Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

L.

v.

EPO

123rd Session **Judgment No. 3790**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. L. against the European Patent Organisation (EPO) on 13 May 2014 and corrected on 9 July, the EPO's reply of 20 October, the complainant's rejoinder of 19 November 2014 and the EPO's surrejoinder of 20 January 2015;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant requests the reimbursement of medical expenses under Article 22 of the EPO's collective medical insurance contract (hereinafter "the collective insurance contract").

Article 16 of the collective insurance contract states that the medical insurance "shall cover reimbursement, within the limits set out [in Article 20 of the contract], of expenditure incurred by insured persons in respect of medical treatment, prescribed by medically qualified persons, as the result of illness, accident, pregnancy and confinement".

Article 22 of the contract, entitled "Additional reimbursement", reads:

"Where, during a period of twelve consecutive months, the total of the medical costs referred to in Article 16 incurred by an insured staff member

> [...] is such that, by virtue of the 20% excess on certain expenses and of the ceilings imposed, the insured staff member still has to bear an amount totalling more than 20% of his average monthly salary over the twelve months in question, [...] the Insurers shall in addition reimburse the difference between the total amount of such excesses and the amounts exceeding the ceilings on the one hand and 20% of the said average monthly salary on the other hand.
>
> The preceding paragraph shall apply to insured persons in receipt of a pension from the Policyholder, the term 'salary' being understood to mean 'pension'."

The complainant, who resigned with effect from 30 June 2009, chose to remain affiliated to the EPO's health insurance scheme after her separation from service. As from 1 July 2011 she started to draw a retirement pension. In the meantime, she had submitted a claim for additional reimbursement, based on Article 22 of the collective insurance contract, in respect of medical expenses incurred between 21 January 2010 and 20 January 2011. On 2 May 2011 she was informed that her claim had been rejected on the grounds that the sum in question was less than her "share under the additional cover".

On 28 June 2011 the complainant asked the President of the European Patent Office, the EPO's secretariat, to cancel that decision. She contended that, under Article 22, the amount of the additional reimbursement should be calculated on the basis of the average monthly salary over the 12 months in question. As she had resigned with effect from 30 June 2009, her salary during the period concerned had been nil and thus her "share under the additional cover" was also nil. She therefore requested the full reimbursement of the medical expenses not covered under Article 20 of the collective insurance contract.

In a letter of 10 August 2011 the Director for Regulations and Change Management explained to the complainant that, as the Administration had already advised her in an e-mail of 15 June 2009, an employee who remained affiliated to the EPO's health insurance scheme after separation from service was entitled to additional reimbursement when, over a 12-month period, the expenditure on medical treatment which they still had to bear exceeded 20 per cent of their final basic salary at the end of service and not 20 per cent of their average monthly salary over the period in question. The Director therefore rejected her claim for reimbursement.

The Internal Appeals Committee, to which the case was referred, issued its report on 19 December 2013, after hearing the parties. As the majority of its members took the view that "no provision" barred the practice which had been applied to the complainant, they recommended that the appeal be dismissed. On 19 February 2014 the Vice-President of Directorate-General 4 (DG4), acting by delegation of power from the President, informed the complainant that, in accordance with the majority opinion of the Committee, he had decided to reject her appeal as unfounded. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order the EPO to grant her the additional reimbursement of medical expenses incurred between 21 January 2010 and 20 January 2011. She also claims damages in the amount of 1,000 euros.

The EPO contends that since the complainant's claim for damages is new, it is irreceivable in accordance with the Tribunal's case law. It also submits that the complaint should be dismissed as unfounded.

CONSIDERATIONS

1. The complainant contends that, under Article 22 of the collective insurance contract, she is entitled to the additional reimbursement of medical expenses which she incurred between 21 January 2010 and 20 January 2011, since she did not receive a salary during that period.

The EPO recognises that the aforementioned Article 22 makes no provision for the complainant's situation and argues that a strictly literal interpretation of the article would result in persons in her situation being denied the benefit of additional reimbursement, since it refers solely to an "insured staff member". The EPO considers that its interpretation is reasonable, does not harm the complainant's interests, does not breach the principle of equal treatment and is in keeping with the spirit of the collective insurance contract.

2. Although the Tribunal agrees with the defendant organisation that Article 22 of the collective insurance contract makes no provision for the complainant's situation, it considers that the Organisation rightly

tried to address her situation with respect to that article by treating it as far as possible in the same way as cases covered by the article.

The complainant's argument that in her case the average monthly salary for the 12 consecutive months should be regarded as nil because she had not received any salary during that period plainly cannot be accepted, having regard to the intention of the parties to the collective insurance contract.

On the other hand, the Tribunal considers reasonable the Organisation's interpretation of Article 22 that, in the particular circumstances of the complainant's case, the adjusted basic salary which she received before her resignation should be taken as the average monthly salary.

3. In addition, it is clear from the submissions in the file, in particular annex 2 to the EPO's reply, that on 15 June 2009 the complainant had already been informed, in response to some questions which she had put to the Administration, that for the application of Article 22 of the collective insurance contract, the 20 per cent threshold would be calculated on the basis of her last adjusted basic salary until such time as she started to draw her retirement pension. Since that date, she had therefore been aware of the conditions which would be applied to her for any additional reimbursement during the period of time in question and she had not objected to them at that juncture.

4. It follows from the foregoing that the complaint must be dismissed in its entirety without there being any need to rule on the EPO's objection to the receivability of the complainant's claim for damages.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 8 November 2016, Mr Claude Rouiller, President of the Tribunal, Mr Patrick Frydman, Judge, and Ms Fatoumata Diakité, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

(Signed)

CLAUDE ROUILLER PATRICK FRYDMAN FATOUMATA DIAKITÉ

DRAŽEN PETROVIĆ