

EIGHTY-FIRST SESSION

In re van DOREMALEN

Judgment 1558

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Johannes Cornelis Hendrikus van Doremalen against the European Patent Organisation (EPO) on 8 September 1995, the EPO's reply of 6 December, the complainant's rejoinder of 26 February 1996 and the Organisation's surrejoinder of 19 April 1996;

Considering the application to intervene filed by Mr. Johannes Vollering on 10 May 1996;

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

Having examined the written submissions;

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

A. The complainant, who is Dutch, joined the staff of the European Patent Office, the secretariat of the EPO, in May 1986 as a patent examiner at grade A2 in Directorate-General 1 (DG1) at The Hague. By a letter of 26 May 1993 the Director of Staff Policy informed him that the President of the Office had decided to initiate disciplinary proceedings to relegate him from step 8 to step 1 in his grade. The charges against him were, first, failing to return staff reports to the Personnel Department on time, secondly, taking unauthorised leave and failure to follow the correct procedures when applying for leave, and, thirdly, giving false information in weekly time-keeping reports.

In its report of 21 June 1993 the Disciplinary Committee upheld the first two charges but not the third and recommended relegation by two steps instead of seven. By a decision dated 13 August the President endorsed that recommendation.

By a letter of 15 November 1993 the complainant appealed against the sanction and the President put his case to the Appeals Committee. In its report of 2 May 1995 the majority recommended that the President should reverse the decision to lower his step, "reimburse" the difference in pay plus interest, "refer back" to his reporting officers his staff reports for 1988-89 and 1990-91, and consider transferring him to another directorate.

By a letter dated 12 June 1995, which he impugns, the Director of Staff Policy told him that the President had decided to reject his appeal.

B. The complainant submits that the President's decision is tainted with procedural flaws and, in any event, unfounded. The Administration failed to set up the Disciplinary Committee within the five-day limit in Article 98 of the Service Regulations; in breach of Article 103(3) the Committee failed to produce a signed transcript of testimony from a key witness; and the Administration failed to send the complainant a copy of the Committee's report within the time limit in Article 102(1).

The Appeals Committee overlooked evidence before it and impaired his right to a hearing. There being no basis in fact for disciplinary action, the Organisation failed to discharge its burden of proof.

He seeks the quashing of the impugned decision, 10,000 guilders in moral damages and the same amount in costs.

C. In its reply the EPO maintains that the sanction was a lawful and proper response to the complainant's breach of Article 14(1) of the Regulations, which required him to act "solely with the interests of the European Patent Organisation ... in mind". The flaws he alleges in the disciplinary proceedings are either "non-existent" or without any effect on the Disciplinary Committee's findings.

D. In his rejoinder the complainant challenges allegations of fact on which the EPO - in his view - mistakenly rests its case. He presses his claims and further seeks the "reimbursement" of sums lost as a result of disciplinary action plus "compounded interest of 16%" a year.

E. In its surrejoinder the EPO says there is no new plea in the rejoinder that might warrant changing its position.

CONSIDERATIONS:

1. The complainant joined the staff of the EPO on 1 May 1986 as a patent examiner at grade A2. He is impugning a decision by the EPO to relegate him by two steps on the grounds of failure to act, as Article 14(1) of the Service Regulations requires, solely with the Organisation's interests in mind.

2. The Organisation charged him with failing to return the reports appraising his performance in 1988-89 and 1990-91 - his "staff reports" - which it had sent to him for signature; disregarding proper procedure in applying for leave, so that he was absent without permission on the mornings of 27 and 30 October 1992; and providing false information in weekly reports on time-keeping. A Disciplinary Committee was set up to inquire into those charges, to which the background was as follows.

3. On 14 November 1990 the complainant's supervisors had completed his staff report for 1988-89. The head of the Personnel Department sent him the report under cover of a letter dated 16 November 1990 asking him to sign and return it by 16 December. He says that he did so, the EPO that he did not. The EPO cites a reminder that the head of Personnel sent him on 11 November 1991 asking him to return the report at once "in order that this reporting procedure can be completed before the new period (1990-1991) begins". The Organisation argues that if the complainant had indeed returned the report by 16 December 1990 he would surely have pointed that out immediately. The complainant makes out that the reminder was in fact sent on 11 November 1990 and was misdated "1991". But that is quite implausible because it would mean that the EPO was asking him, on 11 November 1990, to return a report that it did not even send to him until 16 November 1990. The Disciplinary Committee rightly rejected his explanation and found that he had failed to return his report for 1988-89.

4. In the second half of 1992 the complainant enquired why the original handwritten draft of his staff report for 1990-91 had not been sent to him, although many of his colleagues had already received their staff reports. In reply to inquiries he sent on the subject on 7 September 1992 and 20 October his second-level supervisor wrote on 22 October that the report had already been sent but he would be getting a "certified copy". He says that on 27 October his supervisor gave him what he calls "a pile of copies" - none of them "certified" - of the draft of his staff report for 1990-91, but that he got no covering letter declaring the text to be authentic or telling him what he was to do next. He did not return the report, though the head of Personnel sent him a reminder on 7 January 1993 saying that the deadline for his doing so had passed. He contends that because he had got neither the original text nor a certified copy of the report he was under no duty to take any further action. But the Disciplinary Committee rejected that explanation for his failure to return the report.

5. Article 63 of the Service Regulations, which is headed "Unauthorised absence", reads:

"Except in case of sickness or accident, a permanent employee may not be absent without prior permission from his immediate superior ..."

EPO circular 22 also requires a staff member to submit a standard leave form "as early as possible to his immediate supervisor on or before the last working day". The Disciplinary Committee found that, though there was no agreed deadline, the complainant's supervisor had instructed him on 25 October 1991 to put in any request for leave soon enough to let the supervisor see it before the complainant actually went on leave. The Disciplinary Committee was unable to say whether the complainant's requests for the grant of leave on 27 and on 30 October were made before or after he took that leave, but it found that at any rate, even if made before, they had been too late for his supervisor to have duly received them in advance.

6. In its report of 21 July 1993 the Disciplinary Committee recommended relegating the complainant by two steps. By a letter of 13 August the President informed him that he accepted that recommendation and he appealed to the Appeals Committee on 15 November 1993. In its report of 2 May 1995 the Appeals Committee recommended by a majority reversing that decision on the grounds that:

"(a) although the complainant had failed to return the two staff reports, the charges could not be maintained, because, in respect of the 1988-89 report, EPO neither gave him a second reminder nor warned him of the consequences of not returning it; and in respect of the 1990-91 report, EPO did not make it clear to him what he should do with the copy sent to him, and neither made a written request for his comments within a certain period

nor followed up the matter, and

(b)although the failure to observe the correct procedure in applying for leave had been established, the finding of the [Disciplinary Committee] was vitiated by procedural errors."

The President did not accept the Committee's recommendation but rejected the complainant's appeal in a letter of 12 June 1995. That is the decision he is impugning.

7.Mr. Johannes Vollering, who defended the complainant before the Disciplinary Committee, has filed an application to intervene in the complaint on the grounds that the EPO has harmed his good name by making false, defamatory and insulting remarks about him in its surrejoinder. That matter falls outside the scope of the complaint before the Tribunal, whose ruling can have no bearing on Mr. Vollering's grievance. His application is therefore disallowed.

8.Since the close of the written submissions and the inclusion of the case in the list the complainant has applied for oral proceedings so that he may counter what he says are false allegations in the Organisation's surrejoinder, and he claims additional redress. That application too is refused.

9.It is beyond doubt that despite reminders the complainant failed to return the two staff reports. He knew full well that the original text of the second one was missing and that the process of appraisal was to continue with the copy he had been sent. If he had genuine doubts about the authenticity of that copy he should have asked for clarification, at least when he received the reminder of 7 January 1993 from the head of Personnel. The whole procedure of appraisal had been explained in circular 188 of December 1989, so that he needed no further reminders or warnings about the consequences of default.

10.As for the charge of taking unauthorised leave, the Disciplinary Committee felt unable, as is said in 5 above, to say whether the complainant had made his requests for leave before or after he actually took it. But it misread his supervisor's letter of 25 October 1991 as telling him how to apply for leave. All that the letter said was that it was unacceptable for him to forward a request for leave to his supervisor "knowing very well" that the supervisor would not see it until he had gone on leave. In any event the Committee's finding that he made his requests so late that his supervisor did not receive them in advance depended on the supervisor's own oral testimony to the Committee. The Committee's rules required that a signed transcript of such testimony should be available before the Committee made its findings. Since that was not done, the Appeals Committee was right to take the view that there had been a procedural flaw.

11.Since a single punishment was imposed on the complainant for his failure to return the staff reports and for his taking leave without permission, the decision by the President of the Office must be quashed and the matter sent back to him for a decision on the disciplinary sanction to be imposed only for the failure to return the staff reports.

DECISION:

For the above reasons,

- 1.The decision of 12 June 1995 by the President of the European Patent Office is quashed.
- 2.The case is sent back to the President for a new decision on the disciplinary sanction to be imposed on the complainant.
- 3.The European Patent Organisation shall pay the complainant 1,000 guilders in costs.
- 4.His other claims are dismissed.
- 5.The application to intervene is dismissed.

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

Delivered in public in Geneva on 11 July 1996.

William Douglas
Mella Carroll
Mark Fernando
A.B. Gardner

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