

FORTY-SEVENTH ORDINARY SESSION

***In re* BOW**

Judgment No. 472

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Leonard Louis Bow on 19 January 1981 and brought into conformity with the Rules of Court on 29 January, the EPO's reply of 6 April, the complainant's rejoinder of 4 June, the EPO's surrejoinder of 10 July and the complainant's communication of 21 July 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 71, 107, 108, 112(2)(d) and 120 of the Service Regulations for Permanent Employees of the European Patent Office, the Secretariat of the EPO;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, who is a British subject, is a permanent employee of the European Patent Office and is stationed in Munich. Until the end of the academic year 1978-79 his son Steven, who was born in 1962, was a full-time student of hotel management and catering at a college in England, and the complainant received an education allowance on his account under Article 71(1) of the Service Regulations.⁽¹⁾ His parents then decided that he should carry on full-time studies in the hotel and catering industry in or near Munich. Since he knew no German and a good active and passive knowledge was required, he needed intensive instruction in that language. The Goëthe Institute, Munich, put him on a waiting list for a course starting in October 1979, but since there was no certainty of his getting a place, his parents entered him for a four-week intensive course at a private language school. He accordingly began his studies at the school on 3 September 1979. According to a certificate from the director dated 20 May 1980 he was still attending the school at that date and was to continue to do so in the summer of 1980; the course required him to attend 25 study hours a week. By a letter dated 29 January 1980 the complainant informed the Principal Director of Personnel that his son was attending the school every day from 8.30 a.m. to 1 p.m., had at least two hours' homework a day and attended a language laboratory two afternoons a week. The complainant applied on 28 August 1979 for payment of the education allowance for the period following July 1979 under Article 71(2) of the Service Regulations.⁽²⁾ By a letter dated 10 October 1979 the Remuneration Department of the EPO informed him that in view of the "special character" of the courses it could not approve payment and indeed would have to recover the sums paid for August and September since the educational year 1978-79 had ended in July 1979. The complainant sought an explanation, and on 5 November 1979 the Legal Department gave its opinion. It assumed that the expression "attending a school" in Article 71(2) should be interpreted by reference to Article 71(1) as denoting regular full-time attendance at an educational establishment, and it distinguished planned attendance measured in terms of years, which it regarded as "regular attendance", from short courses measured in weeks, which it did not regard as such. The complainant's application was accordingly dismissed by a decision dated 14 November 1979. On 15 November he duly appealed to the Appeals Committee under Article 108 of the Service Regulations. In its report, transmitted to the President of the EPO on 3 July 1980, the Committee held that the complainant was entitled to repayment of the education allowance for August 1979 - which he had returned to the EPO - and to payment of the allowance for each subsequent month during which his son pursued language studies. It accordingly recommended that the President allow the appeal and remit the matter to the Remuneration Department for appropriate action. By a decision dated 12 November 1980 the President rejected the appeal on the grounds that "educational courses of a temporary and specialised nature, outside the usual educational progression" did not "qualify for an education allowance under Article 71" since otherwise "every conceivable kind of educational course and training programme would be covered, which is clearly not the purpose of this Article." It is the decision of 12 November 1980 which is now impugned.

B. The complainant contends that the question at issue is not whether temporary courses qualify for the Article 71 allowance as the Appeals Committee found, his son's course was not temporary - but whether or not the Committee was wrong in recommending on the facts that his claim was justified. The course was a serious vocational course necessary for his son's future career. He supplies evidence to show that immediately after concluding the German studies on 1 August 1980 his son took up a trainee appointment at an hotel in Munich and for that purpose had to show knowledge of German. He observes that his son joined him in Munich directly as a result of his appointment with the EPO; that his son could not attend any other school in the Munich area; that, in any event, he had to acquire a good knowledge of German in the shortest possible time; and that, on the facts, he was indeed "regularly attending on a full-time basis, an educational establishment" within the meaning of Article 71. He believes that the President put an unjustifiably narrow and unfair interpretation on that article. He accordingly invites the Tribunal to quash the impugned decision and order the President to follow the Appeals Committee's recommendation.

C. In its reply the EPO observes that the President is not bound by the Appeals Committee's recommendation, as Article 112(2)(d) of the Service Regulations makes clear. It points out that the complainant does not deny the close link between (1) and (2) of Article 71: the term "is ... attending a school" in (2) is to be interpreted by reference to (1), which requires "regular attendance" "on a full-time basis". The case turns on the interpretation of these terms, which are based on Article 3 of Annex VII of the Staff Regulations for officials of the European Communities. It is therefore only reasonable to see how that article has been interpreted, and it is material that according to Article 1(1) of the Rules implementing those regulations participation in "temporary" training courses is not regarded as "regular" and "full-time" attendance. The function of the Rules is to interpret, not to restrict, the Staff Regulations. Nor can they in fact be naturally construed as imposing any restriction on the provisions of Article 3 of Annex VII. The President of the EPO is therefore free to put on Article 71 of the EPO Service Regulations the interpretation contained in the rules of the European Communities on a similar article, particularly since the Administrative Council of the EPO adopted the terms used in that article for the EPO rules. Moreover, applying a "systematic" interpretation, the EPO observes that Annex IV of the Service Regulations, which contains the scale of the education allowance payable under Article 71, refers to "primary school", "secondary school" and "university or other educational establishment of an equivalent level" and that Article 120 of the Service Regulations, which relates to transitional payment of the allowance, refers to "primary" and "secondary education". It is clear from these provisions that what is intended is that education should form a whole, proceed according to a predetermined plan, consist in full-time and long-term attendance at educational establishments for periods divided into years or semesters, and be designed to prepare the student for his chosen career. Language courses do not fulfil these requirements since they do not form part of a general education plan. The Article 71 allowance is intended to help in providing education for a career, not enhancement of training within a chosen career. This is clear from Article 71(4), according to which the allowance "shall terminate when the child ceases his or her full-time studies". So construed, Article 71 confers no benefit on the complainant. The German courses followed by his son do not qualify for payment of the allowance since he had completed his studies by July 1979. The only reason why he had to learn German was that he had decided to practise his chosen profession in West Germany; his courses therefore did not form part of his long-term education plan. Besides, it was clear from letters addressed by the complainant to the Administration on 11 October 1979 that the courses lasted only four weeks at a time and it was never determined with certainty what their total duration would be. The fact of attending a series of such courses, even for a total duration of 11 months, did not alter their nature so as to warrant the application of Article 71. The complainant's claims are accordingly unfounded.

D. In his rejoinder the complainant contends that the learning of German in West Germany by a 17-year old living with his father is highly relevant to acquisition of the knowledge required for his taking up a profession or career. He rejects the EPO's contention that such learning is merely a "rounding off" of training after completion of studies. Can vocational training of any kind and at any time qualify for the Article 71 allowance, and if not, where does the EPO draw the line? The significance of an education "plan" is obscure: such a plan can be changed at any time. It is not true to say that the complainant's son had completed his studies: they were in fact interrupted by his going to Munich. As for his choosing to practise his profession in West Germany, it was quite natural for him to want to work in the same country as his father. The total duration of the courses was unclear for the obvious reason that it was not known how well he would adapt to the study of German. The EPO pays for courses in German for the spouses of employees stationed in West Germany: it is as fully justified for it to pay for such courses for a child of school age for whom no European school or its equivalent is available. The complainant contests the interpretation put by the EPO on Article 71 and presses his claim for the allowance.

E. In its surrejoinder the EPO observes that it is unnecessary to determine whether the complainant's son had completed his studies. The only material point is whether the courses formed part of an educational plan and met

the criteria set out in Article 71, and the EPO abides by its view that they did not. It is true that an educational plan may be changed; but that does not alter the nature of the studies which are carried out under it. The courses were not a continuous coherent whole, but consisted of four-week stints, subject to extension by short periods. As for instruction courses in German for spouses of officials, these are short courses provided free of charge on EPO premises: there is no question of the EPO's bearing the cost of other language courses followed by spouses outside the EPO. The Organisation accordingly again invites the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS:

1. The Service Regulations for Permanent Employees of the European Patent Office prescribe payment of an allowance to any employees who are not nationals of the country in which they are serving, for the purpose of educating their children. According to Article 71(1) and (2) the allowance is payable only if the child is regularly attending an educational establishment on a full-time basis.
2. The complainant, a British subject, claimed the allowance to pay for studies which his son Steven, born in London on 27 March 1962, followed from 1 October 1980 at a school in Munich. The President of the EPO refused the claim, although the Appeals Committee, to which he had referred it, made a fully reasoned report recommending that it be allowed.
3. The President of the EPO was alone competent to take the impugned decision and he was not bound by the views of the Appeals Committee, which merely gives its opinion. That being so, the Tribunal will consider whether in rejecting the claim the President, who does not have discretion in the matter, correctly applied Article 71.
4. The question to be determined is the construction to be put on the term "regularly attending, on a full-time basis, an educational establishment".
5. After pursuing studies in England up to the summer holidays of 1979, Steven Bow joined his parents in Munich with the intention of going into the hotel industry. To obtain employment in West Germany he obviously needed a sound knowledge of German, and his father enrolled him in a private school known as "Munich Studies", to follow intensive instruction in the language.

The Tribunal has taken note of the programme of the school. The intensive courses take up 25 hours a week, and each course lasts four weeks. This is the minimum period, and it may be extended by two-week periods. No provision is made for any examination, nor does any diploma appear to be awarded.

Steven Bow did not leave the school until 1 August 1980. A few days later he obtained employment with an hotel in Munich.

6. The EPO contends that the purpose of the education allowance is to help in acquiring skills required for employment, but not in providing further training within a chosen profession. It also relies on the construction put on similar rules by the Commission of the European Communities.

The Tribunal will not apply, even by analogy, rules which are in force in another international organisation. In any event, it is out of the question that the Tribunal should consider, as the complainant suggests, whether the Commission of the European Communities exceeded its authority in adopting those rules.

7. The Tribunal cannot regard the taking of intensive courses at the Munich school as regular and full-time attendance at an educational establishment within the meaning of Article 71. The purpose of the courses was to provide further instruction in a particular area, not in furtherance of general education, but solely to facilitate in practice the exercise of a profession.

8. It is true that Steven Bow followed the courses at the school for ten consecutive months and not just for four or six weeks, and the question is whether this may not have altered the nature of his studies.

Attendance of such regularity and over such a period might suggest that the Appeals Committee's view was the correct one.

But that would be to overlook the sole purpose of the intensive courses at the school. The fact that - for whatever reasons - they were protracted does not alter the character of the school, which can be regarded only as a college

providing training for taking up employment.

9. Steven Bow completed his studies in England on 1 August 1979. After that date he was no longer studying, whatever his age, at an educational establishment. The complaint must therefore be dismissed.

DECISION:

For the above reasons,

The complaint is dismissed.

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 28 January 1982.

(Signed)

André Grisel
J. Ducoux
Devlin

A.B. Gardner

1. Article 71(1) reads: "An education allowance of fixed amount may be granted, on his request, to any permanent employee entitled to the expatriation allowance who is not a national of the country in which he is serving, in respect of each dependent child within the meaning of the Service Regulations, regularly attending, on a full-time basis, an educational establishment outside the country in which the permanent employee is serving..."

2. Article 71(2) reads: "Furthermore, any permanent employee entitled to the expatriation allowance who is not a national of the country in which he is serving, whose child or children is or are attending a school which does not form part of the national system of education of the country in which he is serving may also receive ... an education allowance.