

E.
v.
EPO

126th Session

Judgment No. 4046

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr U. G. J. R. E. against the European Patent Organisation (EPO) on 14 August 2012 and corrected on 30 August, the EPO's reply of 11 December 2012, the complainant's rejoinder of 19 March 2013 and the EPO's surrejoinder of 17 May 2013;

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 challenges the rejection of his claim for an invalidity allowance.

The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat, who worked as an examiner and retired on 30 November 2012.

On 29 October 2011 the complainant, who had been on sick leave for several months, requested that a Medical Committee be convened in order to determine whether he fulfilled the conditions for invalidity set out in Article 62a of the Service Regulations for permanent employees of the Office. After he had been examined by the three medical practitioners of the Medical Committee, the Committee issued

its opinion on 21 May 2012 in which it found by a majority that the complainant was not suffering from invalidity. By a letter dated 11 June 2012, the complainant was informed that, based on this conclusion, the President had decided to maintain him in active service.

The complainant filed his complaint with the Tribunal on 14 August 2012, indicating in the complaint form that he challenges the “decision” of 21 May 2012. He asks the Tribunal to set aside that “decision” and to order the EPO to pay him an invalidity allowance under Article 84 of the Service Regulations. Furthermore, he claims moral damages, costs and the reimbursement of an amount of 1,000 euros incurred in “collecting medical reports and documentation”.

The EPO requests the Tribunal to dismiss the complaint as irreceivable, as the complainant is not challenging a final decision within the meaning of Article VII, paragraph 1, of the Tribunal’s Statute. Subsidiarily, it submits that the complaint is unfounded on the merits.

CONSIDERATIONS

1. The complainant had been a member of staff of the EPO, retiring on 30 November 2012. At least during the latter years of his employment, the complainant suffered from a variety of medical conditions. On 29 October 2011, he applied for an invalidity allowance. This required that a Medical Committee be convened to determine whether he fulfilled the conditions for invalidity for the purposes of Article 62a of the Service Regulations. On 21 May 2012 the Medical Committee, constituted by three medical practitioners, delivered its opinion. A majority of the Committee concluded that the complainant was not suffering from invalidity. It also recorded that one member of the Committee was of the opinion that the criteria for invalidity were fully met. In a document dated 19 June 2012, the reasons of the majority were set out more fully. A little over a week earlier, by letter dated 11 June 2012, the complainant was informed that, based on the majority conclusion of the Medical Committee, the President had decided to maintain him in active service. Implicit in this communication was a rejection of the complainant’s application for an invalidity allowance.

2. On 14 August 2012 the complainant filed a complaint with the Tribunal. The impugned decision is identified in the complaint form as a decision of 21 May 2012. In the brief, prepared by lawyers acting on behalf of the complainant, the conclusion and “decision” of the Medical Committee is described as the “decision” and many of the contentions are directed to establishing error in this “decision”. The relief sought includes the annulment of that “decision”. This is described as part of the principal remedy, the other element of which was that, consequentially, the EPO should be ordered to pay an invalidity allowance under Article 84 of the Service Regulations.

3. It is convenient to deal, at the outset, with the EPO’s contention that the complaint is irreceivable. The EPO argues in its reply that the impugned decision, namely the “decision” of the Committee, is not a final decision for the purposes of Article VII, paragraph 1, of the Tribunal’s Statute. In his rejoinder, the complainant adheres to the position that the complaint challenges the “decision” of the Medical Committee and argues that it does constitute a final decision. It does so because, according to him, the Medical Committee’s “decision” dealt with whether he fulfilled the conditions for invalidity under Article 62a whereas the decision of the President of 11 June 2012 dealt with the consequences of that “decision”. The complainant refers to Judgments 532, consideration 3, and 1244, consideration 3, as demonstrating that a “decision” is any action by an officer of an organisation which has a legal effect. The complainant goes on to argue that “the [Medical Committee’s] [d]ecision is effectively binding on the [EPO], since, due to the expert background of the Medical Committee, it would be arbitrary for it not to follow the [Medical Committee’s] [d]ecision. The [Medical Committee’s] [d]ecision therefore clearly had a legal effect on the [complainant], and is therefore a decision.”

4. This is not correct. The Tribunal’s jurisdiction concerns, relevantly, the non-observance of provisions of the Staff Regulations. In the present case, the complainant would have been entitled to the payment of an invalidity allowance in the event that the Medical Committee determined he suffered from invalidity. The legal right or

benefit arising under the Service Regulations was the payment of that allowance. In circumstances where payment of the allowance should have been made but was not, there has been a non-observance of the Service Regulations challengeable before the Tribunal. Plainly enough, as part of that challenge, the anterior determination of the Medical Committee can be challenged because it is foundational to the decision of the President to refuse to pay the allowance. But that does not render the determination of the Medical Committee a final decision for the purposes of the Tribunal's Statute. Indeed, in principle, it would be open to the President to reject the opinion of the Medical Committee if she or he discerned some reviewable error on the part of the Medical Committee. The Medical Committee's determination is a decision that constitutes a step towards the making of the final administrative decision amenable to challenge in the Tribunal (see Judgment 3433, consideration 9).

5. In some circumstances, the Tribunal has treated a challenge to what has been identified in the complaint as a decision but, in fact, was an anterior step to the challengeable final administrative decision, as a challenge to the final administrative decision itself. An example is found in Judgment 2715. In that case the Tribunal sought to identify what was intended by the complainant and treated the complaint as a manifestation of an intention to challenge the final administrative decision. This course is not open to the Tribunal in the present case. That is because the EPO in the reply explicitly and clearly raises the issue of the receivability of a complaint challenging a "decision" of the Medical Committee. Notwithstanding, the complainant explicitly and clearly adheres in the rejoinder to the position that this was what was being challenged, namely the "decision" of the Medical Committee. In these circumstances, there is no proper basis for imputing to the complainant an intention to challenge the decision of the President of 11 June 2012.

6. In the result, the complaint should be dismissed as irreceivable in accordance with Article VII, paragraph 1, of the Tribunal's Statute.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 4 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ