

## EIGHTY-THIRD SESSION

### *In re Vollering* (No. 9)

Judgment 1658

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr. Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 14 November 1995, the EPO's reply of 15 December 1995, the complainant's rejoinder of 29 March 1996 and the Organisation's letter of 26 April 1996 to the Registrar of the Tribunal saying that it did not wish to file a surrejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article XII, paragraph 1, of its Annex;

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 main issue in this case is the amount of the deductions that the EPO may make from the pay of staff on account of their participation in a strike. The Tribunal ruled on that issue in Judgments 1041 (*in re* Lammineur), 1333 (*in re* Franks No. 2 and Vollering No. 2) and 1612 (*in re* Cook No. 4). A second issue is the child allowance paid by the Government of the Netherlands, known as the *kinderbijslag*. Information on that allowance is given in Judgments 1296 (*in re* Cook), 1333 and 1567, on Mr. Vollering's eighth complaint.

On 8 December 1993 the complainant took part in a one-day strike at The Hague, where the EPO employed him as an examiner of patents. From an additional pay slip he got for the month of February 1994 he learnt that the Organisation had docked one-thirtieth of his basic salary and resident's and dependant's allowances from his pay for that month. The ordinary pay slip for the same month showed that another deduction had been made, in an amount of 303 guilders, because his wife was receiving the *kinderbijslag*.

In a letter of 25 May 1994 to the President of the European Patent Office, the secretariat of the EPO, he applied for the repayment of the sums deducted in February on account of his participation in the strike insofar as they related to the allowances on the grounds that "the Office considers these allowances to be social benefits". Alternatively, if the Organisation saw them "as a pro-rata payment", he asked it to stop making deductions from his EPO child allowance on account of the *kinderbijslag* and pay back to him the amounts corresponding to any deductions made on that account. On 7 July the Director of Staff Policy told him that the President had put his case to the Appeals Committee.

In its report of 4 July 1995 the Appeals Committee unanimously recommended rejecting his appeal as irreceivable on the grounds that the matter was *res judicata*. In a letter of 11 August 1995 the Director of Staff Policy told him that the President had endorsed the Committee's recommendation. That is the decision he is challenging.

On 21 February 1996 he wrote to the members of the Administrative Council of the EPO asking the Council to seek an advisory opinion on Judgment 1333 from the International Court of Justice in accordance with Article XII(1) of the Annex to the Tribunal's Statute. In a letter of 27 March the chairman of the Council answered that the conditions for referral to the Court were not met.

B. The complainant puts forward pleas which he and others offered in support of complaints on which some of the above-mentioned judgments ruled. He also cites records of the internal proceedings.

He comments on the Appeals Committee's report. Its view that it was unlawful to make deductions from his allowances on account of his participation in the strike disagrees with the Tribunal's; yet it felt bound by Judgments 1041 and 1333. Citing its conclusion that he himself may not seek an advisory opinion directly from the International Court of Justice, he contends that the Tribunal's Statute is discriminatory. He says

that proceedings before the Tribunal are "no longer public", the only pleas made public being those that the Tribunal chooses to publish because it sees them as relevant. He says that its judgments are "arbitrary". The Committee overlooked the second aspect of his appeal.

He submits that the internal appeal on which his complaint rests is a new one.

He asks the Tribunal:

- "1. to postpone the decision of this complaint till [at least] after a decision has been taken by the Governing Body concerning the request to bring Judgement 1333 to the [International Court of Justice] for an Advisory Opinion;
2. to declare itself not neutral to give a judgement in this complaint because of the Tribunal's involvement (and especially of its members) in the Judgements 1041, 1296, 1297 and 1333;
3. to quash the decision of the EPO President, dated 11 August 1995;
4. to declare that EPO allowances constitute a form of social security in accordance with higher principles of law;
5. to order repayment of all sums of money deducted from the complainant's allowances because of strike action with an added interest of 10% p.a.;
6. to order the award of moral damages to the complainant of NLG 14000 [guilders] because of the illegal disciplinary sanction suffered by the complainant at the moment his social allowances were deducted following strike action;"

Alternatively he asks the Tribunal, "if the allowances are seen as a pro rata payment, instead of the redress of points 4-6 the redress of points 7-8", which read as follows:

- "7. to order the EPO to pay back all the deducted amounts from the complainant's remuneration because of the receipt of "Kinderbijslag" by the complainant's wife with an added interest of 10% p.a.;
8. to order the EPO to pay a moral damage of NLG 10000 to the complainant because the EPO upholds the illusion that the dependants' allowance is of like nature as the "Kinderbijslag" while in judgement 1333 (re Franks and Vollering) it is judged to be a simple pro rata payment."

Lastly, he wants the Tribunal -

- "9. to condemn the EPO for the failure of the [Internal Appeals Committee] to show proper impartiality in the composition of the members of the IAC [of whom he names one] and to order compensation to the complainant of NLG 5000 for the moral damage suffered by this lack of impartiality of a part of the composition of the IAC;
10. to condemn the EPO for the failure of the Internal Appeals Committee (IAC) in making a true and neutral investigation and therefore the breach of due process of law and to order compensation to the complainant of NLG 10000 for the moral damage suffered by this;
11. to order the award of costs of NLG 40000 to the complainant."

C. The EPO replies that the complaint is irreceivable on the grounds that the impugned decision merely confirms, in line with precedent, the lawfulness of the deductions made. The issue is *res judicata*. Insofar as the complainant makes new claims, they are irreceivable because he has made no internal appeal.

In subsidiary argument on the merits the defendant contends that Article 65(1) b) of the Service Regulations, which grants authority to make deductions from pay, is to be applied to pay as defined in Article 64(2), i.e. to include the basic salary and, where appropriate, allowances and benefits.

The Organisation invites the Tribunal to declare that the complainant causes it injury by lodging complaints in defiance of *res judicata*.

D. In his rejoinder the complainant submits that the Tribunal's judgments have put staff and their families in a "legal and social vacuum". He replaces his claim (1) with an application for adjournment "till at least after a decision has been taken by the [Administrative Council] of the EPO concerning the request to bring Judgment 1333 to the [International Court of Justice] for an Advisory Opinion".

## CONSIDERATIONS

- 1. On 8 December 1993 the complainant participated in a one-day strike of EPO staff stationed at The Hague. The Organisation deducted one-thirtieth of his total pay for February 1994 in accordance with Article 65(1) b) of the Service Regulations. His normal pay slip for that month showed the amounts of his basic salary, household allowance and dependant's allowance. From the last was deducted the sum of 303 guilders on account of the payment of the Dutch child allowance, or *kinderbijslag*, to his wife. An additional pay slip for February 1994, sent to him because of his participation in the strike, showed deductions from his basic salary and household allowance and another from the dependant's allowance.**
- 2. In a letter of 25 May 1994 to the President of the European Patent Office the complainant lodged an internal appeal claiming repayment of the deductions shown in the additional pay slip from his allowances or else of the sum of 303 guilders deducted on account of the payment of *kinderbijslag* to his wife.**
- 3. In its report of 4 July 1995 the Appeals Committee recommended rejecting the appeal as *res judicata*. The Director of Staff Policy did so on the President's behalf by a letter dated 11 August 1995. That is the decision impugned.**
- 4. In his pleadings the complainant asks the Tribunal to adjourn the case until a decision has been taken by the Governing Body of the International Labour Office -- which he replaces in his rejoinder with the Administrative Council of the EPO -- on his application for referral of Judgment 1333 (*in re* Franks No.2 and Vollering No. 2) to the International Court of Justice for an advisory opinion. By a letter dated 19 November 1996 the Tribunal asked the Organisation what was the status of any application from the complainant to the Administrative Council for such referral. The Organisation replied on 26 November 1996 enclosing a copy of a letter that the chairman of its Council had written to the complainant on 27 March 1996 explaining that the conditions for such referral were not fulfilled: the Council was satisfied, said its chairman, that the Tribunal had been competent to hear the case and that there had been no fundamental fault in the procedure followed.**
- 5. Since the complainant's application for referral to the Court has been refused the Tribunal will now take up the case.**
- 6. That the Organisation may make deductions from remuneration in the event of a strike by its staff was declared in Judgments 1041 (*in re* Lammineur) and 1333. Remuneration includes allowances. The Tribunal has also ruled in Judgments 1296 (*in re* Cook) and 1297 (*in re* Theuns No. 3) that the *kinderbijslag* and the dependant's allowance that the Organisation pays are "of like nature". In Judgment 1567, on Mr. Vollering's eighth complaint, it rejected his contention that Judgment 1333 had overruled 1296 and 1297 and affirmed that the ruling in 1296 and 1297 about the nature of the *kinderbijslag* held good. The complainant's claim to repayment of all sums deducted from his allowances because of strike action, having been ruled on in 1333, is irreceivable because it is *res judicata*.**
- 7. His alternative claim to repayment of the amounts deducted from his allowance on account of his wife's receipt of the *kinderbijslag* formed the subject of Judgment 1567. That judgment, which the Tribunal delivered on 30 January 1997 after the close of pleadings on this case, dismissed his eighth complaint. For the reasons it set out therein the Tribunal held that the Organisation was entitled to make a deduction from his dependant's allowance on account of payment of an allowance "of like nature" from another source, i.e. the *kinderbijslag*. So claim 7 fails.**
- 8. The complainant asks the Tribunal to "declare itself not neutral to give a judgment in this complaint because of the Tribunal's involvement (and especially of its members) in the Judgements 1041, 1296, 1297 and 1333". That is not an acceptable claim. The Tribunal will entertain each case that comes before it, apply the material law in making its ruling and in particular take account of precedent so as to ensure consistency. It will apply Judgments 1041, 1296, 1297 and 1333 insofar as they are relevant. Besides, by lodging this complaint the complainant has acknowledged the Tribunal's competence to hear it. If he does not want the Tribunal to rule on his case, his remedy is to withdraw suit. He has not done so.**
- 9. He has failed to substantiate his allegations about partiality in the composition of the Appeals Committee and its failure to make "a true and neutral investigation". Claims 9 and 10 therefore fail.**

**10. His claims 4, 6 and 8 are irreceivable for failure to exhaust the internal means of appeal.**

**11. Since there are no sustainable grounds for quashing the impugned decision, his subsidiary claim to costs must also fail.**

## **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.**