

FIFTY-SEVENTH ORDINARY SESSION

In re WEST

Judgment No. 694

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the European Patent Organisation (EPO) by Mr. Julian Michael West on 14 January 1985 and corrected on 22 January, the EPO's reply of 10 April, the complainant's rejoinder of 28 April and the EPO's surrejoinder of 15 July 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 11(2) and 108 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. The complainant, an Englishman born in 1945, did post-graduate research from August 1967 until September 1972; from then until January 1982 he worked in the British Patent Office. On 11 January 1982 he was appointed to the staff of the EPO in Munich as a substantive examiner of patents. On 1 February the Principal Director of Personnel sent him a reckoning of his seniority. For the five years' university research he was credited, at half-rate, with 2 years and 6 months and for his work in the British Patent Office with 9 years and 4 months. From the total of 11 years and 10 months were subtracted 1 year and 7 months as experience acquired under the age of 25. He was accordingly graded at A3, step 8, with 16 months' seniority. At the end of January 1984 there came to his notice what he describes as a "seniority list", which gave his own seniority and that of other examiners recruited from national patent offices. On 18 April 1984 he filed internal appeals under Article 108 of the EPO Service Regulations. ⁽¹⁾ One of them objected to his ranking in the list and asked that the list be drawn up with due regard to the steps of those appearing in the list, as required by Article 11(2) of the Service Regulations. The appeals were referred on 6 June to the Appeals Committee. By a letter of 19 December 1984 the President of the Office informed the complainant that he accepted the Committee's recommendation to reject the appeal about the seniority list.

B. The complainant alleges that the list was based on criteria which differed according as examiners had been recruited to A3 up to or after 31 December 1980: there was breach of the principle of equality. Article 11(2) of the Service Regulations requires concordance between the examiner's step in his grade and his seniority. At present there is none: in calculating the step experience gained before the age of 25 counts, and research experience counts in full; in calculating seniority they do not. The complainant asks that his seniority be determined in accordance with Article 11(2).

C. The EPO replies that the complaint is irreceivable. The seniority list is not a decision within the meaning of Article VII(1) of the Statute of the Tribunal, but just an internal paper drawn up by the Personnel Department of the Office to list the examiners to be considered for promotion. It contains no new decisions but is based on challengeable decisions taken by the President on the seniority of each examiner. Besides, for reasons the EPO explains, the claim is devoid of merit.

D. The complainant rejoins that he is not objecting to the reckoning of 1 February 1982. In that reckoning one figure was given to determine his grade, another to determine his step. In the seniority list it is the former that was used; in his submission it should have been the latter. The choice of figure constitutes a challengeable decision within the meaning of Article VII(1) of the Tribunal's Statute. Since the list did not come to his notice until late in January 1984, his internal appeal was filed in time and his complaint is receivable. He also argues the merits.

E. In its surrejoinder the EPO enlarges on its pleas. As to receivability, it submits that the allegation of a decision implied in the seniority list is unsound: it rests on a confusion between seniority as calculated for the purpose of promotion in grade and experience as calculated for the purpose of defining the step in the grade. There is nothing in the Regulations to suggest that the latter should count in determining eligibility for promotion.

CONSIDERATIONS:

1. Under Articles II and VII of its Statute the Tribunal is competent to hear complaints against decisions alleged to infringe the terms of appointment of a staff member or a provision of the Staff Regulations.
2. The complainant alleges that there is in the Office a "seniority list". He does not produce or identify the list or any copy of it; he states that it has not been published or displayed or notified to persons concerned. The Organisation states that there is a so-called "seniority list", but that it is only an internal paper drawn up for the exclusive use of the Personnel Department. The Tribunal holds that it is a mere working paper that has no effect in law.
3. The preparation and possession of a list of the kind alleged does not constitute a decision infringing the terms of the complainant's appointment or any provision of the Service Regulations. Accordingly, the Tribunal is not competent to hear the complaint.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 14 November 1985.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

1. "Unless the appointing authority decides otherwise, for duly substantiated reasons relating to the training and special professional experience of the candidate, appointment shall be to the first step in the grade."