

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

T.

v.

EPO

(Application for interpretation filed by the EPO)

126th Session

Judgment No. 3989

THE ADMINISTRATIVE TRIBUNAL,

Considering the application for interpretation of Judgment 3972 filed by the European Patent Organisation (EPO) on 16 March 2018 and the reply of 9 April 2018 from Mr M. T.;

Considering Articles II, paragraph 5, and VI, paragraph 1, of the Statute of the Tribunal;

Having examined the written submissions;

CONSIDERATIONS

1. On 6 December 2017, Judgment 3972 was delivered in public. The proceedings concerned the dismissal of the complainant. Five orders were made. They were:

- “1. The decision of 25 November 2015 is set aside in the part regarding confirmation of dismissal for misconduct in accordance with Article 93(2)(f) of the Service Regulations, as is the same part of the earlier decision of 1 July 2015.
2. The case is sent back to the EPO in accordance with considerations 15 and 16 [of the judgment].
3. The EPO shall pay the complainant 20,000 euros in moral damages.
4. It shall also pay him 1,000 euros in costs.
5. All other claims are dismissed.”

2. It is unnecessary to repeat the background facts that are sufficiently set out in Judgment 3972. However, it is desirable to set out considerations 15 and 16 referred to in the orders:

“15. The Tribunal said in Judgment 3887, consideration 13, that:
‘[T]he President’s decision to dismiss the complainant [...] is vitiated by the fact that neither the President, nor the Disciplinary Committee could have made a proper assessment of the allegations without taking into account whether the complainant acted intentionally, and in control of his faculties, or if the complainant suffered from a mental illness that prevented him from behaving in accordance with his obligations as a permanent employee. Therefore, the principle of due process and the duty of care require the Disciplinary Committee in accordance with Article 101(3) of the Service Regulations (which provides that “[i]f the Disciplinary Committee requires further information concerning the facts complained of or the circumstances in which they arose, it may order an inquiry in which each side can submit its case and reply to the case of the other side”’) to order a medical assessment of the complainant by an expert, and the convening of a Medical Committee if necessary. The medical expert(s) shall also take into consideration all documents in the file submitted to the Tribunal.’

While, in the present case, the Disciplinary Committee, but not the President when deciding initially to dismiss the complainant, did advert to the possibility that the complainant was suffering from a mental illness, it discounted entirely the possible nexus because the information available was insufficient. In circumstances such as the present, the President’s response to the complainant’s request for review was inadequate. The Tribunal concluded in Judgment 3887 that the EPO breached its duty of care towards the complainant in that case. So it is in this case as well. That duty of care would involve the EPO assessing whether the alleged misconduct can be entirely explained by the complainant’s mental illness, and also whether the complainant was entitled to benefits based on an invalidity stemming from his mental illness and perhaps his service with the EPO.

16. In light of the above, it is appropriate to grant the same relief to the complainant in these proceedings as ordered by the Tribunal in Judgment 3887. Accordingly, the decision of 25 November 2015 will be set aside in the part regarding confirmation of dismissal for misconduct in accordance with Article 93(2)(f) of the Service Regulations, as will the same part of the earlier decision of 1 July 2015. The case will be sent back to the EPO for further consideration by the Disciplinary Committee, which will request a medical assessment of the complainant’s health (even, if necessary,

only on the basis of documents) and, if necessary, the convening of a Medical Committee. In the circumstances, no order will be made for reinstatement.”

3. The EPO has applied for an interpretation of the judgment. The EPO seeks answers to seven questions, as it expresses them:

- (1) Does Judgment 3972 entail any additional payments other than moral damages and costs to the total amount of 21,000 euros?
- (2) Should Judgment 3972 be interpreted as imposing that the medical assessment of the complainant be carried out by a medical practitioner agreed by both parties?
- (3) Should Judgment 3972 be interpreted as imposing that the medical assessment of the complainant be ordered by the Disciplinary Committee, or may such assessment be ordered by the EPO?
- (4) What steps must be taken by the EPO for the implementation of Judgment 3972 in the event that, as anticipated by his counsel, the complainant refuses to cooperate and, notably, to undergo the required medical examination and/or to provide the relevant medical background information in his possession, given that the duty to cooperate is the counterpart of the duty of care?
- (5) Should the medical assessment required by Judgment 3972 only provide an opinion on the complainant’s mental health at the material time of the facts – and thereby whether his behaviour could be entirely explained by mental illness – or should such assessment also encompass the complainant’s capacity to work pursuant to Article 62b of the Service Regulations?
- (6) Does the medical assessment required by Judgment 3972 authorise or, on the contrary, preclude the possibility for either of the parties to seek a second medical opinion under Article 89(5) and (7), and Article 90 of the Service Regulations?
- (7) In the event that a medical illness would only partially explain the complainant’s behaviour at the material time of the facts, could he still be dismissed for misconduct or, failing that, for unsatisfactory services? In the latter case, should such a decision be based on a recommendation of the Disciplinary Committee or on a new recommendation of the Joint Committee?

4. Self-evidently, the answer to the first question is no. None of the orders in Judgment 3972, in terms, require additional payment. An order for reinstatement was sought in the proceedings leading to Judgment 3972 and its fate is comprehended by the fifth order in that judgment. The answer to the second, third and fifth questions is that these are matters for the Disciplinary Committee, exercising such powers as it presently has under the Service Regulations. The answer to the fourth question is to be found in the penultimate sentence of consideration 16 of Judgment 3972, namely that the examination can be undertaken on the basis of documents, if necessary.

5. The other questions entail, in substance, a request for an advisory opinion from the Tribunal about what should happen if events unfold in a particular way, or about the legal obligations of the EPO derived from the Service Regulations rather than the orders of the Tribunal. Both the EPO and the complainant must approach the implementation of the orders in a rational, sensible and balanced way and, as a paramount consideration, do so lawfully (see, for example, Judgment 3823, under 4). However, it is not for the Tribunal to advise the parties with any particularity about what they should do or refrain from doing and whether a proposed course of conduct is in conformity with, or violates, provisions in the Service Regulations. In the event that either party, and the EPO in particular because it is amenable to proceedings against it in a further complaint or other proceedings, behaves unlawfully, the conduct is open to review.

DECISION

For the above reasons,

1. Judgment 3972 is to be interpreted and executed in accordance with consideration 4, above.
2. All other claims are dismissed.

In witness of this judgment, adopted on 16 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ