

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

D. M. (Nos. 9 and 10)

v.

EPO

136th Session

Judgment No. 4728

THE ADMINISTRATIVE TRIBUNAL,

Considering the ninth complaint filed by Mr P. D. M. against the European Patent Organisation (EPO) on 13 May 2015, the EPO's reply of 1 September 2015, the complainant's rejoinder of 21 December 2015 and the EPO's surrejoinder of 18 May 2016;

Considering the tenth complaint filed by Mr P. D. M. against the EPO on 9 June 2015, the EPO's reply of 4 March 2016 and the complainant's letter of 15 April 2016 informing the Registrar that he did not wish to file a rejoinder;

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 may be summed up as follows:

The complainant contests the Medical Committee's decision to further extend his sick leave until 31 March 2015 and its failure to recognise that he suffered from invalidity attributable to the performance of official duties.

Facts relevant to the present case are to be found in Judgment 4636, delivered in public on 1 February 2023. Suffice it to recall that the complainant, a former staff member of the European Patent Office, the EPO's secretariat, retired on 1 December 2015.

Prior to that, on 15 December 2013, he reached the “maximum amount of fully paid sick leave (250 working days) within the past three years” and was informed that a Medical Committee would be constituted to examine his case. He was provided with information regarding his basic salary, namely that it would be reduced by 10 per cent for up to 12 months, and he was also provided with information regarding his social security and pension contributions, annual leave, step increase, and home leave.

The Medical Committee was constituted through the appointment of Dr D. by the President of the Office, and the appointment of Dr G.-M. by the complainant. The Committee met in its two-member composition on 23 September 2014 and decided, among other things, to extend the complainant’s sick leave until 31 October 2014 and to schedule its next meeting for October 2014. The complainant was relevantly informed by a letter of 7 October 2014, to which the Committee’s report of its meeting on 23 September 2014 was attached.

The Medical Committee met again in its two-member composition on 9 October 2014. At that meeting, Dr D. and Dr G.-M. disagreed and decided to appoint Dr G. as the third member and to further extend the complainant’s sick leave until 31 December 2014.

Further to the decision to replace Dr D. by Dr S. as the medical practitioner representing the Office, the Medical Committee met in its three-member composition on 6 November 2014. On 9 December 2014, Dr G.-M. informed the complainant that the Committee’s next meeting, initially scheduled to take place in December 2014, had been postponed to January 2015.

On 5 January 2015, the complainant filed his seventh complaint with the Tribunal identifying the 7 October 2014 decision as the impugned decision. In Judgment 4636 the Tribunal dismissed this complaint for failure to impugn a final decision. In consideration 5 of that judgment, the Tribunal said:

“What the complainant identifies as the impugned decision in this case was merely a ‘step in a process’, which may simply have the appearance of a decision (see, for example, Judgment 3860, consideration 6). It cannot be considered as a final decision for the purposes of Article VII of the Statute of the Tribunal, because it was taken precisely in order for the Medical

Committee to obtain additional information before making a determination as to whether the complainant was suffering from invalidity. In these circumstances, the complaint must be dismissed as irreceivable.”

In January 2015, after the complainant’s filing of his seventh complaint with the Tribunal, Dr G. resigned and was replaced by Dr H., as the third member on the Committee, by agreement of the other two members. On 15 January 2015, the Medical Committee met again in its three-member composition (Dr S., the member appointed by the President, Dr G.-M., the member appointed by the complainant, and Dr H., the third member appointed by agreement of the other two Committee members). At that meeting Dr G.-M. considered that the criteria for invalidity were fulfilled in the complainant’s case and saw a detrimental effect in further postponing a decision. Drs S. and H., however, recommended that the complainant undergo “intensified inpatient care in a clinic” so that they could obtain more information on his state of health. By a letter of 17 February 2015, attached to which was a copy of the Medical Committee’s 15 January 2015 report, the complainant was informed that as the Committee members had not been able to agree, either unanimously or by a majority, on a final conclusion, they had decided: (i) to extend his sick leave until 31 March 2015; (ii) to plan for him to undergo a medical examination with Dr H. in February 2015; (iii) to convene again on 27 February 2015 in order to review the situation and decide on the next steps. That is the decision the complainant impugns in his ninth complaint to the Tribunal, filed on 13 May 2015.

The Medical Committee convened again in the same three-member composition on 27 February 2015. At that meeting, the majority opinion, expressed by Drs S. and Dr H., held that the criteria for invalidity were not yet fulfilled, that further exploration of the complainant’s medical situation was needed, and that therapy should be continued and intensified towards the goal of reintegration with a re-evaluation for that purpose scheduled in May 2015. Dr G.-M. maintained the opinion that the criteria for invalidity were fulfilled. By a letter of 9 March 2015, the complainant was informed that the Committee had decided to extend his sick leave until 31 May 2015, to recommend a continuation of his intensified therapy and a re-evaluation towards the goal of reintegration in May 2015. He was provided with a copy of the Medical Committee’s

27 February 2015 report in an attachment to that letter. That is the decision the complainant impugns in his tenth complaint to the Tribunal, filed on 9 June 2015.

In his ninth and tenth complaints, the complainant asks the Tribunal to set aside the Medical Committee's majority decision of 15 January 2015 extending his sick leave until 31 March 2015, to order the EPO to follow the Medical Committee's minority opinion declaring that he meets the definition of invalidity, and to award him moral damages.

The EPO asks the Tribunal to dismiss both complaints as irreceivable and, subsidiarily, as unfounded.

CONSIDERATIONS

1. This judgment concerns two complaints relating to events associated with the processing of a claim for an invalidity benefit. The EPO seeks the joinder of the two complaints so that one judgment can be rendered. This is not opposed by the complainant. As will emerge from the following discussion, it is appropriate that the complaints be joined and that a single judgment be rendered on them. The complainant requests that Dr G.-M. give evidence in these proceedings. The Tribunal is satisfied that any evidence Dr G.-M. might give, even if favourable to the complainant, would be of no material assistance in resolving these two complaints. Much of the relevant background is found in Judgment 4636, delivered in public on 1 February 2023. It is unnecessary to repeat it.

2. The focus of the ninth complaint was a letter of 17 February 2015, identified by the complainant as the impugned decision, attaching a report of the Medical Committee of 15 January 2015. There had, before this letter, been changes to the composition of the Committee and the reconstituted Committee of three medical doctors was divided in its opinion about the complainant's state of health. As evident from the report, one of the doctors considered the requirements for invalidity due to occupational reasons had been fulfilled and it would be detrimental to the complainant if a decision was further postponed. The other two

doctors recommended “intensified inpatient care in a clinic” in order to obtain more information on the complainant’s state of health. The letter of 17 February 2015, from the Head, HR Expert Services, said:

“Please find attached the Medical Committee’s report dated 15.01.2015.

The Medical Committee’s doctors could not agree, either unanimously or by majority, on a final conclusion. Noting their disagreement, the three doctors have therefore decided the following:

- Your current sick leave is extended until 31.03.2015.
- A medical examination with Dr [H.] is planned to take place in February 2015.
- The medical committee will convene again on 27 February 2015 in order to review the situation and decide on the next steps.

You will be kept informed of the conclusions of the Medical Committee due to meet on 27.02.2015 as soon as these are available.”

3. The relief the complainant seeks in the complaint form for his ninth complaint differs slightly from the relief in the complaint brief. But the gist of it is that the decision of the majority that the complainant does not meet the criteria of invalidity and to prolong his sick leave be set aside by the Tribunal and that it be ordered that the minority opinion, which establishes invalidity, be followed and, additionally, that an award of moral damages be made.

4. The focus of the tenth complaint was a letter of 9 March 2015, identified by the complainant as the impugned decision, attaching a report of the Medical Committee of 27 February 2015. The letter of 9 March 2015, from the Head, HR Expert Services, said:

“Please find attached a copy of the Medical Committee’s report dated 27.02.2015 which confirms your present sick leave until 31.05.2015.

The majority opinion of the Medical Committee is that the criteria for invalidity are not yet fulfilled and further exploration of your medical situation is needed.

Furthermore, the Medical Committee recommends continuation of intensified therapy and re-evaluation towards the goal of reintegration in May 2015.”

5. The relief the complainant seeks in the complaint form for his tenth complaint is substantially the same as sought in his ninth complaint. Again, the gist of it is that the decision of the majority that the complainant's sick leave be prolonged be set aside and that it be ordered by the Tribunal that the minority opinion, which establishes invalidity, be followed and, additionally, that an award of moral damages be made.

6. The short answer to both complaints is that neither concerns an administrative decision of the type which can be impugned in proceedings before the Tribunal. The decisions of the Medical Committee to extend the complainant's sick leave were to facilitate the further investigation and consideration of the complainant's medical condition, at least in the eyes of the majority, as part of the process of determining whether he was disabled and entitled to an invalidity benefit. They were both "steps in the process" directed towards the making of the final decision about the complainant's entitlement (see, for example, Judgment 3893, consideration 8). Therefore, the complainant failed to exhaust internal means of redress, as is required by Article VII, paragraph 1, of the Statute of the Tribunal.

7. Accordingly, both complaints should be dismissed.

DECISION

For the above reasons,

The complainant's ninth complaint, filed on 13 May 2015, and his tenth complaint, filed on 9 June 2015, are dismissed.

In witness of this judgment, adopted on 2 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

CLÉMENT GASCON

DRAŽEN PETROVIĆ