

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

S. (No. 2)

v.

EPO

(Application for execution)

123rd Session

Judgment No. 3792

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for execution of Judgment 3045 filed by Mr M. S. on 24 March 2015, the reply of the European Patent Organisation (EPO) of 13 July, the complainant's rejoinder of 29 October 2015 and the EPO's surrejoinder of 5 February 2016;

Considering the documents produced by the parties at the Tribunal's request;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

CONSIDERATIONS

1. In his first complaint, which formed the subject of Judgment 3045, delivered in public on 6 July 2011, the complainant impugned the decision of the President of the European Patent Office, the EPO's secretariat, to grant him an invalidity allowance with effect from 1 November 2008, a decision which had been taken after the Medical Committee had concluded in its opinion of 1 October 2008 that his invalidity was permanent but not caused by an occupational disease. In

its judgment, the Tribunal held that in July and September 2008, without any legal basis, the EPO had denied the complainant the possibility of changing the medical practitioner whom he had initially appointed to participate in the work of the Medical Committee. It therefore sent the case back to the EPO for referral to a properly constituted Medical Committee. It also awarded the complainant 5,000 euros in compensation for moral injury and costs in the same amount. The complainant received these sums on 2 August 2011.

2. Having sent several written reminders to the EPO indicating that he was waiting for the case to be referred to a new medical committee, the complainant was invited on 13 February 2013 to appoint a physician of his choice to be a member of the committee. In the opinion which it issued on 13 June 2013 the Medical Committee unanimously concluded that the complainant's invalidity was not the result of an occupational accident. However, as it suspected that an occupational disease might have caused it, it stated that, in accordance with Articles 62a(3) and 90(3) of the Service Regulations for permanent employees of the European Patent Office, it was "instructing an expert to determine whether there [was] a causal link between the employee's invalidity and the conditions he encountered in or during his work". When this application for execution was filed with Tribunal on 24 March 2015, this expert had still not been appointed.

3. The complainant asks the Tribunal to find that the EPO has "failed in part" to execute Judgment 3045 and to order it to "preserve [his] rights under the Service Regulations", to take the necessary steps to enable the Medical Committee to issue an opinion and then to decide whether or not his disease is service-related, after specifying the stages in the procedure to be followed and establishing time lines for it, if need be. In addition, he claims moral damages in the amount of 10,000 euros for each year of delay in executing Judgment 3045 and 2,000 euros in costs.

4. The EPO considers that all the pertinent provisions have been correctly applied and that no failure to execute Judgment 3045 has been

identified. It therefore asks the Tribunal to dismiss the application as unfounded.

5. The Tribunal draws attention to the fact that pursuant to Article VI of its Statute its judgments are “final and without appeal” and that they are therefore “immediately operative”, as established early in its case law (see, in particular, Judgment 82, under 6). The Tribunal subsequently noted that the principle that its judgments are immediately operative is also a corollary of their *res judicata* authority. International organisations that have recognised the Tribunal’s jurisdiction are bound to take whatever action a judgment may require (see Judgments 553, under 1, 1328, under 12, 1338, under 11, and 3152, under 11). Moreover, “it is well settled that an application for execution may be filed without it being necessary in principle to exhaust internal remedies when the organisation does not execute the judgment, executes it incompletely or carries unreasonably in its execution” (see Judgments 1771, under 2(b), 1887, under 5, and 2684, under 4). In addition, the Tribunal points out that it is up to the parties to work together in good faith to execute the Tribunal’s judgments so as to ensure that they are executed within a reasonable period of time (see Judgment 2684, under 6).

6. In the instant case, the Tribunal notes that, in pursuance of Judgment 3045, delivered in public on 6 July 2011, the EPO has paid the amounts it was ordered to pay. On the other hand, the referral to a new medical committee has been greatly delayed, since the complainant was not invited to appoint the physician of his choice to sit on the new committee until 13 February 2013. As stated above, in its opinion of 13 June 2013, the Medical Committee instructed an expert “to determine whether there [was] a causal link between the employee’s invalidity and the conditions he encountered in or during his work”. It is clear from a letter sent to the complainant by the Organisation on 9 November 2015 that this expert had been appointed before that date.

7. The information supplied by the parties in the further submissions ordered by the Tribunal shows that the complainant met this expert on 4 February 2016 and that the latter considered that a further

examination was necessary. On 10 May 2016 the complainant therefore saw a specialist, who issued his report on 19 May. On the basis of these elements, the expert submitted a draft report on 13 June. These documents were forwarded to the Office and the complainant for comment. The complainant had until 31 October 2016 to express his views. According to the aforementioned letter of 9 November 2015, “the expert will [...] finalise his report in the light of any comments and will forward it to the physician appointed by the President of the Office”, after which the President “will take the final decision on the basis of [this] physician’s conclusions”.

Under Section II, paragraph (7), of the Implementing Rules for Article 90(3) of the Service Regulations in force when the Medical Committee issued its opinion, in the light of any comments from the parties, the expert had to finalise his report “within four months from the date on which the case was referred to him”. The letter of 9 November 2015 shows that the expert had already been appointed by that date. In these circumstances, he should have issued his final report by 9 March 2016 at the latest.

8. It follows from the foregoing that, as of the date on which the present judgment is adopted, in other words more than five years after the delivery in public of Judgment 3045, the latter is still being executed. The Organisation has therefore seriously breached its duty to execute the judgment within a reasonable period of time. It must ensure that the procedure is now completed as soon as possible.

Furthermore, the delay in executing Judgment 3045 has caused the complainant moral injury, which may be fairly redressed by awarding him compensation in the amount of 20,000 euros.

9. As the complainant succeeds, he is entitled to costs, which the Tribunal sets at 500 euros.

DECISION

For the above reasons,

1. The EPO shall pay the complainant 20,000 euros in compensation for moral injury.
2. The Organisation shall pay the complainant costs in the amount of 500 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 8 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ