NINETY-FIRST SESSION

***In re* Müller-Engelmann (No. 13)** **Judgment No. 2047**

The Administrative Tribunal,

Considering the thirteenth complaint filed by Mrs Jutta Müller-Engelmann against the European Patent Organisation (EPO) on 24 June 2000 and corrected on 11 July, the EPO's reply of 6 October 2000, the complainant's rejoinder of 4 January 2001, and the Organisation's surrejoinder of 9 March 2001;

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

Having examined the written submissions and disallowed the complainant's application for the hearing of witnesses;

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

A. Some facts relevant to this case are set out in Judgment 1829 on the complainant's first complaint. She was granted an invalidity pension with effect from 1 August 1999.

On 20 June 1996 the complainant wrote to Van Breda - the insurance brokers who are responsible for the day-to-day handling of the collective insurance contract concluded by the EPO - to request authorisation for "in-patient detoxification treatment". On 24 June Van Breda requested more detailed information, such as the exact toxicological symptoms and a description of the treatment planned. On 15 July the complainant replied that her request could be disregarded for the time being; nevertheless, Van Breda continued to request this information.

On 12 September she submitted a "claim for reimbursement of medical expenses". One of the amounts claimed was for 1,873.09 German marks. It was supported by a statement dated 14 August, showing that she had paid a deposit of 800 marks for treatment, and an invoice dated 3 September for 1,073.09 marks. The diagnosis as indicated on this invoice was "[exposure] to solvents, detoxification problems of the liver". In a settlement statement of 20 September Van Breda informed the complainant that that amount would not be reimbursed as it was waiting for additional information from her doctor, whom it had contacted directly. On 6 November the doctor concerned sent Van Breda copies of medical reports on the complainant. Van Breda informed the complainant on 16 December 1996 that, after consulting a specialist in clinical biology, its medical adviser had decided that there was "no medical indication present for the performed laboratory tests" which were part of the invoice.

The complainant wrote to the President of the European Patent Office on 6 January 1997 requesting that the Office instruct Van Breda to reimburse her for the disputed expenses plus interest; in the event that he was unable to grant her request, she asked him to consider her letter as lodging an appeal. On 12 February the Director of Personnel Development informed her on the President's behalf that her request could not be granted; it had, therefore, been forwarded to the Appeals Committee as appeal RI/8/97.

By letters to the EPO of 13 June 1997, 2 November 1998 and 3 December 1998 the complainant asked on what grounds her claim for reimbursement had been rejected. Van Breda provided this information to the EPO in a letter of 30 April 1999. On 14 May 1999 the Director of Personnel Development informed the complainant in writing that the reimbursement was refused because Van Breda's medical adviser had determined that the anamnesis given could not warrant the tests in question. He added that the Office considered the issue in her internal appeal to be a medical one and told her that she could submit it to an Invalidity Committee pursuant to Article 90(1) of the Service Regulations for Permanent Employees of the European Patent Office.

In its opinion of 15 February 2000 the Appeals Committee unanimously recommended that the items other than the disputed laboratory tests be reimbursed and that the EPO medical officer's opinion be sought regarding the necessity of the tests performed. It also took the view that Van Breda's medical adviser cannot be regarded as the

Office's medical officer in this matter. It considered the complainant's request that the Administration provide her with additional medical documentation, to be unjustified. On 30 March 2000 the President of the Office rejected her claims except those for the reimbursement of medical expenses not related to the laboratory tests. He also informed her that "in accordance with standing practice", Van Breda's medical adviser may act as medical officer within the meaning of Article 90(1) of the Service Regulations. That is the impugned decision.

On 10 April 2000 the sum of 278.28 marks plus 8 per cent interest was paid into her account.

B. The complainant asserts that under the collective insurance contract she has no direct recourse against Van Breda and therefore can only turn to the President of the Office for relief in case of disagreement. The President, in his capacity as her "insurer", has a duty of care; therefore, he should represent her interests, and under Article 83 of the Service Regulations, ensure that medical costs are reimbursed. She claims that there was no justification, either legally or medically, to refuse to reimburse the disputed amount.

She submits that Van Breda's medical adviser is not the same as the medical officer provided for under Article 90(1) of the Service Regulations. She alleges that the Administration agreed on this during the oral proceedings held on 1 February 2000 and that the same conclusion can be drawn from the collective insurance contract. In fact, Van Breda's medical adviser represents the interests of the insurance companies, whereas the President of the Office appoints a medical officer to represent him vis-à-vis staff members. The President's decision to reject her claim is unjustified since it was taken without review by a medical officer appointed by the EPO. It is only after she has the opinion of the EPO's medical officer that she can ask for the convening of an Invalidity Committee.

She also argues breach of her right of access to all medical documents concerning her in connection with the disputed invoice, as well as of her right of "informational self-determination". She contends that the President, as her insurer, has an obligation to make available to her any documents that have a bearing on decisions taken against her. She points to paragraph 6 of Article 32 of the Service Regulations, on personal files, to justify her position.

She asks the Tribunal: (1) to quash the President's decision of 30 March 2000 insofar as it rejected the claims in her appeal; (2) to order the EPO "to pay the medical expenses" amounting to 1,873.09 marks, including interest, less the amount reimbursed on 10 April 2000, or subsidiarily, to provide her with the opinion of the EPO medical officer on the necessity of conducting laboratory tests, pursuant to Article 90(1); (3) to order the EPO to provide her with Van Breda's reasons for refusing to reimburse the cost of the laboratory tests and to supply "the medical reports and the medical assessment of Van Breda's medical adviser, on the basis of which the decision was taken"; and (4) to award her legal costs for the proceedings before the Appeals Committee and the Tribunal.

C. The Organisation replies that the complaint is irreceivable because the internal appeal was irreceivable. The issue at stake is a medical one and therefore it is the Invalidity Committee and not the Appeals Committee that has competence over the matter. Furthermore, her claim requesting the reasons why the laboratory costs could not be reimbursed is irreceivable because she did not put this claim forward in her appeal.

Subsidiarily, the complaint is unfounded. Because of the relationship the Office has with Van Breda, the latter's medical adviser acts in lieu of the Office's medical officer regarding the processing of claims for reimbursement; the EPO points out that this view does not contravene Article 90(1) of the Service Regulations. Consequently, it considers it reasonable to endorse the medical opinions issued by Van Breda's medical adviser on the reimbursement of claims. It asserts, contrary to what the complainant argues, that the representatives of the Administration expressed this view during the hearings on her internal appeal. Only when the Office has doubts concerning the opinion of Van Breda's medical adviser will the Office ask its own medical officer for an opinion, and there is nothing in the complainant's file to indicate that it had any doubts about the medical adviser's opinion. It would, therefore, have been superfluous to seek the opinion of the EPO's medical officer before convening an Invalidity Committee.

The EPO argues that Van Breda has provided the complainant with sufficient reasons as to why it is refusing to reimburse the laboratory expenses in question. It considers her claim to have access to all documents concerning her as unfounded. Van Breda collected all information connected with her claim in a manner that was transparent and fair. The EPO is not entitled to any documents covered by medical secrecy, so it is not in a position to give them to the complainant. However, the complainant can obtain information by asking her doctors for copies of

reports sent by them to Van Breda.

The EPO asks the Tribunal to find her claim for legal costs unfounded. She has only herself to blame for the delay in handling her case. Her representatives were informed at the hearing for the internal appeal that the Appeals Committee could only decide on legal issues and that the complainant would need to convene an Invalidity Committee for any medical dispute; they were then asked if they wished to continue with the appeal procedure or to convene an Invalidity Committee, but they maintained the appeal.

D. In her rejoinder the complainant contends that she has been unable to have the Invalidity Committee convened, as suggested by the EPO, because the conditions of Article 90(1) have not been met. The medical opinion that she contests is that of Van Breda's medical adviser, not the EPO's; therefore Article 90(1) cannot yet be applied.

Her complaint is not based on medical arguments but legal ones. A medical argument would be something based on whether or not the laboratory tests were medically necessary. But she has been asking for proof that there were sufficient reasons to reject her medical reimbursement claims and whether Van Breda's medical adviser can be considered as the Office's medical officer under Article 90(1).

She expands on her plea that she has a legal right to all documents that the EPO and Van Breda have on her and that it is the duty of the Office to ensure that she receives them. She cites several articles from the Service Regulations in support of this plea.

E. In its surrejoinder the Organisation withdraws its objections to receivability and asks instead that the Tribunal provide an interpretation of Article 90(1). It contends that an opinion expressed by Van Breda's medical adviser in the context of an assessment of a claim for reimbursement can be considered as an opinion expressed by the Office's medical officer under the Service Regulations. The EPO submits that this is not a conflict of interest as asserted by the complainant. The Tribunal's definitive ruling on this issue should help break the deadlock with the complainant over whether an Invalidity Committee should be convened.

Concerning the complainant's other claims, the Organisation considers that she has been given sufficient information from Van Breda as to why her medical reimbursement claims were denied, and there is no basis for her request for access to the documents relevant to Van Breda's decision.

Finally, regarding her claim for costs, the EPO asks that the claim for costs for the complaint be rejected and that the claim for costs for the internal appeals procedure be settled once the Office's medical officer, or the Invalidity Committee, has issued an opinion. It also makes a counterclaim for costs which it feels is justified by the fact that the complainant's lengthy rejoinder and other complaints have caused an excessive amount of work for the Organisation's language and legal services.

CONSIDERATIONS

1. The complainant attacks a decision of the President of the European Patent Office of 30 March 2000 which endorsed the Appeals Committee's finding in internal appeal RI/8/97 that the complainant's request for additional medical documentation was unjustified. The President did not endorse that part of the Committee's report which would have required the EPO to appoint its own medical officer to assess the complainant's claim independently of Van Breda's medical adviser.

2. On 20 June 1996 the complainant requested authorisation from Van Breda for "in-patient detoxification treatment". On 24 June Van Breda asked her to provide more detailed information to their medical adviser, such as the exact toxicological symptoms and a description of the treatment planned. On 12 September she filed a claim for reimbursement of medical expenses, including a claim for 1,873.09 German marks corresponding to a deposit of 800 marks and an invoice of 1,073.05 marks. On 16 December 1996 Van Breda communicated the following to her:

"We refer to the correspondence maintained with you and [your doctor] ...

After consulting a specialist in clinical biology, our medical adviser informed us that his approval as to the reimbursement of the expenses amounting to DEM 1073,09 cannot be granted, as there is no medical indication

present for the performed laboratory tests."

3. On 6 January 1997 the complainant wrote to the President wanting the EPO to reimburse the unpaid sums plus interest. In the event that her request would not be granted, her letter was to be considered as an internal appeal. On 12 February 1997 the EPO rejected the complainant's request.

4. On 13 June 1997, 2 November 1998 and 3 December 1998 the complainant requested the EPO to inform her of the grounds of rejection. On 30 April 1999 Van Breda informed the EPO that its "medical adviser did not grant his approval as to the reimbursement of the laboratory expenses amounting to DEM 1 073.09 as the anamnesis mentioned on the bill in question does not justify the performed laboratory tests. ... Hence, there was no medical indication present for the specific laboratory tests performed".

5. On 14 May 1999 the Director of Personnel Development informed the complainant of Van Breda's reason for rejecting her request. He said that the Office considered the issue to be a medical one, coming under Article 90 of the Service Regulations and, therefore, she could submit her case to an Invalidity Committee.

6. On 15 February 2000 the Appeals Committee unanimously recommended that the items other than the disputed laboratory tests be reimbursed and that the EPO's medical officer's opinion had to be sought regarding the necessity of the laboratory tests. The Committee declared the complainant's request for additional medical documentation unjustified. The "relevant medical reports", written by her doctors could be submitted for a report by the medical officer. This would also apply to the expert opinions of Van Breda's medical adviser.

7. On 30 March 2000 the President of the Office rejected the complainant's claims with the exception of her claim for reimbursement of expenses other than the disputed laboratory tests. That is the impugned decision.

8. The complainant asks the Tribunal:

(1) to set aside the decision of 30 March 2000 insofar as the EPO rejected the complainant's claims in her internal appeal;

(2) to order the EPO "to pay the medical expenses" amounting to 1,873.09 marks including interest at 14 per cent per annum, backdated to 30 September 1996, less 357.94 marks reimbursed with the settlement note of 10 April 2000;

or subsidiarily: to order the EPO to provide the complainant with the opinion of the EPO's medical officer regarding the necessity of conducting laboratory tests under Article 90(1) of the Service Regulations;

(3) to order the EPO to provide the complainant with Van Breda's grounds for refusing to reimburse the cost of laboratory tests and to supply "the medical reports and the medical assessment of Van Breda's medical adviser, on the basis of which the decision was taken"; and

(4) to award the complainant costs for the legal expenses "actually incurred" in connection with proceedings before the Appeals Committee and the Tribunal.

9. The EPO now concedes that the complaint is receivable notwithstanding its earlier argument that her appeal was irreceivable before the Appeals Committee and therefore irreceivable before this Tribunal because only the Invalidity Committee has jurisdiction to deal with it. The opinion of the Appeals Committee turned largely on its interpretation of the terms of Article 90 of the Service Regulations, and the correctness of that view is one of the principal issues before the Tribunal. This is a purely legal issue, and whether or not the medical opinion is founded was, and is, irrelevant to it.

10. Article 90 reads as follows:

"(1) The Invalidity Committee shall be responsible for determining action to be taken at the expiry of the maximum period of sick leave provided for in Article 62, paragraph 6, of these Regulations, and for determining, for the purposes of these Regulations and of the Pension Scheme Regulations, whether a permanent employee is suffering from permanent invalidity which prevents him from performing the duties attaching to his employment at the Office.

It shall also be competent to decide upon all disputes relating to medical opinions expressed for the purposes of these Service Regulations, on the one hand, by the medical officer designated by the President of the Office and, on the other, by the permanent employee concerned or his medical practitioner.

(2) Cases shall be submitted to the Invalidity Committee either on the initiative of the President of the Office or at the request of the permanent employee concerned."

11. The complainant adopts the position taken by the Appeals Committee to the effect that the EPO was obligated to appoint its own medical officer for the purposes of dealing with her claim and was not entitled to rely on the medical adviser appointed by Van Breda for that purpose. For the Tribunal to so hold would amount to a denial of the Organisation's right to appoint the medical officer of its choice. The fact that it selects and relies on the same medical adviser as the one appointed by the insurer, whom it has engaged to carry out its obligations to provide health coverage to its staff, is not in the least surprising. Such appointment cannot have any adverse effect upon the complainant who retains the right given by Article 90 to have any contested issue relating to medical matters determined by the Invalidity Committee. The terms of Article 6 of the collective insurance contract, which contains a somewhat similar provision for dealing with disagreements on medical matters as between the parties to that contract, namely the Organisation and the Insurer, are of no concern to the complainant and do not contradict or vary the terms of the Service Regulations. The Organisation is no doubt entitled, if it so chooses, to appoint a different medical officer and, in the event of disagreement, to have recourse to the provisions of Article 6. The Committee erred in its view of this question.

12. The complainant also claims that Van Breda did not give her sufficient reasons for refusing her claim for reimbursement. It is enough to read the terms of the letter sent to the complainant to know that the reason for such refusal was that there was no medical indication for the laboratory tests. That is quite enough.

13. With regard to the complainant's claim to be provided with copies of any medical reports relied upon by Van Breda, it is trite law that a staff member's right to see medical reports may not ordinarily be challenged. As such, the complainant should be provided with copies of medical reports contained in Van Breda's file relating to this matter. Whether or not the EPO has these documents in their possession is irrelevant. As the policy holder, it has the right to give instructions that the complainant be given access to these documents and must ensure that she is provided with the information as soon as reasonably possible. It would appear that the only reason that the Appeals Committee did not recommend such relief was that it thought it would be provided in any event through the medical officer who, it had wrongly felt, had to be consulted. It is of no avail that some or all of the reports in question may have been given by the complainant's own doctors: she is entitled to know from Van Breda exactly what medical information about her it has received and from whom. This disposes of the subsidiary claim mentioned under 8, in sub-paragraph 2, as well as of the primary claim in sub-paragraph 3.

14. Whether Van Breda's refusal of the complainant's claim on its merits is valid or not is a medical issue that can only be addressed by the Invalidity Committee. This disposes of her primary claim mentioned under 8, sub-paragraph 2.

15. The complainant having enjoyed a limited measure of success, she is entitled to her costs incurred before the Tribunal in the amount of 500 euros.

DECISION

For the above reasons,

1. The EPO is ordered to provide the complainant with access to any medical reports in Van Breda's file.

2. The complaint being allowed in part the complainant is entitled to costs incurred before the Tribunal in the amount of 500 euros.

3. The Organisation's counterclaim is dismissed.

4. All other claims are dismissed.

In witness of this judgment, adopted on 27 April 2001, 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 2001.

Michel Gentot

Mella Carroll

James K. Hugessen

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 27 July 2001.