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

NINETY-SIXTH SESSION

Judgment No. 2290

The Administrative Tribunal,

Considering the third complaint filed by Mr A. R. against the European Patent Organisation (EPO) on 9 December 2002, the Organisation's reply of 18 March 2003, the complainant's rejoinder of 16 April and the EPO's surrejoinder of 9 May 2003;

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

Having examined the written submissions;

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

A. The complainant, a Spanish national born in 1959, joined the European Patent Office, the EPO's secretariat, in 1991. He is an examiner at grade A3.

On 30 May 2000 he put in a claim for reimbursement of the cost of a set of spectacle frames for his wife. In its statement of account dated 9 June, Van Breda, the insurance brokers responsible for the day-to-day administration of the Collective Insurance Contract for EPO employees, informed him that only one set of frames could be refunded per period of two years (on the basis of a flat rate of 82.5 German marks). One such refund had already been made during the current two-year period, in July 1999.

On 31 May 2000 the complainant submitted a claim for reimbursement of expenses incurred for medical tests, again for his wife, amounting to 49.82 marks. According to Van Breda's statement of account of 13 June 2000, these expenses were refunded at 80 per cent, leaving a balance of 9.96 marks (i.e. 5.09 euros) which remained at the complainant's charge.

After an exchange of letters, the complainant lodged an internal appeal on 30 January 2001 against Van Breda's refusal to pay the flat rate of 82.5 marks and to refund the full cost of his wife's medical tests. He also asked the Office to urge Van Breda to make sure that the insurance contract was applied correctly. The Appeals Committee, to which the matter was referred, recommended on 19 September 2002 that the President of the Office reject the appeal. On 30 September 2002 the President endorsed the Committee's recommendation. That is the impugned decision.

B. The complainant draws attention to the fact that the Collective Insurance Contract stipulates, in paragraph 5.2.3 of Article 20, that frames are refunded at a "[f]lat rate of DEM 82.50 for a maximum of one set of frames per person per period of two insurance years". He takes this to mean that the base date for calculating these two-year periods should be the initial date of the insurance contract, that is, in his wife's case, 29 December 1993. This would entitle him to a refund for a set of frames for his wife for the period running from 29 December 1999 to 28 December 2001. Since the first refund was made in July 1999, in his view it should not be included in that period.

With regard to his wife's medical tests, he contends, on the basis of a dictionary definition, that they should be considered as histological tests, which are subject to 100 per cent reimbursement according to paragraph 4.3 of Article 20, and not as laboratory (i.e. cytological) tests. According to him, this is a legal matter concerning the interpretation of the terms of the contract rather than a medical issue, so that it is "unacceptable" for the Appeals

Committee simply to reiterate the opinion of Van Breda's medical adviser.

The complainant asks for oral hearings and he seeks reimbursement of the flat rate of 82.5 marks for the purchase of a set of frames as well as the refund of the outstanding balance of 9.96 marks representing the 20 per cent unrefunded expenses for the disputed tests.

C. In its reply the EPO contends that the complaint is irreceivable on two counts. Firstly, the internal appeal against the decision not to refund the flat rate for the spectacle frames was not lodged in time. The complainant was informed in the statement of account of 9 June 2000 that his request for a refund had been rejected, but lodged his appeal only on 30 January 2001. The appeal is therefore time-barred. Secondly, the precise definition of the tests is a medical matter, which lies outside the scope of the Appeals Committee, as the latter itself recognises. The complainant should have raised the issue with the Invalidity Committee if he disagreed with the opinion of Van Breda's medical adviser.

In subsidiary arguments on the merits, the defendant explains that, for the sake of efficiency and simplicity, the two-year insurance period referred to in paragraph 5.2.3 of Article 20 of the Collective Insurance Contract is calculated on the basis of calendar years. Since the complainant's wife signed her contract on 29 December 1993, the first period ran from 1 January 1993 to 31 December 1994. According to that method of calculation, the complainant's claim of 30 May 2000 fell within the same two-year insurance period as the previous refund of July 1999 (i.e. the period from 1 January 1999 to 31 December 2000).

As far as the claim for reimbursement of the laboratory tests is concerned, the EPO points out that the complainant has contested the same issue with Van Breda on a previous occasion. The insurance brokers had then agreed to refund the amount concerned in the light of further information supplied by the complainant's wife's doctor. It therefore recommends that the complainant should use the same approach in the present case.

D. In his rejoinder the complainant argues that reducing a benefit period running in theory for a whole year to a mere three days (from 29 to 31 December 1993) is a form of abuse which has caused him injury.

He maintains, furthermore, that identifying the type of test for which a refund is claimed is not a medical matter but concerns the interpretation of the terms of a contract. Since histology is the study of tissues and living cells, it fully covers cytology, which is the study of living cells only. This means that a cytological test must also be considered a histological test, subject to 100 per cent reimbursement, as stipulated in paragraph 4.3 of Article 20 of the Collective Insurance Contract. He states that this view is supported by the definition given by Van Breda's own medical adviser.

E. In its surrejoinder the defendant maintains its objection to receivability.

Subsidiarily, it reiterates its argument whereby insurance periods are calculated on the basis of two calendar years. While it is true that in the present case the first insurance year (1993) was "largely notional" in view of the fact that the complainant's wife was covered only from 29 December, that does not make the method of calculation unlawful. In fact it entitled her sooner to a further refund. So the complainant cannot claim to have suffered any injury in that regard.

The actual definition of the tests, however, should be left to the pathologist who actually carries out the medical tests. The dispute cannot be solved merely by reference to two definitions given in a French dictionary. The defendant argues that in maintaining that all cytological tests are in fact histological tests, the complainant not only effaces any distinction between the two terms but also assumes a degree of medical competence; in addition, he distorts the views of the medical adviser.

CONSIDERATIONS

1. In his complaint, the complainant implicitly requests that the impugned decision be quashed and that he be granted the benefits he was denied. He argues that the definition of the disputed laboratory tests is a legal matter and that both the Office and the Tribunal are qualified to interpret the notion of "histological tests", which, in his view, by definition also comprise "cytological tests".

The Organisation submits that the complaint is irreceivable, on the grounds firstly that the internal appeal against the decision refusing the flat rate refund for the cost of a set of spectacle frames was not lodged in time, and secondly that the question of defining the type of test carried out, which is a medical matter, should have been raised with an invalidity committee and not with the Appeals Committee, which is not competent to deal with such matters. Subsidiarily, it calls for the complaint to be dismissed for the reasons given under C, above.

2. The oral hearings requested by the complainant are not necessary, since the parties have had every opportunity to express their views in writing during their two exchanges of briefs.

3. The Organisation's plea based on the lateness of the internal appeal is unfounded, as the Appeals Committee rightly recognised. This is because the insurance representative is not an organ of the Organisation, able to take decisions in the meaning of the Office's Service Regulations for Permanent Employees. Decisions concerning insurance benefits are taken by the Office, and more specifically by its President, in accordance with Article 83 of those Regulations. In the circumstances, the complainant indicated in his request that he wished to appeal in the event of a refusal. In doing so, he acted in good time.

4. The question of the flat rate refund for a new set of spectacle frames requires an interpretation of the Collective Insurance Contract.

To that end, it is necessary to determine the meaning which may reasonably be given to the clause of a contract. In case of doubt, it is accepted that, in accordance with the principle of good faith, ambiguous clauses should be interpreted to the detriment of the party which drafted the contract. This principle applies chiefly to non-negotiable standard contracts; it needs to be applied more circumspectly if the contract has been negotiated at length by well-informed parties, as was undoubtedly the case for the collective contract in question, which was entered into by a major organisation and an insurance broker, even though the insured themselves are not direct parties to the contract.

In this case, it cannot be deduced with certainty, from the wording of the Collective Insurance Contract, how the expression "period of [...] insurance" should be interpreted when considering the limits of the insurer's refunds, bearing in mind that these are in fact recurring costs for which the collective contract endeavours to establish a ceiling. A similar notion is expressed in paragraphs 1.1, 1.2, 1.3, 4.6, 4.7, 5.1 and 5.5 of Article 20 of the contract, without any further light being shed on what is meant by the "period of [...] insurance". Nor is paragraph 4.8 any more specific ("once every five years"). Even paragraph 5.1, which in the case of dental prostheses allows reimbursement "per period of two insurance years, the first period ending on 31 December 1980", does not make it absolutely clear how the "period of [...] insurance" should be calculated beyond that date in the case of individual contracts starting during the year.

In the absence of any information enabling the exact meaning of that expression to be established, the Tribunal must keep to a literal interpretation of the terms used in the contract. Since the clauses are intended for the use of the insured, it is a question of ascertaining how the latter should understand the terms. Since there is no indication of any method of calculation used by the insurers and containing a reference to calendar years, the expression "period of [...] insurance" must be understood as the period during which the person concerned has been insured, that is to say, starting from the day when he began to enjoy insurance cover.

Thus, during the two-year period starting 29 December 1999, the complainant's wife received no refund, and the disputed claim is therefore valid.

The Tribunal would urge the Organisation to remove any ambiguity regarding the scope of the collective contract, either by explaining the meaning of this judgment to its employees or, if needs be, by altering the terms of the insurance contract.

5. With regard to the expenses incurred by the complainant's spouse for medical tests, the impugned decision refers to the recommendation of the Appeals Committee, which suggested that legally speaking the opinion of Van Breda's medical adviser should prevail. According to the latter, the expenses concerned related to a "cytological" test and not to a "histological" test, so that they were not subject to 100 per cent reimbursement, but only to 80 per cent, under the general heading of "laboratory tests". The Organisation points out that any objection to that medical opinion should be raised before the Invalidity Committee in accordance with Article 90 of the Service Regulations, but that in the absence of a contrary opinion by that Committee it must abide by the opinion of

the medical adviser.

While the complainant's argument that cytology (the study of cells) is part of histology (the study of tissues) does make sense, the objection nevertheless concerns a medical matter and should be referred to the Invalidity Committee. It is quite possible that medical terminology does not follow everyday usage in this respect and that specialists may be able to clarify the issue.

The Organisation's opinion in this case is therefore beyond reproach (see, for example, Judgment 2249). It should be noted, however, that a different outcome could yet emerge if it were to be established, either by the Invalidity Committee or by Van Breda in the light of further information, that from a medical point of view the disputed tests must be considered "histological". The Tribunal notes that the Organisation in this respect suggests that the complainant's spouse's doctor should "provide further information to Van Breda's medical adviser", in view of the fact that this dispute appears very similar to an earlier one, also involving the complainant's spouse, in which the further information supplied had ultimately led to the acceptance of a 100 per cent refund.

On this ground the complaint must fail.

DECISION

For the above reasons,

1. The impugned decision is set aside, insofar as it concerns the flat rate reimbursement for a set of spectacle frames.

2. All other claims are dismissed.

In witness of this judgment, adopted on 19 November 2003, Mr Michel Gentot, President of the Tribunal, Mr Jean-François Egli, Judge, and Mr Seydou Ba, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 February 2004.

(Signed)

Michel Gentot

Jean-François Egli

Seydou Ba

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 20 February 2004.