

K. (No. 26)

v.

EPO

124th Session

Judgment No. 3893

THE ADMINISTRATIVE TRIBUNAL,

Considering the twenty-sixth complaint filed by Mr A. C. K. against the European Patent Organisation (EPO) on 8 August 2016;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. In June 2012 a Medical Committee determined that the complainant was suffering from permanent invalidity. As two of the three members of the Committee considered that the complainant's invalidity could have been caused by an occupational disease, an expert was consulted in accordance with Article 90(3) of the Service Regulations. The expert, who was based in the Netherlands, was to submit her final report to the Medical Committee within four months.

2. In October 2012 the EPO accepted the expert's request for an extension of the time limit for submitting her report. She sent her draft report to the complainant on 5 December 2012. An exchange of correspondence ensued in which the complainant's lawyer requested various amendments to the draft report, which the expert refused to make.

3. On 1 February 2013 the complainant's lawyer sent a letter to the EPO requesting that the expert be discharged and that the Medical Committee make a finding of occupational illness. Alternatively, he requested that a new expert be appointed by the Medical Committee. If neither request was granted, he asked the EPO to treat his letter as a request for review.

4. On 26 February 2013 the expert informed both the complainant and the EPO that she was renouncing her mandate, because under Dutch law she could only submit her report if the complainant authorised her to do so, and in this case the complainant's authorisation was conditional upon her making amendments to the report that she was unwilling to make.

5. On 26 March 2013 the EPO informed the complainant that in view of this development the case had been remitted to the Medical Committee. It also pointed out that his lawyer's letter of 1 February could not be considered as a request for review as it was not directed against a challengeable decision.

6. On 16 June 2013 the complainant lodged an internal appeal challenging the decision contained in the EPO's letter of 26 March. This appeal was rejected on 10 May 2016 as manifestly irreceivable.

7. On 8 August 2016 the complainant filed his twenty-sixth complaint, impugning the final decision of 10 May 2016.

8. The Tribunal notes that the complainant filed his internal appeal only a few weeks after having been informed by the EPO that his case had been remitted to the Medical Committee. At that time, no final decision had been taken on the question of whether his invalidity was attributable to an occupational illness, and the appeal was therefore premature. Indeed, the decision to remit the case to a Medical Committee after the expert had renounced her mandate was merely a step in the procedure leading to a final decision on that question. As such, it did not in itself constitute a challengeable decision, though it could be challenged

in the context of an appeal directed against the final decision on the cause of the complainant's invalidity (see, for example, Judgment 2366, under 16).

9. The Appeals Committee therefore rightly recommended that the appeal should be dismissed as manifestly irreceivable on that basis, amongst others, and the decision of 10 May 2016 endorsing that recommendation cannot be criticised.

10. In these circumstances, the complaint is clearly devoid of merit and must be summarily dismissed in accordance with the procedure provided for in Article 7 of the Rules of the Tribunal.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 16 May 2017, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 June 2017.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ