

The Administrative Tribunal,

Considering the complaint filed by Mr P.F. E. against the European Patent Organisation (EPO) on 17 July 2001 and corrected on 18 January 2002, the EPO's reply of 27 March, the complainant's rejoinder of 27 June, and the Organisation's surrejoinder of 17 October 2002;

Considering the second complaint filed by the complainant on 17 July 2001 and corrected on 18 January 2002, the EPO's reply of 27 March, the complainant's rejoinder of 27 June, and the Organisation's surrejoinder of 17 October 2002;

Considering the third complaint filed by the complainant on 17 July 2001 and corrected on 18 January 2002, the EPO's reply of 21 March, the complainant's rejoinder of 5 June, and the Organisation's surrejoinder of 30 August 2002;

Considering the fourth complaint filed by the complainant on 17 July 2001 and corrected on 18 January 2002, the EPO's reply of 21 March, the complainant's rejoinder of 5 June, and the Organisation's surrejoinder of 30 August 2002;

Considering the supplementary comments of 24 March 2003, relevant to all four complaints, submitted by the EPO at the Tribunal's request and considering the Registrar's letter of 28 March 2003 inviting the complainant to respond to these comments, to which he did not reply;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's applications for the hearing of witnesses;

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

A. The complainant is an Austrian national born in 1951. He entered into the service of the European Patent Office, the EPO's secretariat, on 1 May 1982 as a formalities officer. At the material time his duty station was Directorate-General 4 (DG4) in Munich, Germany. He was dismissed with effect from 1 July 2000.

On 7 December 1998 the EPO received a letter from the complainant's lawyer explaining the complainant's absence from work since 16 November 1998. It would appear that the complainant was experiencing problems with the German authorities. On 7 December the Vice-President in charge of DG4 sent a registered letter to the complainant informing him that, pursuant to Article 95 of the Service Regulations for Permanent Employees of the European Patent Office, the President of the Office had decided to suspend him from service with immediate effect and that his salary was being reduced by 30 per cent. On 5 February 1999 the Principal Director of Personnel informed the complainant on the President's behalf that his salary would be reduced by 50 per cent as from 8 February. Furthermore, concluding that his "recent behaviour" was in breach of his general duties as a staff member, a Disciplinary Committee was being convened to review the complainant's case. He was barred from entering the premises of the EPO without prior permission.

In its opinion dated 12 January 2000 the Disciplinary Committee found that the complainant had breached the obligations imposed on him as a permanent employee of the EPO. It unanimously recommended that he be dismissed in accordance with Article 93(2)(f) of the Service Regulations. In a meeting held on 2 February 2000 the complainant was orally informed that he was being dismissed with effect from 1 July 2000. In a letter dated 9 February 2000 the President of the Office informed the complainant that, having carefully studied all aspects of

his case, he considered the complainant's behaviour to be a serious breach of his duties as a staff member. Consequently, he was dismissing the complainant with effect from 1 July 2000. This letter was sent by registered mail but was subsequently returned to the EPO as undeliverable. In the meantime, by a letter of 5 February the complainant informed the Office that he would not be at his home address for several weeks. Other correspondence was sent to the complainant on 23 February but it was also returned to the EPO as undeliverable. The letter of dismissal was sent again on 10 March and the complainant acknowledged receipt of it on 24 March.

On 10 June 2000 the complainant wrote to the Principal Director of Personnel, stating that he had been on "continuous sick leave" since 18 January 1999; therefore, he wished to know if any steps had been taken to set up an Invalidity Committee under Article 62 of the Service Regulations. Having received a negative reply from the Principal Director in July 2000, on 11 September 2000 the complainant filed an internal appeal with the President against the decision not to convene an Invalidity Committee. The appeal was registered under the reference RI/70/00. In its opinion dated 13 March 2001 the Appeals Committee found by a majority that, as the complainant had been suspended from service as from 7 December 1998 he could not have been on sick leave from 18 January 1999. Thus the Organisation was correct not to convene an Invalidity Committee. The Appeals Committee recommended dismissing his appeal. The Director of Personnel Development informed the complainant in a letter of 26 March 2001 on the President's behalf that internal appeal RI/70/00 had been rejected. That is the decision the complainant impugns in his first complaint.

On 5 February 2000 the complainant had filed an internal appeal contesting the legitimacy of the disciplinary proceedings leading to his dismissal. This appeal was registered under the reference RI/6/00. On 27 April 2000 he lodged another appeal against the Organisation's failure to assist him - on the basis of Article 28(1) of the Service Regulations - with his problems with the German authorities (registered under the reference RI/31/00). On 6 May 2000 he filed an appeal contesting the validity of the decision to dismiss him (registered under the reference RI/29/00). In its opinions dated 13 March 2001 the Appeals Committee recommended dismissing the appeals. In a letter of 28 March 2001 the Director of Personnel Development informed the complainant on the President's behalf that these internal appeals had been rejected. That is the decision impugned in his second complaint.

On 24 May 2000 the complainant had filed an internal appeal (registered under the reference RI/30/00) against a decision not to comply with his request to have his dismissal date changed to take into account the fact that he did not receive the written notification of his dismissal until approximately six weeks after it was first sent out. In its opinion dated 13 March 2001 the Appeals Committee recommended by a majority to dismiss the appeal. The Director of Personnel Development informed the complainant in a letter of 28 March 2001 on the President's behalf that internal appeal RI/30/00 had been rejected. That is the decision impugned in the third complaint.

On 31 December 1999 the complainant had filed an internal appeal against the implementation by the EPO of a salary attachment for the non-payment of maintenance for his children. This appeal was registered under the reference RI/127/99. In its opinion of 13 March 2001 the Appeals Committee unanimously recommended rejecting the appeal. The Committee considered that the subject matter of this appeal - the right of the EPO to implement a salary attachment at the request of a national court - had already been implicitly dealt with in a previous appeal filed by the complainant. In a letter of 28 March 2001 the Director of Personnel Development informed the complainant on the President's behalf that appeal RI/127/99 had been rejected. That is the decision impugned in his fourth complaint.

B. In his first complaint the complainant contests the final decision taken in appeal RI/70/00 upholding the decision not to convene an Invalidity Committee to determine his fitness for work. He says that he was suffering from a serious illness and could not perform his duties and that he had provided the EPO with medical certificates attesting to his unfitness for work as from 18 January 1999. He considers that this rendered the suspension "superfluous and unnecessary". The EPO should have convened an Invalidity Committee. Since it did not, it was in breach of the Service Regulations and of the duty of care it owed him. He alleges that he was repeatedly told that he must remain in Munich because he was considered to be "on active duty". Furthermore, he learned during the Appeals Committee hearings that the medical certificates submitted by him had been removed from his personal file; therefore, he has been wrongfully denied the right to prove that he had been on "certified sick status" for more than 12 months.

In this complaint he seeks the quashing of the President's decision not to convene an Invalidity Committee. He asks that such a Committee be convened, that he be paid his full salary from 18 January 1999 until the date decided by

the Invalidity Committee and that all medical certificates submitted by him be reinserted in his personal file with copies given to him. He also claims moral damages and costs.

In his second complaint he argues that the disciplinary proceedings against him did not conform to the Service Regulations. His dismissal was not justified and he was not given sufficient reasons for it; he denies that he committed a breach of his obligations as a permanent employee. He also asserts that, according to the Tribunal's case law, a staff member cannot be separated from service while on sick leave. The issues arising from his sick leave should have been resolved before any legal decision was taken regarding his dismissal.

In his second complaint he asks the Tribunal to quash the President's decision, to declare the disciplinary proceedings unlawful, to order his reinstatement from the date of separation onward, and to order that he be paid his full salary from that date onward. He also claims moral damages and costs.

In his third complaint he contests the notification period of his dismissal. Even though the written notification of his dismissal is dated 9 February 2000, he did not receive it until 24 March. Thus, the notification was not in conformity with the Service Regulations, which states that the decision should take effect on the first day of the fifth month following the date of notification. Having informed the EPO by letter that he would not be available at his home address, it is not his fault if the Organisation did not use a different way to inform him of the decision. He alleges that the Organisation intentionally mishandled the situation in order to save a full month's salary.

He seeks the quashing of the President's decision and he asks that the effective date for his dismissal be changed to 1 August 2000. He claims his full salary for the month of July 2000 and costs.

In his fourth complaint he objects to an attachment made on his salary, pursuant to a court order, for the non-payment of child maintenance. He says that the attachment order came from a German court not competent to issue such an order; the EPO should have investigated the order before implementing it. He alleges that he had been providing maintenance payments for his children and that the Organisation was aware of this fact.

He seeks the quashing of the President's decision, compensation for the financial losses he has suffered, moral damages, and costs.

C. In all four of its replies, the EPO argues that the complaints were filed out of time and are therefore irreceivable. The Organisation had sent the final decisions of the President on the complainant's internal appeals by registered mail; the advice of delivery show that he received these decisions on 5 April 2001, so he filed his complaints too late. The EPO offers to provide the original advice of delivery should the Tribunal so wish.

On the merits, the EPO argues that the complaints are unfounded. As for the first complaint it says that it was correct not to convene an Invalidity Committee. The complainant had been suspended as from 7 December 1998. Despite the fact that his illness would have prevented him from working, it does not have the effect of changing his status on suspension. Regarding the medical certificates, the Organisation asserts that such documents are not kept in the personal file, but in "special cupboards". In any event, the certificates' location changes nothing in the complainant's case because they could not entitle him to sick leave.

As for the second complaint, it asserts that there was no breach of the rules or procedures during the disciplinary process; the complainant has confused the different stages of the disciplinary procedure. Furthermore, his dismissal was sufficiently justified and reasoned. Regarding his assertion that the Office is not entitled to dismiss an employee on sick leave, the EPO reiterates that he was not on sick leave, but suspended from service.

As for the third complaint the Organisation submits that the complainant had been orally notified of his dismissal in a meeting held on 2 February 2000. He was well aware that a letter would be sent out shortly thereafter. Written notification was then sent to him by registered mail on 9 February; this letter crossed in the mail with the complainant's letter informing the Office that he would not be at his home address for a few weeks. When a further letter came back as undeliverable, the Office waited until 10 March before resending in a single envelope all the letters that had been returned. It received confirmation that the complainant had got it on 24 March 2000.

On the fourth complaint, the Organisation points out that permanent employees benefit from diplomatic immunity during the performance of their official duties, but this immunity is generally waived in the case of a court ordered salary attachment for non-payment of child maintenance. It says that it correctly applied its rules and procedures. The complainant had the opportunity to contest the validity of the attachment before the courts; the fact that he was

unsuccessful in this regard is proof in its own right that his arguments are invalid. The EPO adds that he has never presented it with a judgment from a national court on this issue in his favour. Lastly, it states that its records regarding maintenance payments are limited to proving that a permanent employee has provided the amount required to receive a dependants' allowance.

In its four replies the EPO makes a counterclaim, asking the Tribunal to sanction the complainant by ordering him to bear all costs of the proceedings, including those of the EPO.

D. In his rejoinders the complainant asserts that he filed his complaints in time. What he received on 5 April 2001 was the opinions of the Appeals Committee on his various appeals. He did not receive the final decisions regarding these appeals until 30 April. He says that any information on the postal receipts has been added by the EPO after the fact, which constitutes falsification of evidence. He points out that he had received many letters with postal receipts from the EPO, so he is well aware of how they are presented. In any event, there is no proof of what was truly inside the envelopes, regardless of what was indicated on the receipts.

In the rejoinder on his first complaint he submits that he first requested an Invalidity Committee to be convened in December 1999, not in June 2000 as alleged by the EPO. He presses his pleas and claims.

In his second rejoinder he maintains his plea that the correct disciplinary procedure was not followed, therefore his dismissal is not lawful. He presses his argument that a permanent employee cannot be dismissed while on sick leave.

In the third rejoinder he says that he had officially notified his local post office of his absence from his "place of delivery". Thus all registered mail sent to him was duly returned. The EPO had been aware that at the material time he had been in Munich, and not in Vienna. It should have tried to deliver the notification to him there. Although admitting that he had refused to provide the Office with a local address, he says he "would have been willing" to go to the Office to pick it up if he had been asked to do so.

In the fourth rejoinder, the complainant states that the Organisation has misunderstood the issue. He is not challenging the legality of the salary attachment but the fact that the EPO has paid out sums to third persons not entitled to receive them, thereby causing him financial losses. He maintains that the attachment order is not valid. He alleges that he has challenged the order in the national courts but that his case has not yet been heard.

E. In all four surrejoinders the Organisation maintains that the complaints are time-barred. It submits that there was indeed reference information written on the advice of delivery receipts at the time the letters were sent to the complainant. Such information is necessary for identification purposes when the receipts are returned to the EPO. It adds that the complainant does not deny that he signed receipts on 5 April 2001. The information regarding the sender was different on the receipts relating to his internal appeals than that of the receipts relating to the final decisions.

In the surrejoinder on the first complaint the EPO states that the complainant had not reached the maximum allowable sick leave under Article 62 because he had been suspended from service with effect from 7 December 1998. Since he was not on extended sick leave it was correct not to convene an Invalidity Committee. As for his allegations regarding his personal file, it informs the Tribunal that medical certificates are never kept in personal files as it would be inappropriate to allow such information to be seen by a staff member's hierarchical superiors, who have access to personal files. In any event it gave him copies of these certificates whenever he requested.

In its second surrejoinder the Organisation maintains that the proper disciplinary procedures were followed. It reiterates that the complainant was not on sick leave, so it was not barred from dismissing him.

In its third surrejoinder the EPO asserts that after the meeting on 2 February 2000 the complainant was well aware that an important letter regarding his dismissal was to be sent. He was therefore under an obligation to ensure that registered mail could have been delivered to him during his absence, at the very least by designating a representative to collect such mail. By his actions he hindered the Organisation in its attempts to notify a staff member of a decision, thus "trying to manipulate the date" of notification. Even the complainant has acknowledged as much that he refused to provide the EPO with an address where he could be reached in Munich.

In its surrejoinder on the fourth complaint the Organisation develops its argument relating to the irreceivability *ratione temporis* of the complaint. It adds subsidiarily that the internal appeal leading to this complaint was in fact

time-barred. Consequently, it is irreceivable on this ground too. On the merits, it points out that the complainant has tried to make a distinction between the act of withholding sums from his salary and the act of paying these sums to a third party. The two acts cannot be disassociated in such a manner; therefore, he is indeed contesting the salary attachment. The EPO says it was correct to implement the salary attachment.

F. In supplementary comments submitted at the request of the Tribunal, the EPO provides the original advice of delivery receipts showing 5 April 2001 as the date the complainant received the President's final decisions on his internal appeals. It was on 22 March 2001 that he had received the opinions on his internal appeals. It supplies this postal receipt as well.

CONSIDERATIONS

1. By these four complaints, the complainant impugns four final decisions by the President of the Office on four separate but related internal appeals. While the substantive issues raised differ from one case to another, they all have in common the same issue of receivability. The Tribunal orders them joined.
2. The complaints were all filed on 17 July 2001. Their receivability depends on the date on which the complainant was notified of the impugned decision in each case.
3. The first complaint corresponds to internal appeal RI/70/00, on which the Appeals Committee issued an opinion on 13 March 2001. On 26 March 2001 the President followed the Committee's recommendation and refused the appeal. The date on the advice of delivery (i.e. the date on which it was sent) is 27 March 2001. It was signed by the complainant as received on 5 April 2001 and sent out by the Vienna Post Office on the same day. On the back of the advice of delivery, there is a handwritten reference to "RI/70/00 of 26.03.01".
4. The second complaint corresponds to internal appeal RI/29/00, on which the Appeals Committee issued an opinion on 13 March 2001. In its opinion the Committee recommended rejecting internal appeals RI/29/00 and RI/6/00, the latter of which is not the subject of any complaint before the Tribunal. Although the translation of the President's decision is not dated, the original letter indicates that he decided to reject the appeal on 28 March 2001. The President's decision lists internal appeals RI/29/00 (the appeal at issue in this complaint), as well as RI/127/99, RI/6/00, RI/30/00 and RI/31/00. The date on the advice of delivery (i.e. the date on which it was sent) is 29 March 2001. It was signed by the complainant as received on 5 April 2001 and sent out by the Vienna Post Office on the same day. On the back of the advice of delivery, there is a handwritten reference to "RI/29/00" (the appeal at issue in this complaint) as well as the four other internal appeal numbers referred to above.
5. The third complaint corresponds to internal appeal RI/30/00, on which the Appeals Committee issued an opinion on 13 March 2001. On 28 March 2001 the President refused five internal appeals, including the appeal at issue in this complaint. The advice of delivery is the same as in the second complaint. The date it was sent is 29 March 2001. The date it was signed as received is 5 April 2001. On the back, there is a handwritten reference to "RI/30/00" (the appeal at issue in this complaint), along with four other internal appeal numbers.
6. The fourth complaint corresponds to internal appeal RI/127/99, on which the Appeals Committee issued an opinion on 13 March 2001. On 28 March 2001 the President refused five internal appeals, including the appeal at issue in this complaint. The advice of delivery is the same as in the second and the third complaints. The date it was sent is 29 March 2001. The date it was signed as received is 5 April 2001. On the back, there is a handwritten reference to "RI/127/99", along with four other internal appeal numbers.
7. To summarise the above: the complainant received two packages on 5 April 2001. In one, reference is made to internal appeal RI/70/00, the subject of his first complaint. In the other, reference is made to internal appeals RI/29/00, RI/30/00, RI/127/99, RI/6/00 and RI/31/00, the first three of which are the subjects of his second, third and fourth complaints respectively.
8. In support of its plea of irreceivability, the EPO produced the two post office advice of delivery receipts signed by the complainant on 5 April 2001. In an attempt to refute this evidence, the complainant says that he only received the President's impugned decisions on 30 April 2001 and that the material received by him on 5 April was simply the opinions of the Appeals Committee. He also suggests that the references to the internal appeal numbers on the back of the receipts were only added after the fact, but, as will appear, his assertion in this respect is wholly

implausible.

9. In response to a request for additional evidence from the Tribunal, the EPO has produced a further advice of delivery receipt signed by the complainant on 22 March 2001. This also bears on the back reference to the four internal appeal numbers corresponding to these four complaints. Although he was given an opportunity to do so, the complainant has not commented on this new material within the time given to him for that purpose. Since this new document pre-dates the President's decisions of 26 and 28 March 2001 and is in the same form as the receipts dated 5 April 2001, it is now clear that the complainant is wrong when he says that the documents received on 5 April were the Appeals Committee's opinions and that the EPO has somehow falsified the postal receipts after the fact. Indeed, if either party has attempted to mislead the Tribunal, it is not the EPO.

10. The complainant's further argument that he only consulted his staff adviser in early May as support for his contention that he did not receive the impugned decisions until 30 April is unconvincing. Whatever may have been his reason for consulting his adviser when he did and not at some other time, the date of such consultation is of no assistance in determining the date of receipt of the impugned decisions or in contradicting the complainant's own signatures on the relevant documents.

11. Accordingly, the complaints were filed out of time and are irreceivable. The defendant's counterclaims for costs should be dismissed.

DECISION

For the above reasons,

1. The complaints are dismissed.
2. The EPO's counterclaims are also dismissed.

In witness of this judgment, adopted on 16 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet