

**SIXTY-THIRD SESSION**

***In re* BENZE (No. 6)**

**Judgment 853**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr. Wolfgang Benze against the European Patent Organisation (EPO) on 22 May 1987, the EPO's reply of 10 August, the complainant's rejoinder of 8 September and the EPO's surrejoinder of 21 October 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 48 and 66(1) and Annex III 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, a citizen of the Federal Republic of Germany and permanent employee of the EPO, has served since 1980 as a search examiner of patents at Rijswijk.

Article 66(1) of the EPO Service Regulations states: "The basic salary scales for each category, grade and step shall be as set out in Annex III". Annex III, Table 1, sets out the scales for staff in category A, among others, and Article 48 reads:

"Except where these Regulations otherwise provide, a permanent employee shall advance by one incremental step as follows: ...

(b) Grades A2, A3, A4 and A5: each year from step 1 to step 7, and every two years for the higher incremental steps."

On 25 November the complainant was given a reckoning of his experience by the guidelines dated 1 August 1985 in staff circular No. 144 of 2 September 1985. His step in his grade, which is A3, went up from 4, with ten months' seniority, to 7 with nine months' seniority. On getting notice of his salary for January 1986 he saw he was indeed at step 7, but the seniority had been "adjusted" and was 21 months. By a letter dated 27 January he lodged an appeal, contending that an A3 official should not be kept at step 7 for over 12 months.

In its report of 8 January 1987 the Appeals Committee found that, unlike the text of Article 48, a footnote to the salary scales of the Organisation for Economic Co-operation and Development was unambiguous. (Like the EPO, the OECD belongs to the group of "co-ordinated organisations".) The footnote reads: "For category A staff, promotion to steps ... 2 to 7 (grades A5, 4, 3 and A2) shall take place after twelve months of service in the step immediately below and promotion to steps ... 8 to 11 (grades A5, 4, 3 and A2) after twenty-four months of service in the step immediately below". The issue was whether advancement to step 8 required 12 or 24 months' service in step 7. The Committee recommended rejecting the appeal on the grounds that, though the text was not clear, the interpretation to be inferred was that step 7 held for 24 months. But the Committee also recommended proposing to the Administrative Council that the text of Article 48 be replaced by that of the footnote. By a letter of 9 March 1987, the impugned decision, the Principal Director of Personnel informed the complainant that the President of the Office had rejected his appeal.

B. The complainant's contention is that, whatever the practice in the OECD and other co-ordinated organisations may be, Article 48 means that the duration of step 7 is only 12 months, not 24. The German version is quite clear on that score, whereas the English and French are not. What the German says is not "every two years for the higher incremental steps", the preposition suggesting that to qualify for step 8 two years must have been served in step 7,

but "every two years in the higher incremental steps": only 12 months have to be served in step 7. The meaning of Article 48 should be taken from the German, the duration of step 7 for A staff being 12 months. The complainant asks that he be awarded the amounts withheld because of the EPO's misinterpretation of Article 48 and a fair sum in costs.

C. In its reply the EPO submits that the complaint is unfounded. It cites the arguments put forward in the Appeals Committee's report in support of the 24-month interpretation. It observes that the Service Regulations are authentic in all three languages and that the complainant may not rely on the German version to the exclusion of the other two just because he thinks it supports his case. All three versions show that 48(b) relates to advancement from one step to the next, not the time to be spent at each step. Advancement from 1 to 7 is at 12-month intervals, but once the official has got to 7 he moves on at 24-month intervals. As the Appeals Committee observed, what matters is the vertical sequence of steps, or "the height of the steps on the staircase", and the vertical "distance" to be covered is 12 months for each step up to 7 and 24 months thereafter. This construction is borne out by the historical method of interpretation: the discussions in the Interim Committee that adopted the Service Regulations show that the intent was to follow long-standing practice in the co-ordinated organisations. That practice is illustrated by the footnote to the OECD salary scales.

D. In his rejoinder the complainant submits that the German text is clear whereas the English and French are not. The general canons of legal construction require that an unambiguous text bear the meaning it conveys, and the complaint therefore rests on the German text. A German-speaking employee of the EPO ought to be able to rely on the authentic German version. The complainant asks that he be awarded costs even if his complaint fails.

E. In its surrejoinder the EPO, besides enlarging on its earlier statements, cites the Tribunal's case law on the interpretation of allegedly different authentic versions of a rule. It maintains that the Council's evident intent was to approve the practice of the co-ordinated organisations and ordain slower advancement once the employee got to step 7. The EPO has acted on the Appeals Committee's suggestion and since March 1987 the salary scales issued to staff members have had an explanatory footnote. The complainant therefore filed his complaint at his own risk.

#### CONSIDERATIONS:

##### Receivability

1. The complainant is impugning a decision of 9 March 1987 which was notified to him on the same day. It is a final decision which rejected an internal appeal he had lodged on 27 January 1986 and on which the Appeals Committee reported on 8 January 1987. He has therefore complied with the requirement in Article VII(1) of the Statute of the Tribunal.

He has also respected the time limit in Article VII(2) by filing his complaint on 22 May 1987.

His complaint is therefore receivable.

##### The merits

2. The material issue is the construction to be put on Article 48(b) of the EPO Service Regulations.

The complainant's contention is that it is the German text of the provision that should prevail, the English and French versions being mere mistranslations. By his interpretation a staff member in grade A2, A3, A4 or A5 should spend only one year in step 7, as in steps 1 to 6, of his grade.

The EPO's answer to that is that all three language versions of Article 48 are authentic and that they bear an interpretation which requires the staff member to spend two years in step 7, as in the "higher incremental steps".3. The Tribunal holds that the three versions of Article 48 are all authentic. By decision CA/D 6/78 of 24 February 1978 the Administrative Council of the EPO declared that its decisions were authentic in all three languages, and since it was the Council that adopted the Service Regulations the three language versions of Article 48 carry equal weight.

4. The Tribunal finds that the three versions of the provision disagree.

5. According to the general rules of construction, all language versions of a text shall be deemed to bear the same

meaning save that, where comparison reveals a point of disagreement, the construction that prevails shall be the one that, with due regard to the purpose of the law-maker, best reconciles the various versions.

6. In keeping with those general rules the Tribunal holds that it is the EPO's interpretation, which indeed the Appeals Committee commended, that fits the purpose of Article 48 intended by the EPO Council.

It is indeed only logical that the staff member be required to spend a longer period in "the higher incremental steps" than in steps 1 to 6. In any event that construction reflects both the practice which the co-ordinated organisations have followed as to advancement from step 7 to step 8 and the EPO's own practice, which has never been regarded as at odds with Article 48 or with the similar rules in force in the other organisations.

Costs

7. Since his complaint fails there are no grounds for awarding costs to the complainant.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Héctor Gros Espiell, 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  
Mella Carroll  
H. Gros Espiell  
A.B. Gardner