EIGHTY-EIGHTH SESSION

In re Muller-Engelmann (Nos. 4, 5 and 6)

Judgment 1894

The Administrative Tribunal,

Considering the fourth and fifth complaints filed by Mrs Jutta Müller-Engelmann against the European Patent Organisation (EPO) on 3 March 1998, her sixth complaint against the Organisation filed on 9 March, the EPO's single reply of 23 June, the complainant's rejoinder of 30 September, and the Organisation's surrejoinder of 10 December 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. Facts relevant to this case are set out in Judgment 1829 on the complainant's first complaint. At the material time she was employed by the European Patent Office, secretariat of the EPO, in Munich, as an examiner at grade A3.

In August and September 1997 the complainant submitted three claims for reimbursement of medical expenses totalling 20,244.94 German marks to Van Breda, the insurance brokers responsible for the day-to-day administration of the collective insurance contract concluded by the EPO. In September and October Van Breda sent her the corresponding settlement notes which showed that it was withholding payment against some of the bills. In letters that followed Van Breda informed her that it was "thoroughly looking into these bills". Van Breda then wrote to the doctors concerned asking them to provide information confirming the "ascertained diagnosis".

The complainant filed three internal appeals with the President of the Office against the non-reimbursement of those expenses within the fifteen-day time limit prescribed in Article 23 of the collective insurance contract. She lodged another appeal with the President against Van Breda's action of contacting her doctors and medical laboratories in order to obtain information about her laboratory results. In a letter of 31 October 1997 the Director of Personnel Development told the complainant that since her claims were still being processed by Van Breda and her doctors had been asked to provide further information a final decision had yet to be made on them.

On 13 March 1998 Van Breda wrote to the complainant saying that its medical adviser would not be able to take a decision until it had the required information and that if no reply was received within three months the invoices would be returned to her. It forwarded to her copies of the reminders that had been sent to her doctors and the medical laboratory. One doctor did send the information asked for, but some of the others replied that without the complainant's authorisation they were unable to forward any details.

On 6 May 1998 the complainant was informed by Van Breda that, in the absence of the required medical information, no decision could be taken regarding the outstanding medical expenses. The complainant states that in the absence of a reply from the President to her internal appeals, she has filed these complaints with the Tribunal.

B. The complainant contends that her complaints are receivable under Article VII(3) of the Tribunal's Statute because the President did not act within sixty days of the filing of her internal appeals as provided for in Article 109(2) of the Service Regulations.

On the merits, she argues in all three complaints that Van Breda's failure to reimburse her medical expenses is unlawful. It should have ordered reimbursement within fifteen days of receiving her claims. Moreover it has no right to contact her doctors or the laboratories without her authorisation. She only learned through some of her doctors that Van Breda had written to them, and she is unaware whether it has contacted any of her other doctors.

In her fourth complaint she says that as Van Breda has received some information from her doctors, the "patient's right of informational self-determination" obliges it to return all of this information to her. In that complaint she

asks the Tribunal to direct Van Breda to deliver to her all of the information received from her doctors and to provide her with a list of all the "physicians and hospitals" that it has contacted.

In all three complaints she asks the Tribunal to order the EPO: to reimburse her for a number of medical bills totalling 12,451.12 German marks plus 14 per cent interest from dates she specifies; to direct Van Breda not to contact her doctors without her authorisation; to compensate her for translation and copying costs; and to pay the "actually incurred amount of [her] related non-legal and legal expenses".

C. In its reply, the Organisation requests the joinder of the fourth, fifth and sixth complaints, since they relate to Van Breda's refusal to reimburse medical expenses and claim interest for late payment; and it submits an identical reply dealing with all three complaints.

The defendant submits that the complaints are not receivable because the complainant has not exhausted the internal means of redress. Pursuant to the second paragraph of Article 90(1) of the Service Regulations, it is the Invalidity Committee, rather than the internal Appeals Committee, which has the competence to consider medical disputes such as the reimbursement of medical expenses. There is no final decision at issue: Van Breda has been unable to arrive at a final decision on the contested expenses as it has not received the information it requested. There is also no indication that her appeal lodged against Van Breda's request to her doctors will not be considered within a reasonable amount of time, and so the conditions for filing a complaint under Article VII(3) of the Tribunal's Statute have not been met.

In addition, her complaints are devoid of merit. Citing Judgment 1288 (*in re* Fessel) which concerned another dispute with Van Breda, the Organisation contends that insurers are "entitled to information which identifies the nature of the ailment and enables them to determine whether the prescribed treatment is appropriate". An official requesting reimbursement is obliged to contribute by supplying such information. Without it, Van Breda is justified, after setting a reasonable time limit, in rejecting the expenses definitively. The EPO states that the complainant "has only herself to blame".

The Organisation rejects her requests for legal fees, and translation and copying costs.

D. In her rejoinder, the complainant argues that her complaints are receivable in the absence of a ruling on her internal appeals and enlarges on her pleas. The internal Appeals Committee supersedes the Invalidity Committee in cases of medical disputes. Under the second paragraph of Article 90(1) of the Service Regulations, the Invalidity Committee is responsible for ruling on all disputes relating to medical opinions expressed, on the one hand by the medical officer appointed by the President of the Office and, on the other hand, by the civil servant concerned or his/her physician. In her case, the EPO's medical officer has not performed any examination, and no medical dispute exists between this officer and the complainant or her doctor.

Further, Van Breda's assertion that it was looking into her bills gave her no reason to assume that a medical dispute existed and that she should apply for the convening of the Invalidity Committee. If the EPO is of the opinion that this Committee was the competent body, the President should have convened it, which he did not.

She argues that Van Breda cannot refuse to reimburse her medical expenses on the grounds that it is not in possession of additional information from the doctors and the laboratory because it already has her doctors' invoices which contain clear diagnosis details. She does not dispute Van Breda's general entitlement to information to the extent that it is required for purposes of examining its obligation to reimburse expenses; however, the insurer's entitlement is not unlimited. She has been willing to cooperate but as she was unaware of the nature of the problems involving the expenses she was unable to take any steps to clarify them.

With respect to the bills in question, it is obvious that Van Breda is impugning the "diagnoses per se" because most of the refused invoices concern "pollutant intoxication". What is ultimately at issue is whether or not the costs incurred for the purpose of clarifying the cause of an ailment are reimbursable.

E. In its surrejoinder, the Organisation presses its objections to receivability. It points out that Van Breda and its medical adviser act in lieu of the EPO with regard to the reimbursement of medical expenses and the Invalidity Committee is only able to intervene once Van Breda has taken a decision.

The complainant could have asked Van Breda to explain the nature of the dispute before filing her appeals, or she could have intervened with her doctors to furnish the required information. After she received copies of the letters

Van Breda sent to her doctors, she could no longer claim that she was unaware of the fact that its medical adviser was requesting further information supporting the medical diagnoses.

As is clear from her rejoinder, the complainant was aware that Van Breda's medical adviser was querying the matter of "pollutant intoxication" at issue in her first complaint. Given that "poisoning due to environmental factors is such a controversial issue", Van Breda is justified in asking for further information from the relevant doctors and laboratories. In exercising its "right of control", Van Breda is entitled to make reimbursement of any invoice dependent on a positive opinion from its medical adviser.

CONSIDERATIONS

1. These three complaints raise the same substantive issues and the Tribunal orders that they be dealt with jointly.

2. In all three complaints the complainant seeks repayment of certain medical invoices submitted by her to Van Breda for reimbursement. Some of the submitted invoices were accepted for reimbursement and some were refused outright as not being covered by the collective insurance contract; there is no substantive issue as to the latter.

3. With respect to all the remaining invoices, Van Breda informed the complainant that it was seeking further information from the relevant medical specialists who had submitted the invoices. The complainant took, and still maintains, the position that Van Breda is not entitled to seek this information because it is privileged.

4. The matter has been fully and conclusively dealt with by the Tribunal in Judgment 1848 (*in re* Müller-Engelmann No. 3). In that judgment the Tribunal said under 12:

"As to the claim regarding the disputed invoices, the law is clear that Van Breda, as representing the insurer, is entitled to any information which identifies the nature of the alleged illness and allows it to determine whether the prescribed treatment is appropriate and necessary (see *in re* Fessel, Judgment 1288 under 7). Of course, the complainant is entitled to require that such information only be made available to Van Breda's medical adviser and be treated by the latter in confidence but she is not entitled to withhold from them any right of access whatsoever to the required medical information. Her unwillingness to allow such access goes against her duty to deal in good faith with her insurers. Moreover, there is no merit whatever to the complainant's argument that because the costs at issue here were incurred in the establishment of a diagnosis they must necessarily be allowed. The argument simply calls into question the existence of the alleged illness and the correctness of its diagnosis."

5. The Tribunal adds that it is not for the complainant, as she asserts in her pleadings, to judge whether the information requested by Van Breda is necessary in order to enable it to assess her claims. That is a matter for the professional assessment of Van Breda and its medical adviser and the Tribunal would not interfere unless it was satisfied that the information was being sought for some abusive or improper purpose. There is no question of that here.

6. The complainant's assertion that some of the requests for information were vague or unclear is beside the mark. Since she takes the position that Van Breda has no right to request any information at all, she cannot argue that such requests should have been more detailed.

7. The Tribunal notes that Judgment 1848 was not released until after the close of pleadings in the present cases. It is surprised that the complainant did not discontinue her proceedings upon receipt of that judgment.

8. Since the complaints are devoid of merit, it is not necessary to deal with the question of receivability.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 5 November 1999, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2000.

Michel Gentot
Mella Carroll
James K. Hugessen

Catherine Comtet

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