

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

## SIXTIETH ORDINARY SESSION

In re ANGIUS

Judgment No. 775

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Pierino Angius against the European Patent Organisation (EPO) on 11 December 1985 and corrected on 22 January 1986 and the EPO's reply of 7 April 1986;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 70 and 108(2) 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. Article 70 of the EPO Service Regulations reads: "An allowance for dependants as set out in Annex III may be granted ... on the basis of supporting evidence where a permanent employee or his spouse mainly and continuously supports a parent ...". The complainant, an Italian, is employed on the staff of the EPO at The Hague. In July 1983 the Remuneration Department of The Hague office told him how to claim an Article 70 allowance. He applied for the allowance for each of his parents, who were living in Italy, and in June and July 1984 he supplied papers including a declaration dated 20 June 1984 and signed by his parents saying that in 1983 they had received from him the equivalent in lire of 509 guilders a month for both of them and from January to May 1984 the equivalent of 540 a month. In a letter of 20 September 1984 the head of Personnel turned down his application on the grounds that the EPO could not regard such remittances as his parents' main and continuous support as Article 70 required. In a letter of 5 October 1984 to the EPO he undertook to pay them at least 1,600 guilders a month. On 8 October he supplied four notices of transfer to his own bank account in Rome of sums purportedly intended for his parents during the period from December 1983 to July 1984 and totalling 35,000 guilders. The head of Personnel informed him on 5 February 1985 that he would get an allowance for each of his parents as from 1 October 1984. He asked on 7 February that the decision take effect as from July 1983 and he lodged an appeal on 4 March. In its report of 10 October 1985 the Appeals Committee recommended that, if he could produce evidence of support from 1 June 1984, the EPO should pay as from that date. By a letter of 6 November 1985, the final decision impugned, the President of the Office informed him that for the period from 1 July 1983 to 31 May 1984 his appeal was rejected, for the period from 1 June to 30 September 1984 the allowances would be paid provided he satisfied the EPO that the conditions for payment had been met. He has not done so.

B. The complainant submits that the EPO's demands are inconsistent. For the period from 1 July 1983 to 30 September 1984 the EPO would not accept notices of transfers to his bank in Rome, but for the period from 1 November 1984 to 30 January 1985 it did. Conversely, it accepted the declaration signed by his parents for the earlier period but refuses such declarations for further periods. The amounts stated in that declaration were too low, but they were only the cash presents he had made to his parents on visits to Italy and excluded other payments, as he explained orally on submitting the declaration. The EPO has therefore misread it. He asks the Tribunal to order that he be paid the allowances as from 1 July 1983.

C. The EPO submits that the complaint is irreceivable as to the period from 1 July 1983 to 31 May 1984. The decisions of 5 February and 6 November 1985 merely confirmed that of 20 September 1984, which the complainant failed to challenge within three months as Article 108(2) of the Service Regulations requires. He failed to exhaust the internal means of redress.

On the merits the EPO observes that the burden lies on the complainant to show that his parents were mainly and continuously dependent on him from 1 July 1983. It requires of him evidence of payment of at least 1,600 guilders a month to his parents. All he has produced is their declaration and the four notices of transfer to his own bank account. The declaration reveals payments far too small to establish "main support", they do not even amount to the

sum of the two allowances, which was 600 guilders a month in 1983 and 620 a month in 1984. Transfers to his account in Rome are immaterial in the absence of proof of payment to his parents. Nor may he plead that the declaration is incomplete or was misread: he submitted it himself without qualification. The EPO was right to refuse to backdate payment to 1 July 1983.

#### CONSIDERATIONS:

The rule on the internal means of redress

1. Article VII(1) of the statute of the Tribunal says that "A complaint shall not be receivable unless the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations".

The Tribunal will rule proprio motu on the application of the article. If an internal appeal was time-barred and the internal appeals body was wrong to hear it, the Tribunal will not entertain a complaint challenging the decision taken on a recommendation by that body. A fortiori, if the Organisation succeeds in showing that the internal appeal was out of time the Tribunal will dismiss the complaint as irreceivable.

The application of the rule in this case

2. In June and July 1984 the complainant submitted statements signed by his parents in support of his claim to the allowance to which Article 70 of the Service Regulations entitles a staff member who "mainly and continuously supports" a relative "by virtue of a legal or judicial obligation". The EPO rejected his claim on 20 September 1984 on the grounds that he had failed to produce the evidence required and in particular to show that he "mainly and continuously supports" his parents.

He did not lodge any internal appeal within the time limit of three months set in Article 108(2) of the Regulations.

3. On the strength of further evidence he supplied the EPO agreed on 5 February 1985 to pay him the allowance for the period from 1 October 1984 to 30 September 1986 provided that every quarter he gave proof of the sums he had made over. On 4 March 1985 he lodged an appeal claiming payment of the allowance as from July 1983. In a letter of 6 November 1985 the President, on the Appeals Committee's recommendation, upheld the decision but invited the complainant to establish by means of written evidence that he had qualified for payment during the period from 1 June to 30 September 1984 as well. That is the decision he impugns.

What the complainant is actually objecting to is the refusal of the allowance from July 1983 to May 1984. The claim was turned down by a decision of 20 September 1984 that went unchallenged and, the internal means of redress not being exhausted is no longer open to challenge before the Tribunal. That follows from what was said in 1 above, and indeed the EPO itself contends that the complaint is irreceivable.

4. The Appeals Committee did declare the appeal against the decision of 5 February 1985 to be receivable on the grounds that it was not the same as that of 20 September 1984: it allowed the claim whereas the later one did not. But since the decision of 5 February 1985 granted the allowance only as from 1 October 1984 it impliedly rejected the claim insofar as it related to any earlier period. It therefore unreservedly confirmed the decision of 20 September 1984 and set off no new time limit for an appeal against it. The same reasoning holds good for the impugned decision of 6 November 1985, the effect of which runs from 1 June 1984.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

(Signed)

André Grisel

Jacques Ducoux

Mohamed Suffian

A.B. Gardner

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