obligations in the present case.

(b) Having conformed to his twofold obligation as set forth above, the Director is free to exercise his discretion in carrying out the responsibilities assigned to him. It follows that the Administrative Tribunal must confine itself to determining whether the decisions taken are tainted by errors in law or based on materially incorrect facts, or whether essential facts have not been taken into consideration, or again whether conclusions which are manifestly incorrect have been drawn from the evidence in the dossier of the person concerned.

Neither the written evidence, nor the oral proceedings have shown that the decision impugned is open to criticism in any of the aforesaid respects in which the Tribunal can exercise its limited power of review.

Whereas, in fact, Mr. Walther contends that the Director exercised his discretion in a manner which was materially incorrect or clearly erroneous in ignoring the fact that as far back as 1955 the Swiss Federal Council had recognised that the duties assigned to complainant at that time were those of a Counsellor, it is clear that under Articles 2.1 and 2.1(T) the Director of B.I.R.P.I. was entitled to undertake a general reclassification of staff members within the prescribed grades at the time the new system was introduced, and that for the purpose of this reclassification the duties formerly performed by the staff members concerned had to be taken into account, but only as one factor among others. Moreover, the classification of complainant's post as P.3/2 did not entail any reduction in his former salary as increased by the post allowance awarded by reason of his duties as Counsellor.

6. It follows from the aforesaid considerations that the Tribunal's review of Mr. Walther's integration has not brought to light any irregularity. While the Director in the exercise of his discretion might have arrived at a more favourable decision in respect of complainant, whose professional competence has never been questioned, it is not for the Tribunal, having exercised its power of review, to substitute its own judgment for that of the responsible authority.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 9 May 1967 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed)

M. Letourneur
André Grisel
Devlin
Jacques Lemoine

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