

EIGHTY-FIRST SESSION

In re GOETTGENS (No. 2)

Judgment 1517

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Johannes Karl Wilhelm Goettgens against the European Patent Organisation (EPO) on 16 September 1994, the EPO's reply of 6 December 1994, the complainant's rejoinder of 22 August 1995, his amendment thereto of 14 September and the Organisation's surrejoinder of 9 November 1995;

Considering Article II, paragraph 5, 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 German born in 1928, was an official of the European Patent Office, the secretariat of the EPO, from 1979 until he retired on 1 March 1992. He joined the Office on secondment from the German national administration. He had been employed by the German Patent Office since 1966, first as a salaried employee and then as a civil servant.

Since he was unable to transfer accrued rights from the German scheme to the EPO's, he qualified under Article 46 of the Office's Pension Scheme Regulations for so-called "enhancement of benefits".

By a memorandum of 11 March 1992 the Administration sent him a reckoning of his Article 46 entitlement.

In a letter of 29 May he appealed to the President of the Office against the decision to base his entitlement on the "retrospective insurance value" of his accrued rights rather than their actuarial equivalent or some other fixed value.

The President referred his case to the Appeals Committee and in a report dated 31 May 1994 the Committee recommended rejecting his appeal. By a letter of 7 July 1994, which he impugns, the Director of Staff Policy told him that the President had decided to endorse the Committee's recommendation.

B. The complainant submits that the reckoning of his "enhanced" benefits was unlawful. Under Rule 46.1/1(i) of the Implementing Rules to the Pension Scheme Regulations the calculation should have been based on the amount of a theoretical transfer which the administrators of the original pension scheme certify to be "the actuarial equivalent or any other fixed value" representing his accrued pension rights. But the EPO based its calculations on a theoretical retrospective insurance value ("Nachversicherungswert"), for which it had no certification from the German authorities.

Even if the EPO had been right to use a theoretical retrospective value its reckoning could not stand since it concerns but a fraction of his pension rights. In the complainant's submission his enhancement should be six times greater and take account not only of his years in the German civil service but also of his industrial experience.

He wants the Tribunal to (1) set aside the decision of 7 July 1994; (2) order the recalculation of his entitlement under Article 46 of the Pension Scheme Regulations; (3) declare that the theoretical retrospective insurance value in the amount of 63,135.54 German marks is "neither the actuarial equivalent nor a capital payment in respect of all [his] retirement pension rights" under the German scheme; (4) order that the "recalculation be made on the basis of the number of years of service that would have been calculated according to Article 12 of the Pension Scheme Regulations using the actuarial equivalent of [his] retirement pension rights accrued under the German pension scheme or that the Office shall determine the number of years of service which it will take into account in consideration of the value of all my German pension rights"; and (5) grant him interest on the amounts due.

C. In its reply the EPO submits that the complaint is devoid of merit. It applied the material rules properly. Under Rule 46.1/1(i) the complainant may not choose between an actuarial equivalent and some other fixed value representing acquired pension rights. Nor may the Organisation choose between the amount certified by the

administrator of the former pension scheme under 46.1/1(i) and its own reckoning under 46.1/1(ii). So it had to use the German administration's figures.

D. In his rejoinder the complainant enlarges on his pleas explaining by how much the Office docked his entitlements under the German scheme. He rephrases his third head of claim and adds a sixth, to costs.

E. In its surrejoinder the Organisation observes that in Judgment 1456 (in re Belser and others) the Tribunal dismissed complaints on the very same issues that the complainant is raising. In any event he will be able to transfer his German pension rights to the EPO's own scheme under the terms of an agreement being worked out between the Organisation and the German authorities.

CONSIDERATIONS:

1. The complainant was employed in the German Patent Office from 1966 and joined the staff of the European Patent Office on 1 April 1979. At the time of his retirement on 1 March 1992 he held the post of director at grade A5. The present dispute arises out of the EPO's reckoning of the adjustment of his pension entitlements under its Pension Scheme Regulations so as to take account of his period of service in the German Patent Office.

2. The complainant challenged the EPO's computation and filed an internal appeal asking, among other things, that his pension be adjusted on the strength of the actuarial equivalent of his pension rights from his former employment, not the theoretically transferred "Nachversicherungswert", or retrospective insurance value. In a report of 31 May 1994 the Appeals Committee recommended against allowing his appeal and on 7 July the President of the Office rejected it. He asks the Tribunal to hold that the retrospective insurance value is neither the actuarial equivalent nor the "fixed value" of all his retirement pension rights accrued under his former employ-

ment. He further asks that the recalculation of his pension be based on the number of years of service arrived at by using the actuarial equivalent of his pension rights accrued in his previous employment or by taking into account the value of all the pension rights he acquired in the employ of the German Government.

3. Where a staff member has previous government service Article 12(1) of the Pension Scheme Regulations provides for the "payment to the Organisation ... of any amounts corresponding to the retirement pension rights accrued under the previous pension scheme". But since the structure of the German Patent Office does not permit transfer under Article 12 the complainant became entitled to an enhancement of benefits under Article 46(1) of the Pension Scheme Regulations based on:

"(i) the difference between the rate of salary applicable for the grade and step reached at the date of departure or death and the rate of salary current for his starting grade and step in the Office at that date, and

(ii) the number of years of service that would have been credited under Article 12 paragraph 1 if a transfer payment had been made."

that is to say - to quote Article 12(1) - "by reference to his grade on confirmation of appointment and to the Implementing Rules hereto, the number of years of reckonable service" under the EPO pensions scheme.

Implementing Rule 46.1/1 further provides:

"(i) The number of years of service in question shall be calculated on the basis of the amount of a theoretical transfer calculated in accordance with the conditions laid down in Article 12, paragraph 1. The afore-mentioned amount shall be that which the department or institution responsible for administering the previous pension scheme is able to certify as being the actuarial equivalent or any other fixed value representing retirement pension rights acquired under that scheme before departure. Pension rights acquired by means of voluntary contributions shall be disregarded.

(ii) Where the institution responsible for administering the previous pension scheme is unable to provide such a certified statement, the Office shall determine in each case the number of years of service which it will take into account."

4. In Judgment 1456 (in re Belser and others) of 6 July 1995 the Tribunal ruled on claims by other retired staff members of the EPO in a position similar to the complainant's who had sought the quashing of decisions by the

President of the Office to apply the retrospective insurance value established by the German national administration for the purpose of enhancing pension benefits under Article 46 of the Regulations.

That judgment dismissed the complaints on the grounds, among others, that the Tribunal would neither order the Organisation to negotiate with a member State nor set the objectives of any such negotiation. In the instant case the same reasoning applies. Being unable to obtain the figure of the actuarial equivalent, the EPO had to rely on "any other fixed value" representing pension rights accrued under the former employment and once the competent German authority gave its certificate was bound by Implementing Rule 46.1/1 to apply the certified amount in calculating the enhancement of the staff member's pension.

5.The complainant seeks to distinguish his own case in that he was employed in the German Patent Office first as a salaried employee and later as a civil servant. But the retirement pension rights covered by Article 12(1) are rights under a previous pension scheme certified as prescribed in Rule 46.1/1(i) of the Implementing Rules. In this case it is the rights certified by the national authority. Whether such rights should include those that arise from contributions to a social security scheme would depend on whether they are taken into account under the pension scheme of the German Patent Office.

6.The complainant further contends that the EPO assigned him to a lower starting grade than the one the Service Regulations provides for. But since he did not duly challenge his starting grade he may not now plead that his case is different on that account from those that the Tribunal dismissed in Judgment 1456.

7.Lastly, he argues that the "Nachversicherungswert" did not reflect all his pension rights, including those resulting from his social security coverage. All that the Tribunal need point out on that score is that once the competent authority has certified a fixed value representing acquired pension rights there is no provision in the Pension Scheme Regulations for varying or setting aside the certificate.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner