

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S. (No. 3)

v.

EPO

140th Session

Judgment No. 5072

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr J.-C. S. against the European Patent Organisation (EPO) on 7 December 2021, the EPO's reply of 10 May 2022, the complainant's rejoinder of 9 June 2022 and the EPO's surrejoinder of 12 September 2022;

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

Having examined the written submissions;

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

The complainant, a Board of Appeal member, challenges the fact that he did not receive an automatic salary advancement following the repeal of the transitional provisions contained in decision CA/D 4/15.

Certain facts relevant to this case are set out in Judgment 5071, also delivered in public this day, concerning the complainant's second complaint. Suffice it to recall that the complainant joined the European Patent Office, the EPO's secretariat, in 1989 as a patent examiner. At the material time, he was a Board of Appeal member.

In December 2014 the Administrative Council of the European Patent Office adopted decision CA/D 10/14, which introduced a new career system with effect from 1 January 2015. This decision, which substantially amended the Service Regulations, introduced a structure under which posts were classified into six "job groups" and 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 the transposition of employees to their new job group, which was set to take place on 1 July 2015, should take into account their 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. Decision CA/D 10/14 also amended the appraisal system by inserting Article 47a into the Service Regulations, as a result of which members of the Boards of Appeal no longer fell outside the scope of the system.

On 25 June 2015 the Administrative Council adopted decision CA/D 4/15, establishing transitional provisions for the chairmen and members of the Boards of Appeal with respect to the reform in question. Article 2 of this decision provided, in particular, that members of the Boards of Appeal would be granted a salary advancement, equivalent to the amount of one step in grade, after 12 months of service if they had a basic salary of or below the amount of that for grade G14, step 1, and after 24 months of service if they had a basic salary above that amount.

The complainant, who held grade A5, step 11, on 31 December 2014, was assigned grade G14, step 4, from 1 July 2015. Pursuant to Article 2 of decision CA/D 4/15, he received, with effect from 1 April 2016, the automatic salary advancement the amount of which he challenged in his second complaint.

On 30 June 2016 the Administrative Council adopted decision CA/D 8/16, which created a career system specific to presidents and members of the Boards of Appeal with effect from 1 January 2017. In particular, Article 8(1) of that decision abolished the transitional provisions introduced by decision CA/D 4/15. The decision also

amended Articles 48, 48a and 49 of the Service Regulations relating, respectively, to step advancement, bonuses and promotion, to the effect that these would not apply to members of the Boards of Appeal. It also amended the conditions of appointment for members of the Boards of Appeal, meaning that they did not qualify for any promotion, step advancement or salary advancement throughout their five-year term. They could only be promoted from grade G14, step 1, to grade G15, step 1, on re-appointment, if they had been recommended for promotion by the President of the Boards of Appeal.

On 1 January 2017, the complainant, to whom the transitional provisions of decision CA/D 4/15 no longer applied, was transposed to grade G14, step 1, in the new career system applicable to members of the Boards of Appeal. His net basic salary as at December 2016, when he held grade G14, step 4, was preserved under a guarantee provided in such a situation by Article 8 of decision CA/D 8/16.

In December 2017 the President of the Boards of Appeal stated, in his Communiqué 2/17 setting out the “[g]uidelines for the evaluation of the performance of members and chairmen of the Boards of Appeal”, that any opinion on re-appointment and recommendation for promotion was to be based on the evaluation report for the member’s or chairman’s current term of office.

On 13 July 2018 the complainant submitted to the President of the Office a request for review of his payslip for April 2018, on the grounds that it was the same as his payslip for March 2018, whereas, in his opinion, he should have received a salary advancement on 1 April 2018 pursuant to decision CA/D 4/15. On 24 July 2018 the Conflict Resolution Unit replied to him, stating that his request for review would not be registered because he had already submitted three requests for review on the same matter, all of which had been rejected. It added that, for any questions regarding the appeal stage, he could contact the Secretariat of the Appeals Committee directly. On 12 October 2018 the complainant therefore filed an appeal with the Appeals Committee, claiming that he was entitled to a salary advancement with effect from 1 April 2018 pursuant to decision CA/D 4/15. In particular, he

challenged the abolition, by Article 8(1) of decision CA/D 8/16, of the salary advancement previously provided for by decision CA/D 4/15.

On 24 July 2019 the complainant signed his 2018 performance evaluation report, in which his performance was graded satisfactory.

In its opinion of 6 July 2021, the Appeals Committee unanimously found the complainant's appeal to be receivable notwithstanding the fact that he had been informed on 20 December 2020 (*recte* 2016) that decision CA/D 8/16 would enter into force on 1 January 2017, as it was reasonable for him to have waited for the payslip for the month in which he could have expected his next automatic salary advancement, had the transitional measures remained in force, before challenging the abolition of the salary-advancement mechanism. The majority of the Appeals Committee recommended that his appeal be rejected as unfounded, on the grounds that the transitional salary advancement mechanism established by Article 2(1) of decision CA/D 4/15 had been repealed with effect from 1 January 2017 when decision CA/D 8/16 entered into force. It found that the challenge to the lawfulness of Communiqué 2/17 was not relevant in this regard and that the new career system for members of the Boards of Appeal was fully operational on 1 April 2018, the date on which the complainant would have qualified for an automatic salary advancement if the transitional provisions had been maintained. The majority added that there was no breach of the complainant's legitimate expectations because the provisions had been lawfully abolished, the complainant had failed to identify any undertaking on the part of the EPO that he would receive an automatic salary advancement notwithstanding the repeal of the transitional provisions, that Article 12 of decision CA/D 8/16, which provided that the President of the Office was to take appropriate measures to ensure a smooth transition to the new system, could not be interpreted as obliging the President to grant him a salary advancement in April 2018, and that the complainant had not shown how he had been treated "unfairly". In addition, the Committee unanimously recommended that the complainant be awarded moral damages on account of the excessive duration of the appeal proceedings.

By letter of 11 October 2021, the complainant was informed of the Office's decision to reject his appeal for the reasons set out by the majority of the members of the Appeals Committee in the opinion referred to above. He was, however, awarded moral damages for the length of the internal appeal procedure. That is the decision impugned by the complainant.

The complainant asks the Tribunal to set aside the impugned decision of 11 October 2021, to set aside the amendments made to Article 47a of the Service Regulations in the June 2018 version thereof, to set aside his 2018 performance evaluation report, drawn up on 24 July 2019, and to award him, with effect from 1 April 2018, a salary advancement as defined in Article 2 of decision CA/D 4/15. He also seeks reimbursement of the unpaid amounts, together with interest at a rate of 4 per cent per annum, reimbursement of the registration fee of 200 euros that he had to pay in order to lodge his internal appeal, together with the award of "costs at a flat rate of 200 [euros], or more if supported by the evidence". Lastly, he claims moral damages of 10,000 euros or any other amount that the Tribunal considers fair.

The EPO asks the Tribunal to declare the complaint irreceivable to the extent that it seeks the setting aside of the amendments to Article 47a of the June 2018 version of the Service Regulations and the complainant's 2018 performance evaluation report. It also asks the Tribunal to dismiss the complaint as unfounded in its entirety.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 11 October 2021 by which the Vice-President of Directorate-General 4, in line with the majority recommendation of the Appeals Committee, rejected his internal appeal challenging the fact that he had not received a salary advancement to which he considered he was entitled with effect from 1 April 2018, in the context of specific provisions applicable to members of the Boards of Appeal.

2. In his complaint form, the complainant had requested oral proceedings. However, he expressly withdrew this request in his rejoinder, where he simply states that he is “willing to participate in oral proceedings, should the Tribunal deem them desirable or necessary”. In view of the purely legal nature of the matters at issue, the parties’ very clear written submissions and the ample evidence produced, the Tribunal considers that it is fully informed of the case and does not find it appropriate to hold oral proceedings.

3. 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 the new system substantially modified the grading system for employees and provided that step advancement within a grade would no longer be based on seniority but on the assessment of performance and competencies.

However, for chairmen and members of the Boards of Appeal, the implementation of certain elements of the new career system, in particular merit-based step advancement, raised particular difficulties connected with the need to safeguard the independence conferred on them, in view of the judicial nature of their duties, by Article 23 of the European Patent Convention. On adoption of the reform, it was therefore decided that the rules dealing with those particular elements would not apply to them until specific provisions dealing with this issue came into force.

4. Pending the finalisation of these new provisions, the Administrative Council adopted decision CA/D 4/15 on 25 June 2015, establishing transitional provisions with effect from that date for the chairmen and members of the Boards of Appeal with respect to the implementation of the new career system.

Article 3 of that decision confirmed, in particular, that the provisions of Article 48 of the Service Regulations relating to step advancement, as they resulted from decision CA/D 10/14, did not apply to the employees in question for the time being.

In order to mitigate the adverse consequences on those employees of the resulting temporary lack of all step advancement, given that the old system of seniority-based step advancement had been abolished, including for them, Article 2 of decision CA/D 4/15 provided that, during the transitional period, they were to be granted a salary advancement that would have the same effect on their basic salary as the award of one further step.

For a Boards of Appeal member in receipt of a basic salary higher than that for the new grade G14, step 1 – such as the complainant – Article 2 provided that the salary advancement would be granted after 24 months' service on a step. The way in which the increase awarded to the complainant on 1 April 2016 was calculated is the subject of his second complaint, on which the Tribunal has ruled in Judgment 5071, also delivered in public this day.

5. By various decisions dated 30 June 2016, including decisions CA/D 6/16 and CA/D 8/16, the Administrative Council adopted a structural reform of the Boards of Appeal.

Decision CA/D 6/16, which took effect, in the main, on 1 July 2016, introduced into the Implementing Regulations to the European Patent Convention new rules primarily aimed at strengthening the managerial autonomy of the Boards of Appeal, which were integrated into one autonomous unit directed by a newly-formed authority, the President of the Boards of Appeal.

Decision CA/D 8/16, meanwhile, which took effect on 1 January 2017, established a parallel career system of specific application to members of the Boards of Appeal. This decision amended several articles of the Service Regulations, providing, in particular, that Article 48 would not apply to them, meaning that step advancement was not possible during their term, but that they would be eligible for grade promotion in the event of re-appointment, if recommended by the

President of the Boards of Appeal. Article 8(1) of decision CA/D 8/16 provided that, simultaneously with the new rules coming into force, “[t]he transitional provisions introduced by [decision] CA/D 4/15 [were] abolished”.

6. As a result of this abolition of the transitional provisions, the complainant was not eligible for the salary advancement which would have been awarded to him on 1 April 2018 if the aforementioned Article 2 of decision CA/D 4/15 had remained in force. It is the individual decision giving effect to the new state of the law as it was applied to him, manifested by the lack of any such advancement on his April 2018 payslip, which the complainant impugns in his third complaint, which is the subject of the present judgment.

7. The Tribunal observes from the outset that, as the EPO rightly submits, some of the claims contained in the complaint are irreceivable as they were not previously raised before the competent internal appeal bodies.

This applies to the claim seeking the “setting aside of the amendments to Article 47a of the Service Regulations in the June 2018 version” thereof, which does not even relate to the content of the article in question, concerning appraisal reports, but in fact refers to a change made to a footnote when that version was published. It appears from the file that this claim was not raised as part of the internal appeal procedure and, although the complainant submits that the parties had exchanged arguments before the Appeals Committee concerning the lawfulness of Article 47a, that is no substitute for presenting a claim for the disputed amendments to be set aside.

The same goes for the complainant’s claim for his 2018 performance evaluation report to be set aside on the grounds that the legal context in which it was drawn up on 24 July 2019 was, in his view, unlawful. A report of this kind can only be impugned before the Tribunal if it has been challenged by means of the objection procedure provided for in paragraph 7 of Article 110a of the Service Regulations. In the present case, the complainant had not first used that procedure.

These new claims are therefore, in any event, irreceivable for failure to exhaust internal means of redress as required by Article VII, paragraph 1, of the Statute of the Tribunal (see, for example, Judgments 4851, consideration 3, 4522, consideration 3, or 4185, consideration 3).

8. As to the merits, it should first be noted that, although the complainant, when challenging the failure to award him a salary advancement, maintains that the President of the Office had “discretionary power to select the date of application of the provisions [of paragraph 1] of Article 8” of decision CA/D 8/16, this is not in fact the case. While it is true that the President of the Office was instructed by the Administrative Council, in Article 12 of that decision, to “take appropriate measures to ensure a smooth transition to the new system”, he did not have authority to amend, as part of those measures, the date on which the abolition of the transitional provisions established by decision CA/D 4/15 would take effect, since that date had been determined by the Council itself, under the combined provisions of Articles 8 and 13 of decision CA/D 8/16, as 1 January 2017.

At the heart of the present dispute is therefore the question of whether the Administrative Council could lawfully decide to repeal the said transitional provisions, as it felt it should, with effect from that date.

9. According to the Tribunal’s case law, an international organisation has wide discretionary power to determine salary structures or the arrangements for career progression, that form part of general staff management policy which the organisation is free to pursue in accordance with its interests (see, for example, Judgments 4889, consideration 9, 4274, consideration 15, or 3275, consideration 8). The same goes for transitional measures included in a revision of staff regulations (see in particular, relating precisely to the implementation of the new career system at the EPO, Judgment 4711, consideration 10). The Tribunal will therefore only interfere in decisions taken by an organisation in such matters in the event of a manifest error indicative of an abuse of this discretionary power.

10. Such decisions do, of course, still need to be taken with due regard for any acquired rights that employees may have. However, in the present case, it is clear that the salary advancement temporarily provided for by decision CA/D 4/15 did not meet the criteria which, under the case law, would confer on those employees eligible for the advancement an acquired right for its continued application, and, furthermore, the complainant does not formally claim such a right in his written submissions.

11. According to Article 2 of decision CA/D 4/15, the salary advancement designed to compensate members of the Boards of Appeal for the lack of step advancement available to them was introduced “[a]s a transitional provision for 2015 or until any further decision on this matter”. Preparatory document CA/49/15, submitted to the Administrative Council by the President of the Office with a view to the adoption of that decision, explained in this regard that the proposed transitional provisions were intended to “maintain career development for the Chairmen and Members of the [Boards of Appeal] with respect to the grant of salary advancements until the [Administrative Council] decide[d] on the concrete implementation of the new career system to these appointees”.

When, by decision CA/D 8/16 of 30 June 2016, the Administrative Council abolished the transitional provisions in question with effect from 1 January 2017, it clearly believed that as a result of the adoption of the structural reform of the Boards of Appeal, the conditions warranting the repeal of those provisions would be satisfied by that date.

12. The Tribunal shares the view, expressed by the majority of the Appeals Committee in its opinion of 6 July 2021, that the Administrative Council’s assessment of the situation was justified, given that the main principles of the new career system for members of the Boards of Appeal had indeed been determined.

First, decision CA/D 6/16, which entered into force on 1 July 2016, provided, *inter alia*, that it would thenceforth be the President of the Boards of Appeal who, upon delegation from the President of the Office, would exercise the right to propose to the Administrative Council the members of the Boards of Appeal for appointment and re-appointment, and, for the first time, established a mechanism for evaluating their performance, the practical details of which were to be determined by this new authority.

Secondly and most importantly, decision CA/D 8/16 put in place a new career progression regime for members of the Boards of Appeal with effect from 1 January 2017. As already noted, under the new regime they were not eligible for step advancement throughout their term of appointment but, on the other hand, there was a possibility for them to be promoted on re-appointment, which had not existed under the previous system, from grade G14, step 1, to grade G15, step 1. The situation of those members of the Boards of Appeal who, as the complainant, were already in service on 31 December 2016 was specifically dealt with in Article 8 of decision CA/D 8/16, which, in particular, provided that their previous basic salary would be preserved.

13. It is true that the new appraisal system introduced by decision CA/D 6/16 was still not fully operational on 1 January 2017. The evaluation guidelines, set out by the President of the Boards of Appeal in his Communiqué 2/17 of 22 December 2017, did not enter into force until 1 January 2018. However, besides the fact that most of the essential aspects of the reform were already applicable, the communiqué provided for the evaluation to relate, if appropriate, to a period before the date of its entry into force, which made it possible for members of the Boards of Appeal to be promoted, retroactively, from 1 January 2017.

14. The complainant claims that there was a breach of Article 4 of decision CA/D 8/16, which was worded as follows: “The application of the provisions on appraisal reports in Article 47a [of the Service Regulations] to [M]embers of the Boards [of Appeal] [...] shall be

suspended pending a further decision on this matter by the Administrative Council”.

The complainant maintains that, in view of these provisions, it was entirely unlawful for the President of the Boards of Appeal to issue the aforementioned Communiqué 2/17 and that, as a result, in the absence of a lawful appraisal system, the new career system for members of the Boards of Appeal could not be regarded as operational.

This plea is not without substance, as it seems that the decision of the Administrative Council envisaged in the aforementioned Article 4 never actually materialised, meaning that, in theory, Article 47a of the Service Regulations remained of no application to members of the Boards of Appeal, although it appears from the relevant texts that the evaluation of those members – despite its particular nature – is in fact treated as falling within the scope of the said Article 47a.

However, while the Tribunal finds this to be an unfortunate shortcoming in the implementation of the reform, the plea raised can still not be upheld.

First, the fact that, contemporaneously with the issue of those provisions, the Administrative Council decided to introduce a new career system for members of the Boards of Appeal, to repeal the transitional provisions set out in decision CA/D 4/15 and to establish – by means of decision CA/D 6/16 adopted on the same day as decision CA/D 8/16 – a performance evaluation regime for those same employees, the practical details of which it entrusted to the President of the Boards of Appeal, demonstrates that the Administrative Council wished to make provision from the outset for the implementation of that regime.

Secondly, even accepting that Communiqué 2/17 should be regarded as lacking legal basis, the Tribunal considers that this does not necessarily mean, in view of the implementation of the other aspects of the reform, that the criteria, referred to in consideration 11 above, which were defined at the time that decision CA/D 4/15 was issued and which were to be used to determine the appropriate time for repealing the transitional provisions contained in that decision, were not met on 1 January 2017.

Lastly, and in any event, it must be emphasised that, even supposing that the criteria originally defined were not in fact met, there was nothing to prevent the Administrative Council, on the adoption of decision CA/D 8/16, from repealing those transitional provisions for other reasons. Where no acquired rights have been breached – as is the case here – there is no requirement on an administrative body, when adopting a general decision on a particular topic, to follow the provisions of similar decisions that it had previously adopted on the same topic or guidance that it has previously issued on the matter. It still has the possibility to lay down new provisions or issue new guidance if it considers it appropriate so to do.

15. Overall, the Tribunal finds that the Administrative Council's decision that the transitional provisions contained in Article 2 of decision CA/D 4/15 should be abolished on 1 January 2017 did not amount to an abuse of its discretionary power in the matter. Furthermore, there was no obligation on the Administrative Council to simultaneously adopt further transitional provisions, as the complainant maintains subsidiarily.

16. The complainant submits that the fact that he did not receive the salary advancement for which he would have been eligible on 1 April 2018 if the transitional provisions set out in decision CA/D 4/15 had remained in force breached his legitimate expectations.

However, it is well established in the Tribunal's case law that no breach of legitimate expectations can occur when the rule on which the expectations claimed by an employee are based has been lawfully abolished (see, in particular, Judgments 4990, consideration 4, 4712, consideration 5, and 3256, consideration 16). It follows from the foregoing that the abolition of the transitional provisions in question was not unlawful.

It would, of course, have been possible for legitimate expectations to arise from some other form of undertaking given by the EPO concerning continued entitlement to the salary advancement at issue (see, for example, Judgment 4898, consideration 12). However,

although the complainant refers generally, in this regard, to assurances that had been given to the members of the Boards of Appeal about their career prospects in the context of the statutory reform, none of the documents submitted in evidence point to the existence of any undertaking on the part of the Organisation concerning the specific question of retaining this interim benefit.

17. The complainant constructs a line of argument alleging various flaws in the aforementioned Communiqué 2/17 setting out guidelines for the evaluation of the performance of the members of the Boards of Appeal, and in the provisions of the Service Regulations which resulted from decision CA/D 8/16 concerning the assignment of those employees to the new grades and arrangements for their promotion. However, this line of argument will be rejected as entirely ineffective. The fact that the complainant did not receive the salary advancement for which he would have been eligible if the transitional provisions set out in decision CA/D 4/15 had remained in force cannot be regarded as a decision taken on the basis of Communiqué 2/17 or of the statutory provisions in question. Therefore, the pleas challenging the lawfulness of those texts are, in any event, of no relevance to the present dispute (see for example, in a similar case, Judgment 4274, consideration 4).

Furthermore, as regards Communiqué 2/17, it must be noted that the Tribunal has already ruled on a plea of unlawfulness raised in the context of a complaint filed by another member of the Boards of Appeal, and that it rejected that plea and, in particular, the contention that the Communiqué was unlawful because it had not been submitted to the General Consultative Committee, which constitutes one of the key elements of the complainant's arguments on this point in the present case (see Judgment 4795, considerations 3 to 8, and particularly consideration 4).

18. The complainant also alleges that there was a breach of the principle of equal treatment. He submits, in this regard, that three members of the Boards of Appeal who had been promoted to grade G15 on 1 January 2017 – that is on the expiry of their previous term, which

coincided with the date on which they became eligible for this promotion under the new career system – had, until that point, benefited from the transitional salary advancement mechanism provided for by decision CA/D 4/15. From this he infers that, to avoid his being treated less favourably than them, he should have enjoyed the same benefit until the end of his term that had commenced prior to 1 January 2017.

However, the Tribunal observes that the provisions of Article 2 of decision CA/D 4/15 were applied in the same manner to all members of the Boards of Appeal throughout the period when they were in force. The complainant's allegation of unequal treatment actually pertains to the way in which the new provisions of the Service Regulations introduced by decision CA/D 8/16 in relation to promotions were applied to those members who were already in office on 31 December 2016. But the question of lawfulness of those provisions and of the arrangements for their implementation is not within the scope of the present dispute.

19. Similarly, the complainant's argument that these transitional implementing arrangements were inequitable, in that they allowed members of the Boards of Appeal junior to him to receive an immediate promotion, is to no avail. It cannot, in any event, create a right to benefit from a salary advancement mechanism which had been lawfully abolished on 1 January 2017.

20. Lastly, the complainant claims that the EPO breached its duty of care towards its employees. In this regard, his essential grievance is that the EPO did not take into account the adverse consequences of the statutory reform and its implementation on serving members of the Boards of Appeal who, like him, held a grade above G14, step 1.

However, the Tribunal notes that the Organisation did take steps to mitigate those adverse consequences through the transitional mechanism for automatic salary advancement established by Article 2 of decision CA/D 4/15 and through the guarantee made to employees in the complainant's situation by Article 8 of decision CA/D 8/16 that their previous basic salary would be preserved. In the circumstances,

the plea alleging a breach of the duty of care cannot be upheld (see, for the rejection of a similar plea in relation to the adoption of the new career system by decision CA/D 10/14, Judgments 4889, consideration 9, and 4711, consideration 10).

21. As a result of the foregoing, the complainant's arguments claiming that he was entitled to receive the disputed salary advancement must be rejected in their entirety.

It follows that the complaint will be dismissed in respect of all the claims contained therein alleging that the failure to award the salary advancement in question was unlawful.

22. However, the Tribunal considers that there is one aspect of the complaint which is nonetheless well founded, for the reasons set out below.

As part of the arguments put forward in support of his claim for moral damages, the complainant challenges, in particular, the Office's refusal to process the request for review of the contested decision which he had submitted on 13 July 2018. It appears from the evidence that, by email of 24 July 2018, the Conflict Resolution Unit informed the complainant that it did not consider it appropriate to register this request because he had already submitted three others concerning the effects that the change in career system had on him.

This process undertaken by the Administration, resulting in the complainant being denied his right to have his request for review properly handled by the competent authority, cannot be accepted. The EPO has not pointed to any provisions which would allow the Conflict Resolution Unit to refuse to register a request for review submitted by an employee. Furthermore, the reason given in this case for refusing the complainant's request was, in any event, unjustified. Even though the three other requests for review submitted by the complainant – which related to the administrative decisions impugned in his second, fourth and fifth complaints respectively – did indeed concern his own situation within the new career system, each of the four requests at issue had its

own subject-matter and the one submitted in the present case was, in particular, quite distinct from the others.

23. The Tribunal has previously ruled, in other cases where the Conflict Resolution Unit refused, similarly, to register a request for review, that, as such a refusal necessarily entails the rejection of the request, it constitutes a decision in itself, against which the employee concerned should bring an internal appeal before the Appeals Committee if she or he wishes to pursue the dispute (see Judgments 4319, consideration 6, and 4269, considerations 6 and 7). In the present case, the complainant did indeed submit an internal appeal against the refusal to register his request for review and that appeal was duly examined by the Committee. However, the fact remains that the failure by the competent authority to process the complainant's request meant that he was denied the benefit of the review procedure, which unlawfully breached his right of appeal.

24. In the particular circumstances of the case, the Tribunal considers that it would be inappropriate to set aside the impugned decision on this sole ground but, in accordance with Article VIII of its Statute, will instead order financial compensation for the moral injury caused to the complainant by this breach of his right of appeal. Accordingly, the complainant will be awarded 3,000 euros in this respect.

25. The complainant seeks reimbursement of the registration fee he had to pay, under Article 5(3) of the Implementing Rules for Articles 106 to 113 of the Service Regulations, when he lodged his internal appeal with the Appeals Committee.

As the Tribunal has previously held, this fee, which may be refunded in full or in part if the appeal is successful, forms part of the costs of the internal appeal procedure (see Judgment 4800, consideration 22). According to its case law, the Tribunal will only award costs for internal appeals in exceptional circumstances (see, for example, Judgments 4644, consideration 3, 4457, consideration 31, or 4392, consideration 13).

In the present case, it must be noted that, to the extent that it concerned the breach of the right of appeal identified above, the internal appeal lodged by the complainant was well founded. Furthermore, the Tribunal considers that, in this unusual case, there are indeed exceptional circumstances justifying the award of costs for the internal procedure. As the complainant rightly submits, the refusal to register his request for review effectively compelled him to bring the matter before the Appeals Committee in order to have his challenge properly dealt with by an appeal body. The Tribunal will therefore order reimbursement of 200 euros, corresponding to the amount of the fee in question.

26. As the complainant succeeds to the extent set out above, he is also entitled to costs for the proceedings before the Tribunal, the amount of which will be set at 200 euros, in accordance with his request.

27. All other claims must be dismissed, without there being any need to rule on the objections made by the EPO to the receivability of some of them, other than those examined in consideration 7 above.

DECISION

For the above reasons,

1. The EPO shall pay the complainant 3,000 euros in moral damages.
2. The Organisation shall reimburse the complainant 200 euros corresponding to the registration fee for his internal appeal.
3. It shall also pay him 200 euros for the costs incurred before the Tribunal.
4. All other claims are dismissed.

In witness of this judgment, adopted on 28 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.