

SIXTY-FIRST ORDINARY SESSION

***In re* JAWORSKI**

Judgment 814

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr. Lech Stanislaw Jaworski against the European Patent Organisation (EPO) on 7 July 1986, the EPO's reply of 6 August, the complainant's rejoinder of 4 September and the EPO's surrejoinder of 21 November 1986;

Considering Article II, paragraph 5, of the Statute of the Tribunal and Articles 32(2), 106(1) and 108(2) of the Service Regulations of the European Patent Office, the secretariat of the EPO;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, an Australian citizen, is employed as an examiner at the EPO's office at The Hague. In August 1979 he suffered injury in an aeroplane accident and has since been treated at a clinic in Cieplice, in Poland, every two years. On 23 December 1985 he applied for one month's sick leave so that he could have further treatment at the clinic. He enclosed a certificate made out by a Polish doctor prescribing the treatment and countersigned by his own doctor. The EPO's answer, in a letter of 8 January 1986, was that he must give its medical officer, Dr. Kersch, further details about the clinic and the kind of treatment he was to undergo. He wrote Dr. Kersch a letter on 30 January appending an "additional certificate pertaining to my requested treatment" and again seeking approval of the leave. On 26 February the head of the Personnel Office wrote to say that Dr. Kersch had not given approval but to invite him to apply for unpaid compassionate leave for the purpose. He did so on 18 March, albeit under protest, and on the same day lodged an appeal under Article 108(2) of the Service Regulations against the refusal of sick leave. On 26 March he supplied a certificate from another doctor, in Delft, prescribing the treatment in Cieplice. He was granted the compassionate leave on 2 April and underwent the treatment that month. On 15 April the head of the Personnel Office informed him that Dr. Kersch, whose opinion could not be disclosed, had not changed his mind and that appeal did not lie to the Appeals Committee on medical matters. Further correspondence led nowhere and he filed his complaint on 7 July.

B. The complainant submits that the refusal of sick leave was a "decision adversely affecting" him within the meaning of Article 106(1) of the Service Regulations because he had to take unpaid leave instead, and the EPO should therefore have stated "the grounds on which it was based". Agreement could surely have been reached on other arrangements. The refusal was unwarranted in that Dr. Kersch, a general practitioner who did not even examine him, overruled the concurrent opinions of specialists. In refusing to disclose Dr. Kersch's opinion the EPO was in breach of Article 32(2), which says that "documents relating to his administrative position" ought to have been "communicated to him before they were filed". He seeks the quashing of the decision, the grant of sick leave instead of compassionate leave, the disclosure of Dr. Kersch's opinion, 2,000 guilders in moral damages, and costs.

C. The EPO replies that by a letter of 18 July 1986 it informed the complainant that in the light of his explanations it had decided to replace the compassionate with sick leave. The complaint should be dismissed because he has obtained satisfaction.

D. The complainant rejoins that he has not obtained full satisfaction. In a reply of 15 August 1986 to the Administration he observed that he had given much earlier the explanations said to have warranted the change of heart, and he pointed out that he had not yet obtained disclosure of Dr. Kersch's opinion, moral damages or costs. He presses the three claims.

E. In its surrejoinder the EPO states that it has given the complainant full satisfaction: it has disclosed to him the

text of Dr. Kersch's opinion and agreed to pay him 2,000 guilders in moral damages and meet his costs.

CONSIDERATIONS:

1. The complainant is an official of the EPO, where he is employed as an examiner. The dispute is over the EPO's refusal of an application he made for sick leave.
2. In 1979 the complainant suffered a serious accident which resulted in his 50 per cent disability. He has on several occasions been a patient at an orthopaedic clinic in Cieplice, in Poland, that treats orthopaedic and traumatic disorders.
3. In a letter of 23 December 1985 the complainant applied for one month's sick leave so that he could undergo further treatment at the clinic in April 1986. On 26 February 1986 the head of the Personnel Office replied that the EPO's medical officer had not given approval and that he was therefore refused permission to take sick leave at the clinic; he might, however, be granted compassionate leave for the purpose.
4. Discussion continued between the parties. The complainant submitted a new medical certificate and asked for a copy of the medical officer's opinion. In a letter of 15 April 1986 the head of the Personnel Office informed him that the medical officer stood by his original opinion that there was no medical reason why the complainant should undergo treatment in Cieplice. He was also refused a copy of the opinion, which the letter described as "an internal administrative minute".
5. The complainant had at the same time lodged an internal appeal, and the letter pointed out that since the dispute was a medical one the Appeals Committee was not competent and the case should be put to a medical board. In a letter of 10 June the head of the Personnel Office said that the EPO was appointing its medical officer to the board and he would be explaining his opinion to the other members. It is not clear whether he did so.
6. In his complaint, which he filed on 7 July 1986, the complainant seeks (a) the quashing of the decision of 26 February 1986 and the grant of sick leave, (b) the disclosure of the medical officer's opinion, (c) an award of 2,000 guilders in moral damages and (d) costs.
7. The Organisation does not plead irreceivability. In a letter which it wrote to the complainant on 18 July 1986 and which it appends to its reply it observes that it gathers from the explanation he has provided that he is no longer applying for leave to undergo treatment in any particular clinic outside the territory of EPO member States, but making an untied application for sick leave. The EPO submits that since that has been granted he has obtained satisfaction and has no cause of action.
8. To that the complainant rejoins that the new decision settles only the first of his claims and he presses the others, to disclosure of the medical officer's opinion, to moral damages and to costs.
9. The Organisation's surrejoinder states that it has given the complainant full satisfaction by letting him have the medical officer's opinion and offering him moral damages amounting to 2,000 guilders and costs. The EPO applies for suspension of the proceedings to allow the complainant, who is on compassionate leave and cannot be found for the time being, to withdraw suit.
10. The Tribunal has failed to reach the complainant at the address he gives in the complaint form and, to save further proceedings, will take up the parties' submissions as they stand.
11. It is plain that the Organisation has given the complainant full satisfaction. In the circumstances, and in view of the parties' attitude, there is no cause of action and no call for any ruling.

DECISION:

For the above reasons,

The Tribunal makes no ruling.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and Mr. Pierre Pescatore, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner,

Registrar.

Delivered in public sitting in Geneva on 13 March 1987.

(Signed)

André Grisel
Jacques Ducoux
Pierre Pescatore
A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.