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

SEVENTY-NINTH SESSION

In re GOETTGENS

Judgment 1424

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Johannes Karl Wilhelm Goettgens against the European Patent Organisation (EPO) on 3 May 1994 and corrected on 16 May, the EPO's reply of 11 August, the complainant's rejoinder of 4 September and the Organisation's letter of 21 September 1994 informing the Registrar of the Tribunal that it did not wish to enter a surrejoinder;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

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 complainant, a German citizen born in 1928, joined the EPO in 1979 and at the material time held a post as director at grade A5.

In notes dated 20 December 1991 and 8 January 1992 he applied to the Director of Personnel for early retirement for reasons of health as from 1 March 1992. By a letter of 20 January 1992 the Director of Personnel granted his application on behalf of the President of the European Patent Office, the EPO's secretariat.

In a medical certificate dated 13 February 1992 his doctor declared him unfit for work for a period of four weeks. In a letter of the same day to the Director of Personnel he asked to have his retirement put off until the end of March so that he could finish the staff reports on his subordinates which poor health had prevented him from writing. On 17 February the Director of Personnel told him that the start of his retirement could not be changed.

In a letter of 26 February he informed the President that since his doctor had found him permanently unfit for work he wanted to have his case put to the Invalidity Committee under Article 90 of the Service Regulations; he was therefore withdrawing his application for early retirement.

In a reply dated 13 March the Director of Personnel said that the President was unwilling to put off the date of retirement, and he supplied a certificate of 19 February 1992 from the President attesting that the effective date was 1 March 1992.

On 29 May 1992 the complainant lodged an appeal with the Appeals Committee objecting, among other things, to the Administration's refusal to follow the invalidity procedure and to its decision of 13 March. In a report of 4 January 1994 the Committee, while regretting the vagueness of the rules on the invalidity procedure, recommended rejecting his appeal. By a letter of 4 February 1994, which he impugns, the Director of Staff Policy told him that the President had endorsed the Committee's recommendation.

B. Relying on Article 84 of the Service Regulations, the complainant submits that the Administration should have applied the invalidity procedure. Although he was close to retirement he was still a staff member when it became plain that his incapacity was permanent.

Staff members are, on application, entitled under Article 90(2) to have their case put to the Invalidity Committee. By denying him the invalidity procedure the President unlawfully replaced the Committee's appraisal with his own and that was in breach of the complainant's rights.

The EPO's insurance company should have paid him the amount due under Article 84 in the event of invalidity.

He wants the Tribunal to (1) quash the decision of 4 February 1994; (2) award him, plus interest, the amount to which he is entitled under Article 84(1) b) of the Service Regulations as in force up to 10 June 1983 and under Article 11 of the Organisation's Collective Insurance Contract; (3) have his retirement pension converted into an invalidity pension in keeping with Article 14(2) or, alternatively, 14(1) of the Pension Regulations; and (4) grant him compensation for the difference in pension, plus interest, for the period from 1 March 1992 up to the date of payment of the invalidity pension.

C. In its reply the EPO contends that his third claim is irreceivable because it did not form part of the internal proceedings.

His other claims are devoid of merit. Article 13 of the Pension Regulations requires assessment of a staff member's invalidity while he is still serving. Besides, it follows from Articles 62(6), 62(7) and 90(1) of the Service Regulations that the official must have been on sick leave for 12 months in the last three years. Between March 1989 and March 1992 - when he retired - the complainant's sick leave came to a total of only 195.5 days; so he does not qualify for an invalidity pension. Nor is he entitled to payment of the Article 84 benefit.

Far from declaring him permanently disabled the medical certificate of 13 February 1992 merely put him on four weeks' sick leave. He has never submitted any evidence to bear out his allegations of invalidity.

D. In his rejoinder the complainant observes that he has withdrawn his application for early retirement and that twelve months' sick leave is not required before the Invalidity Committee may meet.

CONSIDERATIONS:

1. The complainant joined the staff of the EPO in 1979. His health, which had been poor since 1989, grew worse in December 1991, and he wanted to retire as from 1 March 1992. The Director of Personnel asked him to confirm his wishes in writing, and he did so on 8 January 1992. On 20 January the Director of Personnel acknowledged receipt of his application and granted it on behalf of the President of the European Patent Office. On 13 February a doctor saw him and gave him a certificate declaring him unfit for work for four weeks. The same day he asked the Organisation to defer the start of his retirement until the end of March to allow him to complete unfinished staff reports. But in a reply of 17 February the Administration refused and confirmed his retirement at 1 March. On 26 February he again wrote to the President expressing dismay at the refusal and asking to have his case referred to the Invalidity Committee under Article 90 of the Service Regulations; he also said that if his invalidity was not acknowledged he would withdraw his application for early retirement. The EPO held to the original date of retirement and saw no reason to convene the Invalidity Committee. He thereupon lodged many claims with the Appeals Committee, though he dropped some of them as the proceedings continued.

2. The Appeals Committee concluded that the dispute arose out of the EPO's refusal to apply the procedure for assessing invalidity and to acknowledge the complainant's right to an invalidity pension instead of his retirement pension. Though it expressed regret about the inadequacy of the rules, it recommended rejecting his claims. The President confirmed his earlier decision by another of 4 February 1994. The complainant seeks the quashing of it, the conversion of his retirement pension into an invalidity pension, and payment of various amounts he regards as entitlements.

3. On the evidence the Tribunal is satisfied, as was the Appeals Committee, that the EPO did not infringe any procedural or substantive rule by refusing to put his case to the Invalidity Committee and denying him invalidity benefit under the material rules.

4. The first point is that it was proper for the EPO to set the date of his retirement at 1 March 1992 as he had himself asked. Indeed that seems no longer to be at issue since he waived his claim in his appeal to the Appeals Committee to be kept on until the end of the invalidity procedure.

5. It was proper, secondly, to treat him as having retired under Article 54(1) at his own request rather than under 54(2) on the strength of a finding of total permanent invalidity by the Invalidity Committee.

6. Thirdly, the EPO was under no duty to put the matter to the Invalidity Committee and was, in the circumstances of the case, free to turn down his request that it do so.

7. Article 90 reads:

"1. The Invalidity Committee shall be responsible for determining action to be taken at the expiry of the maximum period of sick leave provided for in Article 62, paragraph 6, of these Regulations, and for determining, for the purposes of these Regulations and of the Pension Scheme Regulations, whether a permanent employee is suffering from permanent invalidity which prevents him from performing the duties attaching to his employment at the Office.

It shall also 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.

2. Cases shall be submitted to the Invalidity Committee either on the initiative of the President of the Office or at the request of the permanent employee concerned."

8. There are no implementing provisions. That may be a pity and may indeed account for the dispute since the complainant believes he has a right under the article to put his case to the Committee with or without the Organisation's consent. What is required is a reasonable construction of the rule that heeds the rightful interests of staff and Organisation alike. For that purpose a distinction is to be drawn between the Invalidity Committee's sundry responsibilities under 90(1). When an official's accumulated total of sick leave goes over the limit in Article 62(6) of the Regulations - namely 12 months within any period of three years - the case will go to the Committee whether it is the President of the Office or the official who refers it. Moreover, since the Committee is competent to determine whether there is such permanent disability as to render unfit for work the official may undoubtedly apply for it to take up the case, provided that the application has substance and in particular unfitness is proven. Lastly, though the Committee is also competent in any dispute over matters of medical opinion, there must nevertheless be a genuine dispute over the official's rights to an invalidity pension.

9. The complainant was not granted more than a total of 12 months' sick leave within three years. He did not ask for a meeting of the Invalidity Committee until 26 February 1992, i.e. three days before going on retirement at his own request, and he had nothing more than a doctor's certificate saying he was unfit for work for four weeks from 13 February. It was not open to him, so near the date of departure, to plead unfitness for duties that were to end anyway the very day after the Administration got his request. Nor did he show that there was a dispute over any medical opinion warranting an application from him for an invalidity pension. True, later certificates declared him unfit for work for further periods in which he was no longer on the Organisation's staff. And in November 1992 the German pension scheme to which he belongs - because he worked in his national civil service before secondment to the EPO - put his disability at 30 per cent. But neither of those facts afforded any grounds for referral of the case to the Invalidity Committee.

10. The conclusion is that it was lawful for the EPO both to grant the complainant a retirement pension at his own request and to refuse to put his case to the Invalidity Committee, and there is no evidence before the Tribunal to support his claim to an invalidity pension. So his claims fail in their entirety, there being no need to rule on the Organisation's objections to the receivability of that one in particular.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public in Geneva on 6 July 1995.

(Signed)

William Douglas
Michel Gentot
Mella Carroll
A.B. Gardner

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