

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S. (No. 5)

v.

EPO

141st Session

Judgment No. 5185

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr J.-C. S. against the European Patent Organisation (EPO) on 14 January 2022, the EPO's reply of 10 May 2022, the complainant's rejoinder of 8 June 2022 and the EPO's surrejoinder of 7 September 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, a Board of Appeal member, challenges his transposition to a new grade with effect from 1 July 2015 as a result of the introduction of a new career system.

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.

On 11 December 2014 the Administrative Council adopted decision CA/D 10/14, which introduced a new career system with effect from 1 January 2015. This decision, which substantially amended the Office's 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.

By letter of 9 June 2015, the complainant, who held grade A5, step 11, was informed that, with effect from 1 July 2015, he had been assigned grade G14, step 4, under the new career system. He was transposed to the lower step on the new salary scale because the difference between his basic salary and that for the next higher step on the new scale was more than 50 euros. However, in accordance with Article 56(4) of decision CA/D 10/14, the level of his basic salary was maintained.

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 3 of this decision provided that, as a transitional measure, or until a decision was taken on the matter, the provisions of Articles 47a, 48 and 49 of the Service Regulations with respect to appraisal, step advancement and promotion did not apply to them.

On 24 September 2015 the complainant submitted a request for review of the implementation of the decision abolishing the automatic step advancement inherent in the career system that had been in force until 31 December 2014. In particular, he sought the setting aside of the decision of 9 June 2015 notifying him of his transposition to grade G14, step 4. He argued that the new provisions introduced by decision CA/D 10/14 did not apply to the members of the Boards of Appeal and that there was no justification under decision CA/D 4/15 for transposing the members of the Boards of Appeal into the new career system, as it

did not contain specific provisions for the organisation and operation of the Boards of Appeal. He also stated that the transposition breached his legitimate expectations and constituted a downgrading. On 20 November 2015 he was informed that his request for review was rejected as unfounded.

On 19 February 2016 the complainant lodged an internal appeal against that rejection decision. He requested that the transposition decision be set aside and that he remain under the old career system pending the introduction of a system specific to the chairmen and members of the Boards of Appeal. In the alternative, he requested that he be assigned step 12 in the old grade A5 and transposed to the new career system once he reached that step, that is on 1 April 2016. He also asked that the seniority he had accrued in the step be taken into account on the transposition and that he be assigned a step corresponding to the salary immediately above the corresponding salary under the old system.

The complainant was re-appointed as Board of Appeal member and promoted to grade G15, step 1, with effect from 1 October 2020.

In its opinion of 13 July 2021, the Appeals Committee examined several appeals lodged by members of the Boards of Appeal, including the complainant, against the new career system. It unanimously concluded that the claims for the continued application of the former career system were irreceivable and that it was not competent to issue injunctions to the EPO. It was also unanimous in its view that the unreasonable delay in the internal appeal procedure warranted compensation. As to the merits, the majority of the Appeals Committee recommended that the appeals be rejected as unfounded, in particular on the grounds that general policy measures relating to staff management fell within the discretionary power of the Organisation, that there was no acquired right to an automatic step advancement system and that the transitional measures introduced by decision CA/D 4/15 enabled the members of the Boards of Appeal to enjoy an automatic salary increase, thus preserving their career progression prospects. Moreover, according to the majority, it had not been shown that the EPO had given any

assurances that the old career system would continue, and the allegation of a breach of legitimate expectations had, therefore, to be rejected.

By a letter of 20 October 2021, the complainant was informed, as were the other appellants, that the Office had decided to follow the majority opinion of the Appeals Committee and, accordingly, to reject his internal appeal as partly irreceivable and unfounded for the remainder. He was, however, awarded 600 euros as compensation for the length of the procedure before the Committee and an additional 100 euros for the time that had elapsed since the Committee's deliberations. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision of 20 October 2021, as well as the decision of 9 June 2015, and to assign him the former grade A5, step 12, together with the corresponding basic salary. He also seeks reimbursement of "unpaid amounts", together with interest at a rate of 4 per cent per annum, reimbursement of 300 euros for the "costs" he has incurred or a higher amount upon production of invoices. Lastly, he claims moral damages of 10,000 euros or any other amount that the Tribunal considers fair.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable and entirely unfounded.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 20 October 2021 by which the Vice-President of Directorate-General 4, in accordance with the recommendation of the majority of the Appeals Committee, confirmed the grade transposition that had been applied to him under the new career system for the employees of the European Patent Office resulting from Administrative Council decision CA/D 10/14 of 11 December 2014.

By the initial contested decision, dated 9 June 2015, the complainant, who served as a Board of Appeal member, was assigned grade G14, step 4, with effect from 1 July 2015, rather than grade A5, step 11, which he held under the old career system. As this new grade

was classified lower on the salary scale than the previous one, the decision specified that the complainant would retain his previous basic salary under the guarantee provided for in such cases by Article 56(4) of decision CA/D 10/14.

2. In support of his claims, the complainant submits first of all that the Office could not lawfully transpose the members of the Boards of Appeal to the new career system on 1 July 2015. This was because Article 56 of decision CA/D 10/14, which provided, in paragraph 5, that the transposition of employees was to take effect on that date, was, in his view, inapplicable to this particular category of staff. This assertion rests on the argument that the reform introduced by that decision was incompatible with aspects of the Service Regulations peculiar to members of the Boards of Appeal.

3. However, the Tribunal cannot agree with the complainant on this point.

It is certainly true that, for chairmen and members of the Boards of Appeal, the implementation of certain elements of the new career system 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. A notable example was the merit-based step advancement regime introduced to replace the seniority-based regime previously in force. 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 – which finally did not occur until June 2016.

However, it is clear that the derogations made from the application of the reform all fell within areas, such as promotion or step advancement, where the independence of the members of the Boards of Appeal could be compromised by decisions that required their merits to be evaluated. Transposition to the new grades, which was simply an administrative operation to implement the objective technical consequences of each employee's previous classification level, by

reference to the table of job groups and ranges of grades provided for by Article 41 of decision CA/D 10/14, did not fall within those areas. The Office was therefore correct in considering that the members of the Boards of Appeal should be transposed, like other employees, on 1 July 2015.

4. In seeking to oppose that conclusion, the complainant relies on a statement made by the President of the Office before the Administrative Council, during the discussions preceding the adoption of decision CA/D 10/14 at the Council's 142nd meeting, that no provision concerning "any [...] aspect relevant for [the] careers [of Board of Appeal members]" would apply until the conditions governing the organisation and operation of those Boards had been amended. However, even supposing that this statement could be regarded as a formal promise by the Organisation within the meaning of the Tribunal's case law, as recalled for example in Judgment 4253, consideration 6, it does not have the scope attributed to it by the complainant. For the same reasons as those just set out, it cannot be considered that, in referring to "aspect[s] relevant for their careers", the President meant to include a purely objective administrative operation such as transposition to the new grades.

5. It should be noted that the Administrative Council's intention for the grade transposition to take place on 1 July 2015 for members of the Boards of Appeal is also clear from decision CA/D 4/15 of 25 June 2015, which laid down transitional provisions concerning the application to them of the new career system. The only derogations provided for by that decision related to the probationary period, award of bonuses, appraisal, step advancement and promotion, which, as the Appeals Committee rightly observed in its opinion, confirms that the Administrative Council did not consider a derogation necessary in respect of the actual grade transposition provided for by decision CA/D 10/14. In addition, pending publication of the final career progression arrangements for members of the Boards of Appeal, Article 2 of decision CA/D 4/15 had introduced a mechanism entitling them to an automatic salary advancement which had the same effect on

their basic salary as the award of one additional step. The provisions of Article 2 referred – as the Tribunal had occasion to affirm in Judgment 5071, ruling on the complainant’s second complaint – to the new grades assigned pursuant to decision CA/D 10/14, which, again, indicates that the Administrative Council considered that the transposition to the new grades should indeed take place on the date set out in the latter decision.

6. The complainant next submits that applying the new career system to members of the Boards of Appeal, by transposing them to the grades under that system, breaches their acquired rights. That is because making changes to the arrangements for step advancement and promotion previously in force amounts, in his view, “purely and simply to freezing the career development” of those employees.

7. According to the Tribunal’s case law on the protection of acquired rights, as established in particular 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 in question 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).

8. In Judgments 4710, 4711 and 4712, by which the complaints of another official, selected as “lead complaints” among the large number of disputes over the new career system, were dismissed, and also in Judgment 4889, which dealt with a similar case where additional pleas were raised, the Tribunal has already had occasion to rule on the question of whether acquired rights were respected under the reform in

the general case of Office employees governed by the ordinary provisions of the Service Regulations.

In consideration 8 of Judgment 4711, the terms of which were confirmed in consideration 6 of Judgment 4889, the Tribunal found, with regard to the criteria set out in the aforementioned case law, that the abolition of seniority-based step advancement and its replacement 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 of the opportunity, under the new career system, for step advancement in appropriate circumstances.

The Tribunal added in Judgment 4889, consideration 7, 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.

9. It is certainly true, as the complainant points out in his written submissions, that, in this respect, the members of the Boards of Appeal found themselves in a peculiar situation. When the new career system came into force, the lack of provisions governing their performance appraisal left them unable to benefit from the merit-based step advancement that was brought in more generally under the reform of the Service Regulations. 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 only obtain a promotion – as was, in fact, already the case under the previous system – by applying for another job. Finally, under the new career regime specific to members of the Boards of Appeal, which was finally defined by Administrative Council decision CA/D 8/16 of 30 June 2016, which came into force on

1 January 2017, they were eligible for promotion only on a renewal of their five-year term of office, and not during the term.

10. However, in Judgment 4990, and subsequently in Judgments 5069 and 5070, the Tribunal had occasion to rule on the situation of staff in a different category – namely those in the former grade A4(2) whose salary was higher than that corresponding to the new grade G13, step 5 – who, as a result of the reform of the Service Regulations, were denied any opportunity for step advancement or promotion in their posts, due to the peculiarities of their situation. The Tribunal found that, since the staff concerned still had some career progression opportunities, as there were outlets open to them, and benefited from salary advancements, the situation did not amount to a breach of their acquired rights. It considered 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” (see Judgments 5070, consideration 8, 5069, consideration 10, and 4990, consideration 3).

11. As regards members of the Boards of Appeal, the Tribunal considers that the examination of the specific provisions concerning them cannot but lead to the same conclusion. Firstly, Article 2 of decision CA/D 4/15 had provided, as already noted, that, during the transitional period defined therein, they were to receive an automatic salary advancement equivalent to the award of one additional step, and this increase was then included, pursuant to Article 8 of decision CA/D 8/16, in the basic salary guaranteed to the employees concerned. Secondly, Article 2 of the latter decision provided that members of the Boards of Appeal could be promoted on re-appointment, provided they were recommended for promotion by the President of the Boards of Appeal, based on an assessment of their merits. Moreover, the complainant himself benefited from these arrangements, as he received a salary advancement with effect from 1 April 2016 and was promoted to grade G15, step 1, on 1 October 2020. Lastly, members of the Boards of Appeal have several career outlets available to them, such as becoming chairman of one of the Boards.

Having regard to these various considerations, the Tribunal finds that the changes made to the previous career regime for members of the Boards of Appeal did not alter their fundamental terms of employment, within the meaning of the abovementioned case law, and that the plea alleging breach of their acquired rights cannot, therefore, be upheld.

12. In the course of his line of argument on the question just addressed, the complainant relies on two other pleas, alleging, firstly, that his transposition to the new grade amounted to a disciplinary measure and, secondly, that the career regime described above for members of the Boards of Appeal did not meet the management objectives which formed the basis for the adoption of the reform of the Office's Service Regulations.

These pleas must be rejected.

The assertion that the complainant's transposition is disciplinary in nature is immaterial, since it was the simple application of general statutory regulations and, therefore, could clearly not be regarded as a sanction for personal conduct. Furthermore, the transposition did not lead to a lower salary or reduced responsibilities on the complainant's part and, contrary to his contention, was not an affront to his dignity.

As for his comments about the relevance of the statutory regime applied to members of the Boards of Appeal in the light of the Office's objectives, it should be recalled that, according to the Tribunal's case law, international organisations have wide discretionary power to determine salary structures or the arrangements for career progression, that form part of general staff management policy which they are free to pursue in accordance with their interests (see, for example, Judgments 5072, consideration 9, 4889, consideration 9, 4274, consideration 15, or 3275, consideration 8). 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. However, the Tribunal considers that the existence of such a manifest error is not at all apparent from the file.

13. The complainant submits that making changes to the career progression arrangements enjoyed by members of the Boards of Appeal before the reform, in particular seniority-based step advancement, 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 previous provisions of the Service Regulations governing the career development of Board of Appeal members was not, in itself, in any way unlawful.

It would, of course, have been possible for legitimate expectations to arise from an undertaking formally given by the EPO as to the retention of these old provisions or the anticipated content of the provisions which were to replace them (see Judgments 5072, consideration 16, 5071, consideration 13, and 4898, consideration 12). However, although the complainant refers in this regard to various documents submitted in evidence, the Tribunal considers that none of them contains any sufficiently specific assurances as would constitute such an undertaking on the part of the Organisation.

14. The complainant submits that the transposition arrangements for members of the Boards of Appeal to the new career system resulting from decision CA/D 10/14 breached the principle of equal treatment.

15. According to the Tribunal's case law, 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, for example, Judgments 5071, consideration 14, 4681, consideration 9, 4277, consideration 21, or 3900, consideration 12).

16. The complainant first criticises, on that point, the fact that members of the Boards of Appeal were subject to the same grade transposition rules as the Office's other employees. even though the specific features of their regime connected with the need to safeguard their independence meant that they were not, in his view, in the same situation as those other employees.

However, the Tribunal notes that the specific features in question were irrelevant to the question of transposition to the new grades. As mentioned above, this transposition was a simple administrative operation of an objective nature, which, in itself, had no bearing on the independence of the members of the Boards of Appeal. It was therefore right that they should be subject to the same rules as other employees. The need for their independence to be safeguarded was of concern only in the context of career development. The EPO was careful to establish, in this area, specific rules for the members of the Boards of Appeal, which were drawn up in view of this particular situation. This plea is therefore unfounded.

17. The complainant further submits that decision CA/D 10/14 led to unlawful unequal treatment between the members of the Boards of Appeal themselves, in that, on the one hand, employees previously in very similar situations could end up being classified differently under the rules for the assignment of the new grades and steps and, on the other hand, employees with very different levels of seniority could end up classified in the same way because seniority accrued within the previous step was not taken into account on transposition.

However, apart from the fact that the disparities complained of were remedied by the guarantee to preserve the salary previously received (see, on that point, Judgment 4712, consideration 5) or by the automatic salary advancement which compensated for the abolition of seniority-based advancement on a transitional basis, it is inevitable that, when a reform of staff regulations of this kind is implemented, the employees concerned will be affected differently depending on their individual circumstances. The existence of such differences cannot therefore, in itself, constitute unlawfulness (see, in particular,

Judgment 5071, consideration 16). Nonetheless, there would certainly be reason to censure the criteria used to award the new grades and steps defined by the applicable provisions if they stemmed from a manifest error and thus amounted to an abuse of the discretionary power that organisations have in this matter. However, the arguments put forward by the complainant on this point are not sufficient to convince the Tribunal that any such manifest error occurred.

18. 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 transposition to the new grades provided for by decision CA/D 10/14.

However, the Tribunal notes that the Organisation did take steps to mitigate those adverse consequences, by guaranteeing employees, under Article 56(4) of that decision, that their previous basic salary would be preserved and, specifically in relation to members of the Boards of Appeal, through the transitional mechanism for automatic salary advancement established by Article 2 of decision CA/D 4/15, as well as through the further salary preservation guarantee under Article 8 of decision CA/D 8/16. In the circumstances, the plea alleging a breach of the duty of care cannot be upheld (see, for the rejection of similar pleas raised in the same context, Judgments 5072, consideration 20, 4889, consideration 9, and 4711, consideration 10).

19. Lastly, the complainant asks that the EPO be ordered to pay him damages for the excessive delay in the internal appeal procedure.

The Tribunal notes that five years and eight months passed between the complainant lodging his internal appeal on 19 February 2016 and the final decision on his appeal being issued on 20 October 2021. Such a delay is clearly excessive. However, in various judgments also dealing with challenges to the reform of the EPO's Service Regulations and 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 employees in question was sufficient to remedy the injury they had suffered (see, in particular,

Judgments 5069, consideration 14, 4889, consideration 10, and 4711, consideration 11). 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.

20. 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 one of the claims.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 2025, Mr Patrick Frydman, Vice-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 10 February 2026 by video recording posted on the Tribunal's Internet page.

(Signed)

PATRICK FRYDMAN JACQUES JAUMOTTE CLEMENT GASCON

RENÉ M. VARGAS M.