

SEVENTY-SEVENTH SESSION

***In re* FARNESE (No. 3)**

Judgment 1345

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr. Giuseppe Pasquale Farnese against the European Patent Organisation (EPO) on 16 September 1993 and corrected on 20 October 1993, the EPO's reply of 13 January 1994, the complainant's rejoinder of 1 March and the Organisation's surrejoinder of 12 April 1994;

Considering Articles II, paragraphs 5 and 6, and VII, paragraphs 1 and 2, of the Statute of the Tribunal and Articles 62, 89, 91 and 108 of the Service Regulations of the European Patent Office, the secretariat of the EPO;

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 complainant, an Italian born in 1951, was employed by the EPO as a search examiner from 7 January 1980 to 1 April 1991, when an Invalidity Committee decided he should get an invalidity pension.

The Committee consisted of the Organisation's medical officer at its sub-office in Berlin, Dr. Havestadt; the complainant's doctor, Dr. Oliviero; and a third member, Dr. Greve, appointed by agreement between the other two. The Committee told the complainant to report for medical examinations in Berlin, then his duty station, on 7 March 1991. It said it would take up his case on 8 March 1991 and that the proceedings would be in German.

In a letter of 4 March 1991 the Committee's secretary told the complainant what the arrangements were and warned him that in accordance with Article 91(2) of the Service Regulations he would have to bear any fees his doctor's interpreter might charge.

Article 91(2) reads:

"Where the medical practitioner appointed by the permanent employee is resident elsewhere than at the latter's place of employment, the employee concerned shall bear the cost of additional fees and additional expenses entailed."

On 7 March Dr. Havestadt and Dr. Greve examined the complainant in turn. The complainant's doctor and an interpreter were with him.

In a letter of 31 May to the secretary of the Committee he claimed the refund of Dr. Oliviero's and the interpreter's fees, of airline tickets for Dr. Oliviero and himself and of the cost of his hotel for 6 March.

Replying on 27 June the head of the Berlin sub-office asked him for Dr. Oliviero's account number and explained why he would have to bear the interpreter's fees himself. The EPO settled Dr. Oliviero's fees on 16 September 1991.

In a letter dated 23 September to the head of the sub-office the complainant claimed payment of Dr. Oliviero's fees for his part in the examinations of 7 March; of the interpreter's fees for services rendered on 7 and 8 March; of travel expenses and the cost of hotel accommodation on 6 March for Dr. Oliviero and himself; of travel expenses he incurred for the medical examination he had at The Hague on 11 July 1990; and of interest on the amounts due. He asked the head of the sub-office in the event of rejection to treat his letter as an internal appeal under Article 108 of the Service Regulations.

In a letter of 28 January 1992 the head of the sub-office told the complainant (1) that the Administration had paid

Dr. Oliviero on 16 September 1991 for his work on the Committee; (2) that since the procedure did not require attendance by his doctor or an interpreter at the examinations of 7 March the EPO was not liable for their fees; (3) that he would get the refund of his travel and hotel costs upon production of the original invoices; (4) that Dr. Oliviero's travel and hotel expenses for 7 March only would be refunded upon production of the bills; (5) that there was no evidence to suggest that he could not have travelled alone and therefore no reason why the EPO should pay Dr. Oliviero's hotel expenses for 6 March; (6) that since the Organisation had rejected his claim to travel expenses for examination at The Hague on 11 July 1990 he had to await the outcome of the appeal procedure; and (7) that no interest was due.

Despite a reminder from the EPO on 5 August 1992 the complainant did not reply until 24 August, when he pressed his claims.

In a report of 3 May 1993 the Appeals Committee recommended rejecting his appeal. In a letter of 16 June 1993 the Director of Staff Policy told him that the President of the Office had endorsed the Committee's recommendation and rejected his appeal. That is the decision he now impugns.

B. The complainant puts forward the following arguments.

He recalls that on 1 November 1990 the EPO transferred him to Berlin while he was on sick leave. The "fake" medical examination he had to put up with in Rome on 28 September 1990 made him loath to undergo any further examinations the EPO might order unless his own doctor was with him. The secretary of the Invalidity Committee agreed and that was how his doctor came to accompany him to Berlin.

The Invalidity Committee met on 8 March 1991 to decide on the strength of the examinations carried out the day before, which formed part of the procedure. So it was indispensable for his doctor to attend on 7 March. Inasmuch as he knew no German and the two other doctors neither English nor French there had to be the Italian interpreter present.

He seeks the quashing of the decision of 16 June 1993 and subsidiarily an acknowledgment that the services of his doctor and the interpreter were necessary; payment of (1) his doctor's fees for 7 March 1991; (2) the interpreter's fees; (3) travel expenses he and his doctor incurred; (4) their hotel bills for the night of 6 March 1991; (5) travel expenses he incurred to report for medical examination at The Hague on 11 July 1990; and (6) interest on the sums due. He also claims an award of costs.

C. In its reply the EPO submits that the complaint is in part irreceivable and devoid of merit and for the rest devoid of merit.

Not until 23 September 1991 did he duly appeal for the purpose of pressing his claim to the refund of the costs of travel to The Hague for the examination on 11 July 1990, after expiry of the three-month time limit. So that claim is irreceivable.

On the following issues the complaint is devoid of merit:

(1) The Administration refunded his travel and hotel expenses by cheques dated 30 January 1992 but he sent them back without a word of explanation on 18 March 1993.

(2) Dr. Oliviero's fees for attending the Invalidity Committee's meeting were settled on 16 September 1991. The EPO will not refund his fee for his attendance at the examinations on 7 March since it was quite pointless. It is willing to pay his hotel bill for 7 March. The complainant has never proved that he was unable to travel alone.

(3) As to the interpreter's fee the EPO takes the view that the examinations of 7 March did not require his presence and accordingly refuses to meet the fees relating thereto. It is still waiting for the complainant to produce a proper invoice for the fees relating to 8 March.

(4) His claim to interest must also fail since the EPO has either already refunded the amounts due or promised to do so as soon as he supplies proof of payment. He has only himself to blame for the delays he objects to.

D. In his rejoinder the complainant maintains that his claim to the refund of expenses for the medical examination of 11 July 1990 is receivable: the Tribunal has often acknowledged that time limits may be extended in the interest

of fairness and in exceptional circumstances. It was because of improprieties he endured while still with the EPO that he refused any further medical examinations it ordered unless his own doctor was also present.

He points out that he had the two medical examinations on 7 March, not, as the EPO makes out, one on 7 March and another the next day.

He says he returned the two cheques because he did not see why he should have to break down his claims and because he wanted his case to be treated as a whole. His own inadequate grasp of German entitled him to have an interpreter attending the examinations.

He has not put in claims to the costs of board, taxis and travel from Naples to Rome and back; they come to about 2,000 German marks and he incurred them at a time when the EPO had suspended his pay.

Since Dr. Oliviero has accepted the amount already refunded he withdraws his claim to payment of Dr. Oliviero's actual fees. He says he would waive his claim to the fees of Dr. Oliviero's interpreter and to the cost of his own travel to The Hague if the EPO would agree to pay those amounts to the families of two staff members who died on its premises at The Hague in 1993. His own right to have an interpreter warrants his earlier claim to the refund of the fees of his doctor's interpreter.

E. In its surrejoinder the EPO acknowledges its mistake over the date of the two examinations, which did indeed both take place on 7 March. It observes that the complainant was required to submit his claims to refund in time and with supporting documents; that the families of the other staff members who died at The Hague are getting the pensions due, over and above the lump sums the Service Regulations prescribe; that the EPO is willing to refund Dr. Oliviero's hotel expenses for 7 March on production of an original invoice for a single room, the bill he submitted being for two nights for both him and his wife. His claim to payment of fees for interpreter's services which he allegedly required for the examinations is a new one and is therefore irreceivable.

CONSIDERATIONS:

1. The complainant, who used to be a permanent employee of the European Patent Organisation, was pensioned off at 1 April 1991 on the grounds of invalidity. He is in dispute with the Organisation over the breakdown of the costs of the "invalidity procedure".

2. He duly followed the internal appeal procedure, and the outcome was a report of 3 May 1993 by the Appeals Committee. On the strength of detailed review of the various material issues the Committee unanimously recommended rejecting his claims. On 16 May 1993 the Director of Staff Policy notified rejection to him on behalf of the President of the Office, and that is the final decision he is impugning.

3. The material facts are the following. By the end of 1990 the sick leave granted to the complainant had reached the maximum number of days allowed under Article 62 of the Service Regulations. The EPO thereupon started the procedure for pensioning him off and set up the Invalidity Committee prescribed in Article 89 of the Regulations. Its own appointee was Dr. Havestadt, the medical officer of its sub-office in Berlin, where the complainant was stationed at the material time. He had taken his sick leave in Italy and he appointed his own doctor, Dr. Oliviero. The EPO nominated Dr. Greve of Berlin as the third member and the first two agreed.

4. The Committee having thus been set up, the complainant was summoned to Berlin to undergo medical examination by Dr. Havestadt and Dr. Greve on 7 and 8 March 1991. The Committee was scheduled to meet on 8 March.

5. The complainant turned up in Berlin on 7 March 1991 with Dr. Oliviero and an interpreter, both of whom attended the preliminary and separate medical examinations by Dr. Havestadt and Dr. Greve. The interpreter was also with Dr. Oliviero at the Committee's meeting on 8 March.

6. The evidence shows that the EPO has made no difficulty over meeting the complainant's own travel and subsistence expenses, his own doctor's expenses and fees for attending the Committee's meeting and the interpreter's fees for the same purpose. But it is refusing to pay the doctor's and the interpreter's expenses and fees for attending the prior medical examinations. Those are the only sums at issue.

7. The complainant has appended to his complaint a further claim to the travel expenses he incurred, before the

invalidity procedure had started, for the purpose of going to The Hague for a medical examination on 11 July 1990. He made that claim on 28 June 1990 and the EPO has never acted on it. Although he lodged an internal appeal on 23 September 1991, that, as the Organisation rightly points out, was after expiry of the time limit for such appeal. Since the EPO had taken no decision on his claim the time limit had expired by 28 November 1990. His complaint is therefore irreceivable in respect of that claim under Article VII(1) of the Tribunal's Statute because he has failed to follow the internal appeal procedure properly.

8. Article 91 of the Service Regulations is the rule that is relevant to dispute over the refund of expenses and fees incurred in the invalidity procedure. It reads:

"(1) The costs of meetings of the Invalidity Committee shall be borne by the Organisation.

(2) Where the medical practitioner appointed by the permanent employee is resident elsewhere than at the latter's place of employment, the employee concerned shall bear the cost of additional fees and additional expenses entailed."

9. So there are two conditions for the refund of expenses. One is that they have some necessary connection with the Committee's meetings, and the other is that they should have been incurred at the "place of employment", the permanent employee being required to bear any additional fees and expenses he incurs by appointing a doctor from elsewhere.

10. The complainant's claim to sums over and above what the EPO has agreed or offered to pay does not meet either condition. Although the prior examinations by Dr. Havestadt and Dr. Greve had a direct and necessary connection with the Committee's work and required that the complainant attend, there was no medical reason why for that purpose he should bring along his own doctor or on that account an interpreter. Since he incurred the expenses on his own initiative and in his own interest he must bear them himself. It is not even necessary to rely on Article 91(2).

11. The complaint therefore fails in its entirety. The claim to the expenses of medical examination at The Hague is irreceivable and the claims to certain expenses relating to the Invalidity Committee's work in Berlin are devoid of merit.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Pierre Pescatore, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 13 July 1994.

(Signed)

William Douglas
P. Pescatore
Michel Gentot
A.B. Gardner