

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 17)

v.

EPO

141st Session

Judgment No. 5179

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventeenth complaint filed by Mr C. O. D. L. against the European Patent Organisation (EPO) on 5 October 2017 and corrected on 17 November 2017, the EPO's reply of 23 February 2018, the complainant's rejoinder of 11 June 2018, the EPO's surrejoinder of 17 September 2018, the complainant's additional submissions of 17 May 2023 and the EPO's final comments thereon of 4 October 2023;

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 challenges the decision to reject his request to access his complete medical file and contests the validity of the internal appeals proceedings.

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 12 August 2014, the Secretariat of the Medical Advisory Unit (MAU) informed the complainant that a copy of his medical file had been sent to him via postal services. It also indicated that his medical examination had been scheduled for 14 August 2014 with Dr D., a member of the Medical Committee, and that the Committee would meet on the same day. Following that meeting, the Committee adopted its report unanimously concluding that the complainant was suffering from invalidity.

By an email dated 23 October 2014, addressed to the Secretariat of the MAU, the complainant requested “an update on [his] medical file”, in particular relating to the medical examinations by Dr G. in July 2014 and Dr D. in August 2014 – both members of the Medical Committee –, and “what it contain[ed] relating to the Medical Committee’s deliberations on 14 August 2014”. On 3 December 2014, the complainant reiterated his request to the MAU and asked to be provided with “copies of the results of Dr [D.’s] examination of [him] on 14 August 2014, if necessary by allowing [him] to inspect [his] file”. This request remained unanswered.

On 10 December 2014, the complainant submitted his request related to his medical file to the Data Protection Officer. By email dated 12 December 2014, Ms K., on behalf of the Data Protection Officer, informed the complainant that “[he] [had] access to [his] medical file and to any medical findings which have been filed”; however, any document related to the Medical Committee’s deliberations “[was] secret as stipulated under the provisions of [Article] 92(3) [of the Service Regulations for permanent employees of the Office]”. She also indicated that the complainant “ha[d] access to the information stored in [his] electronic medical file”. Ms K. referred the complainant to the MAU “for [...] further processing of [his] request to get access to [his] medical file”. By an email dated 18 December 2014, the complainant asked Ms K. whether there were “any further details stored in [his] medical file [...] about [the] Medical Committee’s deliberations [...] in excess of its opinions [...] [he] [had] received [...] mean[ing] something like minutes, comments, more detailed resumes or alike”. He indicated that he was not enquiring about the “contents” of such documents but

about “their mere existence”. In her reply of the same day, Ms K. referred the complainant’s enquiry to the MAU, which, according to her, would be in a position to address it. She added that the President of the Office “d[id] [not] receive nor ha[d] access to any other information than the report of the Medical Committee, of which [the complainant had] also received a copy”.

The complainant subsequently sent an email to the MAU, also on 18 December 2014, asking to be informed “when [he] could expect an update of [his] knowledge regards the content of [his] medical file and [his electronic medical file] entries”. On 19 December 2014, he reiterated his request to the Head of the MAU, Ms d.G. The complainant also asked her, inter alia, to confirm that the President had not received any further information concerning his “invalidity case” other than the report of the Medical Committee, “of which [he] ha[d] also received a copy”.

Meanwhile, by a letter dated 18 December 2014, the President informed the complainant of his decision to refer his case once more to a Medical Committee for a second medical opinion before making a final decision regarding his “assignment to invalidity”.

By an email dated 27 January 2015, addressed to the President, the complainant filed a request for review under Article 109 of the Service Regulations, challenging the absence of response to his “request for information” concerning his medical files. Such lack of response constituted, according to the complainant, an “infringement to the [Service Regulations], at least to their spirit” and an act of “institutionalized harassment”. He requested to be provided with “reasons which led to the delay” in addressing his request, and to be granted “cost[s] and damages (in particular moral and punitive damages [...])”.

By an email dated 17 March 2015, addressed to the Secretariat of the MAU, the complainant reiterated his request “for an update on the medical information the Office [held] about [him]”. In its reply dated 19 March 2015, the Secretariat of the MAU indicated that the complainant had been provided with a copy of his medical file on 11 August 2014 and noted that the medical practitioners’ report and handwritten notes could be provided only if their express permission was

obtained. It recalled that the deliberations of the Medical Committee were secret pursuant to Articles 89 to 92 of the Service Regulations and that, consequently, no written records were kept.

On 16 April 2015, the Medical Committee constituted for a second medical opinion regarding the complainant's case adopted its recommendation. 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.

On 4 May 2015, the Principal Director of Human Resources informed the complainant that the President had decided, in light of the newly constituted Medical Committee's report, to recognize his invalidity and assign him to non-active status as of 1 May 2015.

The complainant lodged an internal appeal against the implied rejection of his request for review on 26 June 2015. This appeal was referred to the Appeals Committee. On 24 February 2017, the complainant was informed that his appeal would be dealt with in summary proceedings under Article 9 of the Implementing Rules for Articles 106 to 113 of the Service Regulations.

In its opinion dated 5 May 2017, the majority of the Appeals Committee recommended to summarily dismiss the complainant's internal appeal as manifestly irreceivable. It considered that the complainant's request regarding his medical file constituted a request for information, which did not amount to a "request for a decision" within the meaning of Article 107(1) of the Service Regulations. Consequently, the lack of response could not be regarded as an implied decision of rejection in the sense of Article 107(3) and had no legal effect on the complainant's individual situation. The majority of the Appeals Committee concluded that, in the absence of a challengeable decision within the meaning of Article 108 of the Service Regulations, the appeal was manifestly irreceivable. In its dissenting opinion, the minority raised concerns about the composition of the Appeals Committee and the recourse to a summary procedure for processing the complainant's internal appeal. It recommended to carry out a standard internal appeal procedure.

By a letter dated 7 July 2017, the Vice-President of Directorate-General 4, acting by delegation of power from the President of the Office, informed the complainant of his decision, departing from the Appeals Committee's majority and minority opinions, to grant his claim to receive a copy of his medical file and to grant him moral damages in the amount of 500 euros. This is the impugned decision.

The complainant requests the Tribunal to quash the impugned decision and to declare it, as well as the Appeals Committee opinion, null and void. He also requests the Tribunal to declare that the Appeals Committee was unlawfully constituted and that the internal appeals procedure "ha[s] been fatally deficient", and to send his case back to the EPO "to be re-examined [...] by an appropriately constituted [Appeals Committee]". The complainant asks the Tribunal to quash the decisions "of [a] general nature" leading to the changes to the internal appeals procedure and "affording the basis in law for [him] being individually adversely affected", in order to restore his acquired rights. He also asks the Tribunal to establish rules "under which summary proceedings can be enacted against defendants" before the Tribunal. The complainant requests the Tribunal to allow him to access his "complete medical files", to correct any aspect therein that he would deem inaccurate or incomplete and to submit a "note for inclusion in his medical files". He seeks moral and punitive damages as well as costs, and interest.

The complainant makes several additional claims in his further submissions. First, he claims 420,000 euros in moral damages for "loss of enjoyment of life". Second, he seeks moral damages for the delay in the internal appeals process in the amount of 100 euros per month as from the date of the filing of his internal appeal and until the final payment is made, minus a grace period of two years and minus amounts already paid by the EPO. Lastly, he requests compensation for his printing expenses and interest.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable and unfounded in its entirety, and to order that the complainant bears its costs to the amount of 1,000 euros.

CONSIDERATIONS

1. The complainant requests oral proceedings, listing witnesses in his rejoinder. The Tribunal observes, however, that the parties have presented ample and sufficiently clear written submissions and documents to permit the Tribunal to reach an informed and just decision on the case. Accordingly, the request for oral proceedings is rejected.

2. The complainant requests the joinder of the present complaint with his tenth, eleventh, thirteenth, fourteenth, fifteenth and sixteenth complaints. This request is moot, as those complaints were already adjudicated in Judgment 4256.

3. The complainant requests that the Tribunal establish rules “under which summary proceedings can be enacted against defendants” before the Tribunal. This request is rejected as irreceivable as it does not concern “non-observance, in substance or in form, of the terms of appointment of officials” employed with international organizations which have recognized the jurisdiction of the Tribunal (see Article II, paragraph 5, of the Tribunal’s Statute). In any event, this request is outside the scope of the case.

4. The complainant contends that the 7 July 2017 decision (the impugned decision) – whereby the Vice-President of Directorate-General 4 allowed his claim to receive a copy of his medical file and awarded him moral damages in the amount of 500 euros – was unsatisfactory since it allegedly enclosed an “incomplete copy of a subset of the complainant’s Medical Files”. Moreover, the damages awarded were inadequate. He further maintains that the composition of the Appeals Committee and its proceedings were flawed.

5. The complainant contends that the impugned decision is unlawful to the extent that the decision-making authority failed to provide adequate reasons for not endorsing the majority opinion of the Appeals Committee.

This plea is unfounded. The complainant misinterprets the Tribunal's precedents. It is established in the Tribunal's case law that the executive head of an international organization, "when taking a decision on an internal appeal that departs from the recommendations made by the appeals body, to the detriment of the employee concerned, must adequately state the reasons for not following those recommendations" (see Judgments 4855, consideration 8, 4700, consideration 4, 4545, consideration 4, and 4062, consideration 3). This is not the case here. The majority opinion of the Appeals Committee was not favourable to the complainant; rather, the impugned decision departed from it in the complainant's favour. In these circumstances, the decision-making authority was under no obligation to provide reasons for deviating from the appeals body's opinion, and the complainant, therefore, has no interest in raising this issue.

6. The complainant further contends that the impugned decision failed to address the pleas concerning the composition of the Appeals Committee and its proceedings, disregarding that the majority deemed them both lawful, and that a minority expressed doubts regarding the composition and the recourse to a summary procedure for processing the complainant's internal appeal.

This plea is unfounded.

Given the content of the impugned decision, which allowed the complainant's main claim relating to the disclosure of documents, the issues related to the composition and the proceedings of the Appeals Committee were irrelevant to the outcome of the case. As a result, the decision-making authority was not obliged to provide reasons on these issues.

7. The complainant alleges he was not granted full access to all documentation contained in his medical file, asserting that:

- (i) he received copies from only one of the two medical files held by the Office;

- (ii) the copy of the file he received in August 2014 contained elements that were not present in the copy he received with the final decision;
- (iii) he found out only on 25 May 2018, upon contacting staff in charge of his medical file, of the existence of “a secret part of his medical file, to which he has no access [...]”;
- (iv) the following elements are missing:
 - (iv.a) three statements received by the three medical practitioners from his August 2014 Medical Committee confirming that all relevant facts had been considered during the deliberations of such Medical Committee; the complainant “had requested their inclusion into his medical file/s early in 2015”;
 - (iv.b) Dr G.’s report, as he received only Dr D.’s handwritten notes; and
 - (iv.c) medical reports submitted by the complainant.

He further affirms that the EPO acted in bad faith by asserting that he received a full copy of his medical file.

8. The Tribunal reiterates its established case law: the principle of transparency as well as the individual’s right to access personal data mandate that staff members receive full and unfettered access to their medical files and obtain copies upon request (paying the associated costs as necessary). The only situation in which this rule does not apply is where specific circumstances temporarily prevent such access. However, a decision to temporarily deny staff members full access to their medical files must be fully justified and reasonable (see Judgments 4260, consideration 2, 4118, consideration 5, and 3994, consideration 10). The Tribunal also relevantly stated that in the absence of specific rules or regulations governing the right of staff members to access their own medical files, this right encompasses viewing and obtaining copies of all records and notes in the file, and adding pertinent notes to correct any part of the file considered wrong or incomplete, and that, so stated, the

right to access one's own medical file gives effect to the organisation's duty of transparency (see Judgment 3120, consideration 6).

The Tribunal also refers to Article 92 of the Service Regulations, which read as follows:

- “(1) A permanent employee may submit to the Medical Committee any reports or certificates from his regular medical practitioner or from other practitioners he has consulted.
- (2) The Medical Committee's opinion shall be given either unanimously or by a majority of the medical practitioners forming the committee; it shall be transmitted in writing to the President of the Office and to the permanent employee, who shall both be regularly informed, in writing, about the status of proceedings and the reasons for any delays.
- (3) The Medical Committee's deliberations shall be secret.”

9. In the present case – unlike those addressed in Judgments 4260, 4118, 3120, 2045, and 1684 – there is no evidence that the Office denied the complainant full access to his medical file. Access was granted insofar as it was permitted by the relevant rules. Crucially, specific rules did exist in this case – unlike in the case decided in Judgment 3120 –, which precluded access to the Medical Committee's deliberations, allowing access only to its opinion. As the Medical Committee's deliberations are secret under the statutory rules, lawfully, no written records of them are kept.

Specifically, the complainant's arguments listed in consideration 7 above under (i), (ii), and (iii) are speculative as they are not corroborated by evidence. There is no evidence of the existence of two different medical files or that the complainant received different documents at different times. Furthermore, the EPO, in its reply and surrejoinder, has repeatedly invited the complainant to arrange a meeting with the medical services to compare the files, which he has not done. There is no evidence that on 25 May 2018, when the complainant contacted the officer in charge of his medical file, he or she revealed the existence of a secret part of the medical file. The complainant's description of this last incident in his rejoinder is vague, and he fails to identify the officer's identity.

The complainant's plea that some documents – listed under (iv) in consideration 7 above – are missing, is unfounded.

Specifically, his arguments that he was not provided with “three statements received by the three medical practitioners from his August 2014 Medical Committee” and with the medical reports submitted by the complainant, are unfounded. As a rule, access to medical files should be granted also with regard to medical documentation submitted by the staff concerned and, thus, already in possession of the staff member who is requesting access. Indeed, the aim of a request to access a medical file is not only to obtain documentation that the staff member concerned does not have, but also to check that the medical file contains all the relevant documents, including those submitted by the staff concerned. Nonetheless, in the present case, the complainant, on the one hand, fails to prove that he requested the insertion of the “three statements” into his medical file. In this respect, the EPO, in its surrejoinder, replies that the complainant did not request that the EPO add these documents to his medical file. Evidence on record shows that medical documentation – namely three statements made by three medical practitioners who sat in the Medical Committee of 14 August 2014 and medical reports from a treating physician dated 3 March 2015 – was sent on 4 March 2015 to the Principal Director of Human Resources by the complainant's lawyer who merely drew attention to them, by writing: “I kindly ask you to draw your attention to”, to “ask the President to re-consider his findings communicated by letter dated 18 December 2014 and to confirm that [the complainant] meets the definition of invalidity [...]”.

The complainant does not refute this evidence in his further written submissions.

On the other hand, the complainant fails to clarify to which medical reports, submitted over time, he is referring, when he submitted them, and if and when he requested their inclusion in his medical file. If he intends to refer to the medical reports from a treating physician dated 3 March 2015, mentioned in his lawyer's letter of 4 March 2015, the Tribunal reiterates that there is no evidence that he ever requested the Office to include these reports in his medical file.

As for Dr G.'s report, it could only be provided with his express agreement, as the EPO explained to the complainant, and, thus, in the absence of evidence, in the documentation before the Tribunal, of such express agreement, the denial of access was lawful.

It follows that the complainant's contention that the Office acted in bad faith is not proven. Under the Tribunal's settled case law, bad faith cannot be presumed and must be proven by the evidence (see Judgments 4897, consideration 10, 4675, consideration 6, 4333, consideration 15, 4161, consideration 9, and 3902, consideration 11). Not only is there no evidence on record that the Office withheld relevant information from the complainant, but the Office also expressly invited him, in its reply and surrejoinder, to "visit [...] the Defendant's premises to personally check his medical file and reassure himself in that respect". This demonstrates the Office's good faith and compliance with its duty of care.

In conclusion, the complainant's contention that he was not granted complete access to his medical file is unproven, and his claim for complete access is therefore rejected.

10. Most of the complainant's arguments are concerned with the composition of the Appeals Committee, its proceedings, and the use of a summary procedure for his appeal. He insists his case be remitted to the Office for new deliberations after a proper internal appeal process. The Tribunal's case law holds that when complaints are judged by the Tribunal as devoid of merit – as in the present case – no useful purpose would be served by remitting the case to the Organisation (see Judgment 3890, consideration 4). Moreover, since the complaint is judged by the Tribunal as devoid of merit, no different result for the complainant could be obtained by renewing the consultation process before the Appeals Committee (see Judgment 3890, consideration 6). Additionally, the EPO informed the Tribunal that it had paid 100 euros in moral damages to several complainants, including the present complainant, following Judgment 4550. Therefore, the complainant has already been compensated for the unlawful composition of the Appeals Committee. In such a situation, there is no need to address the merits of

the pleas concerning the composition of the Appeals Committee and its proceedings (see Judgments 4988, consideration 12, 4799, consideration 5, and 4798, consideration 6). It must also be noted that, insofar as the decision-making authority departed from the Appeals Committee's opinion, in the complainant's partial favour, any flaws which may have occurred in the composition of the appeal body or the process before it, are irrelevant to the outcome of the case and, thus, there is no need to address the merits of the pleas concerning the composition of the Appeals Committee.

11. In light of the outcome of the case on the main claims, the complainant is not entitled to be awarded the sums he requested for moral damages, punitive damages, or costs.

12. The complainant advances ancillary claims in his further submissions as follows:

- material printing costs;
- damages for loss of enjoyment of life in the amount of 420,000 euros;
- alteration of damages for excessive delay to 100 euros per month between the date of the initial filing and the final settlement, minus a two-year grace period and amounts already paid by the EPO for delay; and
- interest.

These claims, in addition to being irreceivable as new claims filed for the first time in his further submissions, whereas the complainant could and should have submitted them in his initial complaint (see Judgments 4752, consideration 13, and 4396, consideration 7), must be rejected in light of the outcome of the case on the main claims.

Additionally, regarding the claim for moral damages for delay, in an amount higher than that already awarded by the EPO, the Tribunal observes that moral damages are awarded for moral injury, and the complainant bears the burden of proving the injury and the causal link with the unlawful conduct of the defendant organization. Delay, by

itself, does not entitle a complainant to moral damages (see Judgment 4859, consideration 8), unless the complainant proves the injury suffered as a consequence of the delay. In the present case, the complainant has not established to the Tribunal's satisfaction that he suffered a moral injury for the delay. This claim must therefore be rejected.

13. The EPO submits a counterclaim for costs, alleging that the complaint constitutes an abuse of process by the complainant since the present matter is only an excuse for additional litigation. This is demonstrated, in the EPO's view, by the fact that the complainant:

- (i) was granted his main claim and received compensation;
- (ii) disputes the legality of a final decision that was favorable to him;
- (iii) disputes decision CA/D 7/17, although it was not in force at the time of the material facts;
- (iv) applies for joinder of the present complaint with his pending complaints that do not raise similar issues of fact and law and do not seek similar remedies; and
- (v) attempts to establish the rules governing the functioning of the Office's internal system of justice.

Pursuant to its case law, the Tribunal will avail itself of the possibility to order a complainant to pay costs only in exceptional situations. Indeed, it is essential that the Tribunal should be open and accessible to international civil servants without the dissuasive and chilling effect of possible adverse awards of that kind (see Judgments 4798, consideration 12, and 4143, consideration 7).

The Tribunal considers that not only is the present complaint manifestly irreceivable and unfounded, it is also vexatious and frivolous, aimed, as it appears, at multiplying litigation. The complainant will therefore be ordered to pay the EPO costs in the amount of 1,000 euros.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The complainant will pay to the EPO costs in the amount of 1,000 euros.

In witness of this judgment, adopted on 15 October 2025, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.