

SIXTY-THIRD SESSION

In re CANNICI

Judgment 850

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Beppe Cannici against the European Patent Organisation (EPO) on 1 April 1987 and corrected on 13 April, the EPO's reply of 6 July 1987, the complainant's rejoinder of 3 August and the EPO's surrejoinder of 21 October 1987;

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

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 rules that govern the reckoning of prior experience on appointment and for the purpose of promotion in the EPO are set out in circular 144, which informed the staff of new guidelines dated 1 August 1985 that had come into force as at 1 January 1985. Periods that count are defined in paragraphs I.1 and I.8:

"I.1 Professional activity prior to appointment to an established EPO post is credited for step-in-grade assignment purposes if it corresponds in level and type of duties to the post of recruitment and requires completed university education or - in exceptional cases - equivalent knowledge acquired over many years of professional experience.

I.8 Periods of professional experience after completion of studies may be credited only from the documented date on which university education was successfully completed."

The complainant, an Italian, was employed for two years, from 1 October 1974 to 30 September 1976, in scientific research at the Max Planck Institute. During that period, on 22 April 1976, he was awarded a degree in engineering. He took up duty with the EPO in April 1981 as an assistant examiner at grade A1. He was later promoted to grade A2. A new reckoning of his experience made on 15 September 1985 in accordance with the new guidelines discounted the period from October 1974 to April 1976, when he got his degree. He lodged an internal appeal on 19 August 1985 seeking recognition of the full period of his employment at the Institute. In its report of 17 December 1986 the Appeals Committee unanimously recommended rejecting his appeal and by a letter of 19 January 1987, the impugned decision, the Principal Director of Personnel told him that the President of the Office had accepted the recommendation.

B. The complainant contends that the period of employment in question meets the conditions in I.1 of the guidelines because it requires "completed university education". In any event, since it led to the publication of a scientific article, it comes within the "exceptional cases" allowed under I.1. What is more, his work was the same before and after graduation. He invites the Tribunal (1) to order the EPO to recognise the full period of employment from 1 October 1974 until 30 September 1976 in reckoning his prior experience; (2) to grant him arrears of pay, plus interest at 10 per cent a year, which take account of the promotion to grade A3 he would have been granted on 1 January 1985; and (3) to award him 10,000 Deutschmarks in material and moral damages.

C. The EPO replies that the complaint is devoid of merit. In keeping with I.8 of the guidelines it counted only the part of the period that came after the award of the complainant's degree. His experience before that date was too short to have given him the "equivalent knowledge" that may replace the university degree generally required for appointment to a post in category A. The award of a degree proves completion of university studies, whereas there may be doubt about the degree of knowledge at any earlier time.

D. In his rejoinder the complainant seeks to refute the EPO's arguments, which he describes as inconsistent and

illogical. He submits that the new guidelines are about the reckoning of prior experience, not about qualifying for appointment at the EPO. He does not believe that two years is too short for gaining "equivalent knowledge". The Institute itself recognised that he was as well qualified as a graduate even before he got his degree, and so I.8 does not apply.

E. In its surrejoinder the EPO observes that as an autonomous body it may set its own rules on recruitment to meet staff needs. The rule in I.8 applies to all staff who have a university degree, whatever the country where they graduated. Certainty in law requires that professional experience should not count if gained before the award of the degree and that the rule be applied without discrimination to everyone.

CONSIDERATIONS:

1. The complainant is a grade A2 search examiner at the European Patent Office. From October 1974 until April 1976, when he graduated in engineering, he did scientific work at the Max Planck Institute at Garching in the Federal Republic of Germany, and he is asking the Tribunal to quash a decision taken on 19 January 1987 to discount that experience in reckoning his experience for the purpose of determining his starting step and his seniority for promotion according to circular 144, which informed the staff of new guidelines dated 1 August that had come into force as at 1 January 1985.
2. The complainant was awarded his degree in engineering at the Polytechnic of Milan in April 1976. He had at the time been working since October 1974 at the Institute in scientific research - the term in German is *Gastforscher* - and he continued to work there, after graduation, until September 1976.
3. A reckoning of his experience was made, for the purpose of determining his starting step in his grade and his seniority for promotion, when the new guidelines came into force. Only the later period at the Institute, from April until September 1976, was taken into account, apart from another period of scientific work and a period of employment with a private firm, both after graduation.
4. The complainant lodged an internal appeal seeking recognition of the scientific work he had done at the Institute before graduation. The President of the Office referred the appeal to the Appeals Committee and in a report of 17 December 1986 the Committee unanimously recommended rejecting it.
5. The Principal Director of Personnel informed the complainant that the President had endorsed the recommendation and rejected his appeal, and that is the decision under challenge.
6. The complainant is asking the Tribunal:
 - (a) to order the EPO to recognise the scientific work he did at the Institute before graduation;
 - (b) to determine his pay accordingly and award him arrears of pay, plus interest at 10 per cent a year, which also take account of the fact that according to the correct reckoning he should have been granted grade A3 as from 1 January 1985;
 - (c) to award him 10,000 Deutschmarks in material and moral damages.
7. The complainant has three pleas.

First, he is relying on a certificate from the Max Planck Institute which says that while there he held "grade BAT IIa", the one that corresponds to starting pay for science graduates. He submits that his time there should count by virtue of paragraph I.1 of the guidelines, which recognises "professional activity" that "requires completed university education".

He founds his second plea on another clause of I.1 which says that "in exceptional cases" activity requiring "equivalent knowledge acquired over many years of professional experience" may also count. He contends that his experience of plasma physics at the laboratory of the Polytechnic in Milan, where he was co-author of a scientific article, and his work at the Institute from October 1974 to April 1976 bring him within the "exceptional cases".

Lastly, he says he cannot see why the EPO will not recognise in full work that was the same whether he did it before or after graduation.

8. The complainant's pleas betray misunderstanding of the guidelines in circular 144. In accordance with EPO rules on recruitment paragraph I.1 distinguishes two ways of getting appointed to a post in category A or L. One is by showing "completed university education", the other by showing "equivalent knowledge acquired over many years of professional experience". For staff admitted on the strength of professional experience the circular allows the Administration discretion, it being understood that experience before appointment will count only "in exceptional cases". For staff who are admitted on the strength of a university degree paragraphs I.2 and I.8 say that the only reckonable experience consists of "periods of training and supplementary studies" and professional experience after the "documented date" on which university education was completed; viz. after graduation.

9. It is not in dispute that the complainant was appointed on the strength of the degree granted by the Milan Polytechnic on 22 April 1976, and that is the qualification that determines what prior experience shall count.

10. The first conclusion is that the complainant may not rely, for the purpose of determining the starting date of his reckonable experience, on a certificate issued by a scientific institute before he graduated, since the degree is, as has been said, the only qualification for his appointment recognised in points I.2 and I.8 of the guidelines.

11. The second conclusion is that the complainant may not avail himself of the opportunities provided by the guidelines in favour of staff members who have been admitted as exceptional cases on the strength of their practical experience. The appointment of such staff members presupposes in each case a specific assessment of their experience, and no such assessment is made for university graduates.

12. Lastly, there is nothing illogical about the EPO's treating differently scientific work done before graduation and the same work done after when a degree is an essential qualification for appointment. The complainant's own statements show that his work at the Institute was closely linked with the work he did as a student at the Polytechnic in Milan. Such scientific training was rewarded with a degree and accordingly was required to qualify him for appointment. He may not benefit from his practical experience twice over.

13. His first claim, to recognition of the period of scientific work up to April 1976, is rejected for the reasons that have been explained. His consequent claims to damages therefore fail as well.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Miss Mella Carroll, Judge, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 10 December 1987.

(Signed)

Jacques Ducoux
Mella Carroll
P. Pescatore
A.B. Gardner