

EIGHTY-THIRD SESSION

*In re* Créchet (No. 2)

Judgment 1667

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Patrick Georges Michel Créchet against the European Patent Organisation (EPO) on 6 May 1996, the EPO's reply of 20 August, the complainant's rejoinder of 14 October and the Organisation's surrejoinder of 15 November 1996;

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

Having examined the written evidence 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 Frenchman, joined the staff of the European Patent Office, the secretariat of the EPO, in 1985. He was assigned to Directorate-General 1 (DG1) at The Hague as an assistant examiner at grade A1. The EPO promoted him to examiner at grade A2 as from 1 November 1986 and to A3 as from 1 November 1991.

On 18 August 1989 the President of the Office put to the Administrative Council of the EPO a paper, No. CA/47/89, about the policy of information on patents. The paper explained a scheme for assigning liaison officers to national industrial property offices.

On 13 May 1991 the Office published in the EPO *Gazette* an appeal for applications from staff in category A for a new post as liaison officer with the Portuguese National Industrial Property Institute (INPI) in Lisbon. The announcement said that the successful applicant would be seconded to the INPI for one year, which might be renewed, and that the experience gained would be seen as highly valuable both for him and for the EPO and the success of his secondment would be especially taken into account for the advancement of his career.

The complainant applied. By a letter of 5 March 1992 the Vice-President in charge of Directorate-General 4 told him that he had been appointed. He took up duty at the INPI on 1 May 1992. He had his appointment renewed several times.

In a letter dated 31 August 1995 he asked the Principal Director in charge of information on patents to consider promoting him in grade. In a letter of 5 October the Principal Director answered that his secondment would end at 31 December 1995 and that the promotion boards would "certainly take account" of the experience he had gained in Portugal. Also on 5 October, and in answer to his letter of 31 August, the Principal Director confirmed that his performance as liaison officer would be recorded in his staff report. On 22 November the complainant wrote a letter to the President of the Office citing CA/47/89 and the announcement in the *Gazette* and asking "what the special action guaranteeing the advancement of [his] career amounts to". In a letter of 12 December the Principal Director of Administration of DG1 answered on the President's behalf that his services as liaison officer would be recorded in his staff report. On 19 December 1995 he filed an internal appeal against that decision. At the EPO's request he explained in a memorandum of 19 February 1996 what he meant. He is impugning the implied rejection of his appeal.

On 1 January 1996 he was transferred to a post as an examiner in DG1, still at grade A3.

B. The complainant contends that the guarantees that the EPO offered for the advancement of his career induced him to apply for and to accept the post of liaison officer. CA/47/89 says in point 1.10 that such

liaison officers would be expected to change posts after a fixed period. Point 5 of the announcement in the *Gazette*, which spoke of "career advancement", likewise referred to promotion within the meaning of the Service Regulations. The complainant says that the Organisation promised in talks with him in September 1991 about the meaning of point 5 to promote him by the end of the second year of his secondment to Portugal. The breach of that promise causes him injury since he is no further on than an examiner with only two years' experience, though he himself has eleven. The terms on which he holds his post in DG1 are tantamount to "*de facto* downgrading".

He believes that he has been discriminated against. Two other employees who served as liaison officers have had promotions; yet, through no fault of their own, they had more humdrum duties.

One of the reasons for the decision to transfer him to a lesser post was a wish to punish him for claiming guarantees of career advancement.

He asks the Tribunal to set aside "the decision by the President of the Office not to keep the promises made" and order the EPO to fulfil its "promises". He claims moral damages and costs.

C. In its reply the Organisation contends that the impugned decision causes the complainant no injury: its letter of 12 December 1995 did not refuse the information he had asked for. It nevertheless refrains from objecting to the receivability of his complaint.

In the defendant's submission there is no evidence of promises he says it made him about the advancement of his career. CA/47/89 says nothing of career advancement for liaison officers. Point 5 of the announcement in the *Gazette* does not provide for any derogation from the ordinary rules on promotion and career advancement for permanent employees. Nor does the complainant offer any evidence to suggest that he was made any promises in talks in September 1991. There was never any question of promoting him "by the end of the second year" of his secondment.

Putting him on an examiner's post at the same grade is no "downgrading". He offers no evidence to suggest that the others he mentions got unlawful advancement.

D. In his rejoinder the complainant explains that he is not challenging the promotions of the others in like case, but he maintains that he has been discriminated against.

E. The defendant observes in its surrejoinder that the complainant's getting promotion depends on the application of the ordinary rules. He cannot show any promise of preferential treatment and does not yet qualify for promotion to grade A4.

## CONSIDERATIONS

1. The complainant, who is French and was born on 8 November 1957, is an engineer. The EPO recruited him on 1 May 1985 as an assistant examiner of patents at Directorate-General 1 (DG1) at The Hague. His initial grade was A1. He was later promoted to A2 as an examiner and on 1 November 1991 to A3.

On 18 August 1989 the President of the Office put to the Administrative Council of the EPO a paper explaining a programme whereby it would assign liaison officers to any national industrial property offices which so wished. The liaison officers were to be employees who, by drawing on sound experience of information systems, could ensure that national offices made the most of the opportunities offered by the EPO. In return the Organisation would thoroughly understand what sort of information they needed. The officers were to change posts after their stint so as to encourage the flow of experience. For the purpose the EPO was to second examiners from DG1 or Directorate-General 2 for up to three years. The President's paper, CA/47/89, was circulated among the staff.

The EPO *Gazette* of 13 May 1991 published a lengthy notice of vacancy for a liaison officer in the Portuguese patent office (INPI). The notice said that the liaison officer would spend a year or more in Lisbon and there perform the duties listed. The secondment would start in October 1991. Salary would remain unchanged. Any further expenses the employee might incur would be met. The notice added in point 5 that the experience gained by the liaison officer during his mission would be seen as highly valuable both for him and for the EPO and the success of his secondment would be especially taken into account for the advancement

of his career. Of several candidates the EPO appointed the complainant to serve as liaison officer in Portugal. By a letter of 5 March 1992 it told him that he was appointed for an initial, but renewable, period of one year. He had it extended to 31 December 1995, whereupon his secondment ended. At 1 January 1996 he returned to his post as an examiner, still at grade A3, at The Hague.

2. Before going back to The Hague he told his supervisors that he deserved promotion because of the large and useful contribution that he had made in Portugal.

In a letter of 31 August 1995 to the Principal Director for Patent Information he claimed in particular "consideration for promotion to a higher grade in accordance with the explanations given to him at the interview on Friday 13 September 1991 in Munich about point 5 of the announcement".

The Principal Director assured him in a letter of 5 October 1995 that the promotion boards would "certainly take account" of the experience he had gained while on secondment. The Principal Director further told him in another letter of 5 October:

"I can confirm that your performance as liaison officer will be recorded in your staff report which, as you know, may affect the advancement of your career."

3. In a letter of 22 November 1995 to the President of the Office the complainant said:

"I wish to remind you of the undertakings that the EPO entered into and to know what the special action guaranteeing the advancement of my career amounts to, since it induced me to apply for secondment to Lisbon as liaison officer."

He cited CA/47/89 and the announcement in the *Gazette*, said that his secondment had been a success and concluded:

"Pending information from you about the content of the special action guaranteeing the advancement of my career ..."

The President's answer came in a letter of 12 December 1995:

"The services you provided while on secondment will be reflected in your staff report, which of course will be taken into account for the advancement of your career."

By a letter of 19 December 1995 the complainant said that he was filing an internal appeal against what he saw as an "unfavourable decision".

He submitted a detailed statement of appeal on 19 February 1996, repeating his earlier arguments and contending that in the talks with him after he had applied for the post -

"... in discussion on point 5 of the announcement in the *Gazette* the EPO expressly promised me special promotion on confirmation of my contribution to the success of the post, i.e. by the end of the second year of my secondment to the INPI in Portugal. In the same talks the EPO assured me that after my secondment to the INPI I would get a most promising post because of the great value of the experience gained both by me and by the Organisation."

He explained that his

"internal appeal challenges ... the EPO's decision not to keep its promises and grant me promotion by the end of the second year and a promising post on the conclusion of my secondment to the INPI in Portugal."

Having got no answer, he has lodged this complaint impugning what he sees as the implied rejection of his claims. He puts forward the same main pleas as before.

4. The Organisation doubts whether the complaint is receivable. In its submission the complainant merely asked the President for information; the information he was given cannot affect his legal status, does not amount to a decision and therefore cannot cause injury.

But there is no need to rule on the issue since in any event the complaint fails on the merits for the reasons set out below.

5. The complainant relies on oral promises. The Organisation says that there were none. Since they are not

proved, the sole material issue is whether he may rely on any written promise. There is therefore no need to say whether the Organisation would have been bound by any oral promise, not confirmed in writing and apparently granted without his supervisors' approval, when the appointment and promotion of EPO staff depend on strict compliance with written rules.

6. The EPO's written statements must be so construed as to bear the meaning that the parties must have intended.

The complainant is relying mainly on point 5 of the announcement in the *Gazette* of 13 May 1991.

(a) The issue is one of good faith. There is indeed no question of imputing to the EPO any promise to grant to a seconded employee who proved his mettle as liaison officer an automatic promotion in grade or appointment to some more covetable post. Such promise would have been untoward and presumably incompatible with any properly strict observance of the Service Regulations. So much was to be understood, and should have been understood, from the announcement.

(b) The reasonable construction to be put on the announcement is that success in liaison work should serve the advancement of the employee's career, first in the evaluation of his performance and then in assessing his qualifications for promotion or for appointment to some more desirable post. That is indeed what the text conveys and the interpretation is in line with the Service Regulations and with the Organisation's own interests.

The conclusion is that the text of the announcement gave the employee a limited assurance that a successful secondment as liaison officer would be taken into account as a point in his favour whenever a decision was to be taken on promotion or on appointment. But there was no direct promise as to what the decision would be: he was being given only an expectation.

(c) That is just the view that the President took, and the reply he gave the complainant is unexceptionable.

Only when a specific decision is taken on promotion or appointment may the complainant rely on the alleged success of his work as liaison officer.

The complainant's claims therefore fail.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Miss Mella Carroll, Judge, Mr. Edilbert Razafindralambo, Judge, and Mr. Jean-François Egli, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 10 July 1997.

*(Signed)*

Mella Carroll  
E. Razafindralambo  
Egli  
A.B. Gardner