

EIGHTY-SEVENTH SESSION

In re Müller-Engelmann (No. 2)

Judgment 1847

The Administrative Tribunal,

Considering the second complaint filed by Mrs Jutta Müller-Engelmann against the European Patent Organisation (EPO) on 23 December 1997, and corrected on 2 February 1998, the EPO's reply of 23 April, the complainant's rejoinder of 29 July and the Organisation's surrejoinder of 9 September 1998;

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

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. Facts relevant to this case are set out in Judgment 1829 on Mrs Müller-Engelmann's first complaint. At the material time she was employed by the European Patent Office, secretariat of the EPO, in Munich, as an examiner at grade A3.

On 1 August 1997 the complainant submitted a claim for reimbursement of medical expenses, totalling 4,226.75 German marks, to the insurance brokers Van Breda, who are responsible for the day-to-day handling of the collective insurance contract concluded by the EPO.

According to the version then in force of Article 23 of the contract: "Reimbursement of expenses incurred shall be effected by means of a cheque sent to the insured staff member ... within 15 days ...".

The complainant wrote to the President of the Office on 25 August 1997 appealing against the non-reimbursement of the medical expenses claimed and calling upon the EPO to instruct Van Breda to pay the "amount receivable" within ten days with 14 per cent interest, or otherwise consider her letter as an internal appeal.

On 8 September the complainant received payment of 3,116.49 marks. Van Breda did not reimburse all her medical costs. It excluded from settlement a bill dated 12 December 1996 for 58.28 marks for medical services from Runow and Weber, physicians. Van Breda's settlement statement of 28 August 1997 carried the mention "excluded from the policy" against the reference number denoting that bill.

The Director of Personnel Development acknowledged receipt of her internal appeal 71/97 on 31 October 1997, and told her that as the doctors involved had been asked to provide further information, no final decision had yet been taken.

The complainant submits that in the absence of a reply from the President to her appeal of 25 August she filed her complaint with the Tribunal.

B. The complainant holds that her claim is receivable. The President received her appeal on 25 August, but took no action within the period of sixty days under Article VII(3) of the Tribunal's Statute.

She pleads that failure to reimburse her medical expenses is unlawful. The amount refunded on 8 September did not "cover all costs subject to reimbursement". Van Breda gave no reasons for its refusal to meet the bill for 58.28 marks from Runow and Weber. The bill clearly stated the diagnosis, listed the individual services with the relevant dates and gave their "GOÄ-number" (the official billing chart of the medical profession). She claims that the medical services listed on their bill are covered by her insurance under Articles 16 and 20 a) and b) 1.1 of the collective insurance contract.

As she submitted her claim for reimbursement on 1 August it could be assumed that Van Breda received it by 4 August. To comply with Article 23 of the collective contract, reimbursement by cheque - or bank transfer in this case - should have been ordered within fifteen days, that is by 19 August and payment of the amount of 3,116.49

marks reimbursed to her, plus the outstanding 58.28 marks, should have reached her account by 26 August. It did not: she therefore claims interest for late payment.

The complainant asks the Tribunal to order the EPO: (1) to reimburse her for the bill for 58.28 marks, dated 12 December 1996, with interest of 14 per cent per annum from 27 August 1997; (2) to pay her interest of 14 per cent on the sum of 3,116.49 marks over a period of twelve days from 27 August to 8 September 1997; (3) to compensate her for translation and copying costs; and (4) to pay her legal costs.

C. The EPO asks the Tribunal for the joinder of this complaint with a third complaint that she has filed as in both she asks for reimbursement of medical bills refused by Van Breda and interest for late payment.

The Organisation contends that the complaint is irreceivable under Article VII(1) of the Statute of the Tribunal, as the complainant has not exhausted the internal means of redress. Her appeal lodged on 25 August 1997 has been considered neither by the Appeals Committee nor by the Invalidity Committee whose proceedings would replace those of the Appeals Committee.

In her present complaint the complainant's main request is regarding reimbursement of the bill for 58.28 marks, together with interest for late payment on that sum from 27 August, and on the sum of 3,116.49 marks for the twelve-day period from 27 August to 8 September: whereas her internal appeal 71/97 constituted solely a request for interest for late payment.

This complaint is also devoid of any cause of action, as Van Breda has now agreed to settle the claim for 58.28 marks, owing to a mistake relating to that invoice on the settlement statement of 28 August. According to that statement the type of costs incurred were excluded from the policy, but Van Breda has since acknowledged that the real reason preventing its medical adviser from allowing reimbursement was that he needed additional information to check "the legitimacy of the amounts invoiced".

As for interest for late payment, the complaint is also devoid of substance. Under Article 23 of the collective contract the period for payment is that within which the bank transfer - which replaces payment by cheque - is made, and it is not determined by the date the recipient's account is credited. Van Breda had, therefore, agreed to pay the complainant interest for late payment at a rate of 10 per cent for "nine" days on the sum of 3,116.49 marks, totalling 7.68 marks. Those nine days ran from 19 August to the date of Van Breda's settlement statement of 28 August 1997.

Her complaint being deemed irreceivable the defendant refutes the complainant's claim for translation and legal costs.

D. In her rejoinder the complainant observes that although the EPO recognised her claim for 58.28 marks it had not yet paid her the sum. She therefore maintains her claim for that amount and for interest thereon.

While she acknowledges receiving 7.68 marks through Van Breda as payment of 10 per cent interest on 3,116.49 marks over "ten" days, she claims the balance as she had asked for 14 per cent per annum over twelve days.

The complainant argues that under Article 90(1) of the Service Regulations the Invalidity Committee would not have been the competent body to deal with her case, as there was no medical dispute. The correct internal course of action lay through the Appeals Committee. The acknowledgement of receipt of her appeal by the Director of Personnel Development can in no way purport to be a ruling of the President within the meaning of Article 109 of the Service Regulations and the case has not gone to the Appeals Committee.

It is to be noted that, according to Dr Runow, Van Breda made no effort to obtain the additional information needed about the invoice from him. The diagnosis was evident from the bill submitted. Inasmuch as the invoice related to medical treatment she was entitled to reimbursement under Article 16 of the collective contract.

She presses her other claims to costs.

E. The Organisation reiterates in its surrejoinder that her internal appeal only concerned the request for interest for late payment and was submitted on 25 August 1997, that is before she received Van Breda's settlement statement of 28 August 1997 showing that it was reimbursing some of the amounts in question. A final decision has not yet been taken.

The standard procedure for medical disputes could not be followed as Van Breda's medical adviser has been unable to obtain the information he needs and which he has the right to request. The Organisation repeats that the Invalidity Committee is competent to decide on the matter.

The complainant alone was responsible for delaying reimbursement to her of the invoice for 58.28 marks. Van Breda agreed to reimburse the invoice as a "conciliatory gesture" and asked her on 30 April 1998 to return the original bill to them, as expenses could only be reimbursed against the original invoice. Necessary information still had not been provided and it was therefore "normal that the reimbursement should not result in the payment of late-payment interest".

CONSIDERATIONS

1. There are only two issues involved in this case; firstly, the complainant's claim to medical insurance reimbursement of an invoice for the amount of 58.28 German marks and secondly, the complainant's claim to interest for late payment on 3,116.49 marks.
2. As will appear, the defendant has made a binding offer to settle both claims but the complainant has refused this offer, at least impliedly.
3. The complainant is an employee of the European Patent Organisation. At the material time Article 23 of the collective insurance contract covering such employees provided that reimbursement of medical expenses "shall be effected by means of a cheque sent to the insured staff member ... within 15 days following the date of receipt by the intermediary broker [Van Breda] of the claim".
4. The complainant submitted a claim for reimbursement of medical bills to a total of 4,226.75 marks on 1 August 1997. It can be assumed that the claim was received by Van Breda on 4 August 1997. On 25 August 1997, the complainant filed an internal appeal seeking payment of the amounts claimed together with interest for late payment. She had neither heard from Van Breda, nor had she taken any other steps or made any inquiries. On 28 August 1997, Van Breda responded to the complainant's claim of 1 August; some of the expenses claimed were rejected and are not apparently now at issue; the invoice for 58.28 marks was also rejected without giving a valid reason; a balance of 3,116.49 marks was accepted and the same day payment of that amount was sent by bank transfer to the complainant's account. However the sum was only credited to the complainant's bank account on 8 September 1997.
5. It appears that the complainant's internal appeal was not processed and in a letter of 31 October 1997 the defendant indicates that it believes the matter is still under investigation by Van Breda and is pending.
6. On 23 December 1997 the present complaint was filed with the Tribunal, seeking, as already indicated, reimbursement in respect of the unpaid claim for 58.28 marks and interest for payment twelve days late at 14 per cent per annum on 3,116.49 marks.
7. On 8 April 1998, prior to the filing of its reply herein, the defendant wrote to Van Breda directing it to pay the sum of 58.28 marks since sufficient reason for refusing payment had not been provided; in the same letter, the defendant also directed Van Breda to pay interest for late payment on 3,116.49 marks at 10 per cent for a period of nine days. On 30 April 1998, Van Breda complied with these directions and wrote to the complainant asking her to send them the original invoice of 58.28 marks as the sole pre-condition to the reimbursement thereof; it also credited the complainant with late payment interest on the basis indicated by the defendant. The complainant has apparently not complied with Van Breda's request to submit the original invoice of 58.28 marks. She also contests the calculation of the interest for late payment and has gone ahead with her complaint claiming, in addition to the sums mentioned, full reimbursement of her legal costs and the translation costs.
8. The defendant contests the receivability of the complaint. In light of the view that the Tribunal takes of the merits of this claim, it will not deal with that question.
9. The Tribunal holds that the claim for 58.28 marks has been the subject of a valid, sufficient and binding offer of settlement. The request by Van Breda for the submission of the original invoice is an entirely reasonable condition and, if the amount has not yet been paid, the complainant has only herself to blame.

10. The Tribunal further holds that the payment of interest for late payment calculated on the basis of 10 per cent per annum for a period of nine days fully complies with the defendant's obligations. The fifteen-day period provided by the collective insurance contract expired on 19 August 1997. Van Breda's obligation was to "send" the reimbursement to the complainant within that period; it is not responsible for delays due to postal or banking services. The reimbursement was in fact sent on 28 August 1997: the payment was thus late by only nine days. The Tribunal holds that the interest rate of 10 per cent is more than adequate.

11. The question of both legal and translation costs is entirely within the discretion of the Tribunal. Where a valid, sufficient and binding offer to settle is made by a defendant in the course of proceedings, and the complainant continues with the complaint in the face of such an offer, the Tribunal may well deny costs. The Tribunal also notes that in the present case the complainant filed her internal appeal almost immediately and without apparently requesting information from the defendant or from Van Breda as to the progress of her claim: she appears to be more interested in litigation than in dealing in good faith with her employer. Parties and their legal advisers should be encouraged to settle their claims and dissuaded from time-wasting disputation. There will be no order for costs.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 1999, Miss Mella Carroll, Vice-President of the Tribunal, Mr Mark Fernando, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Mella Carroll
Mark Fernando
James K. Hugessen

Catherine Comtet