Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A. (No. 2)

v.

EPO

139th Session **Judgment No. 4990**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr M. H. G. A. against the European Patent Organisation (EPO) on 4 May 2021, the EPO's reply of 25 October 2021, the complainant's rejoinder of 24 January 2022, corrected on 31 January 2022, and the EPO's surrejoinder of 2 May 2022;

Considering the letter of 12 January 2023 by which the EPO informed the Registry of the Tribunal that it had paid 100 euros in moral damages to the complainant for the irregular composition of the Appeals Committee, as was done in Judgment 4550;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the abolition of automatic step advancement pursuant to the introduction of a new career system.

Facts relevant to this case may be found in Judgments 4710, 4711 and 4712, delivered in public on 7 July 2023, and in Judgment 4889, delivered in public on 8 July 2024.

Suffice it to recall that, on 11 December 2014, the Administrative Council of the European Patent Office, the EPO's secretariat, adopted decision CA/D 10/14 introducing a new career system, which entered into force on 1 January 2015. The new career system substantially modified the way job categories were divided. It introduced a "single spine" structure consisting of 17 grades instead of the former three categories of jobs. Two career paths were established: a managerial path and a technical path. Employees continued to enjoy horizontal step advancement and vertical promotion to higher grades, but the underlying principle of the new career system was that progression was based on sustained performance and demonstrated competencies rather than time spent within a step or grade. The decision provided that transposition from the current to the new career system should be made taking into account the employee's situation as at 31 December 2014. It also provided that no reduction in basic salary should result from the transposition, and that the salary adjustment method in force since 1 July 2014 should apply to the new salary scales and the salary resulting from the transposition. Article 57 of decision CA/D 10/14 provided that employees graded A4(2), whose basic salary on 31 December 2014 was above the amount corresponding to grade 13, step 5, in the new salary scales, were not transposed into the new salary scales. However, they maintained *ad personam* the basic salary corresponding to their grade and step on 31 December 2014, which was subject to future adjustments in application of the salary adjustment method.

On 31 December 2014, the complainant was Head of Department and held grade A4(2), step 11, with 22 months' seniority. On 26 March 2015, he received his March payslip, which showed that he was not granted a step advancement to step 12 on 1 March 2015. By a letter of 30 April 2015, he was informed that, pursuant to Article 57(1) of decision CA/D 10/14, his current grade and step would not be transposed into the new salary scale; he would maintain *ad personam* the basic salary corresponding to grade A4(2), step 11, as at 31 December 2014. His basic salary would be subject to future adjustments under the salary adjustment method and career prospects would be available to him if he was appointed to a higher job group.

On 11 June 2015, the complainant requested a review of the decision contained in his March 2015 payslip not to grant him the bi-annual step advancement. He argued that the old system continued to apply to him as he was not transposed into the new system pursuant to Article 57(1) of decision CA/D 10/14. In his view, step advancement based on seniority constituted an acquired right. Employees in grade A4(2) with a basic salary above the amount corresponding to grade 13, step 5, were the only category of staff that was not transposed into the new salary scale and as such they were discriminated against because they were deprived of any step advancement. His request for review was rejected as unfounded in July 2015 on the ground that, pursuant to the entry into force of the new career system on 1 January 2015, the former salary scale and seniority-based step advancement were no longer applicable, even for staff holding grade A4(2). According to the EPO, his March 2015 salary was therefore determined through a correct application of the transitional measures foreseen by Article 56 of decision CA/D 10/14. The EPO stressed that he would maintain *ad personam* the basic salary corresponding to his grade and step on 31 December 2014, which would be subject to future adjustments in application of the salary adjustment method.

On 16 October 2015, the complainant lodged an appeal against that decision with the Appeals Committee alleging, inter alia, that he no longer had any possibility of step advancement, even merit-based, as he held grade A4(2). Since he lacked only two months' seniority in his step on 31 December 2014, granting him a step advancement would have been a minimal transitional measure to mitigate the particularly adverse effect the non-transposition had on his career progression, in particular as he was not an examiner. He asked that the contested decision be set aside, that decision CA/D 10/14 be declared illegal, that he be granted the step he was entitled to under the previous system and that his salary be recalculated. He also asked to be assigned to job group 3, which was the closest job group to his "former grade A4(2)", or alternatively to be "assigned to a new job group, created to reflect the previous grade A4(2) and the expectations that went along with it". In addition, he sought compensation and costs.

On 18 November 2020, the enlarged chamber of the Appeals Committee issued its opinion concerning the complainant's appeal and several others lodged by staff members against the new career system, in particular regarding the abolition of automatic step advancement and the grade transposition. The majority of the Appeals Committee recommended dismissing the appeals as inadmissible with regard to the requests for the creation of a new career group for those previously in the A4(2) group, since such requests did not concern their administrative status.

In the meantime, the complainant retired from the EPO on 1 January 2020.

By a letter of 4 February 2021, the complainant was informed of the President of the Office's decision to follow the recommendations of the majority of the Appeals Committee for the reasons stated in the opinion. Consequently, his appeal was rejected as unfounded. He was nevertheless awarded 600 euros in moral damages for the length of the appeal proceedings and a further 100 euros in moral damages for the time elapsed since the deliberation of the Appeals Committee. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision of 4 February 2021, to declare Article 57 of decision CA/D 10/14 illegal, to quash the "individual decision", and set aside the general decision CA/D 10/14, in particular the new Article 48 of the Service Regulations for permanent employees of the Office, to recalculate his salary and pension entitlements in light of the progression he should have had under the old system on the day the Tribunal delivers its judgment and taking into account the adjustment of the salary scales since 1 January 2015, plus interest at the rate of 5 per cent. He also seeks reimbursement of the "underpayment since 2015", plus interest at the rate of 5 per cent per year of delay, together with an award of "[f]inancial and material damages" and moral damages. Lastly, he seeks 500 euros for "out-of-pocket expenses, time and trouble incurred for the appeals procedure" and full reimbursement of legal costs.

The EPO asks the Tribunal to reject the complaint as irreceivable insofar as the complainant seeks a declaration of law or the setting aside of decision CA/D 10/14 and otherwise unfounded. It also asks that the complainant be ordered to bear his costs.

CONSIDERATIONS

1. The following discussion proceeds against the background already set out in the facts described above.

2. In his first plea, under the heading "Impugned decision is not reasoned", the complainant contends that the impugned decision endorsed two opinions of the enlarged chamber of the Appeals Committee issued on a number of appeals concerning the New Career System (NCS) and filed by staff, who held the "A4(2)" or "A4(2) *ad personam*" grades in the former career system, including the complainant. In the complainant's view, the impugned decision is not an "individual" decision as required by Article 106 of the Service Regulations for permanent employees of the Office, as the enlarged chamber of the Appeals Committee examined the arguments of a considerable number of appellants and issued long theoretical opinions, which were not reached unanimously.

This plea is unfounded.

As the Tribunal's case law establishes, the executive head of an organisation, when adopting the recommendations of an internal appeal body, is under no obligation to provide any further reasons than those given by the appeal body itself. The obligation to give reasons is affirmed only where the executive head of an organisation rejects the conclusions and recommendations of the appeal body (see Judgments 4616, consideration 9, 4307, consideration 15, and 3994, consideration 12). Accordingly, having accepted the opinion of the enlarged chamber of the Appeals Committee, the President of the Office was under no obligation to provide further reasons for his decision. In addition, the enlarged chamber of the Appeals Committee specifically examined in depth the arguments of the staff holding the A4(2) grade *ad personam* and thus its opinion was not merely theoretical. The fact

that the Appeals Committee's opinion was not reached unanimously was not relevant.

3. In his second, third and fourth pleas, which are interrelated, the complainant contends that:

(i) the opinion of the majority members of the enlarged chamber of the Appeals Committee, endorsed by the President, was tainted by an error of law. In his view, the majority erred in law by equating an acquired right to automatic step advancement based on seniority with an acquired right based on a right to promotion. In his internal appeal, the complainant relied on the specificity of his right to automatic step advancement, but he did not argue that there was a breach of an acquired right to promotion. The majority of the enlarged chamber did not make a clear distinction between promotion, which is essentially merit-based and unpredictable, and progression in steps, which is linked to seniority and predictable;

(ii) the impugned decision was in breach of his acquired right to automatic step advancement based on seniority (enshrined in former Article 48 of the Service Regulations). Such automatic step advancement, independent from promotion and based on no other condition but seniority, was a fundamental and essential term of employment; and

(iii) his career progression and his salary were "frozen". Pursuant to Article 57 of decision CA/D 10/14 he was not transposed into the NCS, and, thus, he lost his right to automatic step advancement based on seniority and he was also denied the possibility of step advancement based on merit as provided for into the NCS. Unlike what was the case for examiners, no further professional development opportunities were available to him, because he worked in general law; promotion to the position of member of the Boards of Appeal, or Senior Expert, or Principal Adviser was open only to examiners.

The Tribunal first notes that the alleged error concerning the distinction between step advancement based on seniority and promotion is immaterial to the issue of whether the NCS violated the complainant's

acquired rights since, in any event, and irrespective of the fact that the Appeals Committee and the impugned decision did not consider the complainant's argument concerning his acquired right to automatic step advancement, there is no acquired right to automatic step advancement. Indeed, the question of whether the abolition of automatic step advancement based on seniority infringed an acquired right has already been addressed and rejected by the Tribunal. In Judgment 4711, consideration 8, the Tribunal held that staff had no acquired right to automatic step advancement based on seniority. The Tribunal recalled that the amendment of a provision governing an official's situation to their detriment constitutes a breach of an acquired right only when such an amendment adversely affects the balance of contractual obligations, or alters fundamental terms of employment in consideration of which the official accepted an appointment, or which subsequently induced them to stay on. In order for there to be a breach of an acquired right, the amendment to the applicable text must relate to a fundamental and essential term of employment. Judgment 4711 considered the situation of a staff member who was transposed into the NCS and, thus, was no longer entitled to automatic step advancement based on seniority, but still had the opportunity of step advancement based on the appraisal of performance and expected competencies. In such a situation, according to Judgment 4711, there is no unreasonable alteration to the balance of contractual obligations, as the step advancement is related to the discharge of the staff members' obligations. There is no alteration of the fundamental terms of employment in consideration of which the official accepted the appointment (see Judgment 4274, considerations 16 to 18, for a similar reasoning in a similar situation). The same principle was stated by Judgments 4710, 4712 and 4889, and, in addition, by Judgment 4888 (see considerations 7 to 10), by which the Tribunal dismissed the application for review filed against Judgments 4710, 4711 and 4712. Judgment 4889 also held, in consideration 7, that staff rules providing for the grant of promotion within an international organisation do not confer any acquired rights on staff. Unless the new rules substantially deprive staff of their former prospects for advancement, an organisation always has the ability to amend those arrangements according to need.

The Tribunal notes that the complainant's situation is different from that considered in Judgment 4711, as he encumbered the grade A4(2) in the previous career system and his salary was above the amount corresponding to grade 13, step 5, in the new salary scales. Accordingly, he was not transposed into the NCS pursuant to the specific provision enshrined in Article 57(1) of decision CA/D 10/14. As a result, he was no longer entitled to automatic step advancement according to the former career system, and he was not entitled to step advancement based on merit according to the NCS. However, this does not imply either that an acquired right was infringed or that his career was "frozen".

It is appropriate, at this point, to recall the peculiarity of grade A4(2) in the former career system and how it was transposed, or not transposed, into the NCS. Prior to the introduction of the NCS, a promotion to grade A4(2) could occur at the earliest after five years in grade A4. It was reserved for staff who had demonstrated particular merit, either in their main duties or, for example, by taking on special duties. The former job descriptions stipulated that employees in grade A4(2) not only had to perform all the duties falling to A4 staff but could also be called upon to perform, on a regular basis, special duties such as training, tutoring, assisting the director and project-management or leading and supervising a group of staff. An A4(2) post required, as minimum qualifications, very wide-ranging or highly specialized professional experience and work of special merit. Decision CA/D 10/14 included specific provisions governing the transposition of employees in grade A4(2) to the new single spine salary scale under the NCS. Under the NCS, grade A4(2) was merged with other grades (A1 to A4) in a single job group below managers (job group 4). Their former specific and distinct grade A4(2) was not reflected in a corresponding distinct grade. The justification given by the Office was primarily that the former policy on A4(2) promotions had led to too many promotions to grade A4(2) occurring too early in the career of A4 staff, thereby contributing to an unsustainable financial situation. In addition, overlaps in salaries between grades A4(2) and A5 and A6 did not reflect the difference existing in grades and with regard to management responsibilities. The Office's intention when proposing the NCS was to

focus on applied competencies rather than on status and to better reflect performance, competence, and roles by limiting the salary overlaps between different levels of responsibility. In the NCS, grade 13 (G13), step 5, was the end of the grade for the new job group 4 and, as a result, for staff that in the former career system encumbered a position A4(2), the end salary was capped at a lower level than that existing under the former career system. In order to safeguard staff at grade A4(2), who in the former career system were already receiving a salary higher than the one provided for in G13, step 5, in the NCS, a specific transitional measure was adopted. All former A4(2) staff whose basic salary on 31 December 2014 was above the amount corresponding to G13, step 5 in the new salary scale (the highest step in the corresponding job group 4), including the complainant, were not transposed into the new salary scale but maintained their former salary *ad personam* (Article 57(1) of decision CA/D 10/14). Consequently, the complainant who on 31 December 2014 held grade A4(2), step 11, with 22 months' seniority, under the NCS could no longer progressively advance to the end of the salary scale of his former grade (A4(2), step 13), whether automatically or by way of merit-based step advancement.

Even though the complainant's situation is different from the situation considered by Judgment 4711, nonetheless, the restriction of previously existing opportunities did not infringe an acquired right to career advancement but only touched the discretionary modalities conditioning promotion and career advancement at a given point in time. The rules applicable to step advancement and promotions were reformed by decision CA/D 10/14 in order to base career progression on proven performance and demonstration of expected competencies, but the promotion opportunities offered to staff were not substantially affected. The three paths to a higher grade provided by former Article 49 of the Service Regulations – namely, the normal promotion procedures to the immediate higher grade, selection for appointment to a position open to competition, and reclassification – have thus been maintained. As a result, the criticized provisions relating to mere promotion modalities, could legally modify the previous rules, and no acquired rights were disregarded. Moreover, as part of the NCS reform, the EPO created the new position of "Senior Expert" in order to offer a

new outlet for examiners, especially those at the upper level of grade A4(2), to compensate for the loss of their step advancement possibilities. Even though the complainant could not access this position because he was not an examiner, this aspect of the reform demonstrates that the EPO did reasonable efforts to strike an overall balance. In addition, even though the complainant was not an examiner, he still had the possibility of being promoted to a position of Director or member of the Boards of Appeal through a selection procedure. As a non-examiner, he could also apply to a post of Team Manager or Head of Department. The fact that the access to high-level managerial positions or to positions on the Boards of Appeal was in fact limited due to the limited number of posts available in these positions, does not imply that there was no opportunity at all to pursue these career paths. Moreover, the complainant could still obtain an increase in his salary through bonuses, functional allowance, salary adjustment, reclassification or promotion.

In conclusion, even if the complainant lost the opportunity of two further automatic steps (from 11 to 13 in the former career system), he maintained the opportunity to obtain a promotion and to benefit from salary raises within his grade. Having regard to the reasons for the contested reform, the solution adopted for staff at A4(2) with a salary higher than the one for G13, step 5, in the NCS, is not disproportionate, it falls within the discretion of the Organisation, and it strikes a reasonable balance which did not alter the essential terms of employment of the staff.

4. In his fifth plea, the complainant alleges that the EPO breached his legitimate expectations and he submits that:

– automatic step advancement was an essential feature of the EPO as it had existed since its "foundation", for almost 40 years, which demonstrates that it was an inherent aspect of the career paths for EPO employees;

– considering the previous framework, which provided for automatic step advancement, and thus salary increments, he had a legitimate expectation of a foreseeable, stable, and transparent salary structure;
– he had a legitimate expectation based on Communiqué No. 63, which provided: "[a] major choice has been made to maintain the same entry and end salaries for all staff, independently of their date of entry at the EPO. This is simple, fair and an important factor of social cohesion. Based on acknowledgement and development of competencies and performance, the new career system offers diversified ways to reward all types of contributions and responsibilities." His expectation is also grounded on paragraph 16 of document CA/84/14 Rev.1 (a preparatory document to the adoption of CA/D 10/14), which provided: "[t]he current lowest salary and highest level of salary have been kept. The maintaining of the entry salary aims at keeping the EPO's attractiveness and be positioned to recruit best candidates in our 38 Member States. The end salary of each job group has been maintained as well, but reaching the end salary will now depend only on performance and competencies." Consequently, he could legitimately expect that the end salary for his grade would be maintained.

This plea is unfounded.

Similar arguments have been dismissed by the Tribunal in Judgment 4712, consideration 5. The Tribunal held that, since the abolition of automatic step advancement based on seniority was lawful and did not breach an acquired right, likewise no legitimate expectations were breached, as the complainant's expectations were grounded on a rule (step advancement based on seniority) which had been lawfully abolished. The contention that automatic step advancement had existed since the creation of the Office, for more than 40 years, and was therefore a well-established practice, which the complainant expected to continue, is unfounded. As already said, automatic step advancement was not based on a practice, but on a rule. In any case, a practice cannot continue to apply when it has been expressly (and lawfully) abolished by a legal provision. In the present case, irrespective of whether automatic step advancement was grounded on a rule and/or on a

practice, it has been lawfully abolished (see also Judgment 4274, consideration 19). In addition, the Tribunal observes that the complainant's previous basic salary was preserved, and not reduced, and he still had the possibility to increase his salary by non-automatic career progression, such as promotion.

As to the complainant's reference to preparatory documents, which preceded the adoption of the NCS, they cannot be considered a promise to the complainant and could not create a legitimate expectation in contrast with the reform which lawfully abolished automatic step advancement.

5. In his sixth plea, the complainant alleges a breach of the principle of equal treatment; he contends that:

(i) he was deprived of within-grade step advancement;

(ii) within-grade step advancement presupposes that staff members are within a grade; staff holding grade A4(2) *ad personam*, by not being transposed into the NCS, were not provided with a grade within which they could advance;

(iii) as a result, other staff in job group 4 had the possibility of advancing in step and of being promoted, while A4(2) *ad personam* staff only had the possibility of being promoted; that was a clear difference in treatment with respect to within-grade step advancement; and

(iv) in addition, the complainant, who was a lawyer (and not an examiner) could not be promoted to the position of Senior Expert (a position available only to examiners) and could not apply for a Director post as the number of posts of that type was limited and none of them were vacant.

This plea is unfounded.

The Tribunal has consistently held that the principle of equal treatment requires, on the one hand, that officials in identical or similar situations be subject to the same rules and, on the other hand, that officials in dissimilar situations be governed by different rules defined so as to take account of this dissimilarity (see Judgment 4712,

consideration 5). The question is whether there were any relevant differences in the former grade A4(2) that warranted a different treatment. The job groups were determined on the basis of the nature of the tasks performed, qualifications, education, knowledge, and expertise. The complainant does not prove that the EPO failed to exercise its judgment properly in transposing job groups in the NCS. Indeed, as already explained in consideration 3 above, grade A4(2) employees were in a different situation in the former system as the promotion to grade A4(2) was an exceptional promotional possibility for grade A4 employees who had demonstrated particular merit, who performed all the duties falling to A4 staff and who may also have been called to perform additional special duties. In addition, the situation of staff members holding grade A4(2) and receiving a salary higher than the salary for G13, step 5, is different from the situation of staff members receiving a salary lower than the salary for G13, step 5. The decision not to transpose staff into the NCS – where they were already receiving a salary higher than the one provided for grade 13, step 5, in the NCS – complied with the reform's objectives and did not result in any disproportionate harm to them. The contention that the complainant had fewer career possibilities than the examiners has already been addressed and rejected in consideration 3 above.

6. In his seventh plea, the complainant alleges a breach of the EPO's duty of care, as it did not adopt transitional or mitigating measures to ensure a smooth transition to the NCS for staff holding grade A4(2); he contends that:

(i) there was no smooth transition, as his salary was frozen as of 31 December 2014 and his 22 months of accumulated experience and good performance in step 11 of grade A4(2) were disregarded;

(ii) there was no need to freeze the situation as at 31 December 2014 since the reward system was only effective on 1 July 2015;

(iii) if the EPO had made a difference between the reward process and seniority advancement, those who were due to be granted an automatic step advancement between January and July 2015 could

have been granted an additional step and still be aligned with the new system on 1 July 2015; and

(iv) the EPO failed to inform the staff of the timeline of implementation, content, and consequences of the reform.

Similar arguments have already been addressed and rejected in Judgment 4711, consideration 10: "The fact that staff members were informed only 15 days before the entry into force of the reform had no material consequences, considering that no action was required of them prior to its implementation. The transitional measures included in the reform of the career system fall within the discretion of the Organisation, do not appear unreasonable and cannot therefore be annulled by the Tribunal. In any case, it is not within the Tribunal's purview to impose different transitional measures." Moreover, as the Tribunal held in Judgment 4889, consideration 8, the six-month gap between the effective date of the NCS and the transposition of employees was originally planned as part of decision CA/D 10/14 itself. The six-month period allocated to the Office for transposing staff members to the new grades and steps does not appear unreasonable given the scale and complexity of this exercise. There is no reason for a different conclusion in the present case. The fact that the complainant would have obtained a step advancement in March 2015, if the NCS had not "frozen" the situation as at 31 December 2014, does not render the reform unreasonable or disproportionate with regard to the complainant's situation. Indeed, the six-month gap was established for the transition of staff in the NCS, whilst the complainant was not transposed into the NCS. For staff who, as the complainant, were not transposed into the NCS, a different transitional measure was adopted, that is the maintenance of the former salary *ad personam*, if it was higher than the new end of the grade salary. In essence, the six-month gap was not intended to govern situations such as the complainant's, and thus, it was reasonable to "freeze" the situation as at 31 December 2014. Moreover, the EPO's choice of "freezing" automatic step advancements as at 31 December 2014 for all staff ensured equal treatment of staff, and, thus, was not unreasonable or disproportionate. In any event, this choice fell within the EPO's discretion and it is not

the role of the Tribunal to impose or suggest different transitional measures.

7. In his eighth plea and in his rejoinder, the complainant alleges flaws affecting decision CA/D 10/14; namely:

(i) the Vice-Presidents appointed to the General Consultative Committee (GCC) were also members of the Management Committee (MAC). Having regard to their role and responsibilities as members of the MAC, they were in a position of conflict of interest;

(ii) the consultation process was merely a *pro forma* consultation as the Office took less than a day to consider the arguments of the Central Staff Committee (CSC) members on the GCC;

(iii) the GCC did not receive all necessary documentation in time before the meeting of 19 November 2014 when the proposed reform was discussed; and

(iv) Article 57 of CA/D 10/14 violates general principles of law as it unilaterally alters an acquired right, discriminates against A4(2) employees, and leads to unbalanced and unfair treatment of well-experienced staff, such as the complainant.

The first three arguments have already been addressed and rejected in Judgment 4711, consideration 5, and there are no grounds for a different reasoning in the present case.

As to the first argument, regarding the composition of the GCC, Judgment 4711, in consideration 5, stated:

> "'[t]he composition of an advisory body does not, except in cases involving manifest perversity, affect the prerogatives of that body. [...] Moreover, the appointment of the Administration's representatives as members of the [General Advisory Committee (GAC)] does not show any manifest perversity' (see Judgment 4322, consideration 9). This case law is applicable also to cases, like the present one, where the composition of the advisory body is challenged by a staff member who is not a member of such body.
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> In addition, the Tribunal does not accept the complainant's interpretation of Articles 1, 2, and 38 of the Service Regulations. Article 1(5) stated, at the relevant time, that:

> '[t]hese Service Regulations shall apply to the President and vice-presidents employed on contract only in so far as there is express provision to that effect in their contract of employment'.
>
> Article 2, under the heading 'Bodies under the Service Regulations', included the GCC. These provisions do not imply that Vice-Presidents as members of the MAC cannot be appointed to the GCC. Such a conclusion is contradicted by the same Article 38, regarding the GCC, which includes in its composition, in addition to all full members of the CSC, the President of the Office and a number of full members of her or his choice. As a result, the fact that the Service Regulations are not applicable to the President (Article 1) does not impede him from being the Chairman of the GCC (Article 38). This conclusion also applies to Vice-Presidents. Indeed, Article 38 provides that the President shall appoint to the GCC a number of full members of her or his choice, and does not expressly prohibit appointing Vice-Presidents.
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> As to the plea of lack of impartiality of the members of the MAC and of the Vice-Presidents, the Tribunal first recalls its case law stating it is a general rule of law that an official who is called upon to take a decision affecting the rights or duties of other persons subject to her or his jurisdiction must withdraw in cases in which her or his impartiality may be open to question on reasonable grounds. It is immaterial that, subjectively, the official may consider herself or himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice (see Judgments 4240, consideration 10, and 3958, consideration 11). A conflict of interest occurs in situations where a reasonable person would not exclude partiality, that is, a situation that gives rise to an objective partiality. Even the mere appearance of partiality, based on facts or situations, gives rise to a conflict of interest (see Judgment 3958, consideration 11). However, an allegation of conflict of interest or lack of impartiality has to be substantiated and based on specific facts, not on mere suspicions or hypotheses. The complainant bears the burden of proof of conflict of interest (see Judgments 4617, consideration 9, and 4616, consideration 6), and, in the present case, he fails to discharge it. Indeed, the mere circumstance that GCC members are also Vice-Presidents and/or members of the MAC does not sustain a conclusion that they lack impartiality as members of the GCC, as there is no evidence that they had received any instructions from the President (see Judgment 4243, consideration 9)."

As to the complainant's second argument listed above, it is sufficient to recall the reasoning of Judgment 4711, consideration 5, in the relevant part:

"With regard to the consultation process of the CSC, it is appropriate to recall that all full members of the CSC are also members of the GCC (see Article 38(1) of the Service Regulations). Therefore, even if the failure to provide the information to the CSC itself is a legal flaw, it had no material consequences in the specific circumstances of the case, given that all its members were in fact in possession of that information as a consequence of their membership of the GCC.

Articles 36(2) and 38(2) of the Service Regulations respectively provide that:

(i) the CSC is in charge of making 'suggestions' relating to the organisation and working of departments or the collective interests and of 'examining any difficulties' of a general nature relating to the Service Regulations or any implementing Rules thereto and 'addressing them' in the GCC; and

(ii) the GCC shall be consulted on any question which the Staff Committee has asked to have examined in accordance with the provisions of Article 36 and which is submitted to it by the President of the Office.

These rules make reference to 'suggestions' and 'questions' submitted by the CSC, but do not mean that whenever the GCC – composed also of the full members of the CSC – is consulted on a proposal, it is mandatory to put on the agenda a counter-proposal made by the CSC. Indeed, Article 38 confers on the President of the Office the power to select which questions are to be submitted to the GCC.

It must also be recalled that, as a matter of fact, on 10 October 2014, the first version of the draft reform was sent by the Office 'for information' to all members of the GCC, that is to say also to its members who were at the same time full members of the CSC. The actual consultation took place one month later and the Tribunal is satisfied that this was a sufficient timespan to understand the meaning and the impact of the reform, taking also into account that, as a matter of fact, the Staff Committee members also participated in the discussions on the reform, in two working groups."

As to the complainant's third argument listed above, it is sufficient to recall the reasoning of Judgment 4711, consideration 5, in the relevant part:

"A proper consultation took place in November 2014, and was preceded by the sending of the proposal, for information, in October 2014. The GCC was provided with the relevant documentation and sufficient time (one month) in order to examine the proposal. The Tribunal reiterates that the proposal sent for information in October 2014 was preceded by discussions in working groups that lasted more than two years."

The complainant's fourth argument listed above reiterates issues concerning acquired rights and unequal treatment, already addressed and rejected by the Tribunal in considerations 3, 4, 5 and 6 above.

8. In his rejoinder, the complainant adds that his individual situation warrants "an exceptional decision", as in his A4(2) position he performed special duties and managerial tasks, acted regularly as Deputy Director, delivered high-quality senior expert opinions, and demonstrated excellent performance. Thus, in his view, his duties cannot be compared to those in the grade A4. They are comparable to duties performed at grade A5. He submits that, according to Article 11(2) of the Service Regulations, the EPO can, in exceptional cases, assign a staff member to a different grade and step (see Article 13 of decision CA/D 10/14 amending Article 11 of the Service Regulations). The complainant concludes that the Office violated its own laws arising from the NCS in assessing his post, the level of his competencies, and his classification in a job group. He contends that the decision to treat him as an ordinary A4 employee and transpose him into job group 4 for which the salary grid ends on G13, step 5, is tainted by a mistake of fact and wrong conclusions drawn from the assessment of his duties. He concludes that this constitutes a serious defect and this alone justifies setting aside the decision.

This plea is unfounded.

As it can be inferred also from the complainant's internal appeal, he contends that he should have been included in job group 3 of the NCS (Director positions, from G13, step 3, to G15, step 4) as his job profile was equivalent to that of a Senior Expert, or in an ad hoc job group. The Tribunal notes that the transposition exercise was based only on the objective criteria of former grades and salaries, and there were no criteria for promotion to higher grades based on individual performance. This option was lawful, as the transposition of staff in the NCS is a discretionary exercise. The complainant has not established to the Tribunal's satisfaction that the EPO's decision to transpose him into job group 4 is tainted by errors of law or fact. Thus, the complainant should at most have requested a reclassification of his post from

grade A4(2) to A5, prior to the transposition exercise, and he never did. Accordingly, any questions concerning his actual tasks and duties are outside the scope of the present complaint.

9. As the complainant's pleas are unfounded, he is not entitled to moral damages allegedly stemming from the impugned decision.

10. As to his request to be awarded moral damages for the length of the internal appeal proceedings, the Tribunal notes that more than five years have elapsed between the filing of the internal appeal by the complainant, on 16 October 2015, and the issuance of the final decision on his appeal on 4 February 2021. Such a delay is manifestly excessive. However, in Judgments 4710, 4711, 4712 and 4889, which concerned cases where the duration of the internal procedure related to various contested decisions was similar to that observed here, the Tribunal considered that the compensation of 700 euros awarded by the Organisation to the affected staff members was sufficient to remedy the harm suffered. In the present case, the complainant was granted the same amount by the impugned decision, and he has not established to the Tribunal's satisfaction that, in his situation, the harm caused by the delay in the internal procedure warrants a higher compensation.

11. As the complaint fails, the complainant is not entitled to costs of the internal proceedings or of the present proceedings.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 7 November 2024, Mr Patrick Frydman, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 6 February 2025 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

HONGYU SHEN

MIRKA DREGER