

SEVENTY-SECOND SESSION

In re BAKKER (Tjerk) (No. 2)

Judgment 1132

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Tjerk Bakker against the European Patent Organisation (EPO) on 15 April 1991 and corrected on 25 April, the EPO's reply of 28 May, the complainant's rejoinder of 3 July and the EPO's letter to the Registrar of 17 July 1991 informing him that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 107 and 108 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 joined the staff of the EPO in 1981 and is employed as a substantive examiner at grade A4 at General Directorate 2 in Munich. This case is a sequel to his first complaint in which he objected to ratings in a report on his performance in 1988. The Tribunal dismissed that complaint in Judgment 1063 stating that since the complainant had failed to comply with the internal appeals procedure laid down in the Service Regulations his complaint was irreceivable.

By a letter of 3 May 1990 the complainant applied for leave to lodge an internal appeal against the 1988 staff report despite being out of time. The Director of Personnel rejected his request on the President's behalf by letter of 11 May. The complainant submitted an appeal against that decision on 31 May. In its report of 14 January 1991 the internal Appeals Committee recommended rejecting the appeal. By letter of 15 February 1991, the decision under challenge, the President endorsed the Committee's recommendations.

B. The complainant submits that the Administration is to blame for his failure to file an internal appeal in time against his 1988 performance report. It answered his inquiries in a "clumsy and negligent manner". What information he got was incomplete and misleading; the Organisation did suggest he might learn more from another official outside Munich, but that proved impossible. He wants the Tribunal to set aside the President's decision of 15 February 1991 and to extend the time limit for appeal against the 1988 staff report.

C. In its reply the EPO submits that the complainant adds nothing new to the arguments in his first complaint. The Organisation's reply and surrejoinder in that case stand. The case law is plain: observance of the time limits for lodging internal appeals is mandatory, and the complainant offers not a shred of evidence to warrant extension of the time limit laid down in Article 108 of the Service Regulations.

D. In his rejoinder the complainant submits that convention barred his seeking signed affidavits to confirm the information that officials in the Personnel Department had given him. The hearsay evidence he relies on must be taken on trust. He presses his claims.

CONSIDERATIONS:

1. The complainant seeks review of his intermediate staff report for 1988, which the President endorsed on 8 December 1989 and communicated to him on 14 December 1989. He filed his internal appeal on 31 May 1990. The Appeals Committee recommended rejecting his appeal on grounds of irreceivability and on 15 February 1991 the President formally rejected it.

2. Article 107 of the EPO Service Regulations provides that a permanent employee may lodge an internal appeal against an act adversely affecting him, and Article 108(2) that such an appeal must be lodged within a period of three months.

Article 108(3) states:

"The period referred to in paragraph 2 shall start to run on the date of publication, display or notification of the act appealed and, in any case, at the latest on the date on which the appellant became aware of it."

3. The complainant pleads that he was not properly informed of the relevant regulations governing internal appeals.

The case law makes it clear that time limits in rules on internal appeals must be strictly adhered to. The complainant did not comply with the requirements of the Service Regulations. Nor can he show any breach of good faith on the Organisation's part. His complaint is therefore irreceivable under Article VII(1) of the Tribunal's Statute because he has failed to exhaust the internal means of redress.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and the Right Honourable Sir William Douglas, Deputy Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1992.

Jacques Ducoux
Mella Carroll
William Douglas
A.B. Gardner