

## EIGHTIETH SESSION

### *In re* PLUGGE

#### Judgment 1470

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Hubert Boudewyn Plugge against the European Patent Organisation (EPO) on 15 November 1994 and corrected on 24 November 1994, the EPO's reply of 10 February 1995, the complainant's rejoinder of 10 March, the Organisation's surrejoinder of 12 April, the complainant's further submissions of 11 August and the EPO's final comments of 19 September 1995;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, 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 citizen of both the Netherlands and New Zealand, has been employed by the EPO since July 1988.

By a letter of 26 May 1994 he asked the President of the European Patent Office, the secretariat of the EPO, to change his place of home leave from Hilversum, in the Netherlands, to Christchurch, in New Zealand. In a reply dated 13 June 1994 the Director of Personnel Administration provisionally approved the change to Christchurch and told him he was entitled against proof of payment to the refund of travel costs up to half the price of an airline ticket at the business class rate.

On 11 August the complainant lodged an appeal against the decision of 13 June seeking a final decision that would grant him revised conditions of refund and another six days' "travel time".

By a letter dated 20 October 1994 the Director of Personnel Administration gave him a final decision that maintained the place of home leave and the conditions set out in the provisional one of 13 June and said that he would have only another three days' travel time.

B. The complainant infers rejection of his internal appeal from the Administration's failure to answer it within two months. He submits that under the applicable provisions of the Service Regulations he was entitled to refund of the full price of air travel in economy class. He also cites two provisions whose effect is, in his submission, to increase the travel time due to him by three days each.

He claims the refund of the cost of travel on home leave in an amount equal to the price of "full tourist economy class tickets"; another six days' travel time; and 2,000 German marks in costs.

C. In its reply the EPO argues that the complaint is irreceivable. Insofar as his internal appeal sought a final decision, that of 20 October 1994 gave him satisfaction. As for his objections to the conditions of refund and the reckoning of travel time in the final decision, he failed to exhaust the internal remedies open to him by challenging that decision.

In subsidiary comments on the merits the Organisation submits that the refund of the costs of travel is limited to expenses actually incurred, and that travel generally costs about half as much in tourist as in business class. When actual costs are greater the EPO pays the difference.

As to his claim to "extra travel time", the complainant wrongly assumes that the two rules on travel time have a cumulative effect: after studying a similar claim from another official the Appeals Committee held the Administration's construction of the rules to be lawful.

D. In his rejoinder the complainant maintains that his complaint is receivable. The decision of 13 June 1994 is a challengeable one: only the conditions it referred to were provisional. The "similar" case to which the Organisation

refers is unlike his own in fact. There is nothing in the two provisions on travel time to suggest that they do not have cumulative effect.

E. In its surrejoinder the EPO observes that there is no new argument in the rejoinder to make it change its position. It presses its earlier pleas and insists that the conditions in the decision of 20 October 1994 comply with the letter and spirit of the Service Regulations.

F. In a further brief the complainant produces documents to show that what the EPO has passed off as a duty to travel in tourist class is merely one to use the class "immediately" below first class, namely business.

G. In comments on that brief the Organisation says that the cardinal rule in the Service Regulations is economy, and there are no exceptions for home leave.

#### CONSIDERATIONS:

1. The complainant joined the EPO in 1988. He has dual nationality, having been born in New Zealand and acquired Dutch nationality by descent. Hilversum, in the Netherlands, used to be the designated place where he might take home leave in accordance with Article 60(2) of the Service Regulations.
2. By a letter of 14 November 1989 he asked the Personnel Department whether he might use his home leave entitlement for the purpose of travel to New Zealand. The answer, dated 4 December 1989, was that he might do so but that the place of his home leave was still Hilversum and the costs and duration of travel would continue to be reckoned on that assumption.
3. On 26 May 1994 the complainant made a written request to the President of the Office to have the place of his home leave changed from Hilversum to Christchurch, in New Zealand. The Director of Personnel Administration replied in a letter of 13 June that the Administration approved his request, but that since "discussions within the Office" were still taking place about "home leave and the reimbursement of expenses" the approval should be regarded as provisional. Reimbursement would be granted on production of proof of actual expenses but would be limited to half the price of a business class ticket unless no ticket was obtainable on the "free market" within that limit.
4. On 11 August 1994 the complainant lodged an internal appeal against that decision. He contends that, not having received any answer to that appeal within sixty days he may infer that it has been rejected and file a complaint with the Tribunal in accordance with Article 109(3) of the Service Regulations and Article VII(3) of the Tribunal's Statute. The relief he seeks is the refund of the costs of travel to Christchurch on home leave at the rate of "full tourist economy class tickets" and the grant of a total of six days for such travel.
5. The final decision on those claims - as to the costs and duration of travel - was contained in a letter which the Director of Personnel Administration wrote to him on 20 October 1994 and which superseded the provisional decision of 13 June 1994. Since he made no internal appeal against the decision of 20 October the complaint is irreceivable under Article VII(1) of the Tribunal's Statute in that he has failed to exhaust the internal means that were available to him for resisting that decision. The Tribunal need not therefore entertain either his further submissions about travel entitlements or the Organisation's comments thereon.

#### DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Julio Barberis, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

William Douglas  
Michel Gentot  
Julio Barberis

