EIGHTY-NINTH SESSION

***In re* Müller-Engelmann (No. 7)** **Judgment No. 1951**

The Administrative Tribunal,

Considering the seventh complaint filed by Mrs Jutta Müller-Engelmann against the European Patent Organisation (EPO) on 14 July 1998 and corrected on 27 July, the EPO's reply of 22 October 1998, the complainant's rejoinder of 8 February 1999 and the Organisation's surrejoinder of 15 April 1999;

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 facts of this case and the pleadings have certain similarities with those set out in Judgment 1848 on the complainant's third complaint and in Judgment 1894 on her fourth, fifth and sixth complaints. At the material time she was employed by the European Patent Office, the secretariat of the EPO, in Munich, as an examiner at grade A3.

On 3 December 1997 the complainant submitted a claim for reimbursement of medical expenses totalling 5,589.40 German marks to the insurance brokers Van Breda, who are responsible for the day-to-day handling of the collective insurance contract concluded by the EPO. The sum of 1,913.14 marks was credited to her account on 8 January 1998.

In its settlement note dated 22 December 1997 Van Breda indicated that it was withholding reimbursement against seven invoices as it was waiting for additional information requested from her doctors. She lodged an appeal dated 9 February 1998 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 and the fact that Van Breda had contacted her doctors directly to obtain information without first seeking her permission.

Van Breda wrote to the complainant on 13 March in connection with the invoices it had not reimbursed and informed her that it had contacted some of her doctors since its medical adviser needed a "medical report as well as the laboratory results proving the ascertained diagnosis". In a letter of 4 June the complainant told Van Breda that if it needed further information it should let her know and she would endeavour to obtain the necessary details from her doctors.

She subsequently filed her complaint with the Tribunal, inferring rejection from the EPO's failure to answer the claims in her appeal of 9 February, which she says was received by the defendant on 13 February 1998.

B. The complainant contends that her complaint is receivable under Article VII(3) of the Tribunal's Statute because the President did not take a decision within sixty days of the filing of her internal appeal as provided for in Article 109(2) of the Service Regulations.

On the merits she argues that Van Breda's failure to reimburse her medical expenses was unlawful. Her participation in the medical insurance offered through the EPO is compulsory and because of the nature of the collective contract the EPO is responsible for Van Breda's actions. The prescriptions and medical services detailed on the seven disputed invoices are subject to insurance coverage under Articles 16 and 20 paragraphs a) and b) 1.1 of the contract. She has never authorised Van Breda to contact her doctors directly and contends that it has no right to seek information from them regarding their diagnosis or treatment.

The complainant argues that Van Breda should have ordered reimbursement within fifteen days of receiving her claim. The bank transfer should have been made by 21 December and the amount of 3,676.26 marks should have

been credited to her account no later than 28 December 1997.

She is therefore claiming the reimbursement of the seven invoices with 14 per cent interest from 28 December 1997. She asks the EPO to direct Van Breda not to contact her doctors for information about her treatment without her authorisation, to hand over to her all information it has received from her doctors and to give her a list of the doctors and hospitals it has contacted. She also claims costs.

C. In its reply the EPO submits that the complaint is not receivable because the complainant has not exhausted the internal means of appeal. The matter relates to a medical dispute and pursuant to the second paragraph of Article 90(1) of the Service Regulations it is the Invalidity Committee, rather than the Appeals Committee, which is competent to decide on such disputes. Because the complainant objected to her doctors imparting the details requested, Van Breda has still not received the information it requires in order to come to a final decision on the invoices. For that reason the standard procedure for medical disputes has not been followed in the complainant's case. Nevertheless, there is no indication that her internal appeal will not be heard within a reasonable amount of time, and therefore the conditions for filing a complaint under Article VII(3) of the Tribunal's Statute have not been met.

Subsidiarily it contends that her complaint is devoid of merit. Van Breda was entitled to make reimbursement dependent on a positive opinion from its medical adviser, who, in exercising his "right of control", is entitled to contact her doctors. As the complainant said in her rejoinder to her third complaint, the amounts which Van Breda refused to reimburse related to a diagnosis of poisoning - a matter raised in her first complaint. The medical adviser was justified in requesting further information from her doctors in order to establish the validity of their diagnosis. He will only be able to come to a final decision on the reimbursement when he has received this information, and the Invalidity Committee will only intervene if a refusal to reimburse leads to a medical dispute.

Article 23 of the collective insurance contract then in force required a bank transfer to be effected by Van Breda within fifteen days of receipt of a claim for reimbursement. In the complainant's case it should have been made by 21 December; but it was made just one day late, on 22 December, the date given on Van Breda's settlement note.

D. In her rejoinder the complainant seeks to rebut the defendant's pleas and argues that she is already entitled to reimbursement and the Appeals Committee is competent to hear her appeal. The complainant submits that she is not at fault if the standard procedure for medical disputes cannot be followed. The burden of providing the final decision cannot be shifted to her.

She submits that in querying her invoices Van Breda is seeking to prevent any confirmation of toxic pollution on the premises of the EPO.

E. In its surrejoinder the Organisation presses its objections to receivability and argues that by preventing Van Breda from receiving the information it required the complainant held matters up. She cannot now seek to benefit from Article VII(3) by saying her appeal has been implicitly rejected. She knew full well from the settlement note dated 22 December 1997 which invoices were in dispute and she could have intervened. Furthermore, receipt of her internal appeal was acknowledged on 6 April 1998, within the required time limit.

The Organisation points out that the alleged poisoning at the workplace is a separate matter which is being addressed by the Invalidity Committee and its opinion is expected soon. An earlier decision on that issue would have helped Van Breda's medical adviser to take a final decision on the matter of the disputed invoices; it was the complainant's uncooperative attitude that caused the delay.

CONSIDERATIONS

1. With the exception of variations in invoice dates and amounts claimed, the essential facts and the substantive issues in this case are identical to those already dealt with by the Tribunal in Judgments 1848 (*in re* Müller-Engelmann No. 3) and 1894 (*in re* Müller-Engelmann Nos. 4, 5 and 6).

2. The insurance brokers, Van Breda, withheld reimbursement of seven claims submitted by the complainant on 3 December 1997, as it was waiting for additional information that had been requested by its medical adviser. The complainant refused to give permission for such information to be revealed. As was held in the above-mentioned judgments, Van Breda was entitled to the information.

3. As in those judgments, the Tribunal does not find it necessary to deal with the question of receivability, and the result must necessarily be the same as before.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 May 2000, Mr Michel Gentot, President of the Tribunal, Miss Mella Carroll, Vice-President, and Mr James K. Hugessen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2000.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 25 July 2000.