

(Application for execution)

**105th Session**

**Judgment No. 2721**

The Administrative Tribunal,

Considering the application for execution of Judgment 2613 filed by Mrs L. M. against the European Patent Organisation (EPO) on 16 June 2007 and corrected on 30 July, the Organisation's reply of 2 November, the complainant's rejoinder of 19 December 2007 and the EPO's surrejoinder of 10 March 2008;

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. Judgment 2613 was delivered on 7 February 2007. It may be recalled that, when the complainant retired on 1 May 2003, she did not have enough reckonable years of service to be eligible for a retirement pension. She had nevertheless asked to retain coverage by the sickness insurance scheme of the European Patent Office, the secretariat of the EPO, and had requested the continued payment of the monthly long-term care benefits which she had received for her disabled daughter since 1 July 2001, but both requests had been rejected. By the above-mentioned judgment the Tribunal quashed the decision refusing the continued payment of the long-term care benefits and ordered the Organisation to pay the complainant "the arrears on these benefits as from termination of her service together with interest for late payment at a rate of 8 per cent per annum". It also awarded the complainant 2,500 euros in costs.

By a letter of 5 April 2007 the Director of Personnel Management and Systems informed the complainant that she would receive the sums due in execution of Judgment 2613. However, he added that, in order to ensure that her daughter was still entitled to long-term care benefits and to determine her level of dependence, Van Breda – the insurance brokers responsible for the day-to-day administration of the Collective Insurance Contract concluded by the EPO – would be asked to carry out a reassessment. On the same date the brokers sent the complainant an assessment form to be filled in by her daughter's personal physician. At the end of April the complainant forwarded the completed form to the brokers and sent the Office the details of her bank account. On 10 May 2007 the costs awarded by the Tribunal in the above-mentioned judgment were credited to her account.

In an e-mail of 23 May addressed to the President of the Office the complainant requested the payment, within ten working days, of the sums due in execution of Judgment 2613. She was informed by a letter of 8 June 2007 from the Director in charge of Compensation and Benefit Systems that, initially, only the long-term care benefits due for the period 1 May to 31 December 2003 would be paid. He explained that as soon as Van Breda's recommendation was received, any further amounts due would be paid immediately. The complainant filed an application for execution on 16 June 2007. By a letter of 28 June 2007 the above-mentioned Director notified her that the Office had received the assessment from Van Breda and that the long-term care benefits could be paid until December 2008: the arrears plus interest for the period 1 January 2004 to 30 June 2007 would be paid as a lump sum and as from 1 July 2007 the benefits would be paid on a monthly basis.

B. The complainant draws attention to the fact that in consideration 5 of Judgment 2613 the Tribunal stated that the Office must pay the arrears on the long-term care benefits due "for the whole period after termination of the complainant's service", and she holds that the EPO cannot defer the payment of the amounts due for the period commencing on 1 January 2004 on the grounds that her daughter's degree of reliance on long-term care is being assessed. In the complainant's view, it is irrelevant that the Organisation now considers that such an assessment

should have been made at the end of 2003. She emphasises that the payment of long-term benefits could not be suspended and submits that the Tribunal has agreed with her on that point.

The complainant requests the Tribunal to order the EPO immediately to pay the accrued interest on all the sums due (capital plus interest) as from 22 February 2007, to "have this judgment enforced by a bailiff" and to set a penalty for default of 500 euros per day as from the tenth day following the delivery of the judgment. She also claims 2,000 euros in compensation for the injury suffered and requests an award of costs.

C. In its reply the Organisation states that Judgment 2613 has already been executed and that the complainant's application therefore no longer shows any cause of action. In support of its argument it produces documents showing that the sums due for the period 1 May to 31 December 2003 were paid on 12 June and that those due for the period 1 January 2004 to 30 June 2007 were paid on 3 July 2007.

Subsidiarily, the Organisation contends that less than five months were needed to process the payment of all the sums due to the complainant and that such a period of time should not be termed unreasonable. It explains that there are three categories of reliance on long-term care, each corresponding to a level of benefits. When the judgment in question was delivered, the Office did not have an assessment of the degree of reliance of the complainant's daughter for the period after December 2003; it therefore had good reason to ask Van Breda for a new assessment.

D. In her rejoinder the complainant holds that the time taken to execute Judgment 2613 was unreasonable: she produces two credit advices, one dated 23 July 2007, the other dated 24 September 2007, which, she says, notified her that the Office had paid her the arrears due for the periods 1 May to 31 December 2003 and 1 January 2004 to 30 June 2007 respectively. She submits that the above-mentioned judgment has not been executed because the Office still owes her 6.05 euros for the second period. She states that she did not receive the full amount announced in the letter of 28 June 2007 because she had to pay bank transfer charges (payment commission and value-added tax), even though the Office usually defrays such charges. She presses her claims and also requests the Tribunal to order the payment with interest of the outstanding balance of 6.05 euros.

E. In its surrejoinder the EPO states that, on receiving the rejoinder, it paid the above-mentioned 6.05 euros, plus 0.32 euros interest for late payment, on 27 February 2008. It explains that the complainant was charged the sum in question owing to an error by its accounting department and it apologises to her. It otherwise stands by its submissions.

## CONSIDERATIONS

1. By Judgment 2613 delivered on 7 February 2007, the Tribunal quashed the decision of 23 May 2005 to refuse the continued payment to the complainant, from the date of termination of her service (1 May 2003), of the long-term care benefits that had previously been paid in respect of her disabled daughter. It ordered the Organisation to pay the complainant the arrears on these benefits together with interest for late payment at a rate of 8 per cent per annum and the sum of 2,500 euros in costs.

The costs were paid to the complainant in May 2007. A sum of 11,827.51 euros, corresponding to the arrears on the long-term care benefits plus interest for the period from 1 May to 31 December 2003, was paid to her on 12 June 2007. On 3 July 2007 the EPO paid the balance of the arrears plus interest (55,808.84 euros); a sum of 6.05 euros was, however, deducted from the balance in respect of bank transfer costs.

2. The complainant submits that Judgment 2613 was therefore not properly executed.

The EPO explains that it was unable to pay the sums due in respect of the arrears of benefits for the period after December 2003 until it had obtained from Van Breda a fresh assessment of the degree of reliance on long-term care of the complainant's daughter.

3. The Tribunal's judgments carry the authority of *res judicata*. They must be executed in full and within a reasonable time (see Judgment 2684, under 4).

In the instant case, the decision in Judgment 2613 was clear and could not be misconstrued. The arrears due to the complainant were to be paid by the end of the period needed for a careful and full calculation. The question of the

degree to which her daughter relied on long-term care was not raised at any point during the proceedings that led to the delivery of the judgment and nothing warranted the undertaking of a fresh assessment of the degree of reliance, which might be expected to delay execution, for the period covered by the judgment.

Yet almost five months passed between the date of delivery of the judgment and the date of payment of the second component of the arrears, equivalent to more than 80 per cent of the total. This delay is due to the assessment requested by the EPO.

The Tribunal again emphasises that it is essential that both salaries and pensions be paid punctually and in full, if only on account of the precise commitments which beneficiaries may have to honour on a daily basis (see Judgment 2381, under 3).

Hence it cannot but be concluded that the EPO breached its obligation to execute Judgment 2613 in full within a reasonable time.

4. That having been said, all sums due to the complainant have been paid together with the interest for late payment, including the balance of 6.05 euros that she was wrongly charged in respect of bank transfer charges owing to an error by the accounting department. The complainant fails to show the continued existence of a pecuniary injury that has not been remedied by the payments thus effected.

5. On the other hand, the complainant should be awarded compensation of 1,000 euros for the injury caused by the late execution of Judgment 2613 as well as costs, which may be fixed *ex aequo et bono* at 500 euros.

## DECISION

For the above reasons,

1. The EPO shall pay the complainant 1,000 euros in compensation for the injury suffered.
2. It shall also pay her 500 euros in costs.
3. All other claims are dismissed.

In witness of this judgment, adopted on 2 May 2008, Mr Seydou Ba, President of the Tribunal, Mr Claude Rouiller, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Claude Rouiller

Patrick Frydman

Catherine Comtet

