

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

SIXTIETH ORDINARY SESSION

In re VAN DER PEET (No. 7)

Judgment No. 777

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr. Hendricus van der Peet against the European Patent Organisation (EPO) on 20 January 1986, the EPO's reply of 4 April, the complainant's rejoinder of 17 July and the EPO's surrejoinder of 30 September as supplemented by its letter of 4 November 1986;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 28(1), 106(2), 107(1) and 108(2) and (4) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence;

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

A. While employed by the EPO at Rijswijk, the complainant, a Dutchman, rented a flat at Noordwijk. A dispute arose between him and his landlady and she gave him notice of termination of the lease. The EPO transferred him to Munich, where he took up duty in January 1984. On 14 February 1984 his landlady's daughter, Mrs. Vos-Nell, wrote in Dutch to the Office saying that the complainant owed 5,000 guilders in rent and she wanted to know his new address. In his reply of 1 March 1984, also in Dutch, the Principal Director of Personnel said that, though "we deplore it to the utmost when the conduct of one of our staff members is open to criticism", the EPO did not "interfere with the private affairs of its staff members" and could not reveal the complainant's private address; he could, however, be reached through the EPO in Munich. The Director sent the complainant a copy of the two letters and asked him to "settle the matter so that the EPO's interests should not suffer". On 5 March the complainant wrote in Dutch lodging an internal appeal alleging interference in his private affairs and gratuitous acceptance of accusations against him. He asked for authority to go to The Hague to see his lawyer and a loan of 5,000 guilders to meet his legal costs. The Director wrote on 8 March to say that he would not answer a letter that was not in an EPO language. On 22 March the complainant wrote asking for translations of Mrs. Vos-Nell's letter and of the reply. The Director refused on 3 April. On 30 April the complainant supplied a translation into English of his letter of 5 March. On the same date he filed a second appeal objecting to the Director's letters of 8 March and 3 April, and on 24 September a third one against the implied rejection of the claims in his letter of 5 March to help in his dispute with his landlady. The three appeals went to the Appeals Committee. In its report of 31 October 1985 it recommended rejecting the first two as devoid of merit and the third as time-barred -- the time limit for challenging the implied rejection of a claim being three months under Article 108(4) of the Service Regulations -- and in any event unsound. By a letter of 11 November 1985, the decision impugned, the President of the Office informed the complainant that he rejected the claims.

B. The complainant contends that the Principal Director of Personnel was wrong to accept Mrs. Vos-Nell's version of the facts; to give her, without his consent, information which led to his being sued in the Dutch courts; to lay on him a duty to "settle the matter so that the EPO's interests should not suffer"; and to refuse him the help he needed to fulfil that duty. He claims (1) compensation for "all costs incurred and all time spent" in defending his interests; (2) three times as much in punitive damages; (3) waiver of the immunity of EPO officials to enable him to pursue his rights under the European Convention on Human Rights; (4) assistance under Article 28(1) of the Service Regulations "with the prosecution of Mrs. Vos-Nell"; and (5) "rehabilitation".

C. The EPO submits that the complaint is irreceivable because it does not impugn any decision infringing on the complainant's rights. The letter of 1 March 1984 from the Principal Director of Personnel, which makes general comments on EPO policy, does not amount to a decision he may challenge. Besides, his claims are not the same as in his internal appeals and so are also irreceivable for failure to exhaust the internal means of redress.

His complaint is in any event devoid of merit and indeed vexatious. The letter of 1 March 1984 neither compromised his interests in his private life nor had any connection with the lawsuit his landlady brought against

him. For those reasons his claims to compensation and to waiver of immunity are also unsound.

D. In his rejoinder the complainant enlarges on his account of the facts and seeks to answer the arguments in the EPO's reply. He submits in particular that his complaint is receivable. The Director's letter of 1 March 1984 is not confined to comments on EPO policy but improperly discloses his transfer to Munich to a third party. Nor has he altered the substance of the claims in his internal appeals: his present claims, though more specific, fall within the ambit of the original ones.

As to the merits, he develops his submissions that the Director's letter constituted unlawful interference in his private life and accepted the unsupported and libellous allegations which had been made against him, and which the EPO should not even have answered. He sets out in detail his many criticisms of the EPO's handling of his case and presses his claims.

E. The EPO develops its case in its surrejoinder. It submits that most of the rejoinder is utterly irrelevant to the minor issues of law which the complaint raises and that the complainant offers no satisfactory answer to its pleas either on receivability or on the merits. It again invites the Tribunal to dismiss the complaint.

CONSIDERATIONS:

Receivability

1. The complainant is claiming (1) compensation for all costs incurred, (2) three times as much in damages, (3) waiver of the immunity of the EPO officials he alleges have infringed his rights, (4) assistance under Article 28 of the Service Regulations and (5) rehabilitation and exculpation.

The claims will be receivable under Article VII(1) of the Statute of the Tribunal only if they were duly submitted to the internal appeals bodies. The first question is whether they were.

2. On 5 March 1984 the complainant wrote a letter in Dutch to the Principal Director of Personnel and on 30 April sent him a translation into English. He said he was lodging an internal appeal against the Director's letter of 1 March 1984 to Mrs. W. Vos-Nell, the daughter of Mrs. A. Nell-Piek, who owned the flat he had leased at Noordwijk, in the Netherlands. He submits that the EPO should be liable for all the costs and trouble the letter of 1 March 1984 caused him.

Although the letter did not amount to a challengeable decision because it did not give rise to any right or duty or question the existence of one, the appeal of 5 March 1984 did seek compensation in the form of reimbursement of costs, damages, and rehabilitation and exculpation. So claims (1), (2) and (5) are receivable because he has exhausted the internal means of redress.

But none of his internal appeals sought waiver of the immunity of EPO officials, and he first raises the matter in a brief he filed with the Appeals Committee on 14 June 1985, after the time limit for internal appeal had expired. Claim (3) is therefore irreceivable.

The assistance he seeks under (4) he applied for in his letter of 5 March 1984. He asked the EPO to supply several texts in Dutch (paragraph 5(a)), approve "duty travel to the Netherlands" (5(b)) and grant him an "interest-free loan" of 5,000 guilders (5(c)). He repeated the claim to assistance in an internal appeal of 24 September 1984, and the Appeals Committee declared it irreceivable.

The Committee was wrong to do so.

The Principal Director of Personnel wrote on 8 March 1984 refusing to answer the complainant's letter of 5 March on the grounds that it was in Dutch. The complainant having sent the Director the translation on 30 April, it was on that date that began the time limit in which the EPO ought to have answered his claim and which Article 106(2) of the Service Regulations sets at two months. The time limit expired on 30 June. The EPO having failed to answer in time, the complainant had three months in which to appeal against the implied rejection of his claim. That is just what he did in his appeal of 24 September 1984, thereby complying with Articles 106(2) and 108(2) of the Regulations. He therefore exhausted the internal means of redress in pursuing the claim in his letter of 5 March and claim (4) is receivable insofar as it relates to the assistance he sought in that letter.

The Tribunal will entertain all the claims but (3).

Merits

3. In a letter of 14 February 1984 Mrs. Vos-Nell asked the head of the EPO office at Rijswijk for the complainant's new address. She accused the complainant of having done a "moonlight flit" and of owing 5,000 guilders in arrears of rent. The Principal Director of Personnel wrote Mrs. Vos-Nell a letter on 1 March 1984 and the complainant regards it as injurious. But did it in fact cause him any injury?

The letter said that he had been transferred to Munich in January 1984 and that the EPO was sorry that the conduct of any of its staff should be open to criticism but glad to see that Mrs. Vos-Nell realised it could not get involved in a staff member's private life. It declined to give the complainant's address but promised to pass on a copy of her letter to him and hoped he would settle the matter. Lastly, it said that any further correspondence might be addressed to him at the EPO in Munich marked "Private and confidential".

The Director makes no comment whatever on the complainant's attitude. Though he deplores any sort of misconduct by the staff, he does so in general terms which apply no more closely to the complainant than to anyone else. Though he hopes that the complainant will settle the matter he does not say who is to blame. In short he remains neutral and that is in line with the Organisation's wish not to meddle in a staff member's private life.

Nor does the Director's letter reveal any fact which is injurious to the complainant. Though it mentions his transfer to Munich, Mrs. Vos-Nell's letter of 14 February 1984 shows that she knew of it already. The suggestion that she write to him at the office in no way alters his position. Besides, the evidence shows that Mrs. Nell-Piek's lawyer was in touch with his, and they could therefore communicate through their lawyers without bringing the EPO in at all.

The complainant says that the Director's letter forced him to go to court and exposed him to a lawsuit by Mrs. Nell-Piek. Neither statement is established. The letter did not in itself put a stop to the negotiations they had already begun in order to reach a settlement. The litigation was most probably the outcome not of the Director's letter but of the breakdown in the negotiations.

The Tribunal concludes that the EPO is not liable for the injury the complainant alleges and that his claims to redress under (1), (2) and (5) are unsound. Whether the Director ought to have sent him Mrs. Vos-Nell's letter before replying is therefore immaterial.

4. The claim to assistance rests on Article 28(1) of the Regulations, which reads: "If, by reason of his office or duties, any permanent employee, or former permanent employee, or any member of his family living in his household is subject to any insult, threat, defamation or attack to his person or property, the Organisation shall assist the employee, in particular in proceedings against the author of any such act".

The claim is misconceived. It is beside the point whether Mrs. Vos-Nell's letter of 14 February 1984 was libellous because it spoke of a moonlight flit and arrears of rent. Even if it was it had nothing to do with his "office or duties". Though he had had to leave the Netherlands on transfer to Munich he was not bound to move without his landlady's knowledge or leaving rent unpaid. There is therefore not the causal link Article 28(1) requires between the complainant's duties and his alleged misconduct.

Besides, although the rule does not give an exhaustive list of the circumstances in which the staff member may seek assistance it does not apply to a civil suit brought by or against the complainant. Quite plainly the bringing of a private lawsuit cannot be likened to an "insult, threat, defamation or attack".

The application for oral proceedings

5. There are no grounds for allowing the complainant's application for oral proceedings since the written evidence before the Tribunal enables it to rule on all the material issues.

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 Tun Mohamed Suffian, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 12 December 1986.

(Signed)

André Grisel

Jacques Ducoux

Mohamed Suffian

Allan Gardner