EIGHTY-SECOND SESSION

In re Vollering (No. 7)

Judgment 1566

The Administrative Tribunal,

Considering the seventh complaint filed by Mr. Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 18 September 1995, the EPO's reply of 15 December, the complainant's rejoinder of 27 March 1996 and the Organisation's surrejoinder of 25 April 1996;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a Dutchman, is employed by the European Patent Office, the EPO's secretariat, as a patent examiner in its Search Directorate (DG1) at The Hague.

After taking part in a one-day strike of staff in October 1992 he had his salary and allowances docked by one-thirtieth in February 1993. On 14 May 1993 he appealed against that deduction, as indeed he had against a similar one that led to a complaint the Tribunal dismissed on 31 January 1994 in Judgment 1333 (*in re* Franks No. 2 and Vollering No. 2).

In a report dated 13 March 1995 the Appeals Committee recommended rejecting his appeal of 14 May 1993. By a letter of 20 April 1995 the Director of Staff Policy informed him of the President's decision to endorse the Committee's recommendation. But he took issue with that decision in a letter of 9 May 1995 and asked the President in the event of rejection to treat it as another appeal.

By a letter of 20 June 1995, which he impugns, the Director of Staff Policy informed him that the Administration would not "answer on matters which have been sufficiently explained to you during several legal proceedings".

B. The complainant refers the Tribunal to several documents he appends to his brief. They include pleadings he and other staff have filed in support of internal appeals as well as correspondence, a petition to the European Parliament and two articles by a lawyer. He takes the Appeals Committee to task for relying on Judgments 1041 (in re Lammineur) and 1333, which he sees as unsound.

He asks the Tribunal:

"1. to postpone the decision of this complaint till after a decision has been taken by the Governing Body concerning the request to bring Judgement 1333 to the ICJ for an Advisory Opinion and at least till after the November 1995 Session in which this Tribunal will decide on an other case concerning this decision of the Governing Body.

2. to declare itself not neutral to give a judgement in this complaint because of the Tribunal's involvement (and especially its members) in the Judgements 1041, 1296, 1297 and 1333.

3. to quash the decision of the EPO President, dated 20 April 1995, respectively 20 June 1995;

4. to declare that EPO allowances constitute a form of social security in accordance with higher principles of law;

5. to order repayment of all sums of money deducted from the complainant's allowances because of strike action with an added interest of 10% p.a.;

6. to declare that the methods of calculation of the deductions from the EPO allowances introduced an adverse discrimination with respect to the complainant and his family;

7. to order the award of moral damages to the complainant of 100 times the difference in payment because of the strike action, per child involved because of the discrimination introduced by these different methods of calculation;

8. to condemn the EPO for the failure of the IAC to show proper impartiality in the composition of the members of the IAC [of whom he names one] and to compensate the complainant with NLG [guilders] 5.000,00 for the moral damage suffered by this lack of impartiality of a part of the composition of the IAC;

9. to order the award of moral damages to the complainant of NLG 14.000,00 because of the illegal disciplinary sanction suffered by the complainant at the moment his social allowances were deducted following strike action;

10. to order the award of costs of NLG 40.000,00 to the complainant."

C. In its reply the EPO contends that the complaint is clearly irreceivable. The letter it impugns was not sent by or on behalf of the President and is therefore not a challengeable decision.

The Organisation's subsidiary plea is that the complaint is devoid of merit, there being no breach of the material rules on appeals and on pay.

D. In his rejoinder the complainant submits that the Tribunal's judgments have put staff and their families in a "legal and social vacuum". He wants to replace his claim (1) with a request to postpone the Tribunal's ruling "till at least after a decision has been taken by the Administrative Council of the EPO concerning the request to bring Judgment 1333 to the International Court of Justice for an Advisory Opinion" and to add a new claim (11) for payment of 5,000 guilders in moral damages on account of the letter of 20 June 1995.

E. In its surrejoinder the Organisation observes that the complainant puts forward no new material argument in his rejoinder.

CONSIDERATIONS

1. The complainant took part in a one-day strike of EPO staff at The Hague in October 1992. The Organisation deducted one-thirtieth of his total pay, i.e. salary plus allowances, for the month of February 1993. He lodged an internal appeal on 14 May of that year against the deduction. The substantive issue of that appeal was the same as the one that the Tribunal had ruled on in Judgments 1041 (*in re* Lammineur) and 1333 (*in re* Franks No. 2 and Vollering No. 2), in which it held that the Organisa-tion had acted properly in making deductions from the pay of EPO staff.

2. In its report of 13 March 1995 the Appeals Committee recommended rejecting the appeal on the grounds that the issue was *res judicata*, though it expressed disagreement with the Tribunal's ruling. The decision by the President of the European Patent Office to reject the appeal was communicated to the complainant by a letter dated 20 April 1995 from the Director of Staff Policy.

3. The complainant sent the President a letter on 9 May 1995 challenging that decision and the Appeals Committee's reasoning, questioning its impartiality, stating that he had written to the Governing Body of the International Labour Office to seek an advisory opinion on the matter from the International Court of Justice, and asking for support from the President for that request. He invited the President to state that the Appeals Committee had been wrong and had "failed in its independent functioning" by giving "a biased opinion"; to acknowledge that his own decision was "vitiated by an error of law" and change it "in an appropriate manner" and to pay him 100 guilders in moral damages. If the President declined, he was to regard the letter as lodging an internal appeal under Articles 106 to 108 of the Service Regulations.

4. In a letter of 20 June 1995 the Director of Staff Policy replied that, since the Service Regulations did not allow internal appeal against the outcome of internal appeal proceedings, the internal appeal the complainant had made in his letter had "not been registered". That is the decision he is now impugning.

5. The Organisation points out that the letter of 20 June 1995 was sent neither by the President nor on his behalf. The complainant demurs, and he is right to do so. It was to the President by name that he had written on 9 May 1995; that letter was what he got in reply and he was entitled to assume that it had been sent with the President's authority. Indeed the position in law would be the same even if the reply had never been written and if he were basing his complaint on implied rejection of the claims in his letter of 9 May.

6. Assuming -- as the complainant does -- that the decision impugned is the one in the letter of 20 June 1995, his complaint is irreceivable. In his letter of 9 May 1995 he lodged an appeal against the decision taken on an earlier

internal appeal on the grounds that the recommendation of the Appeals Committee on which that decision rested was wrong. He contends that it was in line with Articles 106 to 108 of the Service Regulations for him to put to the President a claim to a new decision. He is mistaken. Internal appeal proceedings culminate in a final decision by the President, and appeal against that decision will lie to the Tribunal in accordance with Article 109(3) of the Service Regulations and the Tribunal's own Statute. If the complainant was dissatisfied with the President's final decision his remedy was to appeal to the Tribunal: the Service Regulations do not allow internal appeal against the outcome of an internal appeal.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 30 January 1997.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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