

The Administrative Tribunal,

Considering the complaint filed by Mrs A. T. against the European Patent Organisation (EPO) on 21 June 2001 and corrected on 14 August, the EPO's reply of 31 October 2001, the complainant's rejoinder of 28 January 2002, and the Organisation's surrejoinder of 7 March 2002;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant was born in 1948 and is of German nationality. She took up employment with the European Patent Office, the EPO's secretariat, on 1 April 1985. She was assigned as a paper-keeper to Directorate-General 4 in Munich and at the material time held grade C3.

On 28 November 1993 she reached the maximum period of sick leave on full pay, allowed pursuant to Article 62(6) of the Service Regulations; she has been absent from the Office since July 1994. The Office instituted invalidity proceedings to determine her fitness for work. Meanwhile, she received the reduced salary provided for in Article 62(7), which relates to extended sick leave. Following a decision taken by the Invalidity Committee her sick leave was extended until 1 February 1997. Thereafter, the Office continued to pay her reduced salary in the form of an advance.

In a report of 17 October 1997 the Invalidity Committee recommended that the complainant undergo an inpatient examination in a university clinic, and said she should be regarded as "unfit for work" until that assessment had been performed. It issued a similar recommendation in a report of January 1999. The Administration wrote to the complainant on 3 March, urging her to make an appointment for the recommended examination and threatened disciplinary action if she did not comply. By a letter of 30 April 1999 the Director of Personnel Management asked the complainant to sign a declaration to release the three members of the Invalidity Committee from their obligation to maintain medical confidentiality so that they could communicate with doctors at the clinic in question. The complainant's counsel protested in a letter of 6 May. He said that despite having no authorisation to do so the Office had already passed the complainant's case-notes to the clinic.

By a letter of 27 May 1999 the Director of Personnel Management asked the complainant to sign the confidentiality waiver by 11 June, otherwise the Office would suspend her remuneration with effect from 1 June 1999. She did not comply and on 21 June the same Director informed her that she was to be issued with a reprimand and the "advances" against her salary would be discontinued from 1 June 1999. Payment of her remuneration ceased from that date. The complainant signed the waiver on 25 August. The salary stoppage ended with effect from 19 August 1999.

Meanwhile, the complainant had filed an internal appeal against the salary stoppage. In its report of 19 January 2001 the Appeals Committee found in her favour and recommended allowing the appeal. The President of the Office did not share the Committee's opinion and dismissed the appeal. By a letter of 29 March 2001 the Director of Personnel Development notified the President's decision to the complainant; he said that no decision about the claimed salary would be taken until the Invalidity Committee had given a final opinion about the complainant's fitness for work. That is the impugned decision.

B. The complainant contends that the decision to suspend payment of her remuneration between 1 June and 18 August 1999 was unlawful and the President gave no reason for not following the opinion of the Appeals

Committee. She reiterates points made by the Committee.

She thus submits that the EPO derives its authority to suspend payment of the advances on her reduced salary from Article 62(7), which concerns payment of salary during extended sick leave. She acknowledges that payment of a reduced salary is conditional on a decision by the Invalidity Committee and that for an employee to remain entitled to ongoing payment of salary, the sick leave has to be extended (retroactively) on the basis of a decision taken by the Invalidity Committee. Such, she submits, was made clear by the Tribunal in Judgment 1440. She also notes that in the light of the Office's duty of care, the Invalidity Committee may consider it appropriate for the Office to pay the reduced salary provided for in Article 62(7) in the form of an advance, until the Committee has decided on the matter of extended sick leave. There can be no objection to this happening if a decision about the staff member's unfitness for work is expected from the Committee within a reasonable period of time.

However, she argues that in her case the Administration was wrong to assume that the emoluments paid to her under Article 62(7) were "advances" paid until the question of her unfitness for work could be clarified. This is because in 1997 the Invalidity Committee had found that she was to "be regarded as unfit for work" until the inpatient assessment had been performed. The Committee's report of January 1999 confirmed the 1997 one. She must therefore have been unfit for work in June, July and August 1999, and during that time was entitled to the salary payable during periods of extended sick leave. Hence, she claims that the EPO was wrong to assume that it was entitled to discontinue payment, and that it is irrelevant to determine in which conditions payment of an advance can be discontinued.

The complainant seeks the quashing of the decision "to cease paying her an advance on her reduced salary" between 1 June and 18 August 1999.

C. In its reply the Organisation maintains that, taking into account the applicable rules and practice of the Office, the complaint is devoid of merit. The decision to stop paying the complainant an advance on her salary from 1 June to 18 August 1999 was a temporary one. It was taken after due warning, in line with the Organisation's duty of care. It also reflected the interpretation of the applicable rules given by the Tribunal in Judgment 1440. The decision was fully justified because the complainant was impeding the progress of the invalidity proceedings. Her arguments fail to convince because they are based on the false assumption that the Invalidity Committee's report of 1997 is still applicable.

Problems arose because the complainant had exceeded the duration of sick leave under Article 62(6) without the Invalidity Committee deciding on the extension of her sick leave, because by continually raising procedural points the complainant had blocked the Committee's proceedings. The case has a long history and there has been "much playing for time" on the part of the complainant. The Administration had the right to start disciplinary action against her. At the time, she was in breach of her obligation to cooperate. In the end, however, the disciplinary proceedings were dropped.

The EPO says that at the time of drafting its reply the Invalidity Committee had still not been able to issue an opinion relating to the period from 1 June to 18 August 1999. The complainant has meanwhile continued to receive her reduced salary in the form of an advance on the assumption that the Committee will soon be able to settle the matter.

D. In her rejoinder the complainant rebuts the allegation that she had blocked the invalidity proceedings, stating that she has no control over when the Invalidity Committee issues a final recommendation. If her case has a "long history" it is for two reasons. The first being that the EPO has refused to clarify the causes and effects of "unhealthy pollution of the air in its offices" in order to "undermine" invalidity cases of a similar nature. The second being the unsuitability and inadequacy of the provisions governing the Invalidity Committee proceedings.

E. In its surrejoinder the Organisation notes that the complainant is of the "unsubstantiated" opinion that the cause of her medical condition is air pollution on EPO premises. It points out that on 30 July 1997 the complainant filed a criminal lawsuit, implicating the EPO, but the court did not pursue the charges made. It maintains that the complainant alone is responsible for the drawn out proceedings before the Invalidity Committee. The complainant's reduced salary was, in its opinion, lawfully withheld in as much as in 1999 the Committee had not extended the complainant's sick leave.

CONSIDERATIONS

1. The complainant has been a permanent employee of the European Patent Office since 1 April 1985. On 28 November 1993 the complainant reached the maximum period of paid sick leave allowed pursuant to Article 62(6) of the Service Regulations and has been absent from the Office since July 1994. An Invalidity Committee was established accordingly to assess her fitness for work. Since then, with the exception of the period from 1 June until 18 August 1999, at issue in this complaint, the complainant has received a reduced salary as provided for in Article 62(7), which states:

"If, at the expiry of the maximum period of sick leave as defined in paragraph 6, the permanent employee, without being permanently disabled, is still unable to perform his duties, the sick leave shall be extended by a period to be fixed by the Invalidity Committee. During this period, the permanent employee shall cease to be entitled to advancement, annual leave and home leave, and shall be entitled to half the basic salary received at the expiry of the maximum period of sick leave as defined in paragraph 6, or to 120% of the basic salary appropriate to Grade C1, step 1, whichever is the greater. However, where the incapacity for work is the result of an accident or a serious illness such as cancer, tuberculosis, poliomyelitis, mental illness or heart disease, the permanent employee shall be entitled to the whole of this basic salary."

2. It is not disputed that, in a report of 17 October 1997, a majority of the Invalidity Committee recommended that the complainant undergo an inpatient examination at a university clinic and concluded that: "Until [the complainant] has undergone this inpatient assessment she must be regarded as unfit for work."

3. By 29 January 1999, notwithstanding the recommendation of the Invalidity Committee, the complainant had still not undergone the requested inpatient examination and the Committee issued another report, again recommending such an examination.

4. In the meantime, the Office had regularly been paying the complainant the emoluments provided for in Article 62(7). In the view of the EPO, these payments were made in the nature of a voluntary "advance" under the authority of Article 87, pending a final determination by the Invalidity Committee. It maintains that it was under no obligation to make the payments. Accordingly, when a disagreement arose between the Office and the complainant as to whether the latter was failing to cooperate and was obstructing the holding of the required medical examinations, the Office threatened disciplinary action and suspended all payments to her with effect from 1 June 1999. The payments were only resumed on 19 August 1999, after the complainant had done as she was requested. The Office's right to take these actions is at the heart of the present complaint. More specifically, the Appeals Committee having recommended that her internal appeal be allowed, the complaint is directed against the President of the Office's decision of 29 March 2001 not to accept that recommendation.

5. In the Organisation's view, since the payments it was making to the complainant were entirely voluntary, a matter of grace and favour on its part, it was quite at liberty to suspend such payments when the complainant failed to fulfil her obligation to submit to the required medical examination.

6. The EPO is wrong. The Invalidity Committee's report of 17 October 1997 was categorical in stating that the complainant must be regarded as not fit for work. That means that she was unable to perform her duties and at a minimum she was entitled to receive the emoluments provided for in Article 62(7) unless and until the Invalidity Committee made a further finding putting an end to her sick leave, extending it, or placing her on permanent disability. But, without the authorisation of the Invalidity Committee, the Office had no right by its own unilateral action to suspend the payments to which she was entitled by law.

7. The Tribunal is not required to make any finding on the EPO's allegations of non-cooperation and obstruction on the part of the complainant. There can be no doubt that the latter has a clear obligation to assist the Invalidity Committee and to present herself as and when reasonably required to do so for examination or treatment. If she fails to do so, that might constitute grounds for the Invalidity Committee to declare her sick leave at an end or it might form the basis of disciplinary action. By the terms of Article 93, however, such disciplinary action is limited to one disciplinary measure for each offence and could not include any financial penalty amounting to more than one third of the retirement pension. Here, the Office threatened that it was going both to reprimand the complainant and strip her of her entire entitlement under Article 62(7), thus leaving her with nothing at all. It cannot take the law into its own hands without regard for the complainant's rights or its own obligations under the Service Regulations.

8. In fact, the threatened reprimand was not imposed, but the highhanded actions of the Office in cutting the complainant's payments are both unjustified and illegal. The impugned decision must be rescinded.

9. The complainant has not asked for damages.

10. The impugned decision will be set aside and the EPO will be ordered to pay the complainant the emoluments to which she was entitled while on extended sick leave, with interest at the rate of 8 per cent per annum, for the period from 1 June to 18 August 1999, together with her costs in the amount of 2,000 euros.

DECISION

For the above reasons,

1. The impugned decision is set aside.

2. The EPO is ordered to pay the complainant the emoluments to which she was entitled under Article 62(7) for the period from 1 June to 18 August 1999, together with interest at 8 per cent per annum.

3. It shall pay her 2,000 euros in costs.

In witness of this judgment, adopted on 9 May 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Judge, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 15 July 2002.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet