

The Administrative Tribunal,

Considering the eleventh complaint filed by Mr W. E. B. against the European Patent Organisation (EPO) on 6 January 2003, the EPO's reply of 17 April, the complainant's rejoinder of 29 April, and the Organisation's surrejoinder of 28 May 2003;

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

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

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

A. The complainant, a German national born in 1938, retired from the European Patent Office, the EPO's secretariat, in May 2003 at the age of 65.

Article 8(1) of the Pension Scheme Regulations of the EPO reads as follows:

"Employees shall become eligible for a retirement pension at the age of sixty."

Article 9(1) provides that:

"Entitlement to payment of a retirement pension shall commence on the first day of the month following that in which the employee became eligible for such pension."

On 21 July 2000 the complainant wrote to the President of the Office requesting payment of his retirement pension as of May 1998 on the ground that he had reached the age of 60 on 16 April 1998. He added that, like other EPO employees who worked beyond the age of 60, he had suffered a financial disadvantage. The President rejected his request on 20 September 2000. On 25 September the complainant requested a reconsideration of that decision; having received no reply he wrote again to the President on 11 December 2000, asking him, in case he intended to maintain his refusal, to treat his letter of 25 September as an internal appeal.

In its opinion dated 16 October 2002 the Appeals Committee unanimously recommended rejecting his appeal. On 11 November 2002 the Acting Director of Conditions of Employment and Statutory Bodies informed the complainant on the President's behalf that his appeal had been rejected. That is the impugned decision.

B. The complainant argues that the Office's point of view, that both a salary and a pension cannot be paid at the same time, is only supported by the German text of Article 9(1) of the Pension Scheme Regulations. He contends that in accordance with the English and French texts of Articles 8(1) and 9(1) he had become eligible for his retirement pension as of 1 May 1998. He says that one way to ensure that entitlement to payment of a retirement pension is honoured would be to adopt a rule similar to that used in the European Union; however, he recognises that the EPO is not bound to follow rules other than its own.

The complainant submits that Article 8(2) of the Pension Scheme Regulations makes it clear that he should have been able to receive both his salary, by which he shall accrue further pension rights, and his pension payments from the date he became eligible to draw his pension until his actual retirement date. Both entitlements must be considered separately. He alleges that the Pension Reserve Fund has benefited from unjust enrichment. Lastly, he says that his complaint invokes the principle of collective solidarity.

As his main claim the complainant requests that the EPO be ordered to acknowledge his pension rights as acquired by him until the age of 60 as an independent entitlement and that he be paid his pension as from May 1998 on this

entitlement. He makes two auxiliary claims for compensation for the pension not paid to him between the age of 60 and the end of his service at the age of 65 by way of revaluing his pension entitlements under two different methods set out by him. In each of his claims he asks for interest on all sums due.

C. In its reply the Organisation maintains that the complaint is receivable only insofar as the complainant is not requesting that the rules applying in the European Communities be introduced in the legal provisions of the EPO.

It rebuts all the complainant's arguments. There is nothing in the Pension Scheme Regulations to support any of them, nor is there any variance in the different language versions of the relevant provisions. It asserts that the Pension Scheme Regulations do not allow for permanent employees "in active employment" to be paid a retirement pension; this is why the President turned down his request. When the articles of the Pension Scheme Regulations invoked by the complainant are read in conjunction with Articles 50 and 54 of the Service Regulations for Permanent Employees of the European Patent Office it becomes even clearer that the complainant could not be paid a retirement pension in conjunction with his salary. The Organisation points out that his pension entitlements continued to accrue until the end of his career and the Pension Reserve Fund has not been unjustly enriched.

D. In his rejoinder the complainant reiterates his argument regarding the English and French texts of Articles 8(1) and 9(1) of the Pension Scheme Regulations. He adds that nowhere in the Regulations is it stipulated that he must forfeit the entitlement of a pension from age 60.

E. In its surrejoinder the EPO maintains that there is no linguistic discrepancy between the English, French and German texts. The Regulations have been correctly applied; a permanent employee cannot receive a pension while still in active service.

CONSIDERATIONS

1. The complainant was employed by the European Patent Office, from November 1980 until he was automatically retired in May 2003. His retirement took effect pursuant to Article 54(1) of the Service Regulations which relevantly provides:

"A permanent employee shall be retired

- automatically, on the last day of the month during which he reaches the age of sixty-five years;

[...]"

2. The complainant asserts that he should have been paid a pension in accordance with the EPO's Pension Scheme Regulations when he reached the age of 60 in 1998, notwithstanding that he remained in employment with the EPO until he reached 65. On 21 July 2000 he wrote to the President of the Office requesting payment of a pension in addition to salary. His request was refused and, although correspondence then ensued, an internal appeal was lodged and referred to the Appeals Committee. The Committee unanimously recommended that the appeal be dismissed and on 11 November 2002 the President rejected the appeal in accordance with that recommendation. It is against that decision that the complainant brings the present proceedings.

3. The complainant contends that the English and French texts of Articles 8(1) and 9(1) of the Pension Scheme Regulations provide for payment of a pension upon an employee reaching the age of 60 whether or not that person has then retired. He accepts that the German text requires an employee to have retired before becoming eligible for payment of a pension, but he claims that the English and French texts should prevail. Because he was not paid a pension on reaching the age of 60, he seeks relief on three alternative bases. His main request is for payment of his pension from May 1998 together with interest at the rate of 10 per cent per annum. In two auxiliary requests he claims compensation by way of revaluing his pension entitlements from the age of 65, either by way of specified percentage increases for each year of service after the age of 60 or by a flat 5 per cent increase for each of those years together with interest at 10 per cent per annum from 1 May 2003. The latter claim to relief apparently corresponds with the relevant provisions of the rules applying to officials of the European Union institutions.

4. It is convenient to note, at this stage, that the basis upon which the complainant now seeks payment of a pension from the age of 60 or other compensatory relief differs somewhat from that upon which he first requested such

payment or other compensation. Initially, his request was based on a claim that the EPO Pension Scheme Regulations were unfair to persons remaining in employment after the age of 60 and resulted in the unjust enrichment of the Pension Reserve Fund. In that context, he apparently contended before the Appeals Committee that the Pension Scheme Regulations should be amended to bring them into line with those applying to officials of the European Union institutions which provide for increased pension rights for those remaining in employment after pensionable age. The Committee was of the view that his appeal was admissible to the extent that compensation was sought for non-payment of a pension from the age of 60, but not in respect of his claim that the Pension Scheme Regulations should be amended.

5. In its reply the EPO concedes that the complaint is receivable insofar as the complainant seeks payment of a pension from the age of 60, but not otherwise.

6. The Appeals Committee rightly held that the complainant's appeal was not admissible insofar as it sought amendment of the Pension Scheme Regulations. In these proceedings, however, the complainant seeks compensation, not amendment of the Regulations. The fact that he seeks compensation on alternative bases, including on a basis that corresponds with the provisions applicable to officials of the European Union institutions, does not render those parts of his complaint irreceivable. Accordingly and contrary to the submissions of the EPO, the complaint is wholly receivable.

7. Article 8 of the Pension Scheme Regulations relevantly provides:

"(1) Employees shall become eligible for a retirement pension at the age of sixty.

(2) Pension rights shall continue to accrue to an employee remaining in the service after pensionable age [...].

(3) If an employee retires before pensionable age, payment of his retirement pension shall be deferred until he reaches that age.

(4) However, an employee who retires before pensionable age may request early payment of his pension provided he is at least fifty years old.

[...]"

8. Article 9 provides that:

"(1) Entitlement to payment of a retirement pension shall commence on the first day of the month following that in which the employee became eligible for such pension.

[...]"

Article 10 provides that the pension shall be calculated at 2 per cent per reckonable year of service of the "last step the employee had reached in the last grade held by him for not less than one year before retirement".

9. As already indicated, the complainant bases his argument on the English and French texts of the Pension Scheme Regulations which, he contends, correspond in meaning but differ from the German text. As he bases his argument on the English and French texts, it is necessary to consider the German text only if his argument is made good by reference to the former.

10. The complainant contends that by Article 8(1) of the Pension Scheme Regulations he was "eligible for a retirement pension at the age of sixty" and that he was entitled to be paid that pension in accordance with Article 9(1) on "the first day of the month following that in which [he] became eligible for such pension", namely, on 1 May 1998. In other words, the complainant contends that the only condition precedent to the payment of a pension is the attainment of the age of 60.

11. The complainant's argument ignores the meaning of the phrase "retirement pension". In its ordinary and natural meaning, that phrase signifies that a pension is payable only on or after retirement from service with a particular employer; put another way, the phrase "retirement pension" necessarily imports the condition that a person must be retired before any pension becomes payable. Nor is any different meaning suggested by the context of Articles 8(1) and 9(1). In particular, no different meaning is suggested by Article 8(2) which provides that pension rights

continue to accrue to an employee who remains in employment after reaching pensionable age. That provision serves the clear purpose of permitting subsequent years of service to be counted as "reckonable years of service" and in no way detracts from the ordinary and natural meaning of the phrase "retirement pension".

12. When regard is had to the ordinary and natural meaning of "retirement pension", as it must be, it is clear that Article 8(1) does no more than define "pensionable age" for the purposes of that article which is concerned with the rights of those who remain in employment after pensionable age and those who retire before reaching that age.

13. Moreover, the ordinary and natural meaning of the phrase "retirement pension" is confirmed by Article 10 of the Pension Scheme Regulations. That article provides exhaustively as to the rate of pension payable and does so by reference to the last step of the last grade held for not less than one year before retirement. Until an employee retires there is simply no basis upon which a pension can be calculated.

14. Because a "retirement pension" is one that is paid only on or after retirement, the complainant's argument that he was entitled to be paid a pension at the age of 60 even though still employed by the EPO must be rejected. That being so, it is not necessary to consider the German text of the Pension Scheme Regulations. Further, it is unnecessary to consider other issues dealt with by the Appeals Committee, including those relating to the financing of the EPO pension scheme and the calculation of contributions to the scheme.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet