

The Administrative Tribunal,

Considering the fourteenth complaint filed by Ms J. M.-E. against the European Patent Organisation (EPO) on 17 August 2001 and corrected on 22 November 2001, the EPO's reply of 7 March 2002, the complainant's rejoinder of 22 June, and the Organisation's surrejoinder of 17 October 2002;

Considering the fifteenth complaint filed by Ms J. M.-E. against the EPO on 17 August 2001 and corrected on 22 November 2001, the EPO's reply of 7 March 2002, the complainant's rejoinder of 27 June, and the Organisation's surrejoinder of 17 October 2002;

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

Having examined the written submissions and disallowed the complainant's applications for hearings;

Considering that the facts of the cases and the pleadings may be summed up as follows:

A. Some facts relevant to the present cases are set out in Judgment 2046, delivered on 12 July 2001, on the complainant's twelfth complaint. In that judgment, the Tribunal found that her case had been mishandled by the EPO and it ordered that she be awarded 1,000 German marks in moral damages and 500 euros in costs.

In a letter of 3 July 1998 the complainant was informed that, since she had not acted on letters sent to her on 8 and 16 June requesting that she pay her own and the Office's contributions to the social security and pension schemes, her membership in these schemes had ended as from 1 July 1998. On 1 August 1998 the complainant filed an appeal against the decision contained in that letter. This appeal was subsequently registered under the reference RI/74/98. In a letter of 9 December 1998 the President of the Office informed the complainant that he had annulled the decision of 3 July 1998, thereby reinstating her in the social security and pension schemes with retroactive effect from 1 July 1998. The complainant having obtained satisfaction on her main contention by the time the Appeals Committee had heard the appeal, the remaining issues before it were her claims for costs and "reasonable moral damages" in the amount of 10,000 euros. In its submissions before the Appeals Committee the Administration argued that the complainant had failed to show that she suffered any injury entitling her to moral damages. In its opinion dated 5 April 2001 the Committee found that although the complainant had played a substantial part in creating "the situation" it nevertheless recommended an award for moral damages in the amount of 5,000 euros, plus costs. In a letter of 11 May 2001 the Director of Personnel Development informed the complainant that the President had agreed to the payment of costs in part, but not to an award for moral damages. That is the decision impugned in her fourteenth complaint.

Having refused to be examined by one of the members of the Invalidity Committee, the complainant was informed on 8 June 1998 by the Director of Personnel Management that her absence from work would be considered unauthorised until the examination had taken place; consequently, on 16 June the Administration informed her that her salary was being withheld. On 17 December 1998 she informed the Office that she had made an appointment to be examined by the member of the Invalidity Committee; it took place on 8 January 1999. In a letter of 2 February 1999 the complainant filed an appeal against the failure to honour assurances that her salary would be paid after she underwent the examination. It was subsequently registered under the reference RI/66/99. On 9 February the Office informed her that her salary would be paid with effect from 17 December 1998; the arrears were paid into her account on 24 and 26 February 1999. She pressed her appeal, claiming moral damages for the delay in payment. In its opinion dated 5 April 2001, the Appeals Committee found that even though she had been paid the salary arrears, she had suffered an injury from the delay. It recommended awarding her 1,000 euros in moral damages. In a letter of 11 May 2001 the Director of Personnel Development informed the complainant that the President had rejected her appeal. That is the decision she impugns in her fifteenth complaint.

B. In her fourteenth complaint the complainant asserts that her claim for damages arises from the moral injury caused by her exclusion from the Office's social security and pension schemes. She considers the claim justified given the unlawful nature of the decision taken on 3 July 1998.

In her fifteenth complaint she asserts that her claim for damages arises from the moral injury caused by the EPO's failure to honour certain assurances made to her regarding payment of her salary arrears. She considers her claim justified and points out that the Appeals Committee had confirmed that she suffered an appreciable injury from the delay in paying her the arrears.

In both complaints she contends that the President has never provided her with reasons for his decision not to award her moral damages or the remaining legal costs, despite her repeated requests. She notes that in the past the Tribunal has awarded moral damages even when the decision giving rise to the injury had already been quashed. She submits that according to the case law, the Administration has a duty to prevent conflicts from escalating but that the Office "deliberately created the conditions" which led to the decision of 3 July 1998.

In her fourteenth complaint she applies for hearings before the Tribunal to safeguard her legal rights and in her fifteenth she applies for witnesses to be heard.

She asks the Tribunal: to set aside the President's decisions of 11 May 2001 insofar as these conflict with the recommendations of the Appeals Committee in appeals RI/74/98 and RI/66/99; to order the payment of the remaining legal costs of 661.20 German marks, plus interest, for appeal RI/74/98; to order the payment of legal costs, plus interest, for appeal RI/66/99; to order the EPO to pay her reasonable moral damages of at least 5,000 euros for appeal RI/74/98 and at least 1,000 euros for appeal RI/66/99; to order the President of the Office, to the extent that the above claims are not allowed, to provide a separate statement of the reasons why he did not follow the Appeals Committee's recommendations in both appeals; and to award her costs for the complaints before the Tribunal.

C. The EPO replies that there is no foundation for a claim for moral damages in either the fourteenth or the fifteenth complaint. Before the Appeals Committee took up her appeals the Office had already revoked its decision to exclude her from the social security and pension schemes, thereby reinstating her into them, and it had already paid the salary arrears. The Organisation contends that she has not shown that there was any injury suffered beyond the material losses, for which she has already been compensated.

The determination of whether an award for moral damages is justified must be made in the light of the events leading up to it, and the EPO suggests that the complainant was not entirely blameless. As for her fifteenth complaint, the dispute had been settled "fully and finally" with the payment of the arrears. Additionally, a claim for moral damages arising out of the decisions in letters of 8 and 16 June 1998 has already been ruled on by the Tribunal in Judgment 2046.

Concerning her requests for the reasons the President did not accept the Appeals Committee's recommendations, the Office points out that she was provided with ample reasons in the Administration's position paper on her appeals as well as during the course of the hearings before the Committee. It contests her applications for hearings before the Tribunal.

In replies to both complaints the EPO makes a counterclaim for an award of costs, accusing the complainant of abusing the Office's translation facilities with her lengthy complaints before the Tribunal.

D. In her rejoinders the complainant expands her claims for costs to include translation and copying costs. She adds a claim, requesting that the EPO's counterclaim be rejected.

In her rejoinder to her fourteenth complaint she alleges that she was put under financial and psychological pressure to "obey" the will of the Office. The EPO failed to establish a dialogue with her, and instead resorted to threats of disciplinary action.

She maintains that her claims for moral damages are justified. Concerning her fourteenth complaint she asserts that the EPO knew at the time the decision of 3 July 1998 was taken that it was unlawful, but it was taken anyway. That decision was detrimental to her and caused her stress. She denies that her claim for moral damages in the fifteenth complaint arises out of the same impugned decision for which she had been awarded moral damages in

Judgment 2046. She had made it clear in appeal RI/66/99 that she was appealing against the failure to honour the assurances made to her that if she fulfilled certain conditions her salary payment would be resumed, whereas the appeal leading to Judgment 2046 was based on the unlawfulness of the Office's decisions.

The EPO is now asking the Tribunal to order that she pay for translations for which, she contends, she had been given confirmation that they would be done free of charge. If the Office's translation facilities cannot be used for the purposes of complaints before the Tribunal, then employees whose mother tongue is neither English nor French run a risk of higher costs which other employees will not have to bear. She denies that there has been an abuse of any kind in her use of the translation facilities and in fact she has tried to keep her submissions as short as possible.

E. In its surrejoinder on the fourteenth complaint the Organisation denies that it was unwilling to communicate with the complainant and settle their disputes, and it accuses the complainant of the same. It maintains its position on both complaints that nothing put forward by the complainant warrants an award for moral damages. It reiterates that its counterclaim for an award of costs is justified.

## CONSIDERATIONS

1. In 1998 the Organisation suspended the complainant's membership of the Office's social security and pension schemes. As a result, it ceased making the employer's contribution thereto. That decision was subsequently recognised as unlawful and was revoked by the EPO. The complainant then claimed costs and damages. In her fourteenth complaint, she challenges a final decision in which the President agreed to reimburse some of her legal costs but rejected her claim to damages.

2. In her fifteenth complaint, the complainant challenges a final decision of the President, refusing her moral damages and costs arising out of her appeal filed against the suspension of the complainant's salary for a time because she was refusing to be examined by a particular doctor in the course of ongoing invalidity proceedings.

3. The two complaints raise identical issues and the Tribunal accordingly orders them joined.

4. The issues are also identical to those raised and definitively dealt with by the Tribunal in Judgment 2046. All three disputes have at their origin a disagreement between the complainant and the EPO regarding the appointment of the third member of the Invalidity Committee which was looking into the question of the complainant's disability. That issue was resolved, partly in favour of the complainant but on a view of the law which differed from her own. In the course of its judgment, the Tribunal, having been informed by the parties of events subsequent to the disagreement, dealt with the entire dispute which the following considerations make clear:

"8. No doubt the complainant's case was mishandled by the EPO. Its decisions to declare her absence as 'unauthorised', to withhold her salary and to demand payment of contributions to the social security schemes, were declared unlawful by the EPO itself and it took the necessary measures to remedy the situation. Accordingly, the complainant did get her retroactive salary, was reinstated into the social security schemes, and got her legal costs. Her complaint relates exclusively to the fact that she was not awarded damages.

9. However, the complainant was not entirely blameless. Once it was clear that there was a stalemate in the process for appointing the third member of the Invalidity Committee it was obvious that some solution had to be found. The Service Regulations were, at the material time, silent on the subject (a defect which has since been remedied) but virtually all codes of arbitration, both legislative and private, contain a procedure for having a court or other impartial third party appoint a third arbitrator in the case of deadlock. Once it had become clear that no third member could be appointed in the case at bar, it was entirely reasonable for the EPO to proceed by analogy to such codes. Both parties have now correctly retreated from their initial extreme positions.

As regards the complainant's claim for not less than 2,000 German marks, the Tribunal considers that she is entitled to 1,000 marks in moral damages for the unlawful actions of the EPO. She is also entitled to an award of costs which is set at 500 euros."

5. The award made by the Tribunal in that case was intended to, and did, take account of the complainant's entire claim arising out of the EPO's "unlawful actions" in withholding her salary for a time and suspending her

membership in the social security and pension schemes.

6. That decision was released on 12 July 2001, prior to the filing of the present complaints. Even if the complainant's claims had some merit while they were in the internal appeal stage (and even at that stage they were obviously duplicitous), their continuation before the Tribunal following receipt of Judgment 2046 was vexatious. It is fortunately rare to see such a flagrant example of abuse of the Tribunal's process. The Tribunal has previously admonished this complainant (see Judgment 1847) for her overeagerness to engage in litigation and "time-wasting disputation". The time has come for more serious measures.

7. The EPO has asked for costs. It states, not unreasonably, that the complainant's numerous internal appeals, many of which are still pending, have the effect of paralysing both its legal and translation services. In Judgment 1884 the Tribunal commented as follows:

"8. The Tribunal has never heretofore imposed a costs penalty upon a complainant. However, it asserts unequivocally that it possesses the inherent power to do so as part of the necessary power to control its own process. Clearly, such power must be exercised with the greatest care and only in the most exceptional situations since it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of costs. That said, however, there is another side to the coin: frivolous, vexatious and repeated complaints to the Tribunal absorb the latter's resources and impede its ability to deal expeditiously and fully with the many meritorious complaints which come before it. They are also, of course, costly and time-wasting for the defendant organisation.

9. In the present case the Organisation has not asked for an award of costs but has simply sought a declaration that the complaint is an abuse of process. The Tribunal makes such a declaration and further declares that in future it will award costs against complainants in appropriate cases if they are sought."

8. The time foreseen in the latter passage has now come. The complainant had thirteen complaints pending before the Tribunal at the opening of its present session and at least ten appeals before the EPO's Appeals Committee. The Tribunal will not, of course, impose costs penalties in every case in which a persistent litigant such as the complainant loses, for some disputes will no doubt be at least arguable. But where, as in the present case, a complainant has actually had success before the Tribunal (as the complainant did in Judgment 2046) and nonetheless refuses to accept the limitations which such success imposes, that complainant may expect to have cost consequences. Because this is the first time the Tribunal has had to act against the present complainant, the costs awarded to the Organisation will be relatively nominal, but that will not necessarily be the case in the future. The Tribunal will order the complainant to pay the EPO the sum of 100 euros in costs. The EPO may recover the award by withholding it from any amounts due to the complainant now or in the future.

## DECISION

For the above reasons,

1. The complaints are dismissed as an abuse of process.
2. The complainant shall pay the EPO the sum of 100 euros in costs.

In witness of this judgment, adopted on 7 November 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Florida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

Michel Gentot

James K. Hugessen

Florida Ruth P. Romero

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 13 February 2003.