

THIRTY-NINTH ORDINARY SESSION

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

***In re* REMPP**

Judgment No. 314

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint brought against the International Patent Institute by Mr. Guy Léon Etienne Rempp on 7 May 1976, the Institute's reply of 16 September 1976 and the complainant's rejoinder of 30 November 1976;

Considering the applications to intervene filed by

Mr. P.A.H.M. Adam,
Mr. Michel Jean-Marie Berte,
Mr. Louis Maurice Beslier,
Mr. Carlo G.F. Biggio,
Mr. Ignace Blasband,
Mr. André Cardon,
Mr. Jacobus Johannes Constant,
Mr. A.O.M. Coucke,
Miss Katya Cremers,
Mr. Helmuth Dauksch,
Mr. Anton Otto Davids,
Mr. Robert Jan De Jager,
Mr. March Julien Dekeirel,
Mr. Henri Antoine Delhomme,
Mr. R. De Raeve,
Mr. Joël-André Descamps,
Mr. Raymond-Henri-Albert Gautier,
Mr. D. Jacobus Goedhart,
Mr. Roger Henri Guyon,
Mr. W.J. Harterink,
Mr. Michel Ghislain Hubeau,
Mr. Y.E.M. Hijzelendoorn,
Mr. Igor D.H. Ivanov,
Mr. Rudolf Juyn,
Mr. Hans Kainde,
Mr. L. Kainde,
Mr. Pierre Keppens,
Mr. Augustinus Petrus Kerkhoff,
Mr. Peter Langeveld,
Miss R.M. Leen,
Mr. A.F. Leherte,
Mr. Paul Leitz,
Mr. Christian, Marie, René Lorient,
Mr. C.J.P. Maes,
Mr. Kresimir Mali,
Mr. Gerard Mulder,
Mr. Albert, Jean Nuss,
Mr. W.H. Nutbey,
Miss A.M. Nuyts,
Mr. Jacques C.J.J. Peeters,
Mr. Walter August Permentier,
Mr. Shantisaroo P. Pherai,

Mr. Prein,
Mr. Mladen-Marko Rajic,
Mr. Antoon Oetaaf André Ryckebosch,
Mr. Alex C. Schmidt,
Mrs. Nicole, F G. Schuermans-Hassele,
Mr. Robert L. Simons,
Mr. Max Suter,
Mr. Bernardus Petrus Tiel,
Mr. Fernand Vancraeynest,
Mr. Hendrik van Bilderbeek,
Mr. A.F. van Leeuwen,
Mr. Alain Maurice Joseph van Moer,
Mr. Edward J. van der Brink,
Mr. F.C.M. van der Krogt,
Mr. William Verhulst,
Mr. Jos Wannée,
Mr. Henri P. Weber,
Mr. M.L. Westenberg;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 82 and following of the Institute Staff Regulations;

Having examined the documents in the dossier, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the material facts of the case are as follows:

A. In July 1975 there was a strike at the Institute lasting half a day and in September another lasting a day. At its 127th Session (21-23 October 1975) the Administrative Council discussed the matter and took a decision which was notified to the staff by circular of 23 October entitled "Salary deductions due to the collective work stoppages in July and September 1975". The circular set out, among other things, the following statement by the Council to the Staff Committee's appointed representatives:⁽¹⁾ "As to the strike days, the Council takes the view that as a rule deductions should be made from salaries for any day on which staff members are on strike. It has decided, however, to waive that rule until the end of the year in the belief that there would be no grounds for deductions if by then progress on the programme prescribed in the budget had been made up ...".

B. The General Staff Assembly called another strike on 29, 30 and 31 October 1975, in which the complainant took part. On 13 November 1975 the Director-General announced by circular that further and final consultations had been held with the members of the Administrative Council, and it had been decided, on the grounds of failure of performance, to deduct from the salaries of staff members who had taken part in the strikes in July, September and October 1975 sums corresponding to the number of strike days. In a letter of 11 December 1975 to the Director-General the complainant contended that the Administrative Council's statement at its 127th Session (see paragraph A above) had "put it under a conditional obligation. It decided to refrain until the end of the year from relying upon labour law, and one commonly acknowledged principle of labour law is that deductions should be made from salary for strike days. By waiving that principle on the condition that progress on the programme was made up the Council agreed to apply the law of contract". By the same letter the complainant appealed against the decision of 13 November 1975 to make salary deductions for the strikes in July, September and October 1975.

C. By a circular of 21 January 1976 the Director-General informed the staff that in agreement with the Administrative Council, which had taken stock of the progress of work in 1975 at its 128th Session (17-19 December 1975), it had been decided not to make any salary deductions for the strikes in July and September 1975 since progress had been made up. The internal appeals filed by the complainant and many others were therefore allowed to lapse.

D. On 2 February 1976 the complainant wrote to the Director-General saying that since his claim of 11 December 1975 had been only partly met he wished to press it in so far as it challenged the decision to make deductions from his salary for the strike in October 1975. By a letter of 27 February 1976 the Director-General answered that the Council's statement, to which the complainant had referred, related merely to the strikes in July and September

1975 and not to that in October. The Director-General asked him to say whether in the circumstances he wished to pursue his appeal. On 1 March 1976 the complainant replied that he did. By letter of 11 March the Director-General told him that he could not allow the appeal and would put the matter to the Appeals Committee.

E. The internal appeal proceedings were temporarily suspended because of the absence of the Appeals Committee members appointed by the Staff Committee, and the complainant lodged the present complaint with the Tribunal on 7 May 1976 - i.e. before the expiry of the time limit of sixty plus ninety days running from the date of the internal appeal. He did so at the suggestion of the chairman of the Appeals Committee and so that the delay in the internal proceedings should not bar the filing of a complaint with the Tribunal. The internal proceedings were then resumed and the Appeals Committee reported to the Director-General on 9 September 1976. On 13 September the Director-General endorsed its recommendations and dismissed the appeal.

F. The complainant maintains the same arguments that he put to the Director-General and the Appeals Committee. He contends that by its statement the Council committed itself to applying the law of contract and so waived until the end of 1975 the rule that deductions should be made from salaries for strike days. He accordingly contends that the statement cannot be limited in its application to the strikes in July and September 1975.

G. The complainant asks the Tribunal: (a) to order the Institute to pay his salary for the three days on which he was on strike in October 1975; (b) to order it to pay interest on those sums at 8 per cent a year with effect from 11 February 1976; and (c) to award against the Institute such costs as the Tribunal may determine.

H. Like the Appeals Committee the institute takes it as established that the Council's statement related solely to salary deductions for the strikes in July and September 1975. Whatever obligation that statement may have bred cannot apply to the salary deductions for the strike in October 1975, which in any case took place after the Council had made the statement on which the complainant relies. There is nothing to suggest that the Council intended to allow until the end of 1975 a general exemption from the rule that failure to work due to a strike entails cancellation of salary. Such an exemption would be admissible only if there were an express decision to that effect, and there is not. Since the Council's intention is not open to doubt, the Institute asks the Tribunal to dismiss the complaint.

CONSIDERATIONS:

As to the applications to intervene, Mr. Adam and others have an interest in the quashing of the impugned decision and their applications are therefore receivable.

There being no need to consider the receivability of the appeal and of the complaint;

There was a strike at the Institute in July 1975 lasting half a day and another in September lasting a day.

The complainant took part.

At its 127th Session (21-23 October 1975) the Administrative Council of the Institute took the following decision, which was posted up for the information of the staff on 23 October:⁽²⁾

"(8) Salary deductions due to the collective work stoppages in July and September 1975

As to the strike days, the Council takes the view that as a rule deductions should be made from salaries for any day on which staff members are on strike. It has decided, however, to waive that rule until the end of the year in the belief that there would be no grounds for deductions if by then progress on the programme prescribed in the budget had been made up within limits possibly set by circumstances beyond the Institute's control."

Shortly afterwards, on 29, 30 and 31 October 1975, there was another strike in which the complainant again took part.

What the impugned decision provided was that, in accordance with the Council's decision and in the light of progress made, no deductions would be made from staff salaries for the strikes in July and September 1975 but that, failing a similar decision by the Council, salary deductions would be made for the strike in October.

According to a principle of international public service salary is generally payable only for services rendered, and

so the Institute was right to refuse to pay a staff member who went on strike for the period in which he did not work.

The complainant maintains that on 23 October 1975 the Administrative Council decided not to make salary deductions on account of the strikes. That is true, but it is clear from the actual wording of the decision that the concession applied only to the strikes in July and September and that no special provision was made for the strike on 29, 30 and 31 October, which was in any case subsequent to the decision.

It appears from the foregoing that the complaint should be dismissed as unfounded.

DECISION:

For the above reasons,

The complaint and the applications to intervene are dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 21 November 1977.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet

1. Registry translation.
2. Registry translation.