Registry's translation, the French text alone being authoritative.

EIGHTY-SIXTH SESSION

In re Skulikaris

Judgment 1786

The Administrative Tribunal,

Considering the complaint filed by Mr. Ioanis Skulikaris against the European Patent Organisation (EPO) on 17 December 1997 and corrected on 23 January 1998, the EPO's reply of 2 April, the complainant's rejoinder of 6 July and the Organisation's surrejoinder of 9 September 1998;

Considering Articles II, paragraph 5, and VII 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. By a communiqué of 18 September 1995 the President of the European Patent Office, the EPO's secretariat, announced a decision, taken on 8 September, to amend as from 31 December 1995 Rule 4 c) i) of circular 22. The circular sets out arrangements for the repayment of the expenses of travel on home leave. Before 1 January 1996 the sum refunded was the cost of travel by rail by the shortest standard route from the place of employment to the employee's home and back again. Since that date repayment has been based on the distance between those two places and on either a "kilometric allowance" for a return journey of less than 1,000 kilometres, or 50 per cent of the air fare in business class for a return journey of more than 1,000 kilometres.

The complainant, a Greek citizen who was born in 1954, joined the Office at Munich on 1 October 1989. He is an examiner at grade A3. On 4 December 1995 he filed an appeal against the President's decision announced on 18 September 1995. On 24 June 1997 the Appeals Committee unanimously recommended rejection. By a letter of 28 July 1997 - the impugned decision - the Director of Personnel Development told the complainant that the President of the Office rejected his appeal.

B. Citing Judgment 1000 *(in re* Clements, Patak and Rödl), the complain-ant submits that his complaint is receivable. He is challenging the new version of circular 22, which affects him adversely, and not an individual decision taken thereunder to refund his travel costs.

On the merits he pleads breach of equal treatment in the distinction drawn between employees in one and the same category according to the distance from duty station to home. To his mind the new system favours staff whose home is under 500 kilometres distant over others, like himself, who have to buy the cheapest airline tickets that allow no change in itinerary or date. Those who go by air are worse off because an upper limit is set on the refundable fare. In any event the EPO has failed in the whole purpose of the amendment, which was to make refund simpler.

In the complainant's submission the new rules are in breach of Articles 79 and 80 of the Service Regulations, which preclude the flat-rate repayment - equivalent to half the cost of a business-class airline ticket - that the circular brought in. Subsidiary rules such as circulars must be in line with the Service Regulations.

He seeks the quashing of the President's decision, the review or withdrawal of the new version of circular 22 and an award of damages for any financial loss.

C. In its reply the EPO submits that the complaint is irreceivable: since it challenges a general measure, not an individual decision applying it, the complainant can show no injury. He is in breach of good faith since he was repaid more in 1997 than in 1995. The Tribunal may not order the review of a circular.

In subsidiary argument the EPO submits that the complaint is devoid of merit. Citing the case law, it observes that

staff have no acquired right to the amount of an allowance. Before making the amendment it consulted its General Advisory Committee, which includes staff representatives and which gave unanimous consent to the amendment. There is no discrimination: the new rules cover everyone's case and the new criterion - the distance between duty station and home - is an objective one. Only the EPO can tell whether the purpose of the change is met.

There was flat-rate repayment under the old rules: the only change is the new criterion. Staff may still opt for repayment of actual expenses provided they use the cheapest means of transport. Since few of them do so opt, the flat-rate repayment is obviously ample. In refunding the cost of travel on home leave the EPO may follow a method other than the one prescribed in Article 79 of the Service Regulations for duty travel.

D. In his rejoinder the complainant submits that the rejection of his appeal is a final individual decision and therefore challengeable. He confirms that what he is challenging is circular 22, not the repayment of his own costs of travel for home leave in 1997.

In his view the Organisation is wrong to compare the sums he was repaid in 1995 and 1997. To be objective it should have compared the sum he got in 1997 with the sum he would have got but for the change. The reason why he got more in 1997 than in 1995 was that, his children being older, their airline tickets cost more. The sole purpose of his complaint is the "consistent and equitable application of the Service Regulations". The staff representatives on the General Advisory Committee doubted that the change was in line with Article 79 and thought it detrimental to the staff. What - he asks - is objective about setting an "arbitrary limit" of 500 kilometres?

The intent of the Service Regulations is that there should be a single method of reimbursement for everyone. The Organisation was therefore in breach of "the letter and spirit" of Articles 79 and 80. The Administration poached on the province of the Administrative Council, the only body empowered to amend the Regulations.

E. In its surrejoinder the Organisation submits that the complainant is confounding "individual" and "final" decision. A staff member must appeal against an individual decision so as to get a final decision challengeable in a complaint to the Tribunal.

The complainant is mistaken, too, if he thinks that what is "equitable" must be "uniform": distance is the criterion because it affords a "verifiable empirical figure". Even before circular 22 was amended there was one method for repaying duty travel and another for repaying home leave travel. The report of the General Advisory Committee said nothing of doubts expressed by staff representatives and the Office has not encroached on the Council's authority.

CONSIDERATIONS

1. The complainant, a Greek citizen, is employed by the European Patent Organisation as an examiner at grade A3. A communiqué of 18 September 1995 announced that the President of the Office had decided to amend the procedure for repaying the costs of travel on home leave. The complainant filed an internal appeal against that decision. On 24 June 1997 the Appeals Committee unanimously recommended rejection. The President endorsed that recommendation by a decision of 28 July 1997, which the complainant is now challenging before the Tribunal.

2. What the complainant wants is explicit enough and clear from comparing repayment of travel costs before 1 January 1996 and repayment since.

3. Under Articles 60, 77, 79 and 80 of the Service Regulations staff who take home leave are entitled to repayment of the actual costs of travel from duty station to home and back. According to circular 22 of 16 January 1979 they were free to opt for payment of a lump sum, or flat rate. Before the amendment that the President made on 8 September 1995 the relevant figure for staff in categories A, B5 and B6 used to be the cost of a first-class ticket by rail and by the shortest route. Since the amendment it has been either the "kilometric allowance" allowed under the Regulations for a return journey totalling under 1,000 kilometres or else, for longer journeys, half the cost of a ticket for travel by air in business class.

4. The complainant sees in the new arrangements breach of equal treatment, of Articles 79 and 80 of the Service Regulations and of the ranking of rules. The Organisation replies that, contrary to what he makes out, his complaint is irreceivable because he is challenging the amendment of circular 22, not an individual decision applying it.

5. The Organisation is right. Citing Judgment 1000 (*in re* Clements, Patak and Rödl), the complainant argues that

the decision he is objecting to affects the rights of staff and will afford grounds for individual decisions and so is directly challengeable before the Tribunal. He is misreading that judgment. All it says, in 12, is that according to consistent precedent "when impugning an individual decision that touches him directly the employee of an international organisation may challenge the lawfulness of any general or prior decision". That ruling does not allow direct challenge to a general decision of a kind that must ordinarily be given effect by individual decision. As the Tribunal said in Judgments 624 (*in re* Giroud No. 2 and Lovrecich) and 663 (*in re* Kern Nos. 2, 3, 4 and 5) and has often said since, the staff member must impugn an individual decision applying a general one and, if need be, may for that purpose challenge the lawfulness of the general one without any risk of being told that such challenge is time-barred.

6. The complainant insists that what he wants to see quashed is the amendment to circular 22, i.e. a general decision. He even goes so far as to explain that he is not challenging the individual decision of 24 June 1997 letting him take home leave and setting the amount of costs refundable according to the amended circular. So his complaint cannot but fail as irreceivable.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 6 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Mella Carroll

James K. Hugessen

A.B. Gardner

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