

EIGHTY-FOURTH SESSION

In re McLean (No. 4)

Judgment 1709

The Administrative Tribunal,

Considering the fourth complaint filed by Mr. Gregor Adrian McLean against the European Patent Organisation (EPO) on 18 December 1996, the EPO's reply of 21 March 1997, the complainant's rejoinder of 20 May and the Organisation's surrejoinder of 24 June 1997;

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. Facts relevant to this case are to be found under A in Judgments 1433 and 1493 on Mr. McLean's first and second complaints against the EPO. The complainant is employed at the European Patent Office, the EPO's secretariat, in Munich. At the material time he held a grade A4 appointment.

In December 1994 his wife and son flew to Australia on home leave. They left from London. He himself went, again by air, in June 1995, but from Munich. Both they and he travelled in business class but on airline tickets bought on what is known as the "grey" market at a total cost of 15,123.36 German marks. That was less than the cost of "open" economy-class tickets, ones that set no date of return. In a letter of 25 July 1995 he asked the Administration to refund the cost of the three tickets. By a letter of 3 August 1995 the Remuneration and Pensions Department answered that he would be paid in line with a decision of 29 July 1994 which entitled him to no more than 50 per cent of the cost of business-class tickets.

By a letter of 11 August 1995 he filed an internal appeal with the Director of Personnel Administration on the grounds that the Office was in breach of Article 79(3) b) of the Service Regulations which entitles staff to reimbursement of "the price of a tourist economy class ticket". By a letter of 11 September the Director of Staff Policy informed him that proceedings in his internal appeal were stayed pending the Tribunal's ruling on his second complaint, which was about a similar issue. On 1 February 1996 Judgment 1493 dismissed that complaint. On 6 February he wrote to the chairman of the Appeals Committee confirming his intention of pressing his appeal. In its report of 22 August the Committee recommended rejecting it. The President of the Office endorsed the recommendation and the Director of Staff Policy, who in the meantime had become Director of Staff Development, so informed the complainant in a letter of 4 October 1996, the decision he is impugning.

B. The complainant submits that the Committee's recommendation shows several mistakes of fact and one mistake of law. He asserts that he was unable to get lower fares because to do so he would have had to book months earlier. Besides, because of an ailment he needs a degree of comfort that he would not have had in economy class. Each of the business-class tickets cost less than the economy-class fare. He contends that the ceiling of 50 per cent of a business-class fare has no basis in law. He cites a report which auditors made in 1987 and which was critical of the EPO's broad interpretation of the Service Regulations and recommended encouraging staff to travel as cheaply as they could. The complainant submits that by buying airline tickets for less than the economy class fare he was acting in line with the auditors' recommendation.

What he claims in substance is full refund of the cost of the three airline tickets and an award of 2,000 German marks in costs.

C. In its reply the Organisation submits that the complaint is devoid of merit and should be dismissed. The

complainant's case is not an exception: he was reimbursed on the strength of the decision of 29 July 1994, which confirmed the practice followed since July 1990. The Appeals Committee found the practice lawful, and it is fully in keeping with the policy of saving money. It challenges his assertion that he could not get cheaper tickets. Since his wife and son did not leave from Munich, his claim to the cost of their tickets is in breach of Article 80(3) c) of the Service Regulations.

D. In his rejoinder the complainant rebuts the Organisation's arguments. He asks it to prove that the decision of 29 July 1994 confirms actual practice since July 1990. He presses his pleas.

E. The Organisation finds nothing in his rejoinder to make it change its position. It pleads further in support of its contention that the decision of 29 July 1994 confirms actual practice. Lastly, it submits that the complainant's ailment did not warrant his buying a dearer ticket.

CONSIDERATIONS

1. This is Mr. McLean's fourth complaint about home leave. He submits that under Article 79(3) b) of the Service Regulations he is entitled to refund of the cost of three economy-class tickets for travel by air from Munich to Sydney and back for himself and his wife and son. He paid 15,123.36 German marks for the journey and the EPO has paid back only 13,405.50 marks. He claims the difference: 1,717.86 marks.

2. Article 79(3) reads:

"A permanent employee travelling by air shall be entitled to reimbursement of:

- a) the price of a first class ticket on flights exceeding six hours if he is of grade A7 or A6,
- b) the price of a tourist economy class ticket in all other cases."

3. The complainant is claiming under 79(3) b). He says that the price of an economy-class ticket for travel to Sydney and back is 7,703 marks but he wants reimbursement of the fare he actually paid, which came to less.

4. The EPO replies that it ordinarily construes 79(3) b) to mean that it must pay the fare that is "as cheap as possible", to quote its auditors' report for 1987. So it told the complainant by a letter of 29 July 1994 that it would meet his travel costs up to half the cost of business-class tickets unless tickets were unobtainable on the "free market". It says that fares vary for travel to Australia but economy-class ones are usually to be had at half the price of business class. In support of that contention it produces a list of fares for travel from Frankfurt to Sydney and back by three companies: Qantas, Air New Zealand and Singapore Airlines. For stays of over six days the fares range from 2,000 to 3,400 marks. Since the fare for air travel in economy class from Munich to Frankfurt and back is 300 at the most, the journey to Sydney in economy class ought to have cost less than 3,700 for each passenger, whereas the refund he got came to 4,468.50 for each.

5. The complainant says that a return economy-class ticket costs 7,703 marks. But that is the "open-ended" rate, and he fails to explain satisfactorily why he should be paid that rate for travel on home leave. The rates quoted by the airlines the EPO mentions also apply to economy class, and he has not put forward any convincing reason why he should not have chosen one of those companies.

6. The ailment which he says made it hard for him to travel in economy class did not entitle him to any exception to 79(3) b).

7. He asks the Tribunal to rule that the Organisation's position in its letter of 29 July 1994 offends against 79(3) b). But the Tribunal need not rule on that issue. All it need say is that with the sum of 13,405.50 marks that he has had from the Organisation he and his wife and son could have bought economy-class tickets to Sydney and back on home leave.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. Seydou Ba, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 29 January 1998.

(Signed)

Michel Gentot

Julio Barberis

Seydou Ba

A.B. Gardner

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