116th Session **Judgment No. 3300**

THE ADMINISTRATIVE TRIBUNAL,

Considering Judgment 3056, delivered by the Tribunal on 8 February 2012, on Mr P. A.'s seventh complaint against the European Patent Organisation (EPO);

Considering the EPO's submissions of 9 October 2012 regarding the implementation of Judgment 3056, the complainant's comments of 25 October, and the EPO's additional submissions of 26 October 2012;

Considering the Tribunal's Order of 6 November 2012, the complainant's submissions of 2 January 2013, and the EPO's comments thereon of 15 March 2013;

Considering the Tribunal's second Order of 10 May 2013, the decision of the President of the European Patent Office (hereinafter "the Office") of 29 May, the complainant's comments thereon of 21 June and the EPO's final comments dated 31 July 2013;

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

Having examined the written submissions;

CONSIDERATIONS

1. This case concerns the complainant's seventh complaint filed with the Tribunal. Facts relevant to this case are to be found in Judgments 2580, 2795 and 2816, concerning the complainant's fourth, fifth and sixth complaints, respectively. This case was dealt with by the Tribunal in Judgment 3056.

2. Pursuant to Administrative Council decision CA/D 30/07 the rules governing invalidity pensions were amended with effect from 1 January 2008. As from that date, employees who retired on grounds of invalidity before having reached the statutory retirement age of 65 would not become pensioners immediately but would be considered as employees with non-active status. As such, they would receive an invalidity allowance instead of an invalidity pension and, except where their invalidity was due to an occupational disease, they would continue to contribute to the pension fund. When they reached the age of 65, their contributions to the pension fund would cease and they would begin to draw a retirement pension.

3. On 13 February 2008, after having received his January payslip, the complainant wrote to the President of the Office arguing that he had been forced to retire on an invalidity pension through a flawed procedure and that, as the real cause of his condition was workplace mobbing, his invalidity was due to an occupational disease. He requested that he be exempted from the payment of pension contributions or, in the event that that was not granted, that the old rules governing invalidity be applied. On 9 October 2008 the complainant asked the President to reconsider his case and stated that if he did not receive a reply within two weeks he would seise the Tribunal. By an e-mail dated 15 October 2008 the complainant was informed that the President considered that the decision to deduct pension contributions from the complainant's invalidity allowance was correct.

4. The Tribunal, in Judgment 3056, ruled that the decision put in question by the complaint was the decision to apply the new rules governing invalidity to the complainant on the basis that his invalidity was not the result of an occupational disease. The decision was, however, not taken after consultation of the Medical Committee; it was simply based on an earlier finding by that Committee. Accordingly, the Tribunal decided that:

> "1. The matter is remitted to the President of the Office to refer the question whether the complainant's invalidity was due to an occupational disease to a differently constituted Medical Committee. The Medical Committee is to report within six months of the date of this judgment.
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> 2. The EPO is to provide the Tribunal with the report of the Medical Committee within 21 days of its receipt.
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> 3. The matter is stood over until the 114th Session of the Tribunal for consideration of the course then to be taken, including with respect to costs."

5. In an e-mail dated 19 October 2012, the complainant was informed that following review by the new Medical Committee the latter "confirmed unanimously that it does not suspect that [his] invalidity was caused by an occupational disease". At its 114th Session, the Tribunal, considering that the President of the Office was "in a position to reconsider the nature of the complainant's invalidity in light of the latest opinion of the Medical Committee and of the directions given in Judgment 3056, consideration 9", adopted an Order requiring that the EPO's submissions be forwarded to the complainant for comment, that the complainant's comments be forwarded to the EPO, and that the EPO's final comments be received within 60 days of receipt of the complainant's comments. On 10 May 2013 the Tribunal adopted a second Order to clarify the first, stating that it "directs the President of the EPO to take a decision as to whether the complainant's invalidity was due to an occupational disease and to submit that decision to the Registrar of the Tribunal within 30 days of the date on which the EPO receives notification of

the present Order". The complainant was instructed to provide his comments within 30 days of receipt of the President's decision, and the EPO was instructed to provide its final comments within 30 days of receipt of the complainant's comments. In a letter dated 29 May 2013, the complainant was informed that "after having taken due note of the conclusions of the Medical Committee", the President's final decision was "that [the complainant's] invalidity was not due to an occupational disease".

6. The complainant claims that the procedure of the Medical Committee was flawed, as was the ensuing decision of the President. He alleges that the opinion of the Medical Committee was based on his present state of health instead of that of the pertinent time period. He also alleges that the third medical practitioner's report was flawed, that the latter "breached the Dutch law […] and EPO practice in writing his report on [the complainant] and not allowing [him] to use the rights of inspection, correction and objection (Blokkeringsrecht in Dutch)", and that his conduct in the procedure shows his clear wish to "please the Office". The complainant contends that the Medical Committee was "under full control of the EPO" and its members were not properly informed. He also accuses the EPO of abuse of power, mobbing and providing deficient means of legal redress.

7. The Tribunal notes that the Medical Committee report specifies that the Committee was considering "the period starting with 01-12-2005 and ending with 30-09-2011". There is no evidence to support the claim that it considered the complainant's present state of health instead of his health during the pertinent period.

8. The Tribunal finds no flaw in the third medical practitioner's report. It is normal that his report was signed only by him, and the important factor is that all three medical practitioners on the Committee signed the report which stated their final conclusions. The Tribunal also notes that in any event the Medical Committee is not required to follow a Dutch law which does not apply to the EPO.

9. The Tribunal is of the opinion that the Medical Committee was properly constituted. As the medical practitioners appointed by the President and the complainant could not reach an agreement, they chose a third practitioner in accordance with Article 89(3), paragraph 1, in combination with Article 90(1) of the Service Regulations. The third practitioner was unanimously chosen from the list established in accordance with Article 89(4) of the Service Regulations.

10. The complainant presents no convincing evidence to support the claim that the Committee members were not equally informed and that the third practitioner showed bias against him.

11. The claims of abuse of power and mobbing are unfounded. The complainant submits these accusations without proper substantiation.

12. Furthermore, the Tribunal notes that the complainant was afforded the proper means of contesting the decision with which he disagreed. The complainant had access to, and utilised, a system which was established in accordance with the Staff Rules and Regulations to consider internal complaints of a medical nature. He also had a means of redress in the form of his complaint before the Tribunal, which is the competent neutral body responsible for analysing the validity and legality of an organisation's decision, even one based on Medical Committee reports (see Judgment 2580, under 6).

13. Considering the above, the complaint is unfounded. The Medical Committee's conclusions and the President's decision based on them, not to classify the complainant's invalidity as due to an occupational disease, are free of any vitiating flaws and, as such, stand.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2013, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Seydou Ba, Judge, and Mr Patrick Frydman, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 5 February 2014.

Giuseppe Barbagallo
Seydou Ba
Patrick Frydman
Catherine Comtet