Registry's translation, the French text alone being authoritative.

FIFTY-FIFTH ORDINARY SESSION

In re ANDRES

Judgment No. 647

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Florian Andres on 18 May 1984 and corrected on 14 June, the EPO's reply of 3 September, the complainant's rejoinder of 29 November 1984 and the EPO's surrejoinder of 15 February 1985;

Considering the applications to intervene filed by:

P.R. Alting von Geusau,

M. Aspeby,

C. Bonvin,

C. Bournot,

G.D. Carruthers,

Y. Cleuziou,

B. Gellie,

I. Harris,

U. Hild,

K.P. Hiltner,

B. Hjelm,

R. Höfer,

F.J. Keer,

E. Kirschbaum,

P. Kyriakides,

P.R. Luckett,

V. Markowski,

P. O'Reilly,

U. Peters,

F.J. de Ruiter,

P. Spiekermann,

J. Straker,

R. van Voorst tot Voorst,

A. Wells; Considering Articles II, paragraph S, and VII, paragraphs 1 and 2, of the Statute of the Tribunal and Articles 106 and 108 of the Service Regulations 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, a Swiss citizen, joined the EPO in Munich as an examiner at grade A2 on 1 October 1979. He was later t promoted to grade A3. He and other staff members so promoted found that the EPO had reckoned their professional experience at a less favourable rate than that of examiners directly appointed to A3 and that they would need greater experience to reach the same step in that grade. By a joint letter of 15 October 1981 to the President of the Office the complainant and 15 other officials claimed review of their step in grade A3. Having got no answer, on 7 May 1982 they repeated their claim. On 11 May the Principal Director of Personnel wrote them letters in reply which concluded: "I am sorry to inform you that no special measures can be taken to meet the wishes expressed in your letters." By a further letter of 11 August the complainant submitted his claims again to the President, and the Principal Director of Personnel answered him by a letter of 4 October saying that the letter of 11 May "represented also the views of the President". On 21 December 1982 the complainant, with other staff members, lodged an internal appeal against the letter of 4 October alleging breach of the principle of equal treatment in the calculation of their step in A3. In its report of 19 December 1983, which dealt with the complainant's and similar appeals, the Appeals Committee held that the complainant's and all the others but three were irreceivable on the grounds that the decision they should have challenged under Article 106 of the Service Regulations was the letter of 11 May 1982 and they had not challenged it within the three months' time limit; the letter of 4 October merely confirmed the earlier decision and did not give rise to a new time limit. The President of the Office informed the complainant by a letter of 21 February 1984, the impugned decision, that he accordingly rejected the appeal.

B. The complainant contends that his internal appeal should have been declared receivable: the letter of 11 May 1982 did not constitute a challengeable decision within the meaning of Article 106(2) of the Service Regulations: "A permanent employee ... may submit to the appointing authority a request that it take a decision relating to him. Where the authority is the President of the Office, he shall notify the person concerned of his reasoned decision within two months..." Although the President was entitled to delegate his authority, the Principal Director of Personnel did not indicate in any way in his letter of 11 May that he had: in fact he was stating only his own decision, not the President's. Nor is there any evidence to suggest the President had delegated authority. The letter of 4 October 1982 was not mere confirmation since it stated: "... the President asks me to confirm that it is not his intention to introduce the kind of special measure you are seeking". That was the challengeable decision, the internal appeal was receivable, and so is the present complaint. The complainant also puts forward arguments on the merits. He invites the Tribunal to declare his complaint receivable and to allow it, to quash the decision of 21 February 1984, and to award him 2,000 Swiss francs in costs.

C. The EPO replies that the complaint is irreceivable under Article VI1(2) of the Statute of the Tribunal because the complainant failed to follow the internal appeal procedure correctly, his appeal being out of time. The challengeable decision was the letter of 11 May 1982 and under Article 108(2) of the Service Regulations he should have appealed within three months. There was no flaw in that decision: the Principal Director of Personnel was entitled to take a decision within the scope of his competence on the President's behalf, and there was no need for him to say that he was acting by delegation from the President. Besides, by the complainant's own argument, the letter of 4 October 1982, too, was invalid since again the Director did not say he was acting by delegation of authority. Subsidiarily, the EPO contends that the complaint is devoid of merit.

D. In his rejoinder the complainant enlarges on his arguments in favour of receivability. He observes that whereas the letter of 4 October did refer to the President the one of 11 May did not: that is why the former was valid, the latter not. Besides, time limits should not be exploited by the EPO in breach of the complainant's good faith.

E. In its surrejoinder the EPO develops its submissions on the issue of receivability and answers various points raised in this connection in the rejoinder.

CONSIDERATIONS:

1. The EPO appointed the complainant as an examiner at grade A2, step 2, and he is challenging the rules by which his step was determined on his promotion to grade A3.

He submitted his claim to the EPO for the first time on 15 October 1981 and he repeated it on 7 May 1982. On 11 May the Principal Director of Personnel wrote rejecting his claim. Several months later he advanced it yet again. The Principal Director of Personnel rejected his claim once more, on 4 October, and not until 21 December 1982 did he introduce the internal appeal proceedings. In its report of 19 December 1983 the Appeals Committee expressed the view that his appeal was time-barred and therefore irreceivable. The President of the EPO endorsed that view in a decision of 21 February 1984, and the present complaint, which impugns that decision, was filed within the time limit set in the Statute of the Tribunal.

The EPO maintains that the challenged decision is that of 11 May 1982. According to Article 108(2) of the Service Regulations he had three months from the date of the notification of the decision in which to lodge his internal appeal; the letter of 4 October 1982 merely confirmed the earlier decision and did not extend the time limit; he did not follow the internal appeals procedure correctly; and his complaint is therefore irreceivable under Article VII(1) of the Statute of the Tribunal.

2. The complainant retorts that the letter of 11 May 1982 was irregular: neither in substance nor in form, he says, did it meet the requirements of Article 108 of the Service Regulations.

He submits that only the President is "the appointing authority". He may of course delegate his authority but if he does not do so a letter signed by a director does not amount to a challengeable decision. Indeed, even if the President did delegate authority, the director would have to indicate somehow above his signature that he was writing on the President's behalf and his letter was therefore a decision.

3. The argument is unsound. Even if the letter of 11 May 1982 had been written without authority, the decision therein would not cease to exist on that account. The complainant is confusing rules of substance with the rules on the reckoning of time limits. Provided a communication takes the form of a decision its lawfulness is immaterial to the reckoning of the time limit for lodging an appeal. To hold otherwise would impair the stability of the parties' position in law, which is the purpose and indeed the whole point of a time limit.

Although time limits are essential to sound administration, the organisation must not use them in breach of the complainant's good faith. But the EPO did not do so. The letter of 11 May 1982 stated its decision in terms so plain that there was no mistaking its purport.

The letter of 4 October 1982 did no more than confirm the decision of 11 May. The fact that it expressly invoked the President's authority did not alter its confirmatory character. It therefore created no new time limit for the internal appeal.

Since the Tribunal upholds the impugned decision it will also dismiss the applications to intervene filed by other staff members.

DECISION:

For the above reasons,

The complaint and the applications to intervene are dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Edilbert Razafindralambo, Deputy Judge, the aforementioned have hereunto subscribed their signatures, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 18 March 1985.

(Signed)

André Grisel

Jacques Ducoux

E. Razafindralambo

A.B. Gardner

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