

SIXTY-THIRD SESSION

***In re* ANDRES (No. 9)**

(Application for review)

Judgment 859

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for review of Judgment 785 filed by Mr. Florian Andres on 10 March 1987, the reply of the European Patent Organisation (EPO) of 26 May, the applicant's rejoinder of 18 August and the Organisation's surrejoinder of 21 October 1987;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written evidence;

CONSIDERATIONS

1. The applicant, an examiner with the EPO, is seeking review of Judgment 785. In that judgment, which it delivered on 12 December 1986, the Tribunal dismissed an earlier complaint of his challenging a pay cut in the form of a 1.5 per cent levy imposed from 1 July 1983 until 30 June 1986 on the basic salary of staff in categories A and L. He is seeking also repayment of the sums he alleges to have been wrongfully withheld, together with interest at 10 per cent a year and an award of 2,000 Swiss francs for costs.

The facts

2. The case is the latest in a series of appeals against the levy. The Tribunal delivered Judgment 624 (in re Giroud No. 2 and Lovrecich) on 5 December 1984 on complaints in one of which the applicant had been an intervener, and Judgment 726 (in re Andres No. 2 and others) on 17 March 1986. The latter went into the merits and dismissed the complaints.

3. In the complaint which was dismissed in Judgment 785 the applicant put forward new pleas on the strength of the deliberations on the levy in a body known as the Co-ordinating Committee of Government budget experts, on which several international European organisations are represented.

4. As is recounted in Judgment 785, the arrangements for the levy were debated in the Co-ordinating Committee and set out in two of its reports, the 159th dated 16 February 1979 and the 191st dated 16 February 1983, which, barring a few changes, endorsed the earlier one.

5. On 17 March 1983 the Administrative Council of the EPO took a decision, CA/D 1/83, approving the Committee's 191st Report and revising as from 1 July 1982 the salary and other emoluments of EPO staff. The basis of the decision was Article 64(6) of the Service Regulations: "The remuneration of the permanent employees shall be subject to periodic review and shall be adjusted by the Administrative Council taking account of the recommendations of the Co-ordinating Committee of Government budget experts of the Co-ordinated Organisations". Point 1 of CA/D 1/83 said that note was taken of the 191st Report and point 2 that paragraphs 32 to 38 of the report were approved. The levy was originally to be imposed from 1 July 1982 but was postponed to 1 July 1983 by another Council decision, CA/D 1/84 of 8 June 1984.

6. After Judgment 726 dismissed his appeal against the levy the applicant challenged it again, in his eighth complaint, on the strength of a judgment by the Appeals Board of the Council of Europe which on 15 May 1985 had held a similar levy in that organisation to be unlawful. He cited Article 7 of new rules which had been appended to the 159th Report and which are referred to in the section of the 191st Report - paragraphs 32 to 38 - approved by the Administrative Council.

7. Article 7 provides that adjustments in the salaries of staff of the Co-ordinated Organisations shall "ensure parity of purchasing power for all staff in the same grade and within-grade step". The applicant's argument was that he had not enjoyed "parity of purchasing power" since the ruling by the Appeals Board of the Council of Europe had taken effect.

8. The Tribunal dismissed his eighth complaint in Judgment 785 of 12 December 1986, the one he now wants to have reviewed. Its reasoning was that, though the EPO voluntarily joined in the other organisations' efforts at co-ordination, it was wholly autonomous and was not bound by what any of the other organisations belonging to the system did about the levy.

The issues⁹. The gist of the applicant's case is that the reasoning in Judgment 785 was mistaken, that it was prompted by the EPO's surrejoinder and that he therefore had no chance to warn the Tribunal of the EPO's attempt to mislead. To his mind Article 7 is "obviously" binding on the EPO and in support of that contention he cites CA/D 1/83, which approved it.

10. The Organisation retorts that the application is irreceivable. Not only does it plead a mistake of law but it relies on a text, CA/D 1/83, that was a matter of public knowledge by the time of the earlier proceedings and was indeed then addressed by the parties. There is nothing new about that text and a primary condition prescribed by precedent for the receivability of an application for review is not fulfilled.

11. The EPO cites its earlier pleas on the merits. In its submission Article 7 does not warrant letting EPO staff benefit from another organisation's failure to respect it; after all, co-ordination is mainly in matters of policy and the EPO is quite free to act as it pleases in keeping with its own rules.

12. What the applicant is objecting to is the ruling in Judgment 785 that the quashing of the levy in the Council of Europe - for reasons that are peculiar to that organisation - does not warrant treating as unlawful the similar levy imposed in the EPO following debate in the Co-ordinating Committee.

13. There is nothing new about that plea. It rests on the Co-ordinating Committee's reports and on CA/D 1/83, of which much was said in the context of the earlier cases. Judgment 785 defined the connection between the various texts and held that in imposing the levy the EPO had acted in the exercise of its own autonomous authority and in keeping with its own rules. There is no reason whatever to shift ground.

14. The application is irreceivable because the applicant is seeking, without offering a shred of new evidence, to challenge a decision the Tribunal handed down after letting him have his full say in written proceedings.

15. His claims fail in their entirety.

DECISION:

For the above reasons,

The application is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, 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
P. Pescatore
A.B. Gardner

