

FIFTY-NINTH ORDINARY SESSION

In re WEST (No. 4)

Judgment No. 769

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Julian Michael West against the European Patent Organisation (EPO) on 26 September 1985, the EPO's reply of 31 January and the complainant's letter of 7 February 1986 informing the Registrar of the Tribunal that he did not wish to rejoin;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 55, 59(2) and 62(4) 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 background to this case consists in part in facts which the Tribunal recorded in Judgment 699, under A. Since there were fourteen public holidays in Munich in 1984, or four more than Article 59(2) of the Service Regulations allowed, the EPO staff were required to work additional hours or take annual leave to make up the four days. The complainant who is stationed in Munich, was certified to be sick on 15 August 1984, one of the public holidays. He asked for one extra day's leave to make up for the day he had lost because of illness. The EPO refused and his case went to the Appeals Committee. In its report of 20 June 1985 the Committee recommended rejecting the appeal and by a letter of 19 August, which is the impugned decision, the President informed the complainant that he did so. In Judgment 699 the Tribunal ruled that it was in breach of Article 55 of the Service Regulations to require staff to work the additional hours to make up. By circular 145 of 22 January 1986 the President of the Office informed the staff that, among other things, they would get additional leave and financial compensation for the additional days they had worked in 1984.

B. The complainant contends that since he was ill during a week in 1984 which included one public holiday, 15 August, and therefore lost that holiday, he is entitled to one day's leave in lieu under Article 62(4) of the Service Regulations. Another staff member was granted two days' leave to replace public holidays lost through illness: there was therefore breach of the principle of equal treatment. He asks the Tribunal to order the EPO to grant him one day's leave or one day's pay.

C. The EPO replies that the complaint is devoid of purpose because, in accordance with the circular, the complainant gets one day's extra leave for the additional hours he says he worked to make up the day on which he was ill. The claim is in any event unfounded. It would succeed only if 15 August 1984 could be identified as one of the four holidays over the maximum allowed under Article 59(2)(b) of the Service Regulations. In fact circular 121 does not identify the four days for which additional hours have to be worked. The rules were

uniformly applied.

CONSIDERATIONS:

1. The complainant seeks relief by way of an order that he be awarded one day's leave or one day's salary to compensate for the compulsory day's leave lost on 15 August 1984 due to illness.
2. Article 59(2) of the Service Regulations empowers the President of the Office to compile, after consultation, a list of public holidays applicable to each place of employment, provided that the number of public holidays should not exceed ten.
3. On 8 November 1983 the President published circular 121 declaring fourteen days which would be observed as public holidays in 1984. These included Assumption Day, Wednesday 15 August. On that day the complainant was medically certified sick.

4. In Judgments 699 and 700 (in re Catchlove and Butler) the Tribunal held that in ignoring the limit of ten days specified in Article 59(2) the President was not in breach of any obligation towards the staff. The judgments were concerned with the requirement to work additional time to make up for the four extra public holidays. That is not an issue here.

5. The complainant contends that Article 62(4) of the Service Regulations applies. It reads:

"If, during annual or home leave, a permanent employee is incapacitated, this period of incapacity shall, subject to production of a medical certificate, be deemed to be sick leave and shall not be deducted from his annual or home leave."

The short answer is that the complainant was neither on annual leave nor on home leave on 15 August 1984. Thus Article 62(4) does not apply.

6. The plea of unequal treatment is not substantiated. Either the other staff member who he says was better treated was not in the same position as he, or else the other got the benefit of an unlawful decision, and in that case the complainant may not rely on any breach of equality.

7. The fundamental question is whether a staff member who is on sick leave during a public holiday is entitled to compensatory leave or pay. Applying Article 62 of the Service Regulations dealing with sick leave, the Tribunal answers in the negative.

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 Sir William Douglas, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 June 1986.

André Grisel

Jacques Ducoux

William Douglas

A.B. Gardner