L. (Nos. 8 and 9)

v.

EPO

140th Session **Judgment No. 5077**

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr C. O. D. L. against the European Patent Organisation (EPO) on 12 March 2015 and corrected on 24 April 2015, the EPO's reply of 10 August 2015, the complainant's rejoinder of 18 November 2015 and the EPO's surrejoinder of 10 December 2015, corrected on 4 January 2016;

Considering the ninth complaint filed by Mr L. against the EPO on 31 March 2015 and corrected on 24 April 2015, the EPO's reply dated 10 August 2015 and the complainant's letter of 24 November 2015 informing the Registrar of the Tribunal 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 cases may be summed up as follows:

The complainant challenges (i) the suspension of the final decision on his invalidity and the referral of his case to a Medical Committee for a second opinion, and (ii) the decision to cancel his medical examination and the session of the second Medical Committee planned on 26 March 2015.

The complainant is a former permanent employee of the European Patent Office, the EPO's secretariat, who retired on 1 January 2016.

In October 2013, following the exhaustion of the complainant's sick leave with full pay, a Medical Committee was convened to advise on the action to be taken regarding his situation. On 14 August 2014, the Committee adopted its report, unanimously concluding that the complainant was suffering from invalidity within the meaning of Article 62a(2) of the Service Regulations for permanent employees of the Office. The Medical Committee noted that, in view of the complainant's pathology, there were "no treatment options available to restore [his] ability to work". The Secretary of the Medical Committee informed the complainant of the findings of the Committee on that same day and indicated that the report would be communicated to the President of the Office.

Between September and November 2014, the complainant contacted the Administration on several occasions, urging it to take a decision on his case in light of the Medical Committee's findings. He filed his seventh complaint with the Tribunal on 9 December 2014, challenging the implied decision of the President not to accept the findings of the Medical Committee. In Judgment 3714, delivered in public on 6 July 2016, the Tribunal summarily dismissed that complaint as irreceivable, considering that the complainant had failed to exhaust the internal means of redress available to him.

By a letter dated 18 December 2014, the President informed the complainant of his decision, departing from the unanimous opinion reached by the Medical Committee on 14 August 2014, "to suspend the final decision as regards the relevant administrative consequences related to the recognition of invalidity" and "to refer the matter once more to a Medical Committee for a second medical opinion before a final decision regarding [his] assignment to invalidity [could] be taken". The President noted, in essence, that the Medical Committee had not established in its report with sufficient clarity that the complainant met the statutory conditions of invalidity relating to the definitive and permanent character of his incapacity to work, and that no reintegration steps or other alternative possibilities were sufficiently and duly considered.

On 11 February 2015, the Principal Director of Human Resources informed the complainant that the President had appointed Dr S. as a member of the new Medical Committee constituted for the re-examination of his case and invited him to nominate a medical practitioner of his choice.

By a letter dated 4 March 2015, addressed to the Principal Director of Human Resources, the complainant's lawyer requested the President to reconsider his decision dated 18 December 2014, to confirm that the complainant met the definition of invalidity within the meaning of Article 62a of the Service Regulations, and to assign him to non-active status as per Article 42(1)(f) of the Service Regulations with effect from 1 September 2014, as stipulated in the first Medical Committee's report. The complainant's lawyer also submitted letters from members of the first Medical Committee raising concerns about the President's decision not to follow the recommendation of the Committee.

On 12 March 2015, the complainant filed his eighth complaint with the Tribunal, impugning the President's decision dated 18 December 2014. He requests the Tribunal to quash the impugned decision and to order the President to confirm that he meets the definition of invalidity pursuant to Article 62a of the Service Regulations and to assign him to non-active status with effect from 1 September 2014. He also claims moral damages in the amount of 20,000 euros and costs.

By a letter dated 13 March 2015 addressed to the members of the newly constituted Medical Committee, the complainant's lawyer reiterated his arguments against the President's decision of 18 December 2014, and asked them to acknowledge that the complainant met the definition of invalidity as per the applicable rules and that his medical condition had deteriorated due to the rejection of the first Medical Committee's recommendation. In a separate letter also dated 13 March 2015 and addressed to the members of the Medical Committee, the complainant nominated Dr B. as a member of the Committee.

By an email of 25 March 2015, Ms d.G., the Administrative Head of the Medical Advisory Unit, informed the complainant that his medical examination and the session of the new Medical Committee of 26 March 2015 in Munich, Germany, had been cancelled. Ms d.G.

explained to the complainant that this decision had been taken due to his and his lawyer's communications with Dr S., which were considered to be "liable to generate undue pressure on [him] and to severely impair his ability to assess the case in a serene way [...]". On 31 March 2015, the complainant filed his ninth complaint with the Tribunal, impugning this decision. He requests the Tribunal to set aside the impugned decision and to order the Organisation to "implement [his] invalidity retroactively with effect of 1 September 2014". The complainant also claims material, moral and punitive damages as well as costs.

The new Medical Committee adopted its recommendation on 16 April 2015. It concluded that the complainant was suffering from invalidity within the meaning of Article 62a(2) of the Service Regulations and was unable to perform his duties. The Principal Director of Human Resources informed the complainant, by a letter dated 4 May 2015, that the President had decided, in light of the Medical Committee's report, to assign him to non-active status as of 1 May 2015.

On 27 May 2015, the Vice-President of Directorate-General 4 notified the complainant that his letter dated 13 March 2015 had been registered as a request for review, under Article 109 of the Service Regulations, challenging the letter from the Principal Director of Human Resources dated 11 February 2015 nominating Dr S. for the new Medical Committee and inviting him to nominate a medical practitioner for the new Medical Committee. He noted that this letter was "no impugnable decision which could have been contested by means of a request for review". He also informed the complainant that, due to the subsequent events leading to the President's decision to assign him to non-active status as of 1 May 2015, his request was in any event considered to have become moot and was rejected as irreceivable for lack of a cause of action.

In the present proceedings, the EPO requests the Tribunal to dismiss the eighth complaint as clearly irreceivable, and subsidiarily, as unfounded. It argues that the impugned decision is not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal, and that, in any event, the complainant has no cause of action since his main claim has been satisfied as his invalidity was recognized

in May 2015. Concerning the ninth complaint, the EPO also requests the Tribunal to dismiss it as irreceivable, and subsidiarily, as unfounded.

CONSIDERATIONS

1. The complainant and the EPO request the joinder of the complainant's seventh, eighth and ninth complaints. The request is moot with regard to the seventh complaint, which has already been decided by the Tribunal in Judgment 3714. The eighth and ninth complaints concern related cases and rest on similar arguments. Accordingly, they will be joined to form the subject of a single judgment.

2. The complainant applies for oral proceedings and lists witnesses. The Tribunal observes that the parties have presented ample written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Thus, the request is rejected.

3. In his eighth complaint, the complainant impugns the 18 December 2014 decision by which the President of the Office, departing from the unanimous opinion reached by the Medical Committee on 14 August 2014, which determined that the complainant met the definition of invalidity pursuant to Article 62a(2) of the Service Regulations, decided "to suspend the final decision as regards the relevant administrative consequences related to the recognition of invalidity" and "to refer the matter once more to a Medical Committee for a second medical opinion before a final decision regarding [the assignment of the complainant] to invalidity [could] be taken".

In his ninth complaint, the complainant impugns the decision, communicated to him by an email of 25 March 2015 sent by the Administrative Head of the Medical Advisory Unit, "to cancel the examination and medical committee planned for [...] 26.03.2015 in Munich". These annulments were justified, in the said email, in light of an alleged "undue pressure" exercised by the complainant and his lawyer on one member of the Medical Committee. The email went on to say:

> "I wish to emphasise that you are obliged as an EPO staff member to cooperate in full with the Office's doctors and to refrain from any undue interference in their work.
>
> The review of the medical opinion expressed by the medical committee last year can therefore only take place once the EPO has reassurance from your side that you will cooperate and cease to put undue pressure on the doctors charged to assess your case prior, during and following their assessment. Once this is the case, the EPO will resume the procedure and see that it is carried out in Vienna, so to avoid for you the need to travel to Munich, which you clearly expressed would be your preference.
>
> Please note, that as the examination and medical committee originally scheduled for tomorrow will now no longer take place, the authorisation given to you to travel to Munich during sick leave (according to [Article] 62(3)) is herewith withdrawn."

In addition, in his ninth complaint, the complainant reiterates criticism against the 18 December 2014 decision, already impugned in his eighth complaint.

4. At the outset, the Tribunal will address the receivability issues raised by the EPO. It contends that:

(i) the complaints are irreceivable because the impugned decisions were not final; and

(ii) in any event, the complainant has no cause of action, as his invalidity was later recognized and he was assigned to non-active status as from 1 May 2015; even though he was assigned to non-active status as from 1 May 2015 and not as from 1 September 2014 as he requested, the complainant was not negatively affected, as he did not suffer financial prejudice. In fact, as the complainant was under the age of 55 the lump sum paid to him under Article 84(2) of the Service Regulations (in the version applicable until 31 March 2015 that was applied to the complainant) was not reduced. Additionally, due to the fact that the complainant continued to receive his salary until April 2015 – though at a reduced rate during the extended sick leave – he still received the full expatriation allowance under Article 62(11). This is a benefit the complainant would not have received had he been in receipt of the invalidity allowance as of 1 September 2014.

In his submissions regarding his eighth complaint, the complainant argues that his complaint is receivable as, pursuant to Articles 109(3)(a) and 110(2)(a), a decision taken after the consultation of the Medical Committee, such as the impugned decision, is excluded from internal legal redress and is therefore a final decision within the meaning of Article VII of the Statute of the Tribunal. Moreover, he contends that the President of the Office had no competence to depart from the opinion of the Medical Committee and to suspend the decision.

5. The Tribunal holds that the eighth complaint is irreceivable and, additionally, unfounded. The ninth complaint is in part irreceivable and unfounded in the remainder. Moreover, both complaints are moot.

6. Pursuant to Article VII, paragraph 1, of the Statute of the Tribunal, "[a] complaint shall not be receivable unless the decision impugned is a final decision".

7. As to the 18 December 2014 decision, contrary to the complainant's arguments, it is manifest from its wording, quoted in consideration 3 above, that it was not a final decision within the meaning of the Statute of the Tribunal. The President of the Office expressly stated that the final decision was suspended and that a further medical examination was required before the final decision could be taken. In Judgment 3560, considerations 1 to 4, the Tribunal held that an authority's decision to suspend her or his decision as regards the relevant administrative consequences related to a possible recognition of invalidity and to request a further medical examination is not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal; such a decision, in substance and in form, postponed the taking of the final decision. Thus, the eighth complaint, aiming at setting aside that decision, is irreceivable.

8. Moreover, it is also unfounded. The President's competence to suspend the final decision cannot be reasonably questioned, as, although the Medical Committee is competent to establish invalidity of staff, it falls within the President's purview to establish the administrative

consequences arising from invalidity. According to the Tribunal's case law, in principle, it would be open to the President to reject the opinion of the Medical Committee if she or he discerned some reviewable error on the part of the Medical Committee. The Medical Committee's determination is a decision that constitutes a step towards the making of the final administrative decision amenable to challenge in the Tribunal (see Judgment 4046, consideration 4). To this extent, the President also has the discretionary power to require a further medical examination, in order to establish whether an invalidity is temporary or permanent, as he did in the present case.

9. Likewise, the 25 March 2015 decision was not a final decision within the meaning of Article VII, paragraph 1, of the Statute of the Tribunal, as is manifest from its wording, quoted in consideration 3 above. It was only an internal step in the medical examination procedure (see Judgments 4728, consideration 6, and 4636, consideration 5). In this respect, the complainant's ninth complaint is irreceivable.

10. The complainant views the 25 March 2015 email as an act of institutional harassment against him, but there is no evidence of this contention. In this respect, his ninth complaint is unfounded.

11. The ninth complaint is also irreceivable to the extent it reiterates the challenge to the 18 December 2014 decision, already impugned in the complainant's eighth complaint. It is well established in the Tribunal's case law that the same question cannot be the subject of more than one proceeding between the same parties (see Judgments 4971, consideration 3, 4712, consideration 1, 3291, consideration 6, and 3058, consideration 3).

12. For the sake of completeness, the Tribunal adds that the two complaints are also moot. Indeed, following a further medical examination held in April 2015, the complainant was assigned to non-active status and received an invalidity allowance as from 1 May 2015. He has not established to the Tribunal's satisfaction that he was negatively affected because his invalidity was not recognized earlier, as

from 1 September 2014. On the contrary, there is evidence in the record that he was not negatively affected, as he received his salary from September 2014 until April 2015. In this respect, the 18 December 2014 impugned decision expressly stated that "[d]uring the period of the Medical Committee's proceedings, [the complainant] will remain on extended sick leave". The EPO, in its reply, notes, without being contradicted by the complainant, that, as mentioned above, he received a lump sum pursuant to Article 84 of the Service Regulations, in the same amount he would have received if his invalidity had been recognized as from 1 September 2014. In addition, according to the EPO, he received the full expatriation allowance under Article 62(11), a benefit he would not have been eligible to receive, had he been in receipt of the invalidity allowance since 1 September 2014 instead of 1 May 2015.

13. In conclusion, the complaints are irreceivable, at least partially unfounded, and moot. As a result, the complainant is not entitled to the claimed material, moral and punitive damages or to costs, and the complaints will be dismissed.

DECISION

For the above reasons,

The complaints are dismissed.

In witness of this judgment, adopted on 9 May 2025, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.