

FIFTY-EIGHTH ORDINARY SESSION

In re WEST (No. 3)

Judgment No. 734

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed against the European Patent Organisation (EPO) by Mr. Julian Michael West on 14 January 1985 and corrected on 22 January, the EPO's reply of 10 April, the complainant's rejoinder of 14 May and the EPO's surrejoinder of 22 July 1985;

Considering the applications to intervene in the complaint filed by Mr. John Ainscow on 6 August and by Miss Eileen Hunter on 2 August and the EPO's observations thereon dated 30 August 1985;

Considering Article 11, paragraph 5, of the Statute of the Tribunal and Articles 11(2), 49(7), (9) and (10) and 116(3) 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 facts of the case and the pleadings may be summed up as follows:

A. Facts relevant to this case have already appeared in Judgments 694 and 695, under A. From September 1972 until January 1982 the complainant was employed in the United Kingdom Patent Office. He joined the EPO on 11 January 1982 as an examiner of patents and was graded at A3, step 8. An EPO newsletter issued on 21 February 1984 contained a list of the examiners promoted from A3 to A4 in 1983. The complainant was not on the list, and in a series of letters dated 12, 14 and 17 April 1984 he submitted internal appeals seeking promotion to A4 as from -- on the strength of various reckonings -- 11 January 1984, 11 March 1983 and 11 January 1983 respectively. On 8 November 1984 the Appeals Committee recommended rejecting the complainant's claims as devoid of merit, and by a letter of 19 December, part of which is the decision impugned in this complaint, the President of the office informed him that he endorsed that recommendation.

B. The complainant observes that examiners who were transferred to the EPO from national patent offices during the transitional period of recruitment of examiners following the integration of the EPO and the International Patent Institute are subject to different rules on promotion according as they were recruited before 1 January 1981 or, like himself, on or after that date. Besides, at least one examiner transferred after that date has been graded according to the rules in force before it. He alleges breach of the principle of parity. He asks that he be promoted to A4 in accordance with Articles 11(2), 49(7), and 116(3) of the Service Regulations, or that those already promoted to A4 "under the present inequitable system"

be regraded A3, or else that he be awarded damages for loss of income and prospects of promotion.

C. In its reply the EPO pleads that, though receivable except for the claim to downgrading of other officials to A3, the complaint is devoid of merit. The procedure for promotion is laid down in Article 49(7), (9) and (10) of the Service Regulations. The second clause of 49(7) reads: "The employees must have the minimum number of years of professional experience required under the job description in order to obtain the grade for the post concerned..." In the complainant's case the job description for the A4 post of examiner originally required at least nine years' experience, and this was laid down in CI/Final 18/77 and 20/77 approved by the Administrative Council in October 1977. But that let through too many promotions to A4 and the President of the Office raised the minimum to 13 years, a practice approved by the Council in CA/20/80. In June 1980 the Council raised the minimum again (CA/PV/8, 251-9), although in December 1980 it approved (CA/PV/10, 64) a transitional arrangement allowing more rapid promotion for non-German examiners recruited before 1 January 1981. There was no breach of equality in this case: a British examiner, like the complainant, joining the EPO at A3 after 31 December 1980 is not in the same position as one who joined before 1 January 1981. There is no acquired right to the application of particular criteria for promotion. The case he cites was correctly dealt with: unlike the complainant the official in question was offered employment with the EPO before the end of 1980 and the pre-1981 rules were correctly applied.

D. In his rejoinder the complainant develops his pleas, maintaining that he is the victim of breach of the principle of equality and asking that he be put on a par with those recruited up to 31 December 1980.

E. In its surrejoinder the EPO observes that the rejoinder raises no point which causes it to alter any of the submissions in its reply, which it develops at some length.

CONSIDERATIONS:

Candidates for promotion are required to have a minimum number of years of professional experience. The minimum is a figure liable to be changed from time to time. If the needs of the Office require promotion to be speeded up, it may be lowered; if otherwise it may be raised. The complainant is correct in saying that on and after 1 January 1981 a change in the rules that governed the reckoning of experience made promotion slower for those who were ready for it then than it had been before. But he is incorrect in supposing that the principle of equality means that the rules should be the same for all candidates always. This would make any unfavourable change impossible. A date of change divides those before from those after. They are in separate categories and the principle of equality does not require them to be treated alike.

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 the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner