107th Session **Judgment No. 2843**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr L. T. against the European Patent Organisation (EPO) on 12 October 2007 and corrected on 20 December 2007, the EPO's reply of 17 April 2008, and the letter of 23 September 2008 by which the complainant's counsel informed the Registrar of the Tribunal that the complainant did not wish to file a rejoinder;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a French national, is a former grade A4 staff member of the European Patent Office, the EPO's secretariat, who retired on 1 February 2006. On the afternoon of 7 January 2005, as he was going to pick up his car after work, he slipped on the floor in the underground car park of the Office in Munich and fractured his left leg. He was hospitalised from 11 to 25 January, after which he received out-patient treatment. He resumed his duties on a part-time basis in February 2005.

Having reported the accident to the Office by telephone on 12 January, he wrote to the Building Administration Department the following day, giving further details of the accident and claiming damages. On 22 February 2005 the insurance brokers responsible for the day-to-day administration of the Collective Insurance Contract concluded by the EPO, namely Van Breda, informed him that 80 per cent of the expenses incurred for his treatment and transportation would be reimbursed. On 20 March the complainant requested that the Office reimburse him 100 per cent of the costs already incurred as well as all future costs related to his accident. In a letter dated 9 June 2005 addressed to the Internal Appeals Committee, he initiated appeal proceedings and claimed material and moral damages. The Director in charge of Employment Law responded on 15 June by stating that his appeal had been referred to the President of the Office for consideration, as required by the Service Regulations for Permanent Employees of the European Patent Office.

In its report of 4 July 2005 on the complainant's accident, the Directorate of Facility Management concluded that "[i]t [wa]s no longer possible, six months after the accident, to determine whether at that point in time there was an acute risk of slipping owing to an oily stain". It pointed out that the floors of the car park were fully cleaned twice a year, that the entrance areas were swept weekly and that there were daily inspections carried out by security staff in order to ensure the immediate reporting of potential risks to the relevant department. By a letter of 9 August the Director in charge of Employment Law notified the complainant of the President's decision to reimburse all medical expenses which had not been reimbursed by Van Breda and to reject the claim for moral damages. The letter also indicated that as the complainant's requests had been allowed only in part, the matter had been referred to the Internal Appeals Committee. The Administration confirmed reimbursement of the outstanding medical expenses in November 2005.

In its opinion of 18 May 2007 the Internal Appeals Committee recommended that any outstanding accident-related costs be reimbursed and that because of the complainant's medical circumstances he be

awarded moral damages in the amount of 10,000 euros. It also recommended that the Office reimburse the costs incurred for his internal appeal at a reasonable rate, and that a declaration be issued to the effect that future material damages attributable to the accident would also be reimbursed, provided that they were reasonable in the circumstances. On 19 July 2007 the complainant was informed that the President had decided to reimburse him all transportation and telephone expenses which had not been reimbursed as well as the costs incurred by him in the course of the internal appeal proceedings. The President agreed to compensate future material damages after reimbursement had been claimed unsuccessfully from Van Breda, in accordance with Article 22 of the Collective Insurance Contract. However, she refused to award moral damages on the grounds that the Office had not shown negligence. That is the impugned decision.

B. The complainant submits that the Office breached the duty of care it owes to its employees by failing to provide a safe work environment. According to him, the Office showed negligence in the cleaning and maintenance of the car park. He points out that the report of 4 July 2005 indicates that a number of parking spaces had not been cleaned in November 2004 and that in May 2005 his counsel conducted an inspection which confirmed that there was a lot of dust in the car park. He asserts that sweeping the floors of the car park on a weekly basis was not sufficient, that they should have been mopped and that security staff are not specifically trained to check for and report oil or water stains.

He asks the Tribunal to rescind the impugned decision and, emphasising that he has been "severely and permanently" handicapped, he claims moral damages in the amount of 10,000 euros.

C. In its reply the EPO submits that the complaint is receivable only insofar as the complainant claims moral damages, given that in November 2005 and July 2007 the Organisation reimbursed all the medical, transportation and telephone expenses he had incurred. He therefore has no cause of action in respect of the costs incurred in relation to his accident. In the EPO's view, its duty to meet future costs

does not go beyond the reimbursement ceilings and modalities provided for in the Collective Insurance Contract.

The Organisation admits that it may be held liable on a "no fault" basis for work-related accidents, but argues that the award of moral damages presupposes negligence. It contends that, in the present case, the Office ensured that the car park area was safe by regular cleaning, daily inspections and constant lighting. It adds that the floors of the car park are covered with a non-slip material. The EPO thus considers that there was no negligence and that it cannot be held liable for moral damages.

CONSIDERATIONS

1. As a result of slipping on liquid in the Office's underground car park, the complainant suffered a fracture of the left leg. He was hospitalised and had to undergo surgery, temporary implants, physiotherapy, etc. According to a medical certificate issued approximately two months after the accident, "[the complainant] could move his left ankle in all directions", had "proper joint alignment" and "a satisfactory outcome for everyday purposes", but was "at a higher risk of developing arthritis". The medical certificate also indicated that the fact that the complainant was "a keen diver, [was] likely to put greater strain on the joint" and that after the implants were removed and the wound healed, his loss of capacity to work and degree of handicap were estimated at 10 per cent.

2. The complainant's material damages were covered by the insurance brokers Van Breda and the Organisation. Following internal appeal proceedings and, in accordance with the recommendations of the Internal Appeals Committee, the President decided to pay the complainant transportation and telephone expenses as well as the costs incurred in the course of the internal appeal proceedings and "all future material damages […] causally linked to [the] accident and for which no relief can be obtained under [the] Collective […] Insurance Contract".

Although the Internal Appeals Committee did not find negligence on the part of the Office, it recommended the payment of moral damages in the amount of 10,000 euros. In this regard, it was of the view that the circumstances of a particular case may warrant an award of moral damages exceptionally and irrespective of the employer's fault. It considered that moral damages should be awarded on the basis of the complainant's capacity to work having been diminished by 10 per cent according to the medical certificate, and also on the basis of other considerations such as the subsequent pain, numbness, problematic recovery, and the impact on his mobility and quality of life. The President rejected that recommendation on the ground that the complainant had not proved negligence on the part of the Office. This decision is now impugned before the Tribunal.

3. Contrary to the Internal Appeals Committee's view, it is well settled that in order to extend an organisation's liability beyond its liability under its no-fault regime, a claimant must prove negligence or the intentional breach of a duty (see, for example, Judgments 435, under 5, and 2533, under 6).

As the Tribunal stated in Judgment 2804, under 25:

> "Negligence is the failure to take reasonable steps to prevent a foreseeable risk of injury. Liability in negligence is occasioned when the failure to take such steps causes an injury which was foreseeable."

4. The complainant contends before the Tribunal, as he did before the Internal Appeals Committee, that the Office breached the duty of care owed to its employees by failing to provide a safe work environment. He maintains that the Office was negligent in its cleaning and maintenance of the car park and claims that it should have been mopped instead of just swept on a weekly basis and that the security staff were not specifically trained to check for and report oil or water stains.

5. The evidence is that there were full cleanings twice a year, plus weekly and daily cleanings (Monday through Friday), which included picking up cigarette ends, paper, and drinks cans throughout

the grounds, sweeping up leaves (by hand and machine), emptying waste-paper bins, etc. There were also appropriate non-slip materials on the floor, adequate lighting and constant inspections of the garage by security staff. Additionally, as noted by the Internal Appeals Committee, the Directorate of Facility Management was aware that stains are a recurring problem, particularly in winter, and it conducts daily inspections and deals with any stains as soon as they are noticed.

6. Given the nature of the premises, namely a car park, it cannot be concluded that it was reasonable for the Office to take measures in addition to those that were in place at the time of the accident. In particular, it cannot be concluded that it should have arranged for the mopping rather than the sweeping of the floors. Moreover, it has not been established that, even if additional measures had been taken, they would have eliminated the risk of injury. Accordingly, negligence has not been established and the complaint must be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 15 May 2009, Ms Mary G. Gaudron, Vice-President of the Tribunal, Mr Agustín Gordillo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 8 July 2009.

Mary G. Gaudron
Agustín Gordillo
Dolores M. Hansen
Catherine Comtet