FIFTY-FIRST ORDINARY SESSION

In re VAN DER PEET

Judgment No. 568

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Hendricus van der Peet on 16 February 1983 and brought into conformity with the Rules of Court on 1 March, the EPO's reply of 13 May, the complainant's rejoinder of 30 June, the EPO's surrejoinder of 6 September, the observations supplied, at the Tribunal's invitation, by the complainant on 14 September and by the EPO on 30 September, and the EPO's further communication of 13 October 1933;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 11, 106 to 108 and 116 of the Service Regulations of the European Patent Office the secretariat of the EPO;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. The complainant, a citizen of the Netherlands, worked for two industrial firms for a total of six years and seven months. He joined the European Patent Office in The Hague on 1 July 1980 as an examiner and was given grade A1. On 6 July 1981 he obtained grade A2, step 3, with seniority reckoned at three years and four months, later increased by four months. On 12 October 1981 he appealed to the President of the Office against his grading, but on 19 January 1982 the President upheld it, saying that it was in line with the rules and that the rules were fair. An appeal by the complainant under Article 108 of the Service Regulations went to the Appeals Committee. On 6 December 1982 the Committee recommended rejecting his appeal, and by a letter of 29 December, the impugned decision, the President informed him that he endorsed that recommendation.

B. The complainant alleges breaches of the principle requiring equal pay for work of equal value. First, it is unfair to make examiners start at A1 but not other staff. Secondly, for citizens of the Federal Republic of Germany formerly employed by the Federal German Patent Office industrial experience counts in full in reckoning seniority, and such reckoning would give the complainant five years' more seniority. There is no difference in function between an examiner from industry, like himself, and one from a national patent office. Thirdly, where experience is equal, he has lesser seniority in the EPO than have officials in the "co-ordinated organisations", such as the North Atlantic Treaty Organisation (NATO) and the European Space Agency (ESA). He asked NATO and ESA about employment in telecommunications engineering and both offered him A2, final step, or A3 at the start. He rejects the Appeals Committee's finding that EPO examiners and NATO and ESA engineers do not do the same sort of work. Both need only professional qualifications, and to work as an EPO examiner he did not need, even at the outset, any other special knowledge. He claims grade A2 with effect from 1 July 1980 and the further remuneration due, with interest.

C. In its reply the EPO explains that Article 11 of the Service Regulations makes the starting grade and step depend on training and experience, while Article 116 says that the President of the Office determines the terms of recruitment of examiners "having regard to the guidelines laid down ... by the Administrative Council" of the EPO. Guidelines in CI/Final 20/77 relate to examiners coming from national patent offices and say that experience in industry counts in full in determining the step, but in determining the grade will only be taken into "due account". The President has decided that this should mean 50 per cent and the Council endorsed that in substance in June 1980. For other examiners the President has adopted the following rules: industrial experience is credited at 50 per cent for determining both step and grade; someone with experience only in industry starts at A1; when he is promoted to A2 his step depends on previous and EPO experience; and on appointment he may get A2 only if he has at least two years' patent experience of immediate value to the Office. These rules show no defect which warrants setting the decision aside. There is no breach of the principle of equal treatment. On appointment examiners from national patent offices are not in the same factual position as examiners from industry. In its early

days the EPO wanted to attract examiners with experience of patent work since others generally needed two years' to come up to standard, and it therefore offered better terms to examiners from patent offices. The different treatment prescribed in CI/Final 20/77 is therefore justified. The complainant was correctly graded Al on appointment. His allegations about seniority in NATO and ESA are irrelevant: the posts he mentions have nothing in common with those of EPO examiners, and besides, it is for each organisation to assess the value of experience. The complaint is devoid of merit.

D. The complainant submits that equality of treatment and tne stated career policy require that CI/Final 20/77 apply to all examiners alike. On recruitment examiners from national patent offices are in the same position as others. The former needed retraining because they tende to apply the national patent law they were familiar with, they had language difficulties, and their productivity was below par. The complainant says he performed his duties from the start without retraining and with above-average efficiency. There was therefore no need to depart from the principle of equality to attract the others. In the other "co-ordinated organisations" he would have earned over half as much again. Examiners recruited from national patent offices have an unfair advantage since there is no distinction between industrial experience and experience in a patent office in any particular technical field.

E. The EPO develops its case in its surrejoinder. It maintains that CI/Final 20/77 applies only to examiners recruited from national patent offices; for others the President has adopted special rules for calculating experience which are based on, but adapt the guidelines in CI/Final 20/77. The EPO is free to lay down its own rules, and the rules in the co-ordinated organisations are immaterial.

CONSIDERATIONS:

The circumstances in which the Organisation was created are set out in Judgment 551. They show that it was necessary for the Organisation to recruit a large staff to fill all grades from the highest to the lowest and so, when fixing the initial grade, to take into account experience gained, first, in patent offices and, second, in industry generally. In reckoning this experience the Organisation distinguishes between the first and the second categories. The complainant contends that this is an unreal distinction and consequently one which offends against the principle of equality of treatment. In the opinion of the Tribunal the distinction is not unreal and the complainant has not shown any breach of principle. He is employed as a search examiner and in that work it is reasonable to believe that experience in the handling of patent applications is more immediately useful than general experience as an industrial engineer.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable Lord Devlin, Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 20 December 1983.

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

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