Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F. (No. 3)

v.

EPO

141st Session **Judgment No. 5186**

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr P. F. against the European Patent Organisation (EPO) on 16 January 2022, the EPO's reply of 10 May 2022, the complainant's rejoinder of 19 June 2022 and the EPO's surrejoinder of 15 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 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 1990 as an examiner. He has been a Board of Appeal member since 1 June 2007.

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 9, was informed that, with effect from 1 July 2015, he had been assigned grade G14, step 1, 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 10 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. More specifically, he challenged his payslip for July 2015 and the decision of 9 June 2015 notifying him of his transposition to grade G14, step 1. He argued that the new provisions introduced by decision CA/D 10/14 on 1 January 2015 infringed his acquired rights and his legitimate expectations. On 4 November 2015 he was informed that his request for review was rejected as unfounded.

On 18 January 2016 the complainant lodged an internal appeal against that rejection decision. He asked to be allowed to enjoy automatic step advancement in his former grade A5, as it stood on 31 December 2014, including for the calculation of his pension rights. In the alternative, he asked for the 19 months he had spent in grade A5, step 9, to be recognised as at 1 January 2015 and for the resulting salary level to be taken into account in determining his grade and step in the new career system. He maintained that decision CA/D 10/14 was not applicable to him, particularly in relation to advancement and promotion, since he was a member of the Boards of Appeal. In his view, the decision to transpose him to grade G14, step 1, breached his acquired rights, the principle of good faith and the "protection of legitimate expectations".

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 "rules CA/D 10/14 and CA/D 4/15" and to order that he be allowed to benefit from the career system that was in force on 31 December 2014, in other words, that the principle of automatic horizontal step advancement that was in force at the time of his recruitment in September 1990 and until 31 December 2014 should continue to apply to him from 1 January 2015. He also seeks the benefit from all prerogatives pertaining to the previous advancement system, particularly concerning the basis on which his pension is calculated. In the alternative, he seeks entitlement, with effect from 1 June 2015, to a step advancement every two years, thus allowing him to reach the last step of grade G15, together with all the prerogatives inherent in the grade and step in question. He also claims damages of 6,000 euros for the moral injury caused by the refusal of the EPO and the Appeals Committee to use French in their dealings with him, and of 9,000 euros for the moral injury caused by the refusal to hear him. In his rejoinder, he states that he obviously seeks the setting aside of the impugned decision as identified in the complaint form.

The EPO asks the Tribunal to dismiss the complaint as partially irreceivable insofar as the complainant challenges decisions CA/D 10/14 and CA/D 4/15, which are general decisions requiring an individual implementing decision, and as 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 1, with effect from 1 July 2015, rather than grade A5, step 9, 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.

In his written submissions, the complainant asks the Tribunal to set aside, in addition to the aforementioned individual decisions concerning him, decision CA/D 10/14 itself and also decision CA/D 4/15 of 25 June 2015 which laid down transitional provisions for the application of the new career system to the members of the Boards of Appeal, insofar as those general decisions brought to an end the automatic step advancement based on seniority which those members enjoyed under the previous system.

2. The complainant has requested oral proceedings. However, 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 finds it unnecessary to grant this request.

3. In support of his claims, the complainant submits first of all that the review and internal appeal procedures that led to the impugned decision were legally flawed.

In that regard, he submits, in essence, that neither the decision of 4 November 2015 rejecting his request for review of the initial contested decision nor the opinion of the Appeals Committee of 13 July 2021, whose recommendation the competent authority endorsed in the final decision of 20 October 2021, responded to all the arguments he had put forward before the appeal bodies concerned.

He also complains that, although he had submitted his request for review and his internal appeal in French, the decisions ruling on them, as well as the opinion of the Appeals Committee, the communications from the latter and all the written submissions produced by the EPO in the appeal proceedings, were drafted in English.

In the complainant's view, these two flaws, which are closely linked in his line of argument, had the effect of infringing his right to be heard.

4. These criticisms evidently stem from the particular way in which challenges to the adoption of the new career system were handled. It is clear from the file that, in view of the large number of such challenges, the Office chose to rule on requests for review by way of a common model decision. In addition, in the interests of procedural economy, the Appeals Committee examined jointly in one single opinion all 14 appeals lodged by Board of Appeal members on this topic, some of which had been selected as test cases.

The Tribunal observes that this approach, which does not contravene any rule in force and which, as regards the procedure before the Appeals Committee, is in fact expressly provided for by Articles 9b and 10 of the Implementing Rules for Articles 106 to 113 of the Service Regulations, was decidedly appropriate in view of the number and the similarity of the challenges in question.

It is true that choosing to deal with these challenges jointly meant that it was not possible in the decisions taken or in the Appeals Committee's opinion to respond in detail to all the arguments put forward by each of the employees concerned. The Committee itself explained this in the introduction to its opinion, stating that the opinion was "intended to cover all the relevant submissions made across the various appeals", which "were largely overlapping" in the arguments raised, but that it did not "necessarily" cover all the submissions made in "each individual appeal", where these arguments were "sometimes expressed differently".

Furthermore, it is clear that the decision to handle requests for review and appeals together is what also led the appeal bodies in question to choose to conduct, for the sake of convenience, the entire procedure in just one language, namely English.

5. However, the Tribunal notes that the decision of 4 November 2015 did include reasoning that specifically responded to arguments the complainant had put forward in his request for review. As for the Appeals Committee's opinion, the grounds for which were particularly detailed, consisting of no fewer than 203 paragraphs (and referring, on certain points, to the main opinion delivered by the Enlarged Chamber on appeals brought in connection with the reform of the Service Regulations, which itself contained 341 paragraphs), it can be seen that all the pleas raised by the complainant were ruled on. It is true that some of the arguments put forward by the complainant in support of his pleas were not specifically addressed, but this is not, in itself, sufficient to vitiate the lawfulness of that opinion or of the final decision based thereon. Although appeal bodies must, in principle, address each of the pleas raised before them (see, for example, Judgment 4063, consideration 5), they are not obliged to respond in detail to all the arguments put forward in support of those pleas (see, in particular, Judgments 4507, consideration 3, or 4165, consideration 8).

Although the complainant also maintains that the Office's failure to address his specific arguments in its submissions before the Appeals Committee impeded his ability to defend his interests, the Tribunal considers that nothing in the file indicates that the circumstances in which the procedure was conducted actually deprived the complainant of the opportunity to effectively put forward his grievances against the contested decision.

6. As regards the use of English, the Tribunal observes that, while, in absolute terms, it would certainly have been preferable for the decisions, opinions and other documents issued in the course of the proceedings to have been drafted in the language used by the complainant in his request for review and his appeal, the competent bodies of the Office were under no legal obligation to do that. The Implementing

Rules referred to above make it clear that the review and internal appeal procedures do not have to be conducted in a specific procedural language and that these bodies are therefore free to express themselves in any of the three official languages of the EPO – one of which is English.

It should also be noted that Article 8(3)(f) of the Service Regulations stipulates that employees must have "sufficient language knowledge for performing [their] duties" and that Circular No. 364, with particular regard to "minimum qualifications for recruitment", requires in principle that, in addition to an excellent knowledge of one official language, members of the Boards of Appeal must have the "ability to understand the other two". Moreover, the complainant acknowledges in his rejoinder that he has sufficient knowledge of English to appreciate the meaning of the EPO's written submissions communicated to him in the internal procedure.

Lastly, contrary to what the complainant suggests, there is nothing to indicate that the Office or the competent appeal bodies did not fully understand some of his arguments because they were presented in French.

The plea alleging a breach of the right to be heard arising from the alleged legal flaw in the review and internal appeal procedures will therefore be rejected.

7. The complainant next submits that the new career regime that was applied to members of the Boards of Appeal pursuant to the aforementioned decisions CA/D 10/14 and CA/D 4/15 breached his acquired rights, in that it brought to an end automatic step advancement based on seniority which he – like all the other Office employees – enjoyed under the previous system.

8. 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).

9. 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.

It should also be pointed out – even though this concerns another aspect of the reform, which is not contested by the complainant – that the Tribunal has held that no acquired rights were breached by the changes to the rules governing promotion either, since the opportunities open to staff to advance to a higher grade were not substantially affected (see Judgment 4889, consideration 7).

10. In his written submissions, the complainant maintains that the abolition of seniority-based step advancement breached the acquired rights of the Office's employees because, in his view, this automatic advancement constituted a fundamental element of their previous terms of employment. However, none of the arguments put forward in the complaint to this effect is sufficient to persuade the Tribunal to depart from the conclusion it reached on this point in Judgments 4711 and 4889 cited above.

In support of his line of argument, the complainant relies, in particular, on the content of a brochure sent to him at the time of his recruitment and on subsequent internal documents, which he believes make it clear that, prior to the reform of the Service Regulations, the EPO itself regarded seniority-based advancement as an essential element of the career regime of the Office's employees. The complainant also believes that the inclusion of "deferment of advancement to a higher step" in the list of disciplinary measures in Article 93 of the Service Regulations, as it stood at the time of the reform, indicates the importance attached by the Organisation to this term of employment. However, apart from the fact that the Tribunal struggles to see the demonstrative value of some of the arguments and documents submitted, the fact that the Office has, in the past, recognised the importance of seniority-based step advancement does not, in any event, invalidate the reasoning used in the judgments referred to above, according to which the replacement of that kind of automatic advancement by merit-based step advancement was sufficient compensation to ensure the preservation of employees' acquired rights.

11. It is certainly true that, in this respect, 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.

12. 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).

13. 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 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

in July 2015 and was promoted to grade G15, step 1, on 1 June 2017. 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 complainant's plea alleging a breach of his acquired rights cannot, therefore, be upheld.

14. The complainant extends his argument, mentioned above, about the content of Article 93 of the Service Regulations, by submitting that the abolition of his right to seniority-based step advancement amounted to a disciplinary measure.

This plea is immaterial, since this abolition arose through the simple application of general statutory provisions and, therefore, could clearly not be regarded as a sanction for personal conduct. It should also be pointed out that the transposition of the complainant to the new career system did not lead to a lower salary or reduced responsibilities.

15. The complainant maintains that the transposition of his grade into the new career system breached the principles of good faith and legitimate expectations.

However, his line of argument on this point, which amounts, in essence, to an allegation that his legitimate expectations were disregarded, will be rejected.

It is well established by 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 formal assurances as would constitute such an undertaking on the part of the Organisation.

That finding also applies to the aforementioned decision of 4 November 2015, which, as the complainant points out, contained the assertion – which subsequently turned out to be inaccurate on the introduction of the career regime specific to members of the Boards of Appeal resulting from decision CA/D 8/16 – that, in the new job group into which he had been transposed, he could attain the salary corresponding to the final step of his former grade. It is clear from the wording of the decision in question on this point ("you may still be able to reach the final step in grade [...]") that this merely referred, in any event, to the possibility of this occurring and was not an undertaking by the EPO to that effect, or even a guarantee that the potential for it to happen would not subsequently change. The complainant cannot, therefore, justifiably claim that any assurances were given to him in that decision, or, as he does in the alternative, that the decision contained misleading information.

16. Lastly, the complainant complains that, on his transposition to the new career system, no account was taken of the seniority he had accrued in the previous step, which unduly deprived him of the automatic step advancement which he had enjoyed under the old system. In this respect, he also alleges unequal treatment in that the failure to take account of the time spent in the previous step led to employees whose seniority varied greatly being "put on the same footing".

However, since, as stated above, the abolition of seniority-based step advancement did not breach acquired rights, the Tribunal sees no reason to interfere in the arrangements for transposition into the new

grades which the EPO chose to adopt. In addition, it should be pointed out that the automatic salary increase mechanism introduced on a transitional basis by Article 2 of decision CA/D 4/15 conferred on members of the Boards of Appeal a salary progression linked to their seniority in the previous step, which remedied the failure to take this into account at the time of the transposition itself. As regards the disparities complained of in the treatment of employees, 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.

17. Since none of the complainant's pleas succeeds, the complaint must be dismissed in its entirety, without there being any need to rule on the objections raised by the EPO to the receivability of some of the claims made.

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.