

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

H., Q., (No. 2) and U. (No. 2)

v.

EPO

140th Session

Judgment No. 5069

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr D. O. H. against the European Patent Organisation (EPO) on 4 May 2021 and corrected on 7 July, the EPO's reply of 18 November 2021, the complainant's rejoinder of 18 February 2022, the EPO's surrejoinder of 19 May 2022, the applications to intervene in that case filed by Mr M. A., Mr E. C., Mr P. G., Mr W. W. H., Mr J. A. M. T., Mr C. J. V. and Mr. G. v. d. S. on 22 November 2021, and the EPO's comments thereon of 28 February 2022;

Considering the second complaint filed by Mr C. Q. against the EPO on 4 May 2021 and corrected on 7 July, the EPO's reply of 18 November 2021, the complainant's rejoinder of 18 February 2022, the EPO's surrejoinder of 19 May 2022, the applications to intervene in that case filed by Mr W. H., Mr P. V. M. L. B., Mr P. M. J. L., Mr T. L., Ms A. L., Mr F. M., Mr A. M., Mr J. O., Mr A. P. and Mr A. S. on 22 November 2021, and the EPO's comments thereon of 28 February 2022;

Considering the second complaint filed by Mr P. U. against the EPO on 4 May 2021 and corrected on 7 July, the EPO's reply of 18 November 2021, the complainant's rejoinder of 18 February 2022 and the EPO's surrejoinder of 19 May 2022;

Considering the information submitted by the EPO on 21 March 2025 in response to a request for further submissions from the President of the Tribunal;

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 none of the parties has applied;

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

The complainants challenge the failure to transpose them to a new grade following the introduction of a new career system.

Facts relevant to the present case are set out in Judgment 4889, delivered in public on 8 July 2024, and in Judgment 4990, delivered in public on 6 February 2025. 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 was to take place on 1 July 2015 taking into account the employee's situation on 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 to the salaries resulting from the transposition.

Article 57 of decision CA/D 10/14 provided as follows:

“(1) Employees graded in A4(2) whose basic salary on 31 December 2014 is above the amount corresponding to grade 13 step 5 in the new salary scales shall not be transposed into the new salary scales. They shall maintain *ad personam* the basic salary corresponding to their grade and step on 31 December 2014, which is subject to future adjustments in application of the salary adjustment method.

(2) Employees graded in A4(2) whose basic salary on 31 December 2014 is equal to or less than the amount corresponding to grade 13 step 5 in the new salary scale shall be transposed into the new salary scale in accordance with Article 56.”

When the new career system came into force, Mr H. and Mr Q. worked as patent examiners while Mr U. was an internal auditor. On 31 December 2014 they were all at grade A4(2), on either step 10 or 11, and, as such, received a basic salary above the amount corresponding to the new grade 13, step 5.

By letter of 30 April 2015 Mr H. was informed that, pursuant to paragraph 1 of the aforementioned Article 57 of decision CA/D 10/14, his grade and step would not be transposed into the new salary scale, that he would maintain *ad personam* his basic salary corresponding to the former grade A4(2), step 10, and that his salary would be subject to future adjustments under the annual salary adjustment method. He submitted a request for review of that decision, which was rejected on 31 August 2015. He then lodged an internal appeal against that rejection on 1 November 2015.

In March 2015 Mr Q. and Mr U. submitted a request for review of their payslips for January 2015 insofar as they made no reference to their seniority within the step, as had previously been the case. They requested that they continue to benefit from the system of step advancement and promotion that had been in force prior to the introduction of the new career system, by way of a temporary arrangement, for four years. Their requests for review were rejected and they lodged an internal appeal on 13 and 10 July 2015, respectively. In the meantime, they were informed, by a letter of 30 April 2015, that

their grade and step would not be transposed into the new salary scale, that they would maintain *ad personam* their basic salary corresponding to grade A4(2), step 11 for Mr Q. and step 10 for Mr U., and that their salaries would be subject to future adjustments under the annual salary adjustment method.

It should be noted that, since the events, Mr H. and Mr Q. have retired.

On 18 November 2020 the Enlarged Chamber of the Appeals Committee issued an opinion concerning several appeals brought against the new career system, including those brought by the complainants, which challenged in particular the abolition of the automatic step advancement and the transposition or non-transposition of grades for employees in the former grade A4(2). As regards those appeals filed by employees who were not in grade A4(2) prior to the reform, the Committee referred to its other opinion of the same date, the “master opinion”, issued on the appeals brought against the implementation of the new career system. The majority of the Appeals Committee recommended rejecting the appeals brought by the complainants as legally unfounded and referred to certain points contained in the master opinion, while expressly rejecting those arguments relating, in particular, to a breach of acquired rights, a breach of legitimate expectations and a breach by the Organisation of its duty of care towards its employees. However, the Committee unanimously recommended that each of the complainants be awarded moral damages – in the sum of 600 euros – for the unreasonable length of the internal appeal proceedings.

By a letter of 4 February 2021, the complainants were informed of the Office’s decision to follow the recommendations of the majority of the Appeals Committee for the reasons stated in its opinion. Consequently, their appeal was dismissed. They were nevertheless each awarded 600 euros in moral damages for the length of the appeal procedure and a further 100 euros in moral damages for the time that had elapsed since the deliberation of the Appeals Committee. That is the decision impugned by each of the complainants.

The complainants ask the Tribunal to set aside the impugned decision of 4 February 2021 and to order the EPO to draw all legal consequences therefrom. In the event that the Tribunal should decide not to order the EPO to draw all legal consequences from the setting aside of the impugned decision, they ask that the EPO be ordered to compensate them for the whole of the financial loss they consider they have suffered and to pay them interest at the rate of 5 per cent per annum on the sums due for this financial loss from 2015 to the date of the public delivery of the judgment. Lastly, they ask the Tribunal to order the EPO to pay them a sum to be determined in respect of the costs they have incurred in defending their case.

The EPO asks the Tribunal to dismiss the complaints as irreceivable to the extent that the complainants challenge the specific rules of the new career system governing step advancements, promotions, post allowances and other allowances, since those rules had not been applied to them at the time when they filed their internal appeals or their complaints before the Tribunal. The EPO also submits that the complaints are entirely unfounded.

CONSIDERATIONS

1. The present complaints are among a large number of disputes brought before the Tribunal in relation to the European Patent Office's new career system, introduced by the Administrative Council's decision CA/D 10/14 of 11 December 2014, which entered into force on 1 January 2015. It should be recalled that this new system brought about extensive changes to the structure of employees' grades, by establishing new "career paths", and provided that step advancement within a grade would no longer be based on seniority but on the assessment of performance and competencies.

2. Prior to this statutory reform, the complainants, two of whom worked as patent examiners and the other as internal auditor, held the former grade A4(2). This specific grade, which was open to employees who had served at least five years at grade A4, had, in its time, been

created in order to offer a career outlet to employees with very wide-ranging or highly specialised professional experience and who were considered to have demonstrated particular merit.

With the adoption of the reform, grade A4(2) was merged with the other former grades A1 to A4 within new job group 4. However, the range of grades in that job group ended in grade 13 (G13), step 5, although some employees at grade A4(2) were paid more than the amount corresponding to that new grade and step. As a consequence, Article 57(1) of decision CA/D 10/14 provided that “[e]mployees graded in A4(2) whose basic salary on 31 December 2014 [was] above the amount corresponding to grade 13 step 5 in the new salary scales [would] not be transposed into the new salary scales” and that “[t]hey [would] maintain *ad personam* the basic salary corresponding to their grade and step on 31 December 2014”.

Because of their classification at step 10 or 11, as applicable, of grade A4(2), the complainants fell into the particular situation referred to above.

3. In the present complaints, the complainants impugn before the Tribunal the decision of the Vice-President of Directorate-General 4 dated 4 February 2021 which rejected the internal appeals they had filed challenging, in particular, the failure to transpose them to the grades and steps established by the new career system. They also challenge the provisions of decision CA/D 10/14 abolishing the former automatic step advancement based on seniority, as well as those establishing new rules for grade promotions, which amended, respectively, Articles 48 and 49 of the Service Regulations for permanent employees of the Office.

4. Seventeen applications to intervene were filed: ten in one of the cases and seven in another.

5. The three complaints essentially seek the same redress, rest on very similar submissions and raise the same legal issues. They will therefore be joined to form the subject of a single judgment.

6. It should be recalled that, by Judgments 4710, 4711 and 4712, delivered in public on 7 July 2023, the Tribunal dismissed the complaints of another employee which were selected as “lead complaints” in the dispute concerning the new career system and which challenged, respectively, the lawfulness of decision CA/D 10/14 itself, the abolition of the former automatic step advancement and the transposition of the employee concerned into a new job group as a result of the grade structure reform. It must be pointed out that the applications filed for the review of those judgments were dismissed by Judgment 4888.

In Judgment 4889, delivered in public on 8 July 2024, the Tribunal dismissed complaints which rested on largely identical arguments to those raised in the present cases. The Tribunal thereby confirmed the approach adopted in the aforementioned Judgments 4710, 4711 and 4712 and also rejected other pleas which had not been raised in the complaints which were the subject of those judgments.

Although none of those judgments related to the specific situation of employees in the former grade A4(2) whose basic salary was higher than that corresponding to the new grade G13, step 5, the Tribunal had the opportunity to rule on a complaint filed by an employee in that very situation in Judgment 4990, delivered in public on 6 February 2025. The Tribunal dismissed that complaint too, in particular rejecting all of the arguments that specifically related to the impact of the reform in question on grade A4(2) employees.

The issues raised in the present complaints have, essentially, already been examined by the Tribunal in these various judgments, to which extensive reference will therefore be made in the following considerations.

7. The complainants devote a large part of their arguments to a plea according to which the abolition of automatic step advancement based on seniority, and the replacement thereof by step advancement based on merit, breached the acquired rights of the Office’s employees. Expanding their arguments on this point, they also submit that this breach resulted from the amendment of the provisions governing grade

promotion which brought to an end the system for “quasi-automatic promotion” which, they claim, was in force prior to the disputed reform.

8. According to the Tribunal’s case law on the protection of acquired rights, as established for example in Judgment 61, clarified in Judgment 832 and confirmed in Judgment 986, the amendment of a provision governing an official’s situation to her or his 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 her or him to stay on. In order for there to be a breach of an acquired right, the amendment to the applicable text must, according to Judgment 832, relate to a fundamental and essential term of employment (see, for example, Judgments 4711, consideration 8, 4662, consideration 20, 4593, consideration 10, 4398, consideration 11, or 3074, consideration 16).

9. In consideration 8 of the aforementioned Judgment 4711, the terms of which were confirmed in consideration 6 of Judgment 4889, the Tribunal found, with regard to the criteria referred to, that the abolition of seniority-based step advancement and its replacement – generally speaking – by merit-based step advancement did not constitute a breach of the acquired rights of the Office’s employees. The Tribunal based this finding in particular on the consideration that, while it was true that employees no longer had the right to automatic advancement, they were not deprived, under the new career system, of the opportunity to benefit from a step advancement in appropriate circumstances.

Similarly, in consideration 7 of Judgment 4889, the Tribunal held that the amendment made to the provisions governing promotions, whose objective was to make grade advancement more dependent on the assessment of performance and the evidence of expected competencies, did not constitute a breach of acquired rights. Noting that there was no actual right to “quasi-automatic promotion” under the previous system, the Tribunal considered that the opportunities for

grade advancement open to staff had not been substantially affected by the reform.

10. It is true, as the complainants point out in their submissions, that employees in the former grade A4(2) with a salary above that corresponding to the new grade G13, step 5, found themselves, in that respect, in a peculiar situation. Indeed, the fact that, under the aforementioned provisions of Article 57 of decision CA/D 10/14, they were not transposed into the grades and steps established by the new career system meant that no merit-based step advancement was possible in their grade. In view of the abolition – which applied to them just as it did to other employees – of seniority-based step advancement, they were therefore denied any opportunity for step advancement. In addition, they could obtain a promotion – as was, in fact, already the case under the previous system – only by applying for another job.

However, in consideration 3 of the aforementioned Judgment 4990, the Tribunal found that this situation affecting grade A4(2) employees not transposed to the new salary scales did not amount to a breach of their acquired rights. In this regard, the Tribunal noted in particular that, as part of the reform in question, the EPO had created a new position of “senior expert” which offered new outlets for patent examiners, especially those at the upper level of grade A4(2). The Tribunal took the view that this measure provided some compensation for the loss of all step advancement possibilities. It also noted that examiners still had the possibility of being promoted to a position of director or member of the Boards of Appeal through a selection procedure. As for the employees concerned who – like the complainant in Judgment 4990 – were not examiners, the Tribunal found that career progression options were still available to them too as they could apply for a post of director, head of department or team manager. Lastly, the Tribunal pointed out that all the employees concerned could, moreover, still obtain an increase in salary through bonuses, functional allowances or salary adjustments. The Tribunal therefore concluded that the solution adopted for those staff within the new career system struck a “reasonable balance which did not alter [their] essential terms of employment”.

The Tribunal sees no reason to reach a different conclusion in the present cases, regardless of which post each of the various complainants held. The complainants' line of argument on this point must therefore be rejected.

11. In another plea, the complainants challenge the lawfulness of the six-month gap, provided for by decision CA/D 10/14, between the date of entry into force of the new career system, which, under Article 54 of that decision, was 1 January 2015, and the date of transposition to the new grades – for those staff affected by such transposition – which, pursuant to Article 56(5), was 1 July 2015. They maintain that this situation created a “legal void” between the two dates in question, associated with a “six-month delay” in the implementation of the new system, and that this breached their right to a proper administrative position.

The Tribunal notes that, although the complainants were unaffected by the transposition to the new grades, due to their classification in the former grade A4(2) and to their salary levels, this does not mean that the plea raised is ineffective in their case. The plea must be understood as a challenge to the lawfulness of the transitional situation in which the complainants, along with other employees, were placed between 1 January and 1 July 2015.

However, this plea is unfounded in other respects. In consideration 8 of the aforementioned Judgment 4889, the Tribunal rejected a similar contention on grounds from which there is no valid reason to depart in the present case and to which reference will therefore be made.

12. Under a further line of argument which was not examined in Judgment 4889 since it relates solely to employees in grade A4(2) who were not transposed into the new salary scales, the complainants also submit, in the present cases, that they were not placed in a proper administrative position in the period after 1 July 2015. In this regard, they criticise, in their rejoinders, the anomaly found in the fact that they

were not transposed to the new grades even though the grades under the former career system had been abolished.

However, the complainants cannot validly rely here on the breach of an official's right to a proper administrative position. As the Tribunal recalled in the aforementioned consideration 8 of Judgment 4889, under that right, an official can expect her or his situation, as it results in particular from individual decisions and factual circumstances, to comply with the applicable statutory provisions. By definition, it cannot therefore be relied upon to challenge a decision of the Administrative Council, the purpose of which is, as in the present case, to define the regulations applicable to staff members, whether those regulations be permanent or transitional.

Therefore, although the situation in which the complainants found themselves after 1 July 2015 – namely being graded “outside the scale” and retaining their previous basic salary *ad personam* – is certainly out of the ordinary, it cannot be regarded as unlawful, since it is simply the result of the application of the provisions of the aforementioned Article 57(1) of decision CA/D 10/14.

This claim will, accordingly, also be rejected.

13. The complainants also submit that, in adopting the contested decisions, the EPO failed in its duty of care towards its staff. They consider that the Organisation did not take the interests of its staff into consideration and that the disputed reform caused hardship to staff that was both unnecessary, given that there were no financial difficulties to render it a necessity, and undue, given the scale of the ensuing loss of earnings.

However, in consideration 9 of the aforementioned Judgment 4889, the Tribunal rejected an identically-worded plea, pointing out, furthermore, that similar arguments had already been rejected in Judgment 4711, consideration 10. Moreover, in consideration 6 of Judgment 4990, the Tribunal rejected a claim for a breach of the duty of care in a case that specifically related to employees in grade A4(2) who were not transposed into the new salary scales, finding no cause to consider that such a breach arose in their particular situation.

The Tribunal sees no reason to adopt, in the present cases, a different solution from the one that emerged from those precedents.

14. Lastly, the complainants ask that the EPO be ordered to pay them damages for the unreasonable length of the internal appeal procedure.

The Tribunal notes that more than five years passed – in fact, five and a half years in two of the cases – between the complainants lodging their internal appeals and the final decision on those appeals being delivered on 4 February 2021. Such a delay is clearly excessive. However, in the aforementioned Judgments 4710, 4711, 4712, 4889 and 4990, which related to cases where the internal appeal procedure had lasted a similar length of time as in the present cases, the Tribunal found that the compensation of 700 euros paid, in that respect, by the Organisation to the staff members in question was sufficient to remedy the injury they had suffered. In the present cases, the complainants were awarded that same sum under the impugned decision, and the arguments they raise in this regard fail to establish that, in their cases, the injury caused by the delay in the internal appeal procedure warrants the award of a greater sum.

The claim for compensation will therefore be dismissed.

15. It follows from the foregoing that the complaints must be dismissed in their entirety, without there being any need to rule on the objection to receivability raised by the EPO in relation to some of the claims.

16. The applications to intervene must, as a consequence, also be dismissed, without there being any need to rule on the objections raised by the EPO as to their receivability.

DECISION

For the above reasons,

The complaints are dismissed, as are the applications to intervene.

In witness of this judgment, adopted on 27 May 2025, Mr Patrick Frydman, President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 3 July 2025 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.