

SEVENTIETH SESSION

In re BAKKER (Tjerk)

Judgment 1063

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Tjerk Roelof Bakker against the European Patent Organisation (EPO) on 3 March 1990 and corrected on 9 April, the EPO's reply of 7 June and the complainant's rejoinder of 30 June and the Organisation's surrejoinder of 14 August 1990;

Considering Articles II, paragraph 5, and VII, para-

graph 1, of the Statute of the Tribunal and Articles 107(1), 108(1) and 109(3) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence and decided not to order oral proceedings, which neither party has applied for;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a Dutchman who was born in 1933 and joined the staff of the EPO in 1981, is employed as a substantive examiner at grade A4 at General Directorate 2 in Munich. On 19 May 1989 his supervisor wrote an "intermediate report" on his performance in 1988. It gave him ratings of only 3 ("good") or 4 ("adequate") for particular aspects of his performance and a general rating of 4. The countersigning officer signed the report on 24 July. The complainant set out written objections on 17 August. The reporting officer added "final comments" on 30 August and the countersigning officer on 1 September in section IX of the report form. On 22 September the complainant applied under section X of the form for the application of the procedure for conciliation provided for in section C.4 of the Notes on reporting. On 8 December 1989 the President of the Office endorsed the report without change and that decision, the one the complainant impugns, was notified to him on 14 December.

B. The complainant submits that the report is unfair and inconsistent with reports he was given in earlier years. The reporting officer's adverse comments are, for reasons he explains, unwarranted. He contends in particular that criticisms which he made of EPO policy and which gave offence to the Administration prompted his supervisors to give him a poor report shortly afterwards. He asks the Tribunal to set aside the impugned decision, declare the report invalid and declare "justified" his "instant promotion to a higher grade".

C. In its reply, in which the President of the Tribunal authorised it to address only the issue of receivability, the EPO submits that the complaint is irreceivable under Article VII(1) of the Tribunal's Statute because the complainant has failed to exhaust the internal means of redress. Under Article 108(1) of the Service Regulations the complainant had the right and therefore the obligation to lodge an internal appeal against the decision by the President of the Office to endorse his report. The EPO has not received from him any written communication that it might treat as constituting such an appeal. Moreover, his entry under point 8 of the complaint form - "not applicable" - suggests that he is not alleging that he lodged any internal appeal which the Organisation has failed to answer in time.

D. In his rejoinder the complainant submits that the EPO gave no prompt and full answer to his inquiry about the procedure for lodging an internal appeal. Believing that he has been misled, he presses his complaint.

E. The Organisation's surrejoinder comments further on the issue of receivability and denies that it misled the complainant in any way: he had no reason not to be aware of the proper procedures and has only himself to blame for not exhausting the internal means of redress.

CONSIDERATIONS:

1. The complainant contends that he was given an unfavourable staff report for 1988 because he had criticised the EPO for falling below the standards of inventive activity and accuracy necessary for the acceptance of patent

applications.

2. Article 107 of the EPO Service Regulations provides that a permanent employee may lodge an internal appeal against an act adversely affecting him.

Article 109(3) states:

"When all the internal means of appeal have been exhausted, a permanent employee ... may appeal to the Administrative Tribunal of the International Labour Organisation under the conditions provided in the Statute of that Tribunal."

Article VII(1) of the Tribunal's Statute sets the same condition precedent to the lodging of a complaint.

3. The complainant having failed to follow the internal appeals procedure set out in the Service Regulations, his complaint is irreceivable.

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, have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 29 January 1991.

Jacques Ducoux
Mohamed Suffian
William Douglas
A.B. Gardner