Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 7)

v.

EPO

122nd Session **Judgment No. 3714**

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr C. O. D. L. against the European Patent Organisation (EPO) on 9 December 2014;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 7 of its Rules;

Having examined the written submissions;

CONSIDERATIONS

1. The complainant impugns the implied decision of the President of the European Patent Office not to accept the findings of the Medical Committee concerning his invalidity.

2. On 14 August 2014 the complainant was informed that the Medical Committee had determined that he was suffering from invalidity and that he would be advised as soon as possible of the administrative consequences of that determination. In the meantime, his sick leave was extended.

3. A few weeks later he enquired when a decision on his case would be taken. He was told that the matter was being processed through the usual hierarchical channels.

4. In an e-mail of 29 September 2014, having sent several reminders to the Administration, he explicitly requested that a decision on his invalidity be taken by or on behalf of the President of the Office. On 10 October 2014 the Administration replied that the final decision could be expected "in the very near future".

5. On 9 December 2014 the complainant filed his seventh complaint with the Tribunal. He filled in point 3(b) of the complaint form, indicating that no express decision had been taken within the time limit set in Article VII, paragraph 3, of the Tribunal's Statute, on the claim he had notified to the EPO on 29 September 2014.

6. Article VII, paragraph 3, of the Statute relevantly provides that "[w]here the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision".

7. The "decision upon [a] claim" to which that provision refers does not necessarily mean the final decision on the claim. Indeed, as the Tribunal has often recalled, where the Administration takes any action to deal with a claim, by forwarding it to the competent advisory appeal body for example, this step in itself constitutes "a decision upon [the] claim" within the meaning of Article VII, paragraph 3, which forestalls an implied rejection that could be referred to the Tribunal (see, for example, Judgments 3552, consideration 2, 3456, consideration 4, 3428, consideration 18, and 3356, consideration 15).

8. In December 2014, after the filing of the complaint, the complainant received the President's final decision on his case, taken on the basis of the recommendation of the Medical Committee. He forwarded a copy of this decision to the Tribunal on 23 January 2015.

9. On 12 February 2015, in light of this development, the Registry suggested that the complainant should withdraw his seventh

complaint and file a new complaint challenging the President's final decision. It was pointed out to him that his submissions made it abundantly clear that the Administration had in fact responded to his request of 29 September, even though he had not received the President's final decision at the time when he filed his complaint.

10. The complainant, however, refused to withdraw his seventh complaint and simply requested that the complaint form be amended so as to indicate that he impugned his September 2014 payslip which, according to him, evidenced the rejection of his claim. He subsequently provided a copy of this payslip. This request was rejected.

11. Where a complaint impugning an implied decision does not fulfil the requirements of Article VII, paragraph 3, of the Statute at the time when it is filed, such a deficiency cannot be remedied by simply referring to an express decision taken subsequently to the filing of the complaint. It is only where the initial complaint was receivable under Article VII, paragraph 3, that it can later be viewed as being directed against an express decision taken in the course of the proceedings and on which the parties have been able to comment in their submissions.

12. The Tribunal has established through its case law that exceptions to the requirement of Article VII, paragraph 1, of the Statute that internal remedies be exhausted will be made only in very limited circumstances, namely where staff regulations provide that the decision in question is not such as to be subject to the internal appeal procedure; where for specific reasons connected with the personal status of the complainant she or he does not have access to the internal appeal body; where there is an inordinate and inexcusable delay in the internal appeal procedure; or, lastly, where the parties have mutually agreed to forgo this requirement that internal means of redress must have been exhausted (see, in particular, Judgments 2912, consideration 6, 3397, consideration 1, and 3505, consideration 1). Moreover, the complainant bears the burden of proving that the above conditions are satisfied, and in this respect it is not enough to simply indicate in the complaint form that she or he impugns an implied rejection.

13. Furthermore, an argument based on an inordinate and inexcusable delay may be accepted provided that "a complainant shows that the requirement to exhaust the internal remedies has had the effect of paralysing the exercise of her or his rights. It is only then that she or he is permitted to come directly to the Tribunal where the competent bodies are not able to determine an internal appeal within a reasonable time, depending on the circumstances. A complainant can make use of this possibility only where he has done his utmost, to no avail, to accelerate the internal procedure and where the circumstances show that the appeal body was not able to reach a decision within a reasonable time (see, for example, Judgments 1486, under 11, 1674, under 6(b), and 2039, under 4 and 6(b), and the cases cited therein)." (See Judgment 3558, consideration 9.)

14. In the circumstances outlined above, the Tribunal finds that the complainant has not exhausted the internal remedies available to him. His complaint is clearly irreceivable and must be summarily dismissed in accordance with the procedure set out in Article 7 of the Rules of the Tribunal.

15. Lastly, the Tribunal recalls that the receivability of a complaint is governed solely by the provisions of its own Statute (see Judgment 3428, consideration 18). Accordingly the complainant's argument based on the Administration's failure to comply with a time limit set forth in Article 107 of the Service Regulations for permanent employees of the European Patent Office is irrelevant.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 11 May 2016, Mr Claude Rouiller, President of the Tribunal, Mr Giuseppe Barbagallo, Vice-

President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 July 2016.

CLAUDE ROUILLER

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

DRAŽEN PETROVIĆ