

FORTIETH ORDINARY SESSION

***In re* BIGGIO (No. 2), VAN MOER,
RAMBOER, HOORNAERT, BOGAERT,
DESCAMPS and DEKEIREL**

Judgment No. 340

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints brought against the International Patent Institute on 235 March 1977 by Mr. Carlo Giuseppe Frederico Biggio, Mr. Alain Maurice Joseph Van Moer, Mr. Paul Jules Ramboer, Mr. Winfried Marie Emiel Hoornaert, Mr. Frans Louis Bogaert,

Mr. Joël André Descamps and Mr. Marc Julien Dekeirel, of which Mr. Biggio's complaint was brought into conformity with the Rules of Court on 12 April and the other six on 3 May, the Institute's single reply of 8 July, the complainants' single rejoinder of 30 November 1977 and the Institute's single surrejoinder of 20 January 1978;

Considering that the seven complaints relate to the same matters and should be joined to form the subject of a single decision;

Considering Article II, paragraph 5, of the Statute of the Tribunal and the Institute Staff Regulations, particularly Articles 5 and 25 to 29;

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. On 5 February 1976 several Institute staff members who held grade A7 were promoted to A6 for 1975. Not having been recommended for promotion by the Careers Committee, the complainants were not among them. They appealed to the Tribunal against the decision of 5 February 1976. Mr. Biggio was a complainant in the joined cases of Ledrut and Biggio; the other complainants in this case applied to intervene in those cases. By Judgment No. 300 of 6 June 1977 the Tribunal dismissed the complaints and the applications to intervene.

B. Meanwhile, under pressure of protest, the Careers Committee had been asked to draw up a second list of staff members eligible for promotion, in order of merit and in a manner prescribed by the Director-General in a staff circular of 26 May 1976. As was prescribed in the circular the Careers Committee met again and on 1 December 1976 adopted a report listing in order of merit the staff members whom it had recommended for promotion in its original report. The complainants had not been recommended in that report, which the Director-General had endorsed, nor did they appear in the further list of staff members - who numbered six - promoted to A6 by the Director-General on 24 December 1976 on the Careers Committee's second recommendation. It is the decision of 24 December 1976 that the complainants are impugning.

C. The complainants object to the decision not to promote them on the grounds that it was based on discriminatory principles and criteria and on data which do not bear comparison. The second Careers Committee was improperly constituted. The list was improper because it included some who qualified for promotion and some who had already been promoted. The grounds given by the Committee for its recommendation were inadequate. Lastly, it is doubtful whether the composition of the Committee was proper.

D. In their claims for relief the complainants ask the Tribunal (a) to quash the impugned decision for mistake of law and abuse of authority and because mistaken conclusions were drawn from the facts; (b) to declare the complainants promoted to A6 for 1975 with retroactive effect; (c) accordingly to order payment to them of interest at 6 per cent a year on the sums due; and (d) to award each of them damages amounting to 1,000 French francs.

E. The Institute contends that the impugned decision merely supplements the decision of 5 February 1976 to promote staff members from A7 to A6 for 1975. "The Director-General", it says, "kept the complainants out of the second batch of promoted staff members for the same reason that he had kept them out of the first one. The Tribunal referred to that reason in paragraph 8 of the considerations in Judgment No. 300, and it was this: according to the staff circular of 26 May 1976, by studying the files of all category A staff members concerned 'the Director-General has been able to uphold the careers committees' view on one point, namely that staff members listed in the promotion rosters should in any event be promoted before those who are not'. The Tribunal went on: 'There is nothing to suggest that in that respect the Director-General committed any abuse of his discretionary authority'. The Tribunal should therefore dismiss the present complaints on the same grounds as it dismissed the complaints and the applications to intervene filed by the same staff members against the decision of 5 February 1976." As to the flaws the complainants allege in the procedure prior to the impugned decision, the final decision not to promote them to A6 for 1975 was taken on the Careers Committee's first recommendation and so their objections to its second one have no bearing on the propriety of that decision. "Moreover, having already by Judgment No. 300 dismissed a complaint and applications to intervene submitted by the present complainants against the decision, taken on the Careers Committee's first recommendation, not to promote them to A6 for 1975, the Tribunal cannot but dismiss the present complaints on the same grounds." The "second" Careers Committee was in fact the same as the first one, was quite competent to draw up a further list for 1975 and had the consent of the Staff Committee. Hence the complainants cannot properly plead any flaw in its composition. There was no Impropriety in putting on a single list staff members who qualified for promotion and others who had already been promoted, since the list related to one and the same year. The Committee gave adequate grounds for its recommendation by saying that it had made a comparison of the files submitted to it and by stating the guidelines which had governed its choice. Lastly, the Institute denies the complainants' allegation that there was a mistake of law.

F. The Institute accordingly asks the Tribunal to dismiss the complaints.

CONSIDERATIONS:

As to the defendant:

1. The complainants, who were members of the staff of the International Patent Institute, filed similar complaints against the Institute on 23 March 1977. By an agreement signed on 19 October 1977 the Institute was integrated into the European Patent Office, the secretariat of the European Patent Organization (EPO). Having recognised the jurisdiction of the Administrative Tribunal, with the agreement of the ILO Governing Body, from 1 January 1978 the EPO replaced the Institute in disputes with its staff members still pending at that date before the Tribunal. Thus in this case the EPO has become the defendant.

As to the Tribunal's power of review:

2. The impugned decision to promote six staff members, but not the complainants, from A7 to A6 falls within the scope of discretionary authority. Hence the Tribunal may interfere with that decision only if it was taken without authority, or violates a rule of form or of procedure, or is based on a mistake of fact or of law, or if essential facts were overlooked or if the decision is tainted with abuse of authority, or if clearly mistaken conclusions were drawn from the facts.

As to the complainants' pleas:

3. According to a staff circular of 26 May 1976 the Director-General instructed the Careers Committee, which on 27 January 1976 had drawn up a roster of officials who qualified for promotion from A7 to A6 in 1975, to list those staff members in order of merit. He made it clear that only the staff members included in the original list were to be taken into account. In Judgment No. 300 on the complaints of Mr. Ledrut and Mr. Biggio the Tribunal held that the Director-General had not abused his discretionary authority by deciding to promote only the staff members on that list. Since they were not on that list the complainants cannot properly contend that the decision to refuse them promotion is tainted with any flaw which entitles the Tribunal to interfere.

4. Moreover, there is no substance in the wrongs which they allege. Although Article 27 of the Staff Regulations provides for establishing a committee whenever a promotion list has to be drawn up, it does not bar the Director-General from asking a committee, composed of the same members, to review a list it has already drawn up.

Moreover, it was not to the detriment either of the officials already promoted or of the official whose promotion was proposed to include both categories in the new list. In the present case the Committee stated in broad but clear terms the criteria which it had followed in drawing up the final list and so it met the requirements of Article 26 of the Staff Regulations. There was no need for it to comment on individual cases, which in any event the Director-General himself examined one by one. Again, contrary to what the complainants contend, the lists drawn up by the Committee mention its members and bear their signatures and, in the light of the evidence in the dossier, their appointment was correct. Lastly, as to the arguments based on seniority benefits and the alleged violation of the principle of equality, the Tribunal merely refers to Judgment No. 300, in which it dismissed such arguments.

DECISION:

For the above reasons.

The complaints 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 signature as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 8 May 1978.

(Signed)

M. Letourneur
André Grisel
Devlin

Roland Morellet