

## EIGHTY-SIXTH SESSION

### *In re Roedl*

#### Judgment 1826

The Administrative Tribunal,

Considering the complaint filed by Mrs. Dorothea Roedl against the European Patent Organisation (EPO) on 23 July 1997 and corrected on 20 November, the EPO's reply of 23 February 1998, the complainant's rejoinder of 18 June and the Organisation's surrejoinder of 24 August 1998;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant, a German, was seconded from her national civil service to the European Patent Office, the EPO's secretariat, in September 1980. Though subject to the provisions of the Office's Service Regulations, she continued to get promotions within the German civil service until her retirement in June 1994. On 22 March 1995 the EPO gave her notice of the amount due to her by way of pension enhancement. In reckoning that amount the Administration took no account of the promotions her former employer granted her while she was on secondment. By a letter of 25 April 1995 to the Remuneration and Pensions Department she challenged the reckoning of her pension. On 30 April an official in the Department confirmed that her entitlement would be as reckoned. On 12 June 1995 she lodged an internal appeal against the decision of 22 March. On 3 July she got notice of the referral of her appeal to the Appeals Committee and the Administration's decision to defer action on the matter until the Tribunal had ruled on related complaints submitted earlier by Mr. Paulus Belser and others. In Judgment 1456 of 6 July 1995 the Tribunal delivered a ruling on those complaints. The Administration having failed to notify the Committee of its position on her appeal, she lodged the present complaint on 23 July 1997.

B. Her pleas are the same as those put forward by Mr. Belser, Mr. Otto Bossung and Mr. Kurt Lederer in their second complaints: see Judgment 1825 also delivered this day. She observes, however, that her case differed from theirs insofar as her former employer had continued to promote her while she was on secondment. The amount representing the increment in accrued pension rights under her previous employer's scheme should have been deducted from her pension enhancement as reckoned by the EPO. The Administration's reliance on a so-called "retrospective insurance value" (*Nachversicherungswert*) was incompatible with such deduction because the amount of the enhancement was then lower than that of the increase.

She wants the Tribunal to set aside the reckoning made on 22 March 1995 of the enhancement of her pension benefit, order the EPO to recalculate her entitlement and declare the Organisation's "complete independence" in reckoning pension enhancement. She claims back-payment of any sums due on account of the recalculation as from the date of her retirement, plus interest thereon and an award of costs.

C. Relying mainly on Judgment 1456, the EPO submits in its reply that the complaint is irreceivable under the *res judicata* rule. What is more, the increase that the complainant is seeking on the strength of *in absentia* promotions is less than what the Organisation has actually granted her; so she has no cause of action. But the EPO is willing to withdraw its objections to receivability so as to let the Tribunal rule once and for all on the merits. It puts forward the same pleas on the merits as it does in the context of its dispute with Mr. Belser and others.

D. In her rejoinder the complainant contends that the reduction of her 25 to 30 years' seniority in the German civil service to three or four years for the purposes of reckoning her pension enhancement shows how mistaken is the use of a retrospective insurance value. What the EPO ought to have relied on is the actuarial equivalent of her pension entitlement, whatever views the German Government may have expressed.

E. In its surrejoinder the Organisation submits that it is bound by information the German Government passes on as the "fixed value representing retirement pension rights acquired under the previous pension scheme".

## CONSIDERATIONS

1. This complaint raises the same questions of substance as those ruled on in Judgments 1456 (*in re* Belser and others) and 1517 (*in re* Goettgens No. 2). The same reasoning as that set out in Judgment 1825, delivered this day on the complaints of Mr. Paulus Belser, Mr. Otto Bossung and Mr. Kurt Lederer, applies to prevent the complainant from obtaining the relief she seeks.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 6 November 1998, Mr. Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

Michel Gentot

Mella carroll

James K. Hugessen

A.B. Gardner