

## SEVENTIETH SESSION

### *In re* VAN DER PEET (No. 15)

#### Judgment 1065

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifteenth complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 17 May 1990, the EPO's reply of 23 July, the complainant's rejoinder of 7 August and application of the same date for oral proceedings and the Organisation's surrejoinder of 1 October 1990;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 13 of the European Patent Convention and Article 47 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence;

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

A. The EPO employs the complainant at headquarters in Munich as a substantive examiner, and he was promoted to grade A3 on 1 January 1985. Article 47 of the Service Regulations requires the writing of staff reports, and this complaint, in which the complainant objects to his staff report for 1985, is the sequel to his fourteenth complaint, on which the Tribunal ruled, on 8 December 1988, in Judgment 935.

That judgment recorded under A the complainant's objections to rating him only 3 ("good") for "productivity" and "quality" of work and giving him the same general rating. It described the procedure that was followed in handling the report. A procedure for conciliation is prescribed where there is dispute over a staff report. The Tribunal held that that procedure had not yet been completed in the complainant's case, that there was no final decision by the President of the Office on his report, and that his fourteenth complaint was therefore premature and irreceivable.

Conciliation had in the meantime taken its course. But it failed to resolve the difference of opinion between the complainant and his supervisor, the reporting officer, who confirmed his original ratings. On 6 April 1989 the President of the Office sent the complainant a text which was to form part of the report and which said:

"I have taken into account the arguments exchanged by the parties concerned during the [conciliation] procedure, as well as the relevant judgments of the [Tribunal]. I consider that the grievances expressed by Mr. van der Peet are not only ill-founded but, moreover, have no bearing on his report, my view being that his disputes with the Personnel Department should not have had any adverse effect on his performance as an examiner. I therefore endorse the report without any change."

By a letter of 12 June 1989 the complainant lodged another appeal with the Appeals Committee against the decision of 6 April. The Committee unanimously recommended rejecting the appeal on the merits and the Principal Director of Personnel informed the complainant by a letter of 15 February 1990 that the President did so. The complainant got that letter on 5 March, and it is the decision he is challenging.

B. The complainant makes out that the Tribunal is not competent to hear his complaint, or indeed any complaint brought against the EPO, on the grounds that the Organisation has made no valid declaration of recognition of its competence. He contends that some members of the Tribunal, whom he names, have shown bias in the EPO's favour and asks that they not hear this case. He objects to the composition of the Appeals Committee that heard his appeal of 12 June 1989. He seeks disclosure of records of a meeting the Committee held on 25 October 1989 and of the "final report" by a personnel officer to the President of the Office on conciliation. He submits that the Committee's report should be declared void.

His case is that the staff report is unlawful because it overlooks essential facts. As Judgments 692, 761 and 777 on earlier complaints of his show, the Personnel Department's mishandling of those cases and the defence of his rights and good name demanded of him an inordinate amount of time and energy. The litigation should have been treated as part of his official duties. Try as he did to keep up, his work could not but suffer in the period the report covers. The ratings failed to make allowance for the adverse effects of the EPO's "vexatious" treatment of him at the time.

He could not fairly compete with staff whom the Personnel Department was treating properly. It is not a fair retort that he has only himself to blame if his time was taken up with litigation: the litigation was due to the EPO's own blundering mismanagement. Why should he have to suffer for its inadequacy? Having "sabotaged" his output, it ought to have given him a general rating of 1 ("outstanding").

He gives examples of its importunate, threatening and intransigent behaviour in earlier cases and takes it to task for dilatoriness in dealing with this one.

He asks the Tribunal to refer his complaint "to the competent court"; failing that, to order the EPO "to communicate the facts concerning the occurrences invoked herein to the Reporting Officer in order that he be put in a position as to taking into account" in the complainant's staff report for 1985 the adverse effects of the treatment of him; and to order the Organisation - "binding [it] over in the sum of DM 10,000" - to complete the reporting procedure within three months of the judgment. Being unable to put a figure on the material and moral injury, he reserves the amount of his claim to damages under those heads. He claims an award of 3,000 Deutschmarks in costs.

C. In its reply the EPO affirms the Tribunal's competence. It points out that the members of the Appeals Committee are independent and that the Committee found in the complainant's favour on the matter of conciliation (see Judgment 935 under A). As the personnel officer in charge of the reporting procedure told him in a letter of 14 February 1989, final reports on conciliation are not passed on to the official.

As to the merits the Organisation submits that the complainant is making his report a pretext for pursuing his "vendetta" against the Personnel Department and "for settling old scores". Many matters he dwells on are irrelevant since they arose outside the period covered by the report. The only material issue is whether due account was taken of his commitment to litigation at the time. The evidence shows that the reporting officer had access to all the relevant information when drafting the report and during the conciliation and internal appeal proceedings. In particular he had at his disposal the texts of the Tribunal's judgments on earlier cases of the complainant's. The final comments by the reporting officer on 9 July 1986 and by the countersigning officer on 10 July show that they kept to the guidelines on reporting in circular 146 of 10 February 1986. The President of the Office, too, was aware of the outcome of conciliation and of the judgments when he endorsed the report. The complainant took the opportunity of stating his views in writing. There is therefore no flaw in the impugned decision.

D. In his rejoinder the complainant enlarges on his pleas that the Tribunal is not competent, that several of its members are partial and that the internal appeal proceedings were flawed. He presses his claims to disclosure of the final report on conciliation and of other information. He submits that the rules on reporting did not allow the reporting officers to take account of the vexatious treatment of him and that, "for obvious reasons", they had never been properly informed of the facts. The Personnel Department prevented them from taking account of the adverse effects of its own "unabated vendetta" against him. He himself submits records of the Appeals Committee's meeting of 25 October 1989.

E. In its surrejoinder the Organisation answers the main pleas in the complainant's rejoinder and submits that what he says either repeats arguments in his original brief or, if new, fails to weaken the case made out in its reply.

It explains that the final report on conciliation is just an internal note written for the Administration's own benefit and so does not need to be passed on to anyone else. Besides, the impugned decision is adequately supported by the case records.

The reporting and countersigning officers were free to add their comments in keeping with the rules on reporting. There is no truth in the complainant's objection that they did not have full information at their disposal. The President properly came to the view that the complainant's involvement in litigation was not a reason for giving him better ratings.

#### CONSIDERATIONS:

1. These proceedings relate to the complainant's staff report for 1985. The report gave him a general rating of 3 ("good"), chosen from among assessments that range from 1 ("outstanding") to 5 ("unsatisfactory"). After an unsuccessful attempt at conciliation the President of the Office endorsed the report "without any change" in a decision dated 6 April 1989. The complainant appealed against that decision on 12 June 1989 on the grounds that the Administration had refused to take into account the disproportionate amount of time that he had had to spend in

pursuing several appeals. In its report of 30 November 1989 the internal Appeals Committee recommended dismissing his appeal and the President did so. The Principal Director of Personnel so informed him by a letter of 15 February 1990, which he says he got on 5 March. He is asking the Tribunal (i) to deny its own jurisdiction and refer the case to the competent court and, failing that, (ii) to order the EPO to change his 1985 report; (iii) grant him damages and (iv) award him costs.

The complainant's applications for hearings and for the disclosure of evidence

2. The parties having made full submissions on the material issues, there is no need to order oral proceedings or order the disclosure of any further evidence.

The challenge to jurisdiction

3. The complainant submits that the EPO Service Regulations are part and parcel of the law of the European Communities and have no link with that of the international civil service as applied by the Tribunal, which is, he says, incompetent to hear disputes between the EPO and its employees.

He is mistaken. In accordance with Article 13 of the European Patent Convention the European Patent Organisation has made a declaration recognising the jurisdiction of the Tribunal in respect of disputes between the Organisation and its employees, and the Governing Body of the International Labour Office has approved that declaration.

The charges of bias in favour of the EPO

4. The complainant has seen fit to accuse the members of the Tribunal who delivered Judgment 935 (in re van der Peet No. 14) of "perverting the law" in order to please the administration of the EPO and he asks that those members, and the President of the Tribunal, refrain from sitting in this case.

His attitude and language are quite inadmissible. As in Judgments 933, 934 and 935 the Tribunal again deplores his offensive manner of putting his case.

The allegedly unlawful composition of the Appeals Committee

5. The complainant contends that the members of the Appeals Committee, being subject to supervision and discipline by the President of the Office, are not qualified to carry out the duties of membership.

It does not follow that because the members of the Appeals Committee are also members of the staff they are incapable of independent and unbiased judgment. There is, besides, no evidence whatever to bear out the complainant's accusation.

The complainant's staff report

6. The complainant alleges that his staff report did not take extenuating circumstances into account in assessing his work performance and that certain information was withheld from the reporting officer. His allegation is not supported by the report itself, in which the reporting officer rates his performance "objectively good in spite of the existence of the disputes". It is, moreover, clear from the records that the reporting officer had access to all the relevant information.

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

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