

The Administrative Tribunal,

Considering the second complaint filed by Mrs C. K. against the European Patent Organisation (EPO) on 3 March 2003 and corrected on 24 July, the EPO's reply of 31 October 2003, the complainant's rejoinder of 28 January 2004, and the Organisation's surrejoinder of 7 June 2004;

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

Having examined the written submissions and disallowed the complainant's application for hearings;

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

A. The complainant, a Greek national, is a former permanent employee of the European Patent Office, the secretariat of the EPO; she has benefited from an invalidity pension since 1 October 2001.

Facts relevant to this complaint are to be found in Judgment 2159 delivered on 15 July 2002, in which the Tribunal noted that, although the parties had referred to several internal appeals filed by the complainant, those appeals were not properly before the Tribunal since the Appeals Committee had not yet made its recommendations. Four appeals, carrying the reference numbers RI/23/00, RI/28/00, RI/27/01 and RI/30/01, were joined at the complainant's request, and an oral hearing on the appeals was held on 19 September 2002 in Munich.

In its opinion dated 16 October 2002, the Appeals Committee unanimously recommended rejecting the first three appeals. It recommended allowing appeal RI/30/01 and that the complainant be compensated for the strain suffered in connection with the cessation of her salary payments and awarded costs. In his letter of 6 December 2002 the Head ad interim of Conditions of Employment and Statutory Bodies informed the complainant's counsel that the President had decided to follow the Committee's recommendations on the first three appeals, and, in respect of appeal RI/30/01, to award the complainant legal costs.

The complainant's counsel wrote to the EPO on 18 December, pointing out that the letter of 6 December made no mention of the Committee's recommendation that the complainant be paid compensation. The Head of the Employment Law Department confirmed in a letter of 14 January 2003 that the President decided to reject the recommendation that the complainant be paid compensation, adding "incidentally" that such a claim had not been made. On 16 January 2003 the complainant's counsel wrote back to the Head of the Department, stating that the claim had been made during an oral hearing on 19 September 2002, and he referred to the Appeals Committee's opinion in which the claim was discussed; in light of this information, he asked for confirmation that this claim was still being rejected. The Head of the Department confirmed this fact in a letter dated 20 January 2003. It is the decision of 6 December 2002 that the complainant impugns.

B. The complainant argues that she is entitled to receive an appropriate sum in compensation for pain and suffering, particularly as the decision "to cease salary payments to [her] and to reduce her leave entitlement were proved to be unlawful". In calculating the amount of compensation, consideration should be given to the fact that, by stopping her salary, her livelihood had been drastically jeopardised and that this course of action "caused further considerable damage" to her health. She points out that, contrary to what the Organisation has tried to assert, her claim for compensation for pain and suffering was made in an oral hearing on 19 September 2002 before the Appeals Committee. Had it not been receivable at that time, the Committee would have rejected it, but it did not. In addition, she asserts that she is entitled to reimbursement of the flight costs for attending the hearing but that this has yet to be reimbursed by the EPO.

She asks the Tribunal to set aside the President's decisions of 6 December 2002, 14 January 2003 and 20 January 2003 insofar as these conflict with the Appeals Committee's recommendation in internal appeal RI/30/01. She claims moral damages and costs.

C. In its reply the EPO objects to receivability insofar as the complainant has made claims for damages and for

reimbursement of her travel expenses that she did not put forth in her internal appeal. The Organisation considers that the Tribunal's case law that "receivability depends on the making of prior claims, not of prior pleas" applies by analogy to internal appeals.

On the merits, the EPO considers the request for damages to be unfounded. In the first place, all claims made in appeal RI/30/01 were satisfied once her permanent invalidity had been established. Secondly, the impugned decision, which rejected the claim for damages, was in line with the Tribunal's case law; she had not submitted this claim with her internal appeal, thus she had not exhausted the internal means of redress.

D. In her rejoinder the complainant submits that the EPO made no objection to her claim for damages at the hearing on 19 September 2002; she considers this to mean that it regarded this claim to be "duly filed" and thus receivable. In any event, nowhere in the Service Regulations for Permanent Employees of the European Patent Office, nor in any other statutory text, does it specify that claims submitted during the hearing are to be considered as filed out of time. She maintains that the claim for reimbursement of her airline ticket is also receivable, as such an expense should be considered as part of the costs awarded in an appeal.

On the merits, she argues that there has been a breach of her right to be heard because the EPO did not raise its objection to the claim for damages until the present proceedings.

E. In its surrejoinder the Organisation presses its objection to the claim for damages and notes that the amount claimed has varied throughout the appeal and complaint procedures. Concerning the claim for reimbursement of her travel expenses, it says that the complainant had not made such a request either in her written submissions or during the oral hearings, which is why the Appeals Committee made no recommendation on this issue. Consequently, this claim is irreceivable for failure to exhaust the internal means of redress.

On the merits, it denies that there has been any breach of the principle of adversarial proceedings.

CONSIDERATIONS

1. The complainant began working as an examiner at the EPO in November 1987. After an operation she underwent in March 1999, she was found permanently unfit for work in August 2001 and was granted an invalidity pension to take effect on 1 October 2001. This occurred following a series of disputes with the EPO over her illness and her absences from work, which resulted in four internal appeals and a first complaint before the Tribunal. That complaint was disposed of in Judgment 2159. Some of the claims in her internal appeals were settled before these went to the Appeals Committee. The Committee recommended that three of the appeals be dismissed, and that one, appeal RI/30/01, be allowed.

2. The EPO informed the complainant by a letter of 6 December 2002 that the President of the Office would accept the Committee's recommendations on these appeals, including appeal RI/30/01. However, his acceptance was limited in the latter case to an award of costs notwithstanding the recommendation that the complainant be awarded damages. That is the impugned decision.

3. The complainant's claim for damages (which is for 20,000 euros) is grounded in an incident that was the subject of appeal RI/30/01. The EPO had declared the complainant's absence from work to be unauthorised under Article 63 of the Service Regulations after she refused to undergo a medical examination with its medical officer. The complainant, who had developed post-operative complications, had submitted a medical certificate from her own doctor to justify her further absence.

4. The Appeals Committee later correctly found, based on Judgment 2146, that this medical certificate eliminated any basis for the EPO to declare that absence unauthorised.

5. The complainant made a separate claim to deal with the principal financial fallout of the EPO's actions under Article 63, and the EPO ended up restoring all salary and attendant benefits through a settlement, thus dealing with the practical consequences of the impugned decision before the appeal on it was heard.

6. However, during the appeal proceedings, the complainant also argued that the EPO's announcement that all her salary payments would cease as of 9 May 2001 induced stress that further damaged her already poor health, and she claimed compensation for pain and suffering. The Committee recommended the award of damages, which

the EPO is refusing to pay.

7. The complainant is asking the Tribunal to set aside the President's decision to the extent to which it rejects the recommendation to award her damages. She is also asking the Tribunal to award her moral damages and costs.

Receivability

8. The EPO's position is that because the claim for damages was made as an oral submission during the Committee hearings for appeal RI/30/01, rather than being included in the complainant's original written submissions, it was not actually part of the internal appeal and therefore cannot now be claimed before the Tribunal. The EPO is arguing that it is a separate claim that should be the subject of a new internal appeal before it can be brought anywhere else, and hence the complainant's claim is irreceivable in part for failure to exhaust internal remedies.

9. The EPO cites the Tribunal's case law to support this argument. It suggests that the finding in Judgment 1519, under 14, that "receivability depends on the making of prior claims, not of prior pleas" should apply by analogy to internal appeals as well. The EPO states that otherwise applicants could circumvent the deadlines designed to ensure that both sides have an opportunity to respond to all of each other's arguments.

10. The EPO also argues that the complainant's claim for costs, which includes an airline ticket for attendance at the hearing for appeal RI/30/01, is irreceivable since this claim was not submitted during the appeals process.

11. The objection to receivability is misconceived. The Appeals Committee accepted that the complainant could make a claim for damages and heard both parties on the question. The reason that the Tribunal insists that any claim made before it must first have been asserted in the internal appeal process is that Article VII(1) of its Statute demands that the complainant first exhaust any available internal means of redress. The EPO has not shown that there is any equivalent provision relating to internal appeals, and it is desirable that such appeals should be as unencumbered as possible by procedural obstacles provided that elementary fairness is observed. There is no indication that such was not the case before the Committee which heard both parties in full.

12. The claim for the cost of the airline ticket is also receivable since it only matured with the Committee's recommendation to award costs and the EPO's acceptance of that recommendation.

The merits

13. Judgment 2146 conclusively settles the complainant's right to claim damages. The complainant has, however, failed to provide any convincing evidence that she suffered any material damage to her health as a result of the EPO's actions or the threat of disciplinary proceedings. Any financial consequences, such as loss of salary and benefits, were reversed and no disciplinary action was taken. Her hurt feelings and mental distress will be adequately compensated by an award of moral damages, which the Tribunal assesses at 1,500 euros.

14. There also does not appear to be any basis upon which the claim for the airline ticket costs can be denied. Article 113(7) of the Service Regulations appears to provide a straightforward grant of costs relating to the hearing, and the Committee stated that the costs should be paid in accordance with this provision. Since the EPO has accepted the Committee's findings on costs, it is required to reimburse the complainant for this expense in an amount of 408.10 euros with interest of 8 per cent per annum from the date of the hearing, that is 19 September 2002, until the date of payment. The complainant is entitled to costs for the present proceedings in the amount of 2,000 euros.

DECISION

For the above reasons,

1. The EPO shall pay the complainant an amount of 1,500 euros in moral damages.

2. It shall pay her a sum of 408.10 euros, together with interest at the rate of 8 per cent per annum from 19 September 2002 until the date of payment, as an additional cost of the hearing before the Appeals Committee.

3. It shall also pay her the costs of this proceeding in an amount of 2,000 euros.

In witness of this judgment, adopted on 5 November 2004, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 2 February 2005.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet