

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

FIFTY-SEVENTH ORDINARY SESSION

In re METTEN (No. 3)

Judgment No. 691

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed against the European Patent Organisation (EPO) by Mr. André Metten on 31 October 1984, the EPO's reply of 21 January 1985, the complainant's rejoinder of 25 April and the EPO's surrejoinder of 12 July 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 29, 59(3), 77, 78(1)(a) and 79(1) 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 facts of the case and the pleadings may be summed up as follows:

A. The complainant is a Frenchman and an examiner on the staff of the EPO in Munich. On 3 January 1984 he asked the EPO what help he could expect under Article 29 of the Service Regulations ⁽¹⁾ to follow training courses at the Centre for International Studies in Industrial Property (CEIPI) in Strasbourg; he would need time off in 1984 and in 1985, and it would cost him 10,800 French francs over and above travel and lodging expenses. His supervisor answered in a minute of 25 January that the EPO could give him no help at all. On 13 February the complainant appealed to the Appeals Committee claiming special leave and financial assistance. By a letter of 27 July 1984, which reached the complainant on 7 August and is the impugned decision, the President stated that he endorsed the Committee's recommendation of 14 June to reject the appeal.

B. The complainant submits that Article 29 of the Service Regulations was not properly applied. Whereas the rules of the former International Patent Institute said that training must suit "its own" interests, the EPO Council preferred to align the Regulations with those of the European Communities, of which Article 24 says training must suit "their own", i.e. officials' interests. The English, French and German versions concur and make it plain that the official's own interests are meant. Circular 22 of 1979, which gives effect to Article 29, provides for special leave of up to ten days a year for further training on application from the official. The President's decision rested on the mistaken assumption that training had to be rationed for each examiner. It is immaterial that the EPO itself provides training for officials: Article 29 relates to "further training". The CEIPI courses are useful to an EPO examiner and therefore satisfy Article 29. The complainant seeks the quashing of the impugned decision and compensation amounting to three-twentieths of his monthly pay for annual leave he took on 10, 11 and 12 September 1984 to sit an examination for admittance to the CEIPI courses, compensation amounting to ten-twentieths of his monthly pay for ordinary leave taken to attend the courses from 15 to 26 April 1985, travel expenses and allowances for September 1984 and April 1985 and half the amount of the examination and enrolment fees. He makes subsidiary claims to financial compensation for the taking of five days' annual leave to follow the courses and the corresponding travel expenses and allowances. He claims 6,000 Deutschmarks in costs.

C. The EPO replies that special leave is at the President's discretion, as is clear from Articles 29 and 59(3) ("In addition to annual leave, a permanent employee may, on application, be granted special leave") of the Service Regulations and from Circular 22. The conditions set in Article 29 were not met in this instance. First, that the complainant should attend the CEIPI courses was not "compatible with the proper functioning of the service": the EPO's own training was better suited to examiners' work, and cheaper, and his taking the somewhat theoretical CEIPI courses was not expected to be of use to the EPO. Secondly, the reference to the official's own interests in Article 29 is a mistake: as the preparatory work shows, the intent was to refer to the interests of the organisation, not to grant special leave because it suited the official's whim. In any event there is no provision in Article 29 for financial compensation in lieu of leave. The claims to financial assistance are unsound: under Articles 77, 78(1)(a) and 79(1) of the Service Regulations allowances and expenses are generally payable only to an "employee holding a travel order", and a travel order, which is given only to someone bent on EPO business, is incompatible with

special leave. Lastly, the rules do not provide for payment of fees to an official granted special leave for further training.

D. In his rejoinder the complainant contends that there is no evidence of any mistake in the drafting of Article 29. The text as approved by the EPO Council is the same in all language versions and must be complied with as it stands. Besides, even if a mistake did occur, the CEIPI courses were of no less interest to the EPO than forms of training for which special leave had been granted to other officials. The complainant gives examples. He believes he has been discriminated against. The financial compensation he claims does not need to be provided for in the Regulations: it is a form of damages. Special leave and a travel order are not mutually exclusive. The President wrongly exercised his discretion, and the complainant presses his claims.

E. In its surrejoinder the EPO maintains that the submissions in the rejoinder are either irrelevant or mistaken. The wording of Article 29 is wrong by the historical or teleological method of construction. Contending that the complainant has not been discriminated against, the EPO explains why special leave was granted to two others he mentions. The CEIPI courses brought the EPO no benefit it would not obtain by training him in the Office. The EPO seeks to rebut other points of detail raised in the rejoinder.

CONSIDERATIONS:

1. Article 29 of the EPO Service Regulations stipulates that the Office "shall facilitate such further training and instruction for permanent employees as is compatible with the proper functioning of the service and is in accordance with the interests of the permanent employees". Such training is to be taken into account, the article adds, for the purposes of promotion.

The complainant joined the EPO as an examiner in 1982. He wanted to follow intensive training in 1984 at the Centre for International Studies in Industrial Property (CEIPI) at Strasbourg, and for that purpose he made a claim under Article 29. His supervisors having rejected it, he lodged an internal appeal. The Appeals Committee recommended dismissing it and the President of the Office did so. The impugned decision does not state the reasons for it but refers instead to the Committee's report.

2. Since there can be no right to facilities for training, a decision to grant or to refuse them is a discretionary one. The Tribunal will set the decision aside only if it was made without authority, or in breach of a rule of form or of procedure, or if it was tainted with a mistake of fact or of law, or if essential facts were overlooked, or if there was abuse of authority, or if clearly mistaken conclusions were drawn from the evidence.

5. Section I of the Appeals Committee's report cites the two reasons stated by the competent Principal Director for rejecting the complainant's claim.

The first was that the focus of training policy had always been on in-house training; the second, a financial reason, was that the time examiners spent on training had to be limited.

The Committee held that those two reasons were "compatible with the functioning of the service" and that the claim should therefore fail.

4. In fact what the Committee said in two short sentences sums up arguments the EPO has put forward in much greater detail in its submissions to the Tribunal.

The EPO seeks to show that the President exercised his discretion correctly. Instead of relying exclusively on considerations of a general nature, it submits that the CEIPI training courses are not of any direct value to someone already working as an examiner and that the complainant was given a fair number of days off for training in 1982 and 1983, and even in 1984, although his claim was first rejected early in 1984. It also observes -- and the complainant does not deny it -- that EPO staff have never been granted leave to follow CEIPI courses. Although there is a close association between the EPO and the IPI, the Vice-President of the former being the President of the latter, they work at different levels and their functions are dissimilar.

5. In his rejoinder the complainant contends that the Appeals Committee erred by failing to distinguish between basic training and further training. The Tribunal does not accept this, further training being in its view no more than a continuation of basic training.

The complainant further contends that he received less training than other staff members during his two years on probation, and that he therefore suffered arbitrary discrimination.

The Tribunal will not entertain this plea, which it considers immaterial. The President is not bound to ensure any degree of equality in this area, except to the extent that he must not abuse his authority. It is neither proved nor even likely that he did so in this case. The grant of special leave to two staff members to take examinations in French civil law and in Chinese constitutes no evidence whatever of prejudice against the complainant.

In refusing leave for the purpose of attending CEIPI courses the EPO merely exercised its discretion. There is nothing to suggest such an attitude is in itself objectionable, and the Tribunal will not rule on whether the decision was desirable.

6. The Tribunal holds that no essential fact was overlooked, that no mistake of fact was made, that no mistaken conclusions were drawn from the evidence and that the President committed no abuse of authority.

7. The Tribunal turns to the main plea, which is that the President of the EPO and the Appeals Committee committed an error of law.

So far the Tribunal has considered the lawfulness of the decision only by the criterion of the "functioning of the service". But as worded Article 29 requires the President in taking his decision to take account of the "interests of the permanent employees". The complainant's argument is that the President committed an error of law by failing to do so. It is common ground that neither the EPO nor the Appeals Committee considered his claims by the criterion of his own interests. But that was not by oversight.

8. The Committee took the view that the wording of the English, French and German versions of Article 29 did not reflect the intent of the draughtsman and that the Article was to be construed as requiring that account be taken of the interests, not of the employees, but of the Office. From its reading of the preparatory work the Committee took the view that in an attempt to align the three language versions the draughtsman had distorted the meaning and so it put on the text the construction it thought reflected the draughtsman's intent. Although it recommended that the President put a more clearly worded text to the Administrative Council for approval, it concluded that the employees' interests need not be taken into account.

9. The Tribunal finds that in the three language versions before it the present text is quite clear: the further training of the staff must be compatible with both the "functioning of the service" and "the interests of the permanent employees". The text being unambiguous, the EPO and the Tribunal have no choice but to apply it without reference to the preparatory work or the supposed intent of the lawmaker. Strict textual interpretation is an essential safeguard of the stability of the position in law and so of the Organisation's efficiency.

Only when the text is ambiguous need more subtle methods of construction be applied. Difficulty may occur in international organisations precisely because language versions disagree, and it was just such a difficulty that the Tribunal had to resolve in Judgment 537, for example. But it need not do so here. Since the text is clear in the three official languages of the EPO, the Tribunal concludes that there was an error of law and it allows the complainant's plea.

10. When there is an error of law the decision must be quashed if the error is the foundation on which it rests.

Article 29 does set two conditions for the grant of facilities for further training. But in fact anyone who applies for leave for further training will ordinarily believe it to be in his own interests, and unless the circumstances are exceptional or the claim abusive, what the Office has to determine is whether the claim is compatible with its own efficiency.

The term "proper functioning of the service" may mean either that the claim is not made at a suitable time or else that the proposed training or study does not match the Organisation's aims. There will also be border-line cases, and indeed it is in these that the President will have to determine whether the claim is justified.

In this instance the EPO, even though it held to its own construction of Article 29, took the view that the CEIPI courses were not of great enough value to the complainant to warrant assistance: being intended for students from private industry, they would be of no advantage to the complainant in his career.

The Tribunal finds no evidence to suggest that that view was mistaken and holds that, though an unfortunate error of law was made, it had no effect on the impugned decision.

11. Insofar as the complainant is alleging breach of procedural rules, the Tribunal holds that he had an opportunity to address full observations to the Appeals Committee and that the equality of the parties was respected in the oral proceedings before that Committee.

12. There being no need to determine what procedures should be followed for the grant of training facilities to EPO staff, the Tribunal concludes that the complainant's claims must fail.

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 the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

1. "The Office shall facilitate such further training and instruction for permanent employees as is compatible with the proper functioning of the service and is in accordance with the interests of the permanent employees."