

SIXTY-SIXTH SESSION

In re MONDI (No. 2)

Judgment 964

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr. Edoardo Mondì against the European Patent Organisation (EPO) on 10 August 1988, the EPO's reply of 28 November 1988, the complainant's rejoinder of 29 January 1989 and the EPO's surrejoinder of 14 April 1989;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal and Articles 32(7), 93 and 109 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 Italian who joined the EPO in Munich at grade C3 in 1980, was transferred in 1982 to the Library and Information Service as a clerk at the same grade.

This case is about his staff report for 1984-85. In section III of the report the reporting officer, Mr. Kruse, gave him an unfavourable general assessment and said, among other things, that being subordinate to women might be causing him an "insurmountable personal problem". He stated his objections on 7 January 1988, claiming under section X the conciliation provided for in the rules on reporting. The Personnel Department referred the matter on 9 February to Mr. Kruse, who in a letter of 12 February declined to engage in further discussion and said that the complainant was merely trying his well-known tactics of attrition. On 17 February the Personnel Department told him of that reply and said that a final decision would be taken on the report. The complainant commented in a letter of 23 February and Mr. Kruse replied at length on 22 March. On 23 March the complainant wrote to the President of the Office observing that he had not yet received word of the President's final decision; if he did not hear of it before a month was out he wished to appeal against the "unacceptable delay".

The President's authorised representative endorsed the report under section XI on 24 May and the complainant signed it under section XII on 7 June. On 9 June he wrote the President a letter appealing against the endorsement of the report; he asked that the report be amended and the general and other ratings increased. By a letter of 2 August 1988 the Principal Director of Personnel informed him that the President had provisionally rejected his appeal and passed it on to the Appeals Committee. On 10 August he filed the present complaint.

B. The complainant submits that, the President having failed to entertain his appeal of 9 June 1988, he is entitled to impugn the implied decision to reject his claims.

Mr. Kruse's remark on his attitude towards women supervisors is interference in his private life and in breach of international instruments on human rights and causes him moral injury, the charge of resorting to attrition is a spiteful libel, and the malicious refusal of conciliation is against the rules on reporting.

He asks for (1) an increase in the general and other ratings in the report and (2) the deletions and amendments he sets out. (3) He claims 10,000 Deutschmarks in damages for the injury to his career, "pain and suffering" caused by Mr. Kruse's "illicit encroachment on his private life". (4) He reserves the amount he claims in damages for the injury to his career caused by the refusal of conciliation. (5) He claims DM 6,780 in costs.

C. Authorised by the President of the Tribunal to address only the issue of the receivability of claims (1), (2) and (3), the Organisation submits that as to those claims the complainant has not exhausted the internal means of redress, as Article 109 of the Service Regulations and Article VII(1) of the Statute of the Tribunal require. The President took a decision within sixty days by passing his appeal on to the Appeals Committee and he has failed to await the final decision.

Claim (4) was in his letter of 23 March 1988, which the Organisation did not answer. It is devoid of merit. The purpose of conciliation is to reach a compromise between the two sides, and it is pointless when there is no prospect of agreement. Mr. Kruse knew from experience and from daily contact with the complainant that further talking would be a sheer waste of time. In view of the reporting officer's workload and the countersigning officer's absences due to illness the lapse of time from 7 January 1988, when the complainant applied for conciliation, until 24 May, when the report was approved, was not too long. Nor does he offer evidence of any injury due to the failure of conciliation. The EPO discloses a confidential text entitled "Personal and career profile" and established in accordance with Article 32(7) of the Service Regulations.

D. In his rejoinder the complainant objects to allowing the EPO to address only the receivability of claims (1), (2) and (3). He withdraws those claims but presses (4) and (5).

As to claim (4), he disagrees that experience suggested that conciliation would fail. Conciliation over his report for 1982-83 led to substantial changes in his favour. Mr. Kruse acted from improper motives, including a desire to injure his career and health and to humiliate him. There is nothing in the rules on reporting to suggest that a reporting officer may shirk his duty to take part in conciliation: indeed the rules say that a request from a staff member for discussion with the reporting officer "must always be granted". Mr. Kruse deserves disciplinary action under Article 93 of the Service Regulations. The complainant was victimised because he is Italian.

Lastly, he strongly objects to the EPO's disclosing his "personal and career profile". He asks the Tribunal to order a "complete disciplinary investigation" into the matter.

E. In its surrejoinder the Organisation points out that the provisions on conciliation in the rules on reporting do not state that the reporting officer is bound to agree to meet the staff member: his sole duty is the one that the purpose of conciliation dictates, namely to try to reach agreement on the text of the staff report. So all that is required is that the staff member have every opportunity to state his case again. The complainant did. That conciliation on an earlier staff report of his led to drafting changes does not mean that conciliation always will.

His accusation of discrimination on grounds of nationality is unsubstantiated. The "personal and career profile" supplies, for the Tribunal's convenience, information found in dossiers on earlier appeals by the complainant. His claim to investigation is unfounded.

CONSIDERATIONS

This complaint has been filed prematurely.

The President's authorised representative endorsed the complainant's staff report for 1984-85. The complainant objected and asked that the report be amended. He appealed to the President and the President referred the appeal to the Appeals Committee on 2 August 1988. Only eight days later, on 10 August, the complainant filed the complaint with the Tribunal.

As is stated under B above, the complainant makes five claims. As to the first three, the Organisation sought and was given permission to address only the issue of receivability. The complainant must have agreed that they were irreceivable since in his rejoinder he withdrew them, although he presses the remaining two. But the injury referred to in his claim (4) could have been suffered only as a result of the President's decision, the subject of the appeal pending before the internal Appeals Committee. Until there has been a final decision by the President on the Committee's recommendation, the Tribunal may not entertain the matter. Accordingly, the complaint therefore fails in its entirety.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, and Miss Mella Carroll, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 27 June 1989.

(Signed)

Jacques Ducoux
Mohamed Suffian
Mella Carroll
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.