EIGHTY-SEVENTH SESSION

In re Müller-Engelmann (No. 3)

Judgment 1848

The Administrative Tribunal,

Considering the third complaint filed by Mrs Jutta Müller-Engelmann against the European Patent Organisation (EPO) on 10 February 1998, the EPO's reply of 23 April, the complainant's rejoinder of 28 July and the Organisation's surrejoinder of 9 September 1998;

Considering Articles II, paragraph 5, and VII 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. Facts relevant to this case are set out in Judgment 1847 also delivered this day, on Mrs Müller-Engelmann's second complaint. At the material time she was employed by the European Patent Office, secretariat of the EPO, as an examiner at grade A3 in Munich.

On 22 August 1997 the complainant submitted a claim for reimbursement of medical expenses totalling 3,881.12 German marks to the insurance brokers, Van Breda, who are responsible for the day-to-day handling of the collective insurance contract concluded by the EPO.

By a letter of 12 September, the complainant appealed to the President of the Office against the non-reimbursement of those medical expenses within the fifteen-day time span provided for in Article 23 of the collective insurance contract. She asked for reimbursement by Van Breda within ten days or for the Office to take legal action against them to collect the amount receivable plus 14 per cent interest for the delay.

Van Breda refunded 1,090.50 marks, but refused reimbursement of three bills: one dated 21 January 1997 from Runow and Weber, physicians, for 1,190.72 marks; and two bills from a laboratory, Labo Tech, one of 16 December 1996 for 250.59 marks and the other dated 6 January 1997 for 317.63 marks. A note on Van Breda's settlement statement dated 12 September 1997 informed the complainant that for those three they were "waiting for additional information which [they had] required of [her] physician/hospital".

In a letter of 17 September Van Breda informed the complainant that they were "thoroughly looking into" the three bills for which payment was withheld and would let her know the outcome. On 28 September the complainant sent a revised appeal to the President, claiming reimbursement by Van Breda against the three invoices. The Director of Personnel Development acknowledged receipt of her internal appeal 87/97 on 31 October. The complainant says that having received no answer from the President she filed her complaint with the Tribunal.

B. The complainant pleads that her complaint is receivable. Her internal appeal dated 12 September was received by the defendant on 16 September 1997. As the President took no action within sixty days her complaint to the Tribunal is receivable under Article VII(3) of its Statute and Article 109(2) of the EPO Service Regulations.

The complainant pleads that failure to reimburse her expenses is unlawful: the medical services listed on the bills are subject to reimbursement under Article 16 and 20 a) and b) 1.1 of the collective insurance contract.

The bill from Runow and Weber stated a clear diagnosis. It also listed the individual medical services with the relevant date, and their "*GOÄ*-number" (the official billing chart of the medical profession). Van Breda's assertion that it was waiting for further information from the physicians was no reason to leave the claim unsettled. Since the defendant did not tell her what it considered was wrong with the three bills she could not seek clarification herself through her physicians. Van Breda's affirmation in its letter of 17 September that it was "thoroughly looking into" the bills was not enough: it gave no reasons for refusing reimbursement.

Van Breda would, she assumes, have received her claim of 22 August by 25 August. According to Article 23 of the

collective insurance contract Van Breda should give instructions for reimbursement within 15 days, and so the bank transfer should have been executed on 9 September at the latest. Allowing a further week, the complainant's account should have been credited by 16 September: she therefore claims interest for late payment as from 17 September.

First, she seeks the reimbursement by the defendant of the three medical bills: one from Runow and Weber for 1,190.72 marks; and two from Labo Tech for 250.59 and 317.63 marks; and claims interest of 14 per cent per annum from 17 September 1997 on all three. Secondly, she claims compensation for translation and copying costs. Lastly, she asks that the defendant "be liable to pay the actually incurred amount of the Complainant's related non-legal and legal expenses, should such expenses occur".

C. The Organisation in its reply requests the joinder of the complainant's second complaint with this, her third. In both she asks for the reimbursement of medical invoices which Van Breda was unable to refund because its medical adviser did not have all the necessary information relating to the claims.

Her third complaint, it asserts, is irreceivable. In her internal appeal, 87/97, filed on 12 September she only sought interest for late payment against all the invoices, totalling 3,881.12 marks, which she submitted for reimbursement on 22 August. The internal means of redress have not been exhausted, as neither the internal Appeals Committee, nor the Invalidity Committee, which would act as a substitute, have yet met to hear appeal 87/97. The Organisation points out that the Director of Personnel Development acknowledged receipt of her internal appeal on 31 October 1997.

It claims that her complaint is partly unfounded. Citing Judgment 1288, *in re* Fessel, it affirms that insurers are entitled to ask for information to determine if treatment was appropriate and the onus can be on the employee help provide it. Van Breda was entitled to make reimbursement of the invoices dependent on its medical adviser receiving the information required from Runow and Weber and Labo Tech.

Van Breda had written to Labo Tech on 1 October 1997 asking for "a copy of the laboratory results which confirm the ascertained diagnosis", to enable their medical adviser to reach a decision about the reimbursement of the amounts invoiced. They sent a similar letter to Runow and Weber, followed by a reminder to them and to Labo Tech on 24 March 1998. Runow and Weber responded inasmuch as they returned the reminder with a hand-written note on it saying: "We don't have the allowance from our patient to send laboratory results". Labo-Tech has still not responded to requests for information. The complainant is aware of those requests, but it is assumed she will be opposed to the laboratory providing required information too.

On 13 March Van Breda had written to the complainant telling her that their medical adviser needed "a medical report as well as the laboratory results proving the ascertained diagnosis", and told her that if they received no reply they would return her invoices to her. The defendant argues that Van Breda is meanwhile justified in not reimbursing the invoices in question.

Subsidiarily the complaint is partly devoid of substance. By a letter of 8 April 1998 the Directorate of Staff Policy requested Van Breda to pay the complainant interest for three days' late payment - from 9 to 12 September - at 10 per cent on the 1,090.50 marks reimbursed following her claim of 22 August 1997. Under Article 23 of the collective insurance contract instructions should be given for payment within fifteen days: payment does not have to be credited to the payee's account within that time.

The EPO rejects her request for reimbursement of translation costs and legal fees.

D. The complainant in her rejoinder enlarges on her pleas.

She takes the view that the appropriate body to hear her case was the Appeals Committee, rather than the Invalidity Committee. No examination was performed by the EPO's medical officer, and there was no medical dispute between that officer, the complainant or her physician. The Organisation took no steps to convene an Invalidity Committee either.

Her internal appeal did not only relate to interest for late payment, but also to the medical bills at issue. Acknowledgement of receipt of her appeal did not constitute a ruling on the part of the President within the meaning of Article 109 of the Service Regulations.

The complainant does not dispute that Van Breda is entitled to information "for the purpose of examining its obligation to render payment", and has always been prepared to cooperate in obtaining medical findings and laboratory results required to that end. However, the Organisation has no more asked for her cooperation in the procuring of findings, than it has asked her to release her physicians from "their obligation to preserve secrecy".

As the nature of her ailment was identified on the invoices it was clear the services were medical and reimbursement was justified. She claims the EPO is impugning the "diagnoses per se", and refuses therefore to reimburse costs connected with them. It was making the reimbursement of the costs contingent on its acceptance of the diagnosis.

Van Breda, she says, is "obliged" to reimburse the bills because of irregularities she points to. Contrary to what the defendant affirms, Labo Tech did not receive a letter from Van Breda dated 1 October 1997 asking for a copy of the laboratory results; it only received the reminder of 24 March 1998, after the filing of the present complaint. The alleged letter to Runow and Weber of 1 October did not relate to the bill at issue of 21 January. It was only the "reminder" of 24 March 1998 that mentioned it and made it clear that information was needed.

She further asserts that Van Breda "creates the impression that it acts arbitrarily" and was unclear about what it needed to know to come to a decision on the refund. It paid her other Labo Tech invoices without query yet it refused invoices connected in any way with intoxication arising from environmental problems in the European Patent Office in Munich.

The 0.90 marks paid by Van Breda as interest at 10 per cent for three days' interest for late payment on the sum of 1090.50 does not relate to the claims at issue. She claims interest that has accrued since 17 September 1997 at the rate of 14 per cent.

E. In its surrejoinder the Organisation maintains its arguments.

The complainant's internal appeal was dated 12 September 1997, and Van Breda's settlement statement showing that some invoices had not been reimbursed was sent to her the same day. A final decision has not been taken with regard to the contested invoices and so the internal appeal procedure has not been able to follow its normal course.

The Invalidity Committee is the competent body to decide on this case by virtue of the collective insurance contract concluded by the EPO which indicates that Van Breda is responsible for the day-to-day administration of the contract. Van Breda and its medical officer act in lieu of the Office. The Committee can only intervene if a definite refusal to supply information leads to a medical dispute.

Given that "poisoning due to environmental factors is such a controversial issue", Van Breda's medical adviser is justified in requesting from practitioners and laboratories further information "proving the ascertained diagnosis" so that he can decide if the diagnosis is justified. In this case he has not yet received the information he needs.

Contrary to what the complainant affirms, Van Breda's medical adviser did contact the laboratory and Runow and Weber for the information required before 24 March 1998. Labo Tech "admits to having received" - "albeit belatedly" a copy of the letter dated 1 October 1997 from Van Breda and says that it was awaiting instructions from the complainant. Runow and Weber also knew of the medical adviser's requests for information as is clear from the wording of the note written on the reminder letter of 24 March that they returned to Van Breda.

CONSIDERATIONS

1. While the complainant appears to believe this case to be about her right to reimbursement of certain alleged medical expenses, the defendant seems to think that it is a medical dispute which should have come before the Invalidity Committee. In reality the case turns upon the application of well-established and uncontroversial principles of law.

2. On 22 August 1997, the complainant, an employee of the European Patent Office, filed a claim with Van Breda for reimbursement of medical expenses totalling 3,881.12 German marks. Article 23 of the collective insurance contract requires Van Breda to send settlement of such claims within 15 days of receipt. The complainant, on 16 September 1997, lodged an internal appeal dated 12 September in which she sought reimbursement of her expenses together with interest for late payment.

3. On 12 September 1997, Van Breda sent out a settlement note reimbursing the complainant the sum of 1,090.50 marks, an amount which did not cover all the invoices submitted. Van Breda refused reimbursement of the following:

(a) an invoice from Drs Runow and Weber dated 21 January 1997 for 1,190.72 marks. This covers consultation and other services, with the diagnosis that the complainant was suffering from "exposure to solvents and detoxification problems of the liver";

(b) an invoice from Labo Tech dated 16 December 1996, for 250.59 marks, for a "Redox" examination; and

(c) an invoice from Labo Tech dated 6 January 1997, for 317.63 marks, covering a "personal vitalising substance mix".

4. Both in the settlement note and in a letter to the complainant dated 17 September 1997, Van Breda indicated it required additional information on the exact nature of the medical services which had been performed.

5. The complainant's bank account was credited with the amount of 1,090.50 marks on 23 September 1997.

6. Van Breda's inquiries with the laboratory and/or the complainant's medical advisers remain unclear; they claim to have written to the laboratory on 1 October 1997 requesting a copy of the results which confirmed the diagnosis, but the laboratory first denied receiving such letter.

7. On 28 September 1997 the complainant amended her internal appeal taking account of the payment received from Van Breda. She asserts two claims:

(a) Interest for late payment on 1,090.50 marks at the rate of 14 per cent per annum;

(b) Payment of the three above-noted invoices as well as interest at 14 per cent per annum for late payment.

In her internal appeal as amended the complainant questions unequivocally the right of Van Breda to contact her physicians directly to seek information.

8. The complainant's internal appeal does not appear to have proceeded although the record does not reveal what, if any, steps she took to press the matter forward. The present complaint was filed with the Tribunal on 10 February 1998.

9. On 8 April 1998 Van Breda paid the complainant three days' interest at 10 per cent per annum on 1,090.50 marks.

10. While it is not by any means clear that the complainant has effectively exhausted her internal remedies so as to render the present complaint receivable, the Tribunal prefers to deal with this matter on the merits.

11. The claim for late payment interest has clearly been settled. It is accepted by all parties that Van Breda received the complainant's claim on 25 August and that the reimbursement should have been sent to her by 9 September. It was in fact sent on 12 September - three days late. She has now been paid three days interest at 10 per cent and that is more than adequate. Her insistence on continuing with her claim is unfounded.

12. As to the claim regarding the disputed invoices, the law is clear that Van Breda, as representing the insurer, is entitled to any information which identifies the nature of the alleged illness and allows it to determine whether the prescribed treatment is appropriate and necessary (see *in re* Fessel, Judgment 1288 under 7). Of course the complainant is entitled to require that such information only be made available to Van Breda's medical adviser and be treated by the latter in confidence but she is not entitled to withhold from them any right of access whatsoever to the required medical

information. Her unwillingness to allow such access goes against her duty to deal in good faith with her insurers. Moreover, there is no merit whatever to the complainant's argument that because the costs at issue here were incurred in the establishment of a diagnosis they must necessarily be allowed. That argument simply calls into question the existence of the alleged illness and the correctness of its diagnosis.

13. The complaint being without foundation, the question of costs does not arise.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 May 1999, Miss Mella Carroll, Vice-President of the Tribunal, Mr Mark Fernando, Judge, and Mr James K. Hugessen, Judge, sign below, as do I, Mrs Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 1999.

Mella Carroll
Mark Fernando
James K. Hugessen

Catherine Comtet

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