

## EIGHTY-SECOND SESSION

### *In re Cook* (No. 4)

#### Judgment 1612

The Administrative Tribunal,

Considering the fourth complaint filed by Mr. Steven Derek Cook against the European Patent Organisation (EPO) on 25 November 1995, the EPO's reply of 16 February 1996, the complainant's rejoinder of 12 May and the Organisation's surrejoinder of 12 June 1996;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, who is British, works for the European Patent Office, the secretariat of the EPO, at its Directorate-General 1 (DG1) at The Hague. Facts relevant to this case appear in Judgment 1296 of 14 July 1993, on his first complaint, which was about the child allowance payable in the Netherlands, and Judgment 1333 (*in re* Franks No. 2 and Vollerling No. 2) of 31 January 1994, a case in which he was an intervener and which was about deductions from family allowance made on account of participation in a strike of EPO staff at The Hague.

From a pay slip he got on 26 February 1994 for the month of February 1994 the complainant learned that the Organisation had made two deductions from the child allowance payable for his handicapped dependent daughter. One deduction, amounting to one-thirtieth of the allowance, was made because he had gone on strike on 8 December 1993. The other, of 101 guilders, was made on account of the child allowance known as the *kinderbijslag* that his wife was receiving from the Dutch State.

By a letter of 26 May 1994 he appealed against the deductions to the President of the Office. The President referred the matter to the Appeals Committee. In its report of 4 July 1995 the Committee recommended making good the deduction for going on strike but not the one attributable to payment of the Dutch child allowance.

By a letter of 11 August 1995, which he impugns, the Director of Staff Policy told him that the President was rejecting his appeal.

B. The complainant submits that the Tribunal's rulings on the basis for payment of child allowance are inconsistent. If such allowance is a social benefit, payment of it cannot depend on services rendered. The EPO's practice too is inconsistent and discriminatory. The Organisation has infringed his human rights.

He asks the Tribunal:

"(a) to quash the decision of the President of the EPO dated 11/8/95 to reject my internal appeal ...;

(b) to order full reimbursement of strike deductions made from the handicapped dependent child allowance I receive for my eldest daughter;

(c) to declare the judgments 1041 and 1333 vitiated by the fact that the Tribunal failed to take into account Internationally agreed principles on social security and the right of the family to social protection;

(d) to order reimbursement of all past '*kinderbijslag*' deductions made from the EPO dependent child allowance;

(e) to order the EPO to enter into discussions with the Netherlands government to establish a bi-lateral legal framework, consistent with national and European Union law, for the application to EPO employees in the Netherlands of the principle of the non-cumulation of social benefits paid for the same social purpose;

(f) to order the EPO to refrain from making '*kinderbijslag*' deductions until a proper legal basis, consistent with National and European Union law, has been established with the Netherlands government;

(g) to declare that the withholding by the EPO of the handicapped child allowance from an employee participating in strike action is a form of

discrimination and punishment justified in neither the law of the EPO Service Regulations nor in internationally agreed standards on social security and human rights;

(h) to condemn the EPO for its abuse of its public authority when making strike deductions from family allowances;

(i) to order an independent enquiry into the functioning of the Tribunal itself and whether it meets the necessary standards of impartiality and justice to be expected of an international Tribunal of last instance (last instance for the complainant);

(j) to order payment of at least [50,000 guilders] to me as moral damages for the harm and grief caused by the challenged decision of 11/8/95.

(k) to award costs to me currently estimated at [10,000 guilders]".

C. In its reply the EPO contends that the complaint is in part irreceivable and, subsidiarily, devoid of merit.

Since the Tribunal has already dismissed claims from him that turn on payment of the Dutch child allowance, his claims (d) to (f) are *res judicata*. In any event he fails to offer any new pleas in support.

On the merits the EPO points out that Judgment 1333 upheld the lawfulness of deductions made under Articles 64(2) and 65(1)(b) of the Service Regulations from the dependant's allowance on account of strike action. So the complainant's allegations of discrimination and victimisation are unfounded.

D. In his rejoinder the complainant presses his claims and enlarges on his pleas. He says it is odd to make deductions from a dependant's allowance because the official has gone on strike, yet still treat it as a "purely social" benefit like those paid under Dutch social security.

E. In its surrejoinder the EPO submits that the rejoinder raises no new material issue.

## CONSIDERATIONS

1. In his introductory remarks in his original brief the complainant questions the Tribunal's competence to hear this case. By filing his complaint he has invoked the Tribunal's jurisdiction. Though free to withdraw it at any time before the Tribunal took it up he has not done so. The Tribunal sees no reason why it is not competent to rule on his case. Nor is it appropriate for him to ask the Tribunal -- as he does in the same introductory remarks -- to tell him to which court he should appeal or to proceed no further pending "full judicial review" of Judgments 1041 (*in re Lammineur*), 1296, 1297 (*in re Theuns No. 3*) and 1333.

2. On 8 December 1993 he took part in a one-day strike of EPO staff at The Hague. The pay slip he got on 26 February 1994 for that month showed that for his three children the EPO had made deductions of two kinds against the sums paid in dependants' allowances. One deduction was made on account of the payment to his wife of the *kinderbijslag*, the child allowance due from the Dutch State; the other was made, on account of his going on strike, from the amounts of the dependants' allowances payable by the EPO for his three children.

3. On 26 May 1994 he lodged three internal appeals against the deductions for each of his three children. He sought reimbursement of the sums deducted and a recommendation that the Organisation should seek an advisory opinion from the International Court of Justice on the Tribunal's judgments on the issue.

4. In its report of 4 July 1995 the Appeals Committee recommended allowing the complainant's claim to reimbursement of the deductions made from the dependants' allowances on account of his participation in the strike, or else negotiating a solution. But it recommended rejecting his claim to reimbursement of the deduction made on account of payment of the *kinderbijslag* on the grounds that the issue was *res judicata*, Judgment 1296 having ruled on it in the context of his first complaint. The Committee took the view that a staff member had no right to have a case referred to the International Court of Justice and it therefore made no recommendation on that score.

5. In a letter of 11 August 1995 to the complainant the President rejected on the merits his claim to repayment of the deductions from his dependants' allowances and rejected as *res judicata* his claim to repayment of the deduction made on account of the *kinderbijslag*. That is the decision he is impugning in this complaint. He lodged another two, his fifth and sixth, claiming full allowances for each of his other two children, but he has since withdrawn them. The present complaint concerns only the allowance for his handicapped daughter.

6. Having taken part in a strike of EPO staff on 11 December 1991, the complainant intervened in the second complaint which Mr. Nigel Franks and Mr. Johannes Vollering had lodged against the Organisation, and which challenged deductions made from family allowances on account of participation in that strike. Judgment 1333 dismissed both complaint and intervention: confirming Judgment 1041, it ruled that the Organisation had acted correctly in making the deductions from remuneration, including the allowances. Judgments 1041 and 1333 were based on an interpretation of Article 64(2) of the EPO Service Regulations, which says that "Remuneration shall comprise basic salary and, where appropriate, any allowances". The complainant is bound by the Tribunal's ruling on the issue. A dependant's allowance may be due whether the child is handicapped or not; so for the purpose of interpreting 64(2) no distinction is to be drawn between the dependant's allowance and the handicapped dependant's allowance.

7. As for the deduction made from the dependant's allowance on account of the payment of the *kinderbijslag* by the Dutch State, it is authorised under Article 67(2) of the Service Regulations:

"A permanent employee in receipt of family allowances shall declare allowances of like nature paid to him, to his spouse or to his dependants from other sources; these allowances shall be deducted from those paid under these Service Regulations".

The complainant challenged the lawfulness of such deduction in his first complaint. Judgment 1296 dismissed that complaint on the grounds that the EPO dependant's allowance was of like nature and that the Organisation's practice was lawful. The claim to repayment of deductions made on account of the *kinderbijslag* is therefore also irreceivable under the *res judicata* rule.

8. The Organisation has applied for joinder of this case with Mr. Vollering's seventh, eighth and ninth complaints. The Tribunal disallows the application. Mr. Vollering's seventh complaint is dismissed as irreceivable in Judgment 1566, also delivered this day, which does not go into the merits. His eighth is about a different aspect of the *kinderbijslag*, namely the receipt of a lump sum in respect of back payments. And his ninth has been adjourned at his own request.

9. Insofar as the complainant's claims as set out in B above are not already *res judicata* they did not form part of any internal appeal and are therefore irreceivable under Article VII(1) of the Tribunal's Statute because he has failed to exhaust his internal remedies. The claim to costs, being subsidiary, must also fail.

## 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