

The Administrative Tribunal,

Considering the complaint filed by Miss S. F. against the European Patent Organisation (EPO) on 22 December 2004, the Organisation's reply of 16 March 2005, the complainant's rejoinder of 25 April and the EPO's surrejoinder of 25 July 2005;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a German national born in 1971, joined the European Patent Office, the secretariat of the EPO, on 1 December 1998 as an administrative officer at grade B4 in the Infrastructure Services directorate of Directorate-General 1 of the Office in The Hague. Owing to a "temporary staff shortage", she was offered a fixed-term contract for a four-year period. She was employed in Technical Services.

In a letter dated 15 August 2002 the Director of Personnel reminded the complainant that her period of employment would end on 30 November 2002. He added that since construction work in connection with a building in The Hague (the Hinge project) had been completed, and as a result of a reorganisation in Technical Services, her post had been suppressed. He noted that she had applied for a grade B5/B1 post. The complainant wrote to the President of the Office on 20 November 2002 and, after explaining that her tasks were related to the maintenance of buildings in The Hague and to medium and long-term projects, requested an extension of her contract pursuant to Article 2 of the Conditions of Employment for contract staff. In a letter of 16 January 2003 the Director of Personnel reminded her that her post had been suppressed, adding that several job opportunities might arise in the course of 2003. On 6 March the complainant filed an internal appeal asking to be reinstated or, failing that, to receive financial compensation. In a letter of 29 April 2003 the head of the Employment Law directorate informed her that as her post had been suppressed the President of the Office considered that her request could not be granted and had referred the matter to the Appeals Committee.

In a report issued on 14 September 2004, the Appeals Committee recommended by a majority that the appeal be dismissed as unfounded. Although the Office had failed to supply further details that had been requested, the Committee saw no reason to doubt that the complainant's post had indeed been deleted, and it considered such deletion to be all the more justified for the fact that the directorate concerned was undergoing a phase of restructuring. According to the Committee, the complainant had rightly been offered a fixed-term contract as she had been appointed for the duration of the work on the Hinge building project so that a permanent employee could be seconded from Infrastructure Services to that project. Noting that the complainant had applied for only one post, the Committee considered nevertheless that the Office had fulfilled its duty of care by drawing her attention to the possibility that further vacancies might be advertised in 2003. It took the view that the complainant had not proved that the disputed decision was based in part on discriminatory remarks by the head of Infrastructure Services. It was unable to see a sexist meaning in the latter's comments regarding the complainant's lack of assertiveness and the roughness of the construction world. Two members of the Committee expressed a dissenting opinion, on the grounds that many of the duties assigned to the complainant were of a permanent nature and that her appeal was therefore allowable.

In a letter of 8 October 2004, which constitutes the impugned decision, the director in charge of Personnel Management and Systems informed the complainant that in accordance with the opinion of the majority of the Committee, the President of the Office had decided to dismiss her appeal.

B. The complainant argued before the Appeals Committee that the disputed decision was based on reasons that were false and vitiated by bias. Those arguments having been rejected by a majority of the Committee members,

she considers that their opinion is faulty on several counts. In her view, her post was not eliminated as a result of reorganisation. Yet although the Office deliberately failed to supply further details in that respect as requested, the Committee gave it the benefit of the doubt, which constituted a fundamental error of law. The complainant asserts that her tasks did not “disappear” since a vacancy notice for a grade A4/A1 post with the very same tasks was published a few months later. She points out furthermore that most of the posts advertised did not match her qualifications. In her opinion, the remarks of her supervisor were “incongruous” in view of her performance and she accuses the Committee of failing to take relevant facts into consideration.

The complainant contends that the tasks she was assigned did not end with her contract and that it was the dissenting opinion expressed by two of the Committee members which should have been followed.

She asks for the decision of 8 October 2004 to be quashed. She wants to be appointed as a permanent employee of the Office or alternatively to be employed again as a contract staff member, or as a further alternative to be awarded appropriate financial compensation. She also claims costs.

C. In its reply the defendant organisation submits that the complaint is irreceivable on the grounds that the complainant’s internal appeal was filed late. It submits that the complainant was informed by the letter of 15 August 2002 of the Organisation’s “refusal” to extend her contract. By her letter of 20 November 2002 she should have lodged an appeal against that decision, but since in that letter she only requested an extension of her contract, it cannot be deemed to constitute a letter of appeal.

On the merits, the EPO contends that the decision not to extend her contract was not based on unsatisfactory performance but on the completion of the Hinge project, on the restructuring of Infrastructure Services and on the deletion of her post. It explains that the complainant was standing in for a permanent employee who had been temporarily seconded to the Hinge project, hence her tasks were inherently temporary. Since she was expected to perform the normal duties of the seconded employee, she did take on long-term tasks but only on a temporary basis.

The Organisation also recalls that decisions concerning the non-renewal of a contract are left to the discretion of the appointing authority and are subject to only limited review by the Tribunal. It goes on to argue that it did not abuse that discretion in the present case. When the building project was completed, the permanent employee replaced by the complainant was able to take back some of the duties she had been performing while he was on secondment. Some of the complainant’s tasks had been completed or put on hold, and others – the remaining 10 to 15 per cent – were redistributed. For the EPO, if the remaining duties can be performed by other staff in the directorate, there can be no objection in principle to the Office’s deciding to delete a post held by a contract staff member on expiry of the latter’s contract. The complainant has failed to show that a permanent post was created for the duties she carried out, and her argument on this issue is not supported by the A4/A1 vacancy she mentions, since it was in a different category. Similarly, the complainant has failed to show that she suffered discriminatory treatment.

D. In her rejoinder the complainant points out that the Appeals Committee unanimously declared her appeal receivable and that its reasoning regarding receivability should be followed.

On the merits, she asserts that the permanent employee she was replacing did not return to his post and that in view of the many new building and maintenance projects, much more than 10 to 15 per cent of her duties remained. Since the EPO published several job vacancy notices to recruit personnel to carry out those tasks, she does not understand why they were not entrusted to her.

She adds that in her pleadings before the Appeals Committee she asserted, without being contradicted, that she had been promised a permanent position upon expiry of her contract. She therefore had reasonable expectations that her appointment would be extended. She states that she is far from convinced that the Office acted equitably and fulfilled its duty of care. In her view, it is clear that the Organisation still needed her services. The only valid reason for not extending her appointment would have been widespread reorganisation, but although such reorganisation was planned it was never carried out.

E. In its surrejoinder the EPO maintains its position regarding receivability.

On the merits, it submits that the restructuring did in fact take place. It explains that even though, as a result of that

restructuring, the staff member whom the complainant had temporarily replaced did not return to Technical Services upon completion of the construction project, he did resume some of his former duties. It maintains that between 85 and 90 per cent of the complainant's tasks had been either completed or suspended. The EPO, which considers that the complainant has in no way proved that a promise was made to her, produces an attestation signed by the very persons she alleges made that promise and in which they formally deny having said anything to the complainant to raise her hopes.

CONSIDERATIONS

1. The complainant joined the European Patent Office on a fixed-term contract for a four-year period starting 1 December 1998. The letter of 11 September 1998, in which the Director of Personnel offered her a post as an administrative officer at grade B4 in the Infrastructure Services directorate of Directorate-General 1, specified that her contract was of fixed duration owing to a "temporary staff shortage".
2. In a letter dated 15 August 2002 the new Director of Personnel "reminded" the complainant that her period of employment would end on 30 November 2002 and added that, since the construction work for the "Hinge" project – which had given rise to her recruitment – was finished, and as a result of a reorganisation of the Technical Services, her post had been suppressed. He also informed her that a new post of Building Maintenance Officer was vacant and he noted that she had applied for that post. The complainant wrote to the President of the Office on 20 November 2002 explaining that her contract was due to expire on 30 November but that her tasks were related to projects which were far from being completed and that the Technical Services were short of staff. In the circumstances, she requested an extension of her contract pursuant to Article 2 of the Conditions of Employment for contract staff. On 16 January 2003 the Director of Personnel replied to the complainant – whose appointment had come to an end on 30 November 2002 – reminding her that her post had been suppressed, and that she had been so informed in the letter of 15 August 2002. On 6 March 2003 the complainant filed an internal appeal against the implicit rejection of her request for extension, which was referred to the Appeals Committee.
3. In a report issued on 14 September 2004, the Appeals Committee considered that the appeal was receivable but recommended, by a majority of its members, that it be dismissed as unfounded. On 8 October 2004 the director in charge of Personnel Management and Systems informed the complainant that, in accordance with the Committee's opinion, the President had decided to dismiss her appeal. The complainant then filed a complaint with the Tribunal seeking the quashing of that decision and asking to be appointed as a permanent employee, or alternatively as a contract staff member, or as a further alternative to be awarded appropriate financial compensation.
4. In rebuttal, the defendant organisation submits that the complaint is irreceivable on the grounds that the decision of 16 January 2003 merely confirmed the decision contained in the letter of 15 August 2002 which reminded the complainant of the expiry date of her appointment and which she did not challenge within the prescribed time limits. The Organisation's plea is wrong. It was on 20 November 2002 that the complainant requested an extension of her contract; this request was refused in the letter of 16 January 2003, against which she appealed in a timely manner on 6 March 2003.
5. According to the complainant, the decision to refuse the extension of her contract was based on errors of law and of fact and shows that the Office failed to honour its duties towards her and acted discriminately. The complainant reiterates before the Tribunal the arguments which failed to convince the majority of the Appeals Committee but appeared well founded to a minority of its members.
6. The evidence on file does not support the complainant's pleas. Her fixed-term contract with the Office was indeed due to expire after four years and the latter had no obligation either to renew or extend it. The Tribunal has only a limited power of review over the reasons that led the Office not to extend the complainant's contract. In this case, even though the tasks to which the complainant had been assigned when she was recruited were not entirely completed – except for those concerning the construction of the building in the Hinge project – there is no doubt that the Office did reorganise the technical services concerned, and there is no evidence that the suppression of the post held by the complainant, who had been recruited to meet a temporary staff shortage, was motivated by mistaken or biased considerations. The defendant organisation has shown that the impugned decision was based not on the performance of the complainant, whose reports were satisfactory, but on the need to reorganise its services, which in no way prevented her from applying for other vacant posts. It is true that her supervisor appears to have

questioned her ability to manage construction projects, owing to the “harshness” of the Dutch construction world, but this remark can hardly be interpreted as either discriminatory or sexist. He indeed regretted that the complainant had applied for only one vacant post, for which her profile was considered unsuitable by the Selection Board, as he felt that she might well have been accepted for other posts. There is no indication in the file that the complainant’s supervisors treated her arbitrarily or discriminated against her, or that the Organisation failed in its duty of care towards her. There is moreover no evidence that she ever received any promises from staff members authorised to make offers on behalf of the Office.

7. Since none of the pleas succeeds, the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 28 October 2005, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mr Agustín Gordillo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 1 February 2006.

Michel Gentot

James K. Hugessen

Agustín Gordillo

Catherine Comtet