

## SIXTY-THIRD SESSION

### *In re* WEST (No. 6)

#### Judgment 846

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr. Julian Michael West against the European Patent Organisation (EPO) on 5 January 1987, as amended on 11 January, the EPO's reply of 23 March, the complainant's rejoinder of 5 April and the EPO's surrejoinder of 22 June 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 32, 47, 93, 94 and 100 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. The complainant is a substantive examiner of patents with General Directorate 2 (DG2) of the EPO in Munich. On 25 January 1985 he wrote a letter to the President of the Office saying that in his view the professional liaison group for substantive examiners had outlived its usefulness and ought to be disbanded. In a minute of 31 January the Vice-President, Mr. Wallace, answered: "... I regard it as unacceptable conduct that a member of DG2 staff should send a note of this tone and character to the President ... without informing me or any other senior member of DG2 .... I intend to have your note and a copy of this response placed on your personal file ...". On 5 February the complainant replied to the Vice-President in a letter alleging breach of the provisions of the Service Regulations on personal files and disciplinary proceedings. On 7 February he lodged an internal appeal objecting to having the Vice-President's minute put in his personal file. After provisional rejection his case went to the Appeals Committee. The Chairman of the Committee found that the file contained neither the complainant's letter of 25 January nor the Vice-President's minute of 31 January. In its report of 23 June the Committee recommended taking no further action. By a letter of 18 December 1986, the impugned decision, the Principal Director of Personnel told the complainant that the President accepted that recommendation.

B. The complainant submits that the inclusion of the Vice-President's minute in his personal file is tantamount to a reprimand under Article 93(2) of the Service Regulations but that the rules on disciplinary procedure in Articles 93, 94 and 100 were not respected. Making a suggestion is no breach of the Regulations. Articles 32, 47 and 96 do not provide for putting the minute in his personal file. He claims damages amounting to 10,000 Deutschmarks, 1,000 DM in lieu of the reward he believes he deserved for his suggestion, and 2,000 DM in costs.

C. In its reply the EPO points out that in his internal appeal the complainant sought neither compensation for the disciplinary action he alleges was taken against him, nor a reward for his suggestion. The claims are irreceivable because he has failed to exhaust the internal means of redress.

The complaint is in any event devoid of substance. The Vice-President did no more than state an intent: in fact, as the President said in his letter of 18 December 1986 the papers were never put in the complainant's file. Besides, even if they had been that would not have been a disciplinary measure under Article 93 of the Service Regulations. Article 32 would have authorised filing them.

In making his suggestion the complainant did not follow the procedure laid down by the President and set out in circular 84 of 19 March 1981. There are therefore no grounds for a reward.

D. The complainant rejoins that there is no evidence to support the EPO's assertion that the Vice-President's stated intent was not carried out. If the papers were never put in his personal file there was no point in rejecting his appeal provisionally: a letter of explanation or apology would have ended the matter. Article 32 does not authorise filing the papers, and why does the EPO argue that it does if they were never actually filed?

Even if they were not he has still suffered injury because he was misled into thinking he had been disciplined and

because the Vice-President chairs the promotion board. For that injury alone he claims 5,000 DM in damages.

He increases his claim to costs in case his claims to compensation are held irreceivable. He asks the Tribunal to order that the papers be struck out of his personal file and not put back later.

E. In its surrejoinder the EPO submits that the complainant's rejoinder fails to rebut any of the arguments in its reply. It observes in particular that there was nothing to prevent his seeking an award of compensation in his internal appeal; that his complaint rests on the false assumption - which he could have checked for himself - that his personal file contained the papers he objected to; and that he has made a larger and spurious claim to costs in a blatant attempt to get round the fatal objections to his complaint.

#### CONSIDERATIONS:

##### The issue

1. The issue in this case is whether the alleged inclusion in the complainant's personal file of a minute from Mr. Wallace, the Vice-President of the Office, was tantamount to a reprimand under Article 93(2) of the Service Regulations and, if so, whether Articles 93, 94 and 100, which relate to disciplinary measures, ought to have been complied with.

##### The background

2. The EPO encourages staff to make suggestions for the improvement of efficiency and gives rewards for any it finds acceptable. Circular 84 of 19 March 1981 sets out the procedure to be followed. The suggestion is to be sent in on a standard form together with a sealed envelope containing the identity of the author. It is passed on to an independent committee, of whom the Chairman and one member are appointed by the President of the Office and one member by the Staff Committee. The committee makes recommendations to the President. Rewards may range from 50 to 1,000 Deutschmarks.

3. The complainant, a substantive examiner of patents in General Directorate 2 (DG2) in Munich, was minded to make a suggestion, but he did not follow the official procedure. Instead he wrote to the President on 25 January 1985 in the following somewhat blunt terms:

"The professional liaison group for substantive Examiners appears to have outlived its usefulness. May I therefore propose that it be disbanded, and its members be sent back to perform the duties for which they were recruited. The European Patent Office has an enormous and continually increasing number of quangos [quasi-autonomous non-governmental organisations], at least 90% of which are either unnecessary or manned by staff of too low a grade."

4. The President passed the suggestion on to Mr. Wallace, who took exception to it and on 31 January wrote the complainant a letter, which read in part:

"I wish to inform you that I regard it as unacceptable conduct that a member of DG2 staff should send a note of this tone and character to the President. I also find it unacceptable that the note was sent without informing me or any other senior member of DG2.

... I intend to have your note and a copy of this response placed on your personal file ..."

The complainant again responded rather tactlessly by sending the Vice-President a letter on 5 February, of which the first sentence reads:

"While it is always a pleasure to receive letters from you, I wish to inform you that I find the tone and character of your most extraordinary note dated 31.01.85 quite unacceptable from a senior member of DG2."

The letter went on to allege breach by the Vice-President of the provisions of the Service Regulations on personal files and disciplinary proceedings.

5. On 7 February the complainant lodged an internal appeal objecting to having the Vice-President's minute put in his personal file. After provisional rejection his case went to the Appeals Committee. In its report of 23 June the Committee held that there was no need to say whether a statement of intent in the Vice-President's letter was an act

adversely affecting a staff member against which he could appeal. Whatever the Vice-President's intention might have been, it had not been put into effect or, if put into effect, the action had been withdrawn: the Chairman of the Committee had examined the complainant's personal file and found in it neither his letter of 25 January 1985 nor Mr. Wallace's reply of 31 January. The Committee concluded that the appeal was without foundation: either the complainant had never suffered any damage in the first place because the documents had never been put in his file or else, if they had, they had later been withdrawn. In either case the complainant had been given satisfaction. The Committee recommended that the President take no further action and close the case.

The President decided to accept the recommendation and that is the decision impugned.

The Tribunal's decision

6. The complainant's claim to damages amounting to 10,000 DM and to 1,000 DM in lieu of the reward which he believes he deserves for his suggestion is irreceivable. He could have made it in his internal appeal but failed to do so. Before coming to the Tribunal he should have exhausted all the internal means of redress.

7. In any event the complaint is devoid of merit.

As the Appeals Committee found, the Vice-President's letter of 31 January was a mere expression of intent, it was not put into effect, and even supposing it was, the action was withdrawn, and the complainant has accordingly been given satisfaction.

As the President said in his letter of 18 December 1986 the papers were never put in the complainant's file.

His complaint therefore fails and there are no grounds for any award of damages or costs.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and the Right Honourable Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux  
Mohamed Suffian  
William Douglas  
A.B. Gardner