



Afgørelse i sag 2710/2009/RT - Údajné neprovedení platby a poskytnutí nepřesných informací

Rozhodnutí

Případ 2710/2009/RT - Otevřeno dne 03/12/2009 - Rozhodnutí ze dne 12/05/2010

Stěžovatel, bývalý úředník Evropské komise, dostává invalidní důchod na základě utrpěného úrazu. Po úraze požádal Komisi o pojistné plnění, na které měl nárok. S návrhem Komise ohledně stupně invalidity a celkové částky pojistného plnění nebyl spokojen. Proto požádal, aby byla svolána lékařská komise. Na základě konečného rozhodnutí lékařské komise informovala Komise dne 23. července 2009 stěžovatele, že kromě již vyplacených částek má nárok na 9 545,31 EUR. Komise mu však tuto částku nevyplatila. Stěžovatel se tudíž obrátil na veřejného ochránce práv.

Ve své stížnosti uvedl, že Komise mu nevyplatila částku odpovídající stupni trvalé invalidity, který mu byl přiřazen, přestože ho informovala, že tak učinila, a poskytla mu zavádějící informace. Tvrdil, že Komise by měla platbu provést a zaplatit úroky z prodlení.

Dopisem ze dne 4. ledna 2010 stěžovatel informoval veřejného ochránce práv, že Komise mu již dlužnou částku spolu s úroky z prodlení vyplatila. Ve svém stanovisku Komise výše uvedené potvrdila.

Na základě výše uvedených skutečností veřejný ochránce práv dospěl k závěru, že Komise přijala odpovídající opatření k urovnání záležitosti. Případ tedy uzavřel.

THE BACKGROUND TO THE COMPLAINT

1. The complainant, a former European Commission official, receives an invalidity pension following an accident. After the accident, he applied for indemnity insurance benefits, to which he was entitled on the basis of Article 73 of the Staff Regulations and the "*Common Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease*" ('the accident rules').

2. On 18 March 2006, the complainant submitted a complaint to the Commission under Article 90(2) of the Staff Regulations, in which he argued, in substance, that the Commission had abusively delayed its decision on his indemnity insurance claim. The Commission recognised the lengthy period of time needed to deal with the complainant's case, but denied the abusive character of the resulting delay and stated that the complexity of the file justified the length of time it had taken to close it.

3. On 28 August 2006, the complainant turned to the Ombudsman with a complaint that was registered under reference 2782/2006/(MHZ)RT. Following an inquiry, the Ombudsman found



two instances of maladministration in the Commission's handling of the case and made two critical remarks as regards the delay in paying the complainant's indemnity insurance benefits and the breach of Article 12 of the Code of Good Administrative Behaviour [1] .

4. On 18 February 2008, the complainant submitted a new complaint to the Ombudsman against the Commission (*complaint 492/2008/RT*), in which he stated that he was not satisfied with the Commission's proposal concerning his invalidity rate and the amount of his indemnity insurance benefits. Accordingly, he asked for the Medical Committee to be convened. He alleged that the Commission acted unfairly and attempted to influence the work of the Medical Committee in favour of the institution's private insurance company. In his reply of 4 March 2008, the Ombudsman took the view that, on the basis of the evidence submitted by the complainant, there were insufficient grounds to open an inquiry into his complaint.

5. On 23 July 2009, the Commission informed the complainant that, on 9 June 2009, it received the Medical Committee's final report establishing his permanent invalidity rate. It added that, on 17 June 2009, it forwarded the report to its insurance company. It stated that, after receiving the agreement of the insurance company, it would make the balance payment corresponding to his permanent invalidity rate.

6. On 27 July 2009, the Commission informed the complainant that, on the basis of the Medical Committee's report, it had decided that his permanent invalidity rate should be 64.5%. It stated that two provisional payments had already been made to him, namely: (i) on 1 November 2005, corresponding to an invalidity rate of 40%; and (ii) on 2 November 2006, corresponding to an invalidity rate of 23.5%. Accordingly, the Commission would proceed with the balance payment corresponding to the remaining invalidity rate of 1%, that is to say, EUR 9 545.31.

7. On 25 August and 3 September 2009, the complainant's lawyer approached the Commission services. He pointed out that the Commission had still not made the balance payment of EUR 9 545.31.

8. On 10 September 2009, the Commission (PMO [2]) replied to the above two letters. It stated that its private insurance company made the balance payment to the complainant's bank account on 25 August 2009.

9. On 29 September 2009, the complainant's lawyer replied to the Commission's letter of 10 September 2009. He stated that his client had not yet received the final payment and asked the Commission to explain the delay. Moreover, he pointed out that his client was entitled to request the Commission to pay him interest for the late payment.

10. On 15 October 2009, the Commission replied to the above letter. It stated that " *there was a misunderstanding as regards the balance payment* ". After checking with the insurance company, the Commission found out that that the payment had been made on 30 September 2009 instead of 25 August 2009. The Commission expressed its regrets for the situation. However, it pointed out that the two-month delay could not be considered as



"unreasonable", given that the "usual deadline for such payments is six weeks". Moreover, there is no legal basis to justify the requested payment of interest.

11. On 22 October 2009, the complainant's lawyer approached the Commission services again. He pointed out that, nearly three months after the Commission adopted its decision of 27 July 2009, the balance payment had still not been made. He requested the Commission: (i) to make the balance payment immediately; and (ii) to pay interest for the late payment.

12. On 3 November 2009, the complainant turned again to the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

13. In his complaint to the Ombudsman, the complainant submitted the following allegation and claim.

Allegation :

The Commission (i) failed to pay him the balance payment corresponding to his permanent invalidity rate, although it informed him that it had done so; and (ii) provided him with misleading information as regards the above payment.

Claim :

The Commission should make the balance payment and pay interest for the delay.

THE INQUIRY

14. On 3 December 2009, the Ombudsman opened an inquiry.

15. On 4 January 2010, the complainant sent a further correspondence relating to his present complaint. On 2 March 2010, the Commission sent its opinion on the present complaint, which was forwarded to the complainant with an invitation to make observations.

16. The complainant sent its observations on 25 March 2010.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Alleged failure to pay the balance payment and to provide accurate information and related claim

Arguments presented to the Ombudsman

17. In his letter of 4 January 2010, the complainant informed the Ombudsman for the first time that, on 23 October 2009 (that is, before he lodged his present complaint to the Ombudsman), his lawyer submitted an appeal under Article 90(2) of the Staff Regulations against the Commission's decision of 27 July 2009. He pointed out that the subject matter of this appeal also covered the issue of the Commission's failure to make the balance payment of his indemnity insurance benefits.

18. The complainant mentioned that, on 9 November 2009, after he had submitted the present complaint to the Ombudsman, the Commission made the balance payment



corresponding to his indemnity insurance benefits. Moreover, on 23 November 2009, the Commission paid him interest for the late payment.

19. According to the complainant, the balance payment of his indemnity insurance benefits was delayed because the Commission, namely, the PMO, made the payment to the complainant's old bank account by mistake.

20. Finally, the complainant pointed out that, despite the two critical remarks made by the Ombudsman in the framework of his inquiry 2782/2006/(MHZ)RT, the Commission had failed to improve the quality of its administrative services. In light of the new information submitted in his letter of 4 January 2010, the complainant suggested that the Ombudsman could carry out an own-initiative inquiry into the matter if he decides to close the present case.

21. In its opinion, the Commission explained that, on 17 June 2009, it sent the report of the Medical Committee to the insurance company in order to obtain an additional receipt. The insurance company provided the receipt in question. Therefore, on 27 July 2009, the Commission sent the complainant its final decision concerning his permanent invalidity rate, and asked the insurance company to make the corresponding balance payment.

22. The Commission stated that, as a general rule, affiliates receive payment within a one-month deadline. Following the letter from the complainant's lawyer dated 25 August 2009, the Commission asked the insurance company whether it had made the payment. The insurance company confirmed that it had done so.

23. On 29 September 2009, after receiving the second letter from the complainant's lawyer, the Commission contacted the insurance company. After checking, the insurance company discovered that, by mistake, the payment had been made to the complainant's old bank account. The Commission asked the insurance company to make the payment to another bank account and to pay the complainant interest for late payment. The insurance company did so. The Commission pointed out that it could not be expected to know that the complainant had, in the meantime, changed his bank account.

24. In his observations, the complainant expressed his dissatisfaction with the Commission's position. He argued that the Commission committed several mistakes regarding the payment of his indemnity insurance benefits, namely, i) it acted wrongly when it made the payment of his indemnity insurance benefits subject to the insurance company's approval of the Medical Committee's report; ii) the complainant sent the Commission a registered letter informing it in due time about the change in his bank account details; iii) the insurance company failed to take any measures after making the payment into the wrong bank account on two separate occasions; iv) the Commission failed to act promptly after receiving the letter dated 25 August 2009 from the complainant's lawyer, in which it was informed that the payment had not been made; v) the Commission acted wrongly in applying only a 5,50% rate of interest for calculating interest for late payment.

The Ombudsman's assessment



25. The Ombudsman takes the view that, by making the balance payment of the complainant's indemnity insurance benefits, and by paying interest for the delay which occurred, the Commission satisfied the claim submitted in the complainant's original complaint.

26. As regards the complainant's argument that the payment was delayed because the Commission paid the balance payment into another bank account by mistake, the Ombudsman notes that the complainant has received the amount due, as well as interest for late payment. The Ombudsman also notes that the above facts were confirmed by the Commission in its opinion. He does not, therefore, consider it useful to pursue the present inquiry any further.

27. The Ombudsman considers that the Commission has taken adequate steps to settle the matter.

28. Finally, the Ombudsman notes the complainant's suggestion concerning the opening of an own-initiative inquiry into the PMO's handling of his case and of similar cases and he will consider it in the context of other proposals for future own-initiative inquiries.

B. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

The Commission has taken steps to settle the matter.

The complainant and the Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 12 May 2010

[1] Decision 2782/2007/(MHZ)RT, available on the Ombudsman's website <http://www.ombudsman.europa.eu/cases/decision.faces/en/3225/html.bookmark> .

[2] Office for the Administration and Payment of Individual Entitlements.