**R.-G.**

***v.***

**EPO**

**137th Session** **Judgment No. 4807**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms S. M. R.-G. against the European Patent Organisation (EPO) on 22 August 2014 and corrected on 17 October, the EPO's reply of 6 March 2015, the complainant's rejoinder of 18 May 2015 and the EPO's surrejoinder of 6 August 2015;

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 report of the Medical Committee which extended her sick leave until 31 May 2016 and concluded that she was not suffering from invalidity.

The complainant joined the European Patent Office, the EPO's secretariat, in 1988. Between 1996 and September 2012, she was working part-time for medical reasons. In September 2012, she was placed on sick leave. By letter dated 1 October 2012, she was informed that the EPO's Medical Adviser, Dr K., had been asked to assess her medical condition under the provisions of Article 62 of the Service Regulations for permanent employees of the European Patent Office "in order to ascertain whether [her] current sick leave [had] been claimed for *bona fide* reasons". During a medical examination which took place on 5 October 2012, Dr K. confirmed the complainant's incapacity for

duty. On 15 March 2013, following the recommendation of the Medical Committee, the complainant resumed work with reduced working time. Due to the complainant's continuing health issues, a new Medical Committee, made up of Dr K. and Dr E., the complainant's nominated doctor, was constituted on 21 May 2013. On 4 June 2013, the complainant was again placed on sick leave.

On 11 February 2014, the newly constituted Medical Committee met to assess the complainant's situation and decided to appoint Dr F. as its third member.

On 9 April 2014, the Medical Committee requested that Dr M., an expert chosen from the EPO's list of medical practitioners, "carry out a medical examination of [the complainant] and [...] present her findings at the next meeting of the Medical [C]ommittee". In a report dated 28 May 2014, Dr M. provided a medical diagnosis of the complainant and concluded that she did not see "a possibility to reintegrate [the complainant] into the working process at [the] EPO". She added that "in [her] opinion the criteria for invalidity [were] fulfilled".

The Medical Committee met on 2 June 2014. In its report of the same date, the Committee determined that the complainant's sick leave should be extended until 31 May 2016 and recommended that "intensive therapeutic measures" be taken "in coordination with Dr [E.]". It concluded that the complainant was not suffering from invalidity, noting however that "Dr [E.] [was] of opinion that the criteria for invalidity [were] fulfilled, also taking into account the expert opinion of Dr [M.]". According to the report, the next follow-up examination by the Medical Adviser would take place in May 2015 and the next follow-up meeting of the Medical Committee would be in May 2016.

By letter dated 11 June 2014, the Secretary of the Medical Committee sent the complainant a copy of its report. The letter stated the following:

> "Please find attached the report of the Medical Committee dated 2 June 2014. The Committee confirms the extension of your current sick leave until 31 May 2016 and recommends 'Intensive therapeutic measures in coordination with Dr. [E.]'. The next review by the Medical Adviser is scheduled for May 2015, the next review by the Medical Committee for May 2016.

> Other comments: Dr. [E.] is of opinion that the criteria for invalidity are fulfilled, also taking into account the expert opinion of Dr. [M.], from the Third Doctors list for the EPO The Hague, here not as committee member, but as specialist in her field.
>
> A copy of such report has been sent to the President of the Office. The Administration will inform you as soon as possible of the administrative consequences arising from the report's conclusions."[*]

Based on the report of the Medical Committee, on 23 June 2014, the Head of Department, Human Resources (HR) Expert Services, informed the complainant that her sick leave had been extended until 31 May 2016. He also listed the consequences of such decision on her administrative status and remuneration.

On 22 August 2014, the complainant filed the present complaint with the Tribunal, identifying the 11 June 2014 letter as the impugned decision.

On 12 March 2015, the complainant was informed that, in view of her complaint and an upcoming reform at the EPO regarding sick leave and medical proceedings, it had been decided to advance the date of the next meeting of the Medical Committee, initially scheduled for May 2016.

The Medical Committee, made up of new members, met on 26 March 2015. It unanimously found that the complainant was suffering from invalidity within the meaning of Article 62a of the Service Regulations and determined that her sick leave should come to an end on 31 March 2015. As a result, on 21 April 2015, the Principal Director, HR, wrote to the complainant that from 1 April 2015 to 1 January 2016 she would be "assigned to non-active status" and receive an invalidity allowance, after which she would cease to receive such allowance and would instead be granted a retirement pension for health reasons. On 26 June 2015, the complainant received a lump sum under the invalidity insurance of 203,778.63 euros.

[*] Registry's translation, except for the parts underlined.

The complainant asks the Tribunal to set aside the impugned decision and to declare that she met, as of 11 June 2014, the criteria for invalidity. She requests the reimbursement of medical expenses "arising due to her illness and invalidity". She asks to be awarded moral damages in the amount of 50,000 euros as well as punitive damages in the amount of 100,000 euros. She further asks the Tribunal to declare that the EPO breached its duty of care towards her and that the impugned decision is part of an ongoing pattern of institutional harassment against her. Lastly, she claims costs as well as any other relief that "the Tribunal deems equitable, just and necessary in view of the alleged miscarriage of justice". She also seeks the payment of interest.

The EPO asks the Tribunal to dismiss the complaint as partially irreceivable and entirely unfounded on the merits.

## CONSIDERATIONS

1. The complainant challenges before the Tribunal the letter of the Medical Committee of 11 June 2014, notified by its Secretary, enclosing the Medical Committee's report of 2 June 2014, which extended her sick leave until 31 May 2016 and concluded that she was not suffering from invalidity.

2. The EPO submits that the medical report concerned does not constitute a decision within the meaning of Article 106 of the Service Regulations for permanent employees of the European Patent Office and that the only decision that can be challenged is the letter of 23 June 2014 from the Administration informing the complainant of the administrative consequences of the Medical Committee's findings.

3. The complainant argues that the decision to be challenged directly before the Tribunal, in accordance with Articles 107 and 109(3) of the Service Regulations (in the version in force at the relevant time), is the decision of the Medical Committee not to declare that she was suffering from invalidity and that the letter of 23 June 2014 is merely a notification of the administrative consequences of that decision.

4. Article 106 of the Service Regulations provided that:

> "(1) Any decision relating to an employee, a former employee, or rightful claimant on his behalf shall at once be communicated in writing to the person concerned.
>
> (2) Any decision adversely affecting a person shall state the grounds on which it was based."

Article 92(2) "Proceedings" of Title VI "Medical Committee" of the Service Regulations (in the version in force at the relevant time) provided that "[t]he 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".

5. The Tribunal also notes that, at the end of the letter of 11 June 2014, the Medical Committee had stated that, pursuant to Article 92(2) of the Service Regulations, "[a] copy of such report has been sent to the President of the Office. The Administration will inform you as soon as possible of the administrative consequences arising from the report's conclusions."[*]

6. According to the Tribunal's well-established case law, the Medical Committee's opinion is not an administrative decision of the type that can be challenged before the Tribunal as it is merely a step in the process of reaching the final decision of the Administration. In Judgment 4118, consideration 2, the Tribunal clarified the principle regarding a complaint directed against the Medical Committee's report:

> "With respect to the claims directed against the 'decision' of the Medical Committee of 21 June 2007, the Tribunal notes at the outset that they are manifestly irreceivable, inasmuch as the alleged decision is only an opinion amounting to a preparatory step which, as such, cannot be appealed. The only act adversely affecting the complainant is the administrative decision taken in light of that opinion, namely, in this case, the decision of the President of the Office of 12 July 2007. Thus, as the complainant himself

[*] Registry's translation.

> appears to admit in his rejoinder, it is that decision that he should have challenged, if he considered that he had grounds to do so, and not the opinion of the Medical Committee of 21 June 2007."

7. The Tribunal notes that the complainant in her rejoinder reiterates that "she is contesting the entirety of the Medical Committee's report dated 11 June 2014 [...], also notified by the letter dated 23 June 2014", although the EPO drew her attention to her error in its reply. However, in the instant case, the only act adversely affecting the complainant is the administrative decision endorsing the Medical Committee's opinion, contained in the 23 June 2014 letter from the Head of Department, Human Resources (HR) Expert Services, and not the Medical Committee's opinion of 2 June 2014 or its letter of 11 June 2014, which the complainant erroneously considers to be the decision to be impugned.

8. Therefore, the complaint is irreceivable and must be dismissed in its entirety.

9. The oral proceedings and the production of documents requested by the complainant are accordingly rejected.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 24 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER