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

SEVENTY-NINTH SESSION

In re VOLLERING (No. 4)

Judgment 1431

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr. Johannes Petrus Geertruda Vollering against the European Patent Organisation (EPO) on 29 March 1994, the EPO's reply of 24 June, the complainant's rejoinder of 29 September and the Organisation's letter of 26 December 1994 informing the Registrar of the Tribunal that it did not wish to enter a surrejoinder;

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

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

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

A. The EPO employs the complainant, a Dutchman, as a patent examiner at grade A3 in Directorate-General 1 (DG1) at The Hague.

By a note of 2 March 1992 the Vice-President in charge of DG1 announced to the staff the "production target" for 1992, calling for the utmost effort to make up for a fall in output at The Hague office in 1991.

In a note of 28 April 1992 headed "Your output for 1991. Shortfall to be made good in 1992", the Deputy Principal Director of Search told the complainant that his output in 1991 should have been 55 search-files for 91.2 days' work and that since he had done only 45 files his target for 1992 was raised by 5. The complainant answered in a note of 6 May that he did not know what authority the Deputy Principal Director had to issue such instructions and he would take no notice. On 2 June the Deputy Principal Director answered that it was he who set production targets and saw that they were reached and that his decision came under the note of 2 March 1992 from the Vice-President in charge of DG1. In a note of 10 June the Principal Director of Search informed him that the "tone and style" of his note of 6 May were "wholly unacceptable" and that there might well be disciplinary proceedings.

On 23 June 1992 the complainant lodged an internal appeal with the President of the European Patent Office, the Organisation's secretariat, seeking review of his production target for 1991. He alleged failure to deduct time during which he had been on strike, on 1 October and 11 December 1991, from the number of days spent on search work. On 24 June 1992 he filed a second internal appeal alleging that there was no basis in law for the Deputy Principal Director's order of 28 April that he do another five files in 1992.

In a note of 29 June he offered an apology to the Deputy Principal Director but said that the number of days he had spent on search came to 71.3, not the figure of 91.2 as given in the note of 28 April, the difference being accounted for not only by time on strike but also by the number of days he had spent on representation of the staff.

In his reply of 2 July the Deputy Principal Director said that in view of that new information the complainant had no "shortfall" to make good and the note of 28 April was "null and void". In a note of 7 July in answer to his of 23 June the Head of the Personnel Department told him on the President's behalf that the number of days he had spent on search work in 1991 had been corrected, by subtraction of one-and-a-half days on strike, to 89.7. There followed correspondence between the complainant and several officials in which he sought to have his "year-overview" corrected. In November 1992 he succeeded.

The Director of Personnel had informed him by a letter of 13 July 1992 of the referral of his appeal of 24 June 1992 to the Appeals Committee. In its report of 20 December 1993 the Committee took the view that in the absence of any act affecting him adversely his appeal was irreceivable. By a letter of 13 January 1994, which he impugns, the Director of Staff Policy informed him of the President's rejection of the appeal.

B. The complainant submits that it is at odds with the principle of equal treatment to give additional work to an examiner who fails to meet the production target for any particular year. The EPO does not demand less from someone whose output is greater than the set figure.

So raising his target for 1992 amounts to a hidden disciplinary sanction. That being so, the Administration ought to have consulted the Disciplinary Committee beforehand, and it infringed his right to a hearing.

Only the wrong figures in the note of 28 April 1992 led the Deputy Principal Director to back down, but he still assented to the legitimacy of the idea of a "shortfall", for which there is no basis in law.

The complainant challenges the opinion of the Appeals Committee, which he charges with bias. The note of 28 April, he explains, contained a false accusation which he was given no opportunity to answer. So it did cause him injury, and withdrawing it did not give him satisfaction. The chairman of the Committee treated him roughly, failed to examine his appeal properly and denied him due process.

The notion of a "shortfall", which holds good, affects all examiners. So he asks the Tribunal to "condemn" the Organisation and award him (a) 10,000 guilders in moral damages for the "false accusation"; (b) 5,000 guilders in damages for "reluctance" to correct his "year-overview"; (c) 10,000 guilders in damages for breach of his right to a hearing; (d) 10,000 guilders in damages for declaring the unlawful "shortfall"; (e) 10,000 guilders in damages for disciplinary action the EPO took without following the procedure prescribed in Articles 25 and 93 to 105 of the Service Regulations; (f) 5,000 guilders in damages for breach of due process on appeal; and (g) 10,000 guilders in costs.

C. In its reply the EPO submits that, besides being devoid of merit and vexatious, the complaint does not contain the same claims as did the internal appeal and is therefore irreceivable.

In subsidiary argument on the merits the Organisation contends that the Deputy Principal Director's note was due to a mere miscalculation and did not amount to disciplinary action. The Administration took the complainant's objections and granted him full satisfaction by withdrawing the content of the note and not increasing his target. There were no exceptional circumstances warranting moral damages.

Under Article 111 of the Service Regulations the Appeals Committee is a fully autonomous body, and the Administration is not liable for any views it may express.

The content of the note of 10 June 1992 from the Principal Director of Search was warranted inasmuch as the complainant went too far in his note of 6 May.

D. In his rejoinder the complainant says that the means of appeal open to international civil servants in general and to EPO staff in particular are not good enough, the advantage lying with the Administration. He sees nothing vexatious about his case and he presses his pleas. He seeks the award of another 5,000 guilders in damages for the moral injury attributable to the gratuitous allegation that his complaint is abusive.

CONSIDERATIONS:

1. On 4 May 1992 the complainant, who is a patent examiner with the European Patent Organisation, got a note dated 28 April 1992 from the Deputy Principal Director of Search. It said that the director of his unit might have expected 55 files from him for the 91.2 days of search work he had done in 1991 but that he had handed in only 45; since there was a "shortfall" of 10 he was asked "to do another 5 by the end of 1992". The complainant answered that the Deputy Principal Director had no authority to write such a note, that the figures used to reckon his output were wrong, and that there was no basis in the rules for ordering him to make good a "shortfall". He put two internal appeals to the President of the Office and in a note of 29 June 1992 to the Deputy Principal Director he gave what he thought were the right figures.

2.The Deputy Principal Director's answer of 2 July 1992 acknowledged that for the purpose of reckoning output the time he had spent on search work should be only 71.3 days instead of 91.2; so there was "actually no shortfall" and he was to "treat the note of 28 April 1992 as null and void". He went ahead with his case nevertheless and the President of the Office referred it to the Appeals Committee. On 20 December 1993 the Committee reported that the complainant's appeal was irreceivable on the grounds that the challenged note of 28 April 1992 had been

unreservedly withdrawn and in any event he could plead no breach of any material rule. The President agreed and rejected his appeal by a decision of 13 January 1994.

3. That is the decision he is impugning and asking the Tribunal to quash. He also wants it to order the EPO to pay him various amounts in damages for the injury he attributes to the "false accusation" it wittingly based on wrong figures; to its reluctance to make the required corrections; to breach of due process; to its asking him to make good the "shortfall"; to the disciplinary action it took without having followed the proper procedure; and to flaws in the Appeals Committee proceedings. He also claims costs and in his rejoinder a further sum in damages.

4. The gist of his case is that the note of 2 July 1992 did not settle his dispute with the Organisation: though the Administration put the original figures right it has never in so many words acknowledged its error in law in requiring him to make up a "shortfall", and that was tantamount to disciplinary action.

5. He is mistaken. The case turns on the lawfulness of the decision in the note of 28 April 1992. The official who wrote it has withdrawn it and declared it null and void. Whatever his reasons for doing so may have been, the only possible inference is the one drawn by the Appeals Committee, namely that the complainant has no cause of action and his complaint is therefore irreceivable. The Tribunal will not rule whether it is proper to order someone to make good a "shortfall" since in the event there was no such order and there is no longer any substantive dispute between the complainant and the Organisation.

6. It is true that the Appeals Committee took up only his appeal of 24 June 1992, not the one of 23 June objecting to the Deputy Principal Director's figures and asking for corrections. But, as he says himself in his rejoinder, both appeals had the same origin, the Deputy Principal Director's note, and the evidence is that the EPO made in November 1992 the corrections he wanted. On that score too he has obtained satisfaction and shows no cause of action.

7. Since his claim to the quashing of the decision fails so do his claims to damages. The EPO did not take unduly long to correct its mistakes and in the circumstances they caused him no injury. Nor does the evidence bear out his allegations of breach of due process by the Administration and the Appeals Committee. In his rejoinder he claims damages for the injury he says the Organisation has caused him by gratuitously describing his complaint as vexatious. That claim fails too. Though maintaining that the complaint "constitutes an abuse", the EPO does not ask the Tribunal to dismiss it as irreceivable for that reason. The defendant is merely exercising the freedom of speech that any litigant must be allowed, short of resorting to offensive or insulting language.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Miss Mella Carroll, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 6 July 1995.

(Signed)

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner

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