

## EIGHTY-THIRD SESSION

### *In re Angius* (No. 3)

Judgment 1650

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Piero Angius against the European Patent Organisation (EPO) on 24 September 1996 and corrected on 14 October, the EPO's reply of 20 December 1996, the complainant's rejoinder of 13 February 1997 and the Organisation's surrejoinder of 22 April 1997;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

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

A. The complainant, an Italian who was born in 1948, has been on the staff of the European Patent Office, the secretariat of the EPO, since 1980. At the material time he was an examiner of patents at grade A3 in General-Directorate 1 at The Hague (DG1).

By a note of 5 September 1995 the Personnel Department told him that he was promoted to grade A4 as from 1 January 1995. From a staff announcement posted up on 13 May 1996 he gathered that two other members of the staff had been promoted retroactively as from 1 June and 1 October 1995. On 2 July 1996 he wrote to the Principal Director of Administration asking why he had not fared as well. The Principal Director's reply of 9 July was that the promotions of the other two, who were in categories B and C, had been granted by the Promotion Board for 1995 but the announcement had been held up until 1996. On 16 July the complainant lodged an internal appeal seeking promotion to A4 as from 1 April 1992. In this complaint he is impugning the implied rejection of that internal appeal.

B. The complainant contends that the EPO has been discriminating against him since 1992. By way of illustration he points out that, despite many reminders from him, the completed text of the report on his performance in 1990-91 was not sent to him until June 1994. That was obviously a stratagem to hold up his promotion to A4.

He contends that the EPO is failing to abide by the Tribunal's judgments and taking reprisals against litigants. He believes that only if the Tribunal awards him heavy damages will the Organisation, in particular DG1, be impelled to change its staff policy and "arrogant attitude".

He seeks promotion to A4 as from 1 April 1992 and awards of 1,800 German marks in costs and of at least 600,000 in damages. He asks the Tribunal to identify the responsible officers at least once by name and title.

C. In its reply the Organisation rebuts the complainant's pleas about discrimination and reprisals.

It observes that the impugned decision was sent to him over ten months before he filed his internal appeal. The staff announcement of 13 May 1996 and the explanatory letter did not amount to new facts setting off a new time limit for internal appeal. The Appeals Committee had told the complainant in a report on an earlier appeal of March 1994 that his promotion might be made retroactive. Since his internal appeal was not filed in time it was irreceivable. So too, therefore, is the complaint.

In subsidiary argument the EPO contends that the complaint is devoid of merit. Though the Promotion Board reviewed the complainant's case after the completion of the performance report in June 1994, it did not recommend retroactive promotion.

D. In his rejoinder the complainant enlarges on his pleas that the EPO was guilty of bad faith and abuse of authority, calculated to hold up his promotion to A4. He contends that the staff announcement of 13 May

and the letter of 9 July 1996 did amount to new facts which showed that he was being discriminated against. His complaint is therefore receivable. It is also sound since the distinction which the letter drew between categories of personnel in the matter of retroactive promotion was not one that the EPO had ever made before and is quite unwarranted. Some of the promotions that the Organisation announced in January 1997 were backdated by more than a year. He challenges the defendant's allegation that the Promotion Board reviewed his case in 1994 in the light of his new performance appraisal.

E. In its surrejoinder the EPO maintains that the complainant is using the complaint as a pretext for putting to the Tribunal allegations which he made in his second one, on which Judgment 1344 ruled. It maintains that the complaint is irreceivable. It acknowledges that the possibility of retroactive promotion does not depend on the category of staff the employee belongs to, but points out that backdating is not a foregone conclusion. Thus the Promotion Board took into account, not just the general rating of the complainant's performance but also the ratings and comments he got for the quality and quantity of his work. It did not take the view that he deserved promotion before 1995.

## CONSIDERATIONS

1. The EPO recruited the complainant in January 1980 as an examiner of patents in the field of mechanics. By a note dated 5 September 1995 its Personnel Department told him that he was promoted to grade A4 as from 1 January 1995.
2. On 13 May 1996 there was a staff announcement that two employees were promoted, one to grade B2 as from 1 October 1995 and the other to B5 as from 1 June 1995. The complainant wrote a letter on 2 July 1996 to the Principal Director of Administration pointing out that those employees had got promotion in 1996 as from dates in 1995; he wanted to know why he himself had not had the "same treatment".
3. In a reply dated 9 July 1996 the Principal Director told him that the promotions he had mentioned were the results of the Promotion Board's recommendations for 1995 but that, for reasons there was no need to explain, the announcement of them had had to be held over until 1996 and they had therefore been made retroactive.
4. On 16 July 1996 the complainant wrote a letter to the President of the Office asking that he be promoted to A4 as from 1 April 1992 or else that his letter be treated as an internal appeal under Articles 106 to 109 of the Service Regulations. Having got no answer from the Organisation, he filed this complaint on 24 September 1996 challenging the implied rejection of his appeal.
5. The Organisation pleads that the complaint is irreceivable on the grounds that what it is challenging is not a decision. The complainant filed his internal appeal in response to the Principal Director's letter of 9 July 1996, which merely gave him information he had asked for.
6. If the complainant intended his letter of 16 July 1996 to be an internal appeal against a decision not to promote him to A4 as from 1 April 1992, that decision can be only the one mentioned in the Personnel Department's note of 5 September 1995 telling him that his promotion to A4 took effect as from 1 January 1995. Viewed in that light, his complaint is irreceivable because he failed to lodge an internal appeal within three months of receiving that decision, the time limit set in the Service Regulations for such appeal. In fact ten months elapsed before he appealed. He therefore failed to exhaust his internal remedies, as Article VII(1) of the Tribunal's Statute requires.
7. He seeks to get round the time bar by saying that only on reading the staff announcement of 13 May 1996 did he realise that the information in the note of 5 September 1995 had been misleading: it had told him that promotion could not be retroactive as from a date earlier than 1 January of the year of promotion. The time limit of three months therefore -- he argues -- ran only from 13 May 1996 and his appeal of 16 July observed it.
8. The argument fails. As the Principal Director's letter of 9 July 1996 explained to him, the promotions mentioned in the staff announcement were made on the recommendations of the Promotion Board for 1995 and were retroactive as from dates in that year only because it had not proved possible to announce them until 1996. So, even on the complainant's own account, what he was told was not misleading: the promotions

were the outcome of the exercise for promotion in 1995. He may therefore plead no extenuating circumstances to excuse the lateness of his internal appeal.

## 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. Edilbert Razafindralambo, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

William Douglas  
Mella Carroll  
E. Razafindralambo  
A.B. Gardner

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