SEVENTY-FIFTH SESSION

In re FESSEL

Judgment 1288

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Horst Fessel against the European Patent Organisation (EPO) on 20 August 1992 and corrected on 23 September, the EPO's reply of 11 December 1992, the complainant's rejoinder of 11 February 1993 and the EPO's surrejoinder of 19 March 1993;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article 90 of the Service Regulations of the European Patent Office, the secretariat of the EPO, and Articles 16, 19 and 20 of the collective insurance contract between the EPO and J. Van Breda and Company International;

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. The EPO has concluded with insurance brokers, Van Breda and Company International, a "collective insurance contract" for the benefit of staff and their dependants. Article 16 of the contract provides that the costs of medical treatment shall be met only when it is "prescribed by medically qualified persons". Article 20(b) 4.8 provides for full reimbursement of the costs of "spa cures" lasting up to 21 days. Circular 178, which the EPO issued on 16 January 1989, advises the staff member to get Van Breda's prior approval of any treatment or cure expected to be costly.

Article 90(1) of the EPO Service Regulations says that the Invalidity Committee is "competent to decide upon all disputes relating to medical opinions expressed, on the one hand, ... by the medical officer designated by the President of the Office and, on the other, by the permanent employee concerned or his medical practitioner".

The complainant, a German, joined the EPO in April 1980. His two dependent daughters - Iris, who was aged 23 at the material time, and Barbara, who was 22 - were covered by the Organisation's health insurance scheme. On 8 February 1991 he put to the Organisation a claim to the refund of 11,000 Deutschmarks, the cost of cures his daughters had taken at Davos, in Switzerland, in January 1991. With the claim he submitted invoices from the Hotel Belvedere at Davos: 8,350 Deutchmarks for three weeks' half board and lodging; 1,245 Swiss francs for drinks and lunches; and 1,047 Swiss francs for massage, physiotherapy, the solarium and baths. At the same time he submitted two certificates dated 20 and 21 December 1990 from his daughters' doctor, who said that they were both suffering from "chronic infections of the respiratory tract with chronic sinusitis" and "strain-induced back-ache" and his daughter Barbara from "chronic recurrent bronchitis" as well and that they urgently needed "a health cure".

In a letter of 27 February 1991 Van Breda told the Office that they intended to refuse the claim: the doctor's certificate did not say where the treatment was to be; the doctor in charge at Davos had drawn up no plan of treatment; there was no proof of treatment; and Davos was not a "cure centre" anyway. On 15 March Van Breda received from the complainant prescriptions from his daughters' doctor dated 20 and 21 December 1990 for ten baths and ten massages for each of them. The prescriptions said that both were suffering from "recurrent spinal syndrome - myogelosis".

By a letter of 2 April to the complainant Van Breda notified refusal of his claim on the grounds that the treatment had not been a "spa cure", as Article 20(b) 4.8 of the insurance contract required. In a letter of 15 April the complainant asked Van Breda to reconsider the matter.

In a letter of 30 April to Van Breda the Director of Personnel took exception to the "sudden change of a long and well-established practice" of meeting the cost of all cures and not just "spa cures" and asked them to reconsider their policy.

In a letter of 19 June to the complainant Van Breda told him that though the matter of spa cures had "already been

solved" they were still unable to meet his claim for want of medical evidence, and they explained why.

In a letter of 1 July to the EPO's medical officer the complainant refused, on the grounds that the material issue was one of law, to let his daughters undergo medical examination. The same day he lodged an internal appeal and it was referred to the Appeals Committee. In its report of 23 April 1992 the Committee, observing that its competence was limited to non-medical questions, unanimously recommended rejecting the appeal for lack of supporting documents. It also held that it was unreasonable of the complainant to expect Van Breda to pay for accommodation at a luxury hotel at Davos.

In a letter of 14 May 1992, the decision impugned, the President of the Office informed the complainant that he endorsed the Committee's recommendation.

B. The complainant submits that the impugned decision is tainted with procedural flaws and mistakes of fact and law.

The Organisation infringed his right to a hearing. Not until 19 June 1991 did Van Breda convey to him the reasons they had given the Office in their letter of 27 February 1991. Moreover, those reasons were at odds with what they had told him in their letter of 2 April and that was in breach of good faith.

In concluding that Davos was not suitable for medical cures the Organisation made a mistake of fact: he adduces evidence to the contrary.

He alleges a mistake of law in that there is no requirement in the insurance contract for a second medical opinion. In any case the doctor who prescribed the treatment was qualified within the meaning of Article 16 of the contract. Although a medical certificate from a doctor at the cure centre is one admissible form of evidence others may be just as acceptable.

He asks the Tribunal to set aside the decision, order refund of the cost of the cures, compensate him for "lost interest and differing exchange rates" and award him 2,000 Deutschmarks in costs.

C. In its reply the Organisation observes that in their letters of 2 April and 19 June 1991 Van Breda merely repeated the reasons they had given in their letter of 27 February 1991. Besides, why did the complainant write to Van Breda in March and supply the documents they had asked for if he was unaware of those reasons?

There is no evidence to suggest that the doctor had prescribed treatment at Davos and his offer to produce such evidence is immaterial. In any event he should have got Van Breda's prior approval in keeping with circular 178. The prescriptions he submitted did not cover all the items for which he claimed reimbursement.

D. In his rejoinder the complainant enlarges on his earlier pleas. He points out that the collective insurance contract does not limit the amount of repayments: Van Breda has met the costs of stays in luxury hotels before. Neither the Service Regulations nor the insurance contract lays down any procedure for monitoring claims.

E. In its surrejoinder the Organisation develops its earlier pleas. It argues in particular that Van Breda's right to check claims does not give them free rein because Article 90 of the Service Regulations expressly makes the EPO's Invalidity Committee competent in medical disputes.

CONSIDERATIONS:

1. The complainant has been a permanent employee of the EPO since 1980. He and his daughters Iris, who at the material time was 23 years old, and Barbara, who was 22, are insured persons within the meaning of Title III of the contract for collective insurance concluded between the EPO and Van Breda and Company International.

2. Article 16 of the collective insurance contract provides:

"The insurance shall cover reimbursement, within the limits set out below, 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 19 guarantees to insured persons freedom to choose doctor, chemist, hospital and other competent persons

or institutions.

Article 20 reads:

"(a) ...

(b) Medical expenses shall be reimbursed subject to the following limits:

1. Fees;

1.1 General practitioner and specialist: 100% reimbursement up to a ceiling of DM 4,400 per person per insurance year. ...

...

4.8 Spa cures: 100% reimbursement for a maximum period of 21 days. Except where absolute medical necessity is proved, cures may be reimbursed only once every five years. ..."

In Circular 178 of 16 January 1989 the EPO advises staff to apply for Van Breda's prior approval before embarking on treatment or a cure whose costs are likely to be high.

Lastly, Article 90(1) of the EPO Service Regulations states that the Invalidity Committee

"... shall be competent to decide upon all disputes relating to medical opinions expressed for the purposes of these Service Regulations, on the one hand, by the medical officer designated by the President of the Office and, on the other, by the permanent employee concerned or his medical practitioner."

3. On 8 February 1991 the complainant claimed reimbursement of the costs of cures taken by his daughters at Davos, in Switzerland, in January 1991. By a letter dated 27 February 1991 the insurers informed the EPO of their intention of rejecting the claim. The complainant submitted further documents to the insurers but by a letter dated 2 April they informed him that they were refusing his claim because it did not relate to "spa" cures. After further correspondence Van Breda gave him in a letter of 19 June 1991 the following reasons for their refusal:

(a) the doctor's prescription did not say where his daughters were to take the cures;

(b) the doctor at the cure centre had drawn up no plan of treatment;

(c) there was no certificate to say that his daughters had actually taken the cures; and

(d) Davos was not a recognised cure centre.

4. The complainant did not refer the matter to the Invalidity Committee in accordance with Article 90(1) of the Service Regulations. Instead he appealed to the Appeals Committee. In its report of 23 April 1992 that Committee held that its competence was limited to the non-medical, i.e. formal or legal, aspects of the case, and after examining them it recommended dismissing the complainant's internal appeal.

5. The complainant contends, first, that he has met all the material requirements for the reimbursement of medical expenses; secondly, that the refusal of his claim was in breach of good faith and that the EPO infringed his right to reply.

6. As to his first plea, the medical certificates he bases his claims on are almost identical for each of his daughters and describe their ailments as chronic infections of the respiratory tract, sinusitis and strain-induced backache. Miss Barbara Fessel is said to be suffering also from recurrent bronchitis. The complainant argues that no further medical examination is necessary either by his daughters' own doctor or by any other before, during or after the cure. So he refused the EPO's invitation to have them undergo medical examinations for the purpose of answering the questions raised by Van Breda. The complainant's submission is that all that he was required to do was produce the medical certificates and prescriptions and documentary evidence that his daughters had gone to the spa and undergone treatment there.

7. The complainant is mistaken as to the rights and obligations of insurers and insured. According to general principles of law the insurers are entitled to information which identifies the nature of the ailment and enables them to determine whether the prescribed treatment is appropriate. In this case they were entitled to know what the medical certificates meant by the term "health cure", whether the treatment was to be supervised, whether it was to be followed at intervals prescribed by the doctor or left to the discretion of the insured, and whether the treatment ordered had actually been carried out. Those are medical questions that were within the Invalidity Committee's competence. By contending that the requirements of Article 16 of the collective insurance contract were met with the production of certain documents the complainant suggests that they need not be interpreted. Since the documents he put in evidence raise medical questions that remain unresolved, he is mistaken in arguing that the Tribunal may dispose of the case on purely legal or formal grounds. When, in June 1991, the Organisation called for further medical evidence and arranged for the complainant's daughters to undergo medical examination, there were two courses of action open to him insofar as he did not agree to such examination: either withdraw his claim or ask to have the matter put to the Invalidity Committee in accordance with Article 90 of the Service Regulations. But he merely refused to let his daughters be examined, and that was not compatible with his obligations as claimant.

8. As to his second plea - that the refusal of his claim was in breach of good faith and his right to a hearing - he argues that the four grounds on which the insurers finally relied were made known to the EPO in their letter of 27 February 1991 but not conveyed to him until some four months later. The President's decision should, he says, have been based on grounds on which he had had an opportunity to comment.

9. The evidence before the Tribunal shows that as early as 15 March 1991, when the insurers received information from the complainant bearing directly on the disputed grounds, he was aware of the insurers' reasons for delaying reimbursement and had answered them. Although the insurers refused his claim in a letter of 2 April 1991 on the grounds that its liability covered only "spa" cures - as against cures based on climatic conditions - that reservation was lifted following the Personnel Director's letter of 30 April 1991 in which he took exception to Van Breda's "sudden change of a long and well- established practice". Van Breda's return to the four original - and still unresolved - grounds did not constitute any breach of good faith or of the complainant's right to state his case.

Lastly, the EPO's advice to staff in circular 178, headed "Reimbursement refused by Van Breda", was plain: staff were to seek the insurers' prior approval for cures likely to be expensive and for which subsequent reimbursement "may prove difficult". That the complainant paid no heed to the warning before his daughters took cures, not under a doctor's supervision and in a luxury hotel, shows a lack of care for the consequences of which he has only himself to blame.

His second plea, too, fails.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, Vice-President of the Tribunal, Mr. Edilbert Razafindralambo, Judge, and Mr. Michel Gentot, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 14 July 1993.

(Signed)

William Douglas
E. Razafindralambo
Michel Gentot
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.