

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

V. (No. 2)

v.

EPO

140th Session

Judgment No. 5070

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr C. J. V. against the European Patent Organisation (EPO) on 22 April 2021, the EPO's reply of 18 November 2021, the complainant's rejoinder of 8 December 2021 and the EPO's surrejoinder of 9 March 2022;

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 lack of step advancement 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.”

The complainant joined the European Patent Office in 1985 as a patent examiner. On 31 December 2014 he held grade A4(2), step 10, and, as such, received a basic salary above the amount corresponding to the new grade 13, step 5. By letter of 30 April 2015, the complainant 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 scales, 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.

On 22 June 2015 the complainant submitted a request for review of his payslip for March 2015 in that it reflected a decision not to award him a step increase on 1 March 2015. In particular he asked for an advancement to step 11 of grade A4(2) with effect from 1 March 2015

pursuant to Article 48 of the Office's Service Regulations in force on 31 December 2014. His request for review having been rejected, he lodged, on 22 September 2015, an internal appeal against this rejection.

The complainant retired on 1 December 2018.

On 18 November 2020 the Enlarged Chamber of the Appeals Committee issued an opinion on several appeals brought against the new career system, including that of the complainant, which challenged in particular the abolition of 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", on the appeals brought against the implementation of the new career system. The majority of the Appeals Committee recommended rejecting the appeal brought by the complainant 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 the complainant be awarded moral damages – in the sum of 600 euros – for the unreasonable length of the internal appeal proceedings.

By letter of 4 February 2021, the complainant was informed of the Office's decision to follow the recommendations of the majority of the Appeals Committee members for the reasons stated in its opinion. Consequently, his appeal was dismissed. He was nevertheless 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 deliberations of the Appeals Committee. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to order that the provisions for step advancement in force on 31 December 2014 be applied, that he be given an advancement to grade A4(2), step 11, from 1 March 2015 and to grade A4(2), step 12, from 1 March 2017, on the basis of the salary scale applicable at that

date, periodically reviewed, and that his retirement pension be calculated on the basis of the salary corresponding to grade A4(2), step 12, on the previous salary scale as periodically reviewed. He also seeks interest for late payment, running from each of the dates on which monthly payment fell due, and compensation of at least 2,000 euros for the moral injury he considers he has suffered, together with a sum to be determined by the Tribunal by way of costs.

The EPO asks the Tribunal to dismiss the complaint as irreceivable to the extent that the complainant challenges 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 him at the time when he filed his internal appeal or his complaint before the Tribunal. It also asserts that the complaint is entirely unfounded.

CONSIDERATIONS

1. The present complaint is 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 was no longer based on seniority but on the assessment of performance and competencies.

2. Prior to this statutory reform, the complainant, who worked as a patent examiner, 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 step and grade. 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”.

The complainant, because of his classification at step 10 of grade A4(2), fell into the particular situation referred to above.

3. In the present complaint, the complainant impugns before the Tribunal the decision of the Vice-President of Directorate-General 4 dated 4 February 2021 which rejected the internal appeal he had filed to challenge the abolition, resulting from the changes made by decision CA/D 10/14 to Article 48 of the Service Regulations, of the automatic step advancement to which he had been previously entitled. He also challenges the fact that he was not transposed to the grades and steps established under the new career system, which had the effect of denying him any possibility of step advancement.

4. 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 over 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 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 arguments that were largely similar to those raised in the present case. Confirming the approach adopted in the aforementioned Judgments 4710, 4711 and 4712, the Tribunal also rejected other pleas that 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, in Judgment 4990, delivered in public on 6 February 2025, to rule on a complaint lodged by an employee who was in that very situation. It dismissed that complaint too, 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 complaint have, essentially, already been examined by the Tribunal in these various judgments, to which extensive reference will therefore be made in the considerations below.

5. The complainant devotes most of his arguments to one plea, according to which the abolition of automatic step advancement based on seniority breached his acquired rights.

6. According to the Tribunal's case law on the protection of acquired rights, 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).

7. 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 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 for step advancement in the appropriate circumstances.

The Tribunal also added in consideration 7 of Judgment 4889 that the amendment made to the provisions governing promotions, which made grade advancement more dependent on the assessment of performance and evidence of expected competencies, did not constitute a breach of acquired rights either. It found that the opportunities for grade advancement open to staff had not been substantially affected by the reform.

8. It is certainly true, as the complainant points out in his 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. 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, it noted in particular that, as part of the reforms in question, the EPO had created a new position of “senior

expert” which offered new outlets for patent examiners, especially for 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 and, moreover, could still obtain an increase in salary through bonuses, functional allowances or salary adjustments. The Tribunal therefore concluded that the solution adopted for the staff concerned 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 case. The complainant’s line of argument on this point will therefore be rejected.

9. In another plea, the complainant challenges 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 on which those staff affected by the transposition were transposed to their new grades, which, pursuant to Article 56(5), was 1 July 2015. He maintains that this created a “legal void” between the two dates in question which breached his right to a proper administrative position.

The Tribunal notes that, although the complainant was unaffected by the transposition to the new grades, due to his classification in the former grade A4(2) and to his salary level, this does not mean that the plea raised is ineffective in his case. The plea must be understood as a challenge to the lawfulness of the transitional situation in which the complainant, along with other employees, was 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 plea, on grounds from which there is no valid reason to depart in the present case and to which reference will therefore be made.

In addition, the complainant cannot validly maintain that he should have continued to benefit, during the transitional period, from seniority-based step advancement, since the latter had been abolished with effect from 1 January 2015 by decision CA/D 10/14.

10. Under a further line of argument which was not examined in Judgment 4889 since it relates solely to the particular case of employees in grade A4(2) who were not transposed to the new salary scales, the complainant also submits, in the present case, that he was not placed in a proper administrative position in the period after 1 July 2015. This leads him to deduce that he would have retained entitlement to automatic step advancement in his old grade.

However, apart from the fact that that last claim is, in any event, devoid of merit since, as has just been mentioned, seniority-based step advancement had been abolished from 1 January 2015, the complainant 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 complainant found himself after 1 July 2015 – namely being graded “outside the scale” and retaining his 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.

11. The complainant also submits that, in adopting the contested decisions, the EPO failed in its duty of care towards its staff. He takes the view, in particular, that, in failing to provide appropriate transitional

measures for employees in his situation, the Organisation caused him “unnecessary and undue hardship”.

However, in the aforementioned Judgment 4711, consideration 10, and then in Judgment 4889, consideration 9, the Tribunal rejected similar pleas. 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 situations. The Tribunal sees no reason to adopt, in the present case, a different solution from the one that emerged from those precedents.

12. The complainant finds that the impugned decision of 4 February 2021 is unlawful as it was based on the majority opinion of the Enlarged Chamber of the Appeals Committee, which he considered to be flawed.

In this regard, the complainant submits that the opinion is tainted by an error of law in that the Committee considered that the Tribunal’s case law on the protection of acquired rights in relation to promotion opportunities could apply, more generally, to any kind of career progression, including step advancement based on seniority. However, as the Tribunal has already had occasion to observe when ruling, in Judgment 4990, consideration 3, on a plea based on this same alleged flaw, such a challenge is of no avail because – for the reasons recalled above – there was, in any event, no acquired right to such a step advancement.

Moreover, the other criticisms levelled against the opinion in question, which in reality amount to a reiteration, in a different form, of some of the same arguments addressed above, must also be rejected for the same reasons as those already set out.

Even if the complainant also appears to criticise the Vice-President of Directorate-General 4 because the reasoning for her decision consisted merely of a reference to that opinion, that does not amount to a flaw since the Vice-President endorsed the majority recommendation of the appeal body and was therefore entitled to simply refer in this way

to the reasons provided by that body (see, on this point, Judgment 4990, consideration 2, and the case law cited therein).

13. Lastly, the complainant asks that the EPO be ordered to pay him damages for the moral injury resulting, firstly, from the unlawfulness of the impugned decision and, secondly, from the unreasonable length the internal appeal procedure.

As far as the alleged unlawfulness of the decision in question is concerned, this claim must be dismissed because there has been no finding of such unlawfulness in the above considerations.

As for the length of the internal appeal procedure, the Tribunal notes that five and a half years passed between the complainant lodging his internal appeal on 22 September 2015 and the final decision on his appeal being issued on 4 February 2021. Such a delay is clearly excessive. However, in the aforementioned Judgments 4710, 4711, 4712, 4889 and 4990, which concerned cases where the internal appeal procedure lasted a similar length of time as that observed here, the Tribunal found that the compensation of 700 euros paid, on this account, by the Organisation to the staff members in question was sufficient to remedy the injury they had suffered. In the present case, the complainant was awarded on that account the same sum under the impugned decision, and he fails to establish that, in his case, the injury caused by the delay in the internal appeal procedure warrants the award of a greater sum.

This claim for compensation will therefore be dismissed.

14. It follows from the foregoing that the complaint must be dismissed in its entirety, without there being any need to rule on the objection to receivability raised by the EPO in relation to some of the complainant's claims.

DECISION

For the above reasons,
The complaint is dismissed.

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.