

The Administrative Tribunal,

Considering the second complaint filed by Mrs Marcella Cappadonia against the European Patent Organisation (EPO) on 11 March 2000 and corrected on 14 April, the EPO's reply of 5 July 2000, and the Registrar's letter of 15 February 2001 informing the complainant that, the time limit for filing a rejoinder having expired, the written pleadings had closed under Article 9(2) of the Rules of the Tribunal;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, an Italian national born in 1960, is a permanent employee with the European Patent Office, the EPO's secretariat. She took up her employment with the EPO on 1 September 1990. Shortly thereafter the Personnel Department informed her that her reckonable experience "for purposes of recruitment and promotion" had been calculated as 3 years and 7 months, which corresponded to grade A2-2-7. She was promoted to grade A3 as of 1 October 1999.

On 12 December 1991 she requested unpaid leave for a period of eight months, with effect from 1 May 1992. This was subsequently extended by two years at the complainant's initiative. At the end of this period she wished to return to the EPO, but there was no suitable post available; her leave was then extended several times by the Organisation for a total of two additional years. She returned to work at the EPO on 1 January 1997 after 4 years and 8 months of unpaid leave.

During her leave she worked as a scientific officer, at a research centre. On 20 January 1997 she submitted a certificate describing the work she performed while on leave and asked the EPO to recalculate her reckonable experience and adjust her grade accordingly. On 24 January the Director of Personnel Management informed her that experience gained during unpaid leave could not "be credited as reckonable experience" and refused her request.

On 14 April the complainant appealed to the President of the Office. On 14 May 1997 he replied that he was unable to grant her request and that he had forwarded it "to the relevant department for appropriate handling as an internal appeal". On 4 June 1998 the Director of Personnel Development informed her that, in fact, her appeal had not been forwarded but that this had been rectified.

The Administration's position paper on the complainant's internal appeal stated that it would be inconsistent with Article 45(3) of the Service Regulations for Permanent Employees of the European Patent Office to credit experience she had gained while on leave; that article specifically prohibits advancement to a higher step or promotion in grade while on leave for personal reasons. It also stated that circular No. 144 of 2 September 1985, which lays down "Guidelines ... for calculating the reckonable experience of A staff for purposes of recruitment and promotion (career system)", shows in paragraph I.1 that only experience prior to recruitment can be taken into account.

In its opinion dated 6 December 1999 the Appeals Committee unanimously recommended rejecting her appeal. On 13 December 1999 the Director of Personnel Development informed the complainant that the President of the Office had rejected her appeal. That is the impugned decision.

B. The complainant makes four pleas in support of her request for a recalculation of her working experience. First,

referring to circular 144, she contests the EPO's view that working experience is only taken into account upon recruitment, particularly as the circular specifies that working experience can be considered for both "purposes of recruitment and promotion". Moreover, the circular does not exclude taking into consideration working experience gained during unpaid leave. Secondly, the EPO's reference to Article 45 during the appeal procedure was not justified since she had not asked to be promoted during her leave. Thirdly, since she was promoted to A3 only on 1 October 1999, with a total of eight years credited experience, it was obvious that the experience she gained during her leave had not been taken into consideration, even though circular 144 made that possible. Lastly, she takes issue with the manner in which the Administration has handled her case and, in particular, how it misplaced important documents, which prolonged the process.

She claims a recalculation of her working experience.

C. In its reply the EPO rebuts the complainant's argument regarding circular 144. This circular is intended as a guideline for the implementation of Article 11 (on grade and seniority) of the Service Regulations, which comes under Chapter 3 on recruitment. Calculation of reckonable experience does not take place at any other time during an official's career with the EPO. The Organisation presses its pleas regarding Article 45: when her leave was granted the complainant's attention was drawn to this article which explicitly states that a permanent employee is not entitled to promotion during leave. Therefore, it would be contradictory to credit the experience she gained during her leave for the purpose of granting her a higher step or promotion in grade. As for the promotion she received in October 1999, the EPO points out that 8 years of experience is merely a minimum requirement for a promotion. The Tribunal has repeatedly ruled that promotions are discretionary, and that a promotion is not "automatic" upon reaching the minimum years of experience. Nevertheless, the complainant was immediately promoted upon fulfilling the minimum requirements.

Regarding the complainant's allegation that her case was not handled with due care, the EPO admits that her letter of appeal was "inadvertently" not forwarded in a timely manner. Regret for this had been expressed to her by the Director of Personnel Management following which the appeal procedure had been completed within a reasonable period. In the EPO's opinion there is no reason for allowing the complainant's application for hearings.

## CONSIDERATIONS

1. The complainant joined the Organisation on 1 September 1990 with reckonable experience of three years and seven months which entitled her to grade A2-2-7.
2. She was granted unpaid leave from 1 May to 31 December 1992. This was later extended at her request to 31 December 1994. The complainant could not be reinstated at this time as there was no suitable post available. Her unpaid leave was therefore extended and she was ultimately reinstated on 1 January 1997 after a total of four years and eight months of unpaid leave.
3. Before the complainant started her leave her attention was drawn to Article 45 of the Service Regulations which, in its third paragraph, says that an official is not entitled to an advancement to a higher step or promotion in grade while on unpaid leave.
4. When she returned she asked for a recalculation of her "reckonable experience/grade" in view of the experience she had gained at the research centre where she worked during her leave. This was refused on 24 January 1997. Following the unanimous recommendation of the Appeals Committee, the President of the Office rejected her appeal on 13 December 1999. That is the impugned decision.
5. Article 11 of the Service Regulations provides:  
"(1) The appointing authority shall assign to each employee the grade corresponding to the post for which he has been recruited.  
(2) Unless the appointing authority decides otherwise, for duly substantiated reasons relating to the training and special professional experience of the candidate, appointment shall be to the first step in the grade."
6. Circular 144 lays down guidelines for calculating reckonable experience. Section I defines reckonable

experience. Section II deals with how to apply reckonable experience in calculating grade and step on recruitment. According to Section III (relating to promotion under Article 49 of the Service Regulations):

"The calculation provided for under I is also applicable to periods of employment to be ascertained under the career system (step-in-grade upon promotion), subject to the minimum ages laid down in the promotion instructions established by the President."

7. The complainant argues that a calculation of working experience is not restricted to initial employment. She claims this is given only as an example and it is explicitly stated that it applies also to promotion. She says that any reference to Article 45 is unjustified as she did not request promotion during leave. She also claims that when she was promoted to grade A3 on 1 October 1999 her working experience while on leave was "obviously not taken into consideration".

8. What the complainant asked for in January 1997 was the recalculation of her reckonable experience and her grade; in other words she was seeking promotion as a result of experience gained while on unpaid leave. Promotion is carefully regulated under Article 49. This article provides for six different types of promotion, but there is no provision for promotion for having gained additional experience while on leave. Nor is there provision for any recalculation of the calculation made on recruitment. This claim fails.

9. Any criticism the complainant may have about her actual promotion on 1 October 1999 is irrelevant to this complaint. The administrative decision which she disputes and which has gone through the internal appeal process was made in January 1997. A subsequent different decision which is disputed forms a separate cause of action.

10. The complainant criticises the way in which her appeal was dealt with by the Organisation in that they lost some of her correspondence. The Tribunal, however, does not find that her rights were in any way compromised.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 3 May 2001, Miss Mella Carroll, Vice-President of the Tribunal, Mr James K. Hugessen, Judge and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2001.

Mella Carroll

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet