

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

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

**S. (No. 4)**

**v.**

**EPO**

**141st Session**

**Judgment No. 5187**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr J.-C. S. against the European Patent Organisation (EPO) on 22 December 2021, the EPO's reply of 10 May 2022, the complainant's rejoinder of 16 June 2022 and the EPO's surrejoinder of 13 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 January 2017.

Certain facts relevant to this case are set out in Judgments 5071 and 5072, delivered on 3 July 2025, concerning the complainant's second and third complaints respectively, and in Judgment 5185, concerning his fifth complaint, also delivered this day. 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 and had been assigned grade G14, step 4, on 1 July 2015 (the decision impugned in his fifth complaint) under the new career system for employees of the European Patent Office introduced, with effect from 1 January 2015, by the Administrative Council's

decision CA/D 10/14 of 11 December 2014. 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. 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 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. These transitional measures were abolished by decision CA/D 8/16, adopted by the Administrative Council on 30 June 2016, which created a career regime specific to chairmen and members of the Boards of Appeal. Article 8(2) of that decision provided, in particular, that members of the Boards of Appeal already in service on 31 December 2016 would be assigned to the grade and step specified for their job group in Article 11(3) of the Service Regulations, as amended by that same decision. If, however, their net basic salary as at 31 December 2016, including any salary difference guaranteed under the new career system for all staff (pursuant to Article 56(4) of decision CA/D 10/14) and any full

advancement of salary acquired by that date, was higher than that payable for that grade and step, they would continue to receive the higher salary until the end of their term. This higher salary was also to be taken into account for pension purposes.

By letter of 20 December 2016, the complainant was informed that, with effect from 1 January 2017, he had been transposed to grade G14, step 1, in the new career regime applicable to members of the Boards of Appeal. His net basic salary received in December 2016, when he held grade G14, step 4, was preserved under the guarantee provided for by Article 8(2) of decision CA/D 8/16. He submitted a request for review of this decision to the President of the Office, who rejected it.

On 28 June 2017 he lodged an internal appeal with the Appeals Committee, in which he sought the withdrawal of the decision to transpose him to grade G14, step 1, on the grounds that this decision amounted to a “downgrading” and adversely affected his career. In particular, he claimed that his acquired rights and legitimate expectations had been breached because his basic salary had been reduced and that he was unable to benefit from mobility measures without losing the salary preservation guarantee provided for in decision CA/D 8/16. He argued that the decision also breached the principle of equal treatment in that the grade transposition to the new career system amounted to a promotion for some and a downgrading for others, and that it disregarded seniority acquired in post.

In January 2019 he was informed that the Appeals Committee was considering using a test-case procedure. Despite his objections, this procedure was followed.

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

In its opinion of 6 July 2021, the Appeals Committee unanimously recommended that the appeals before it be dismissed as irreceivable insofar as some of them included claims relating to the abolition of automatic step advancement by decision CA/D 10/14, whereas the arguments put forward related solely to the measures introduced by decisions CA/D 5/16, 6/16 and 8/16. The majority of the Committee recommended that the claims for the general decisions to be set aside

should be rejected as irreceivable. On the merits, it concluded that there were no acquired rights to a grade or step, that the changes made to the grading system were in line with the objectives of the reform (in other words, strengthening the independence of the members of the Boards of Appeal, simplifying their career regime and ensuring consistency with the new career system introduced by decision CA/D 10/14 for the other employees), and that the position of the members of the Boards of Appeal had been sufficiently safeguarded by the fact that the nominal value of their salary taken into account for pension purposes had been preserved. It rejected the allegations of breach of legitimate expectations because there was no evidence that the Office had undertaken to ensure that they would continue to benefit from automatic salary advancement. In addition, it rejected the allegation of unequal treatment on the grounds that, although the appellants had been assigned the same grade and step as newly-appointed members of the Boards of Appeal, they had retained a higher basic salary. Lastly, the majority considered that the assignment of grade G14, step 1, did not constitute a disguised sanction since it was a general measure that applied to all members of the Boards of Appeal and did not result in a lower salary or reduced responsibilities.

By letter of 13 October 2021, the complainant was informed 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 250 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 13 October 2021, as well as the decision of 20 December 2016, and to order payment of the "salary advancements" that he would have received had the latter decision not been taken, together with interest at the rate of 4 per cent per annum. He also seeks an award of "costs" as a lump sum of 300 euros or more upon production of

invoices, as well as 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 unfounded.

### CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 13 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 on the introduction of the new career regime specific to members of the Boards of Appeal provided for by Administrative Council decision CA/D 8/16 of 30 June 2016.

It should be pointed out that the adoption of this specific career regime itself formed part of the introduction of the new career system for employees of the European Patent Office resulting from decision CA/D 10/14 of 11 December 2014. In fact, the implementation of certain elements of this new career system, and in particular the replacement of seniority-based step advancement, which had been in place up until then, by merit-based step advancement raised particular difficulties for members of the Boards of Appeal 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. It had therefore been decided, on the adoption of decision CA/D 10/14, that the rules dealing with those particular elements would not apply to members of the Boards of Appeal and that a specific regime for them would be established at a later date. Transitional provisions governing their situation were laid down in decision CA/D 4/15 of 25 June 2015, following which the regime was finally introduced by the aforementioned decision CA/D 8/16.

2. By the contested decision dated 20 December 2016, subsequently confirmed in the impugned decision thus triggering the present dispute, the complainant was assigned grade G14, step 1, with

effect from 1 January 2017, rather than grade G14, step 4, to which he had initially been transposed on 1 July 2015 pursuant to decision CA/D 10/14. As the new reclassification entailed a reduced salary level, the decision of 20 December 2016 specified that the complainant would retain his previous basic salary under the guarantee provided for in such cases by Article 8(2) of decision CA/D 8/16. It should be noted that the basic salary referred to had previously been increased, with effect from 1 April 2016, by the effect of an automatic salary advancement mechanism introduced on a transitional basis by Article 2 of decision CA/D 4/15.

3. In support of his claims, the complainant first of all submits, in effect, that the impugned decision should be set aside as a consequence of the setting aside of the transposition to grade G14, step 4, initially applied to him on 1 July 2015, which he challenges in his fifth complaint. However, in Judgment 5185, also delivered this day, the Tribunal dismissed that complaint, thereby depriving this plea of its very foundation. Furthermore, although, in the present case, the complainant reiterates the contention put forward in his fifth complaint that the provisions of decision CA/D 10/14 relating to grade transposition and the abolition of seniority-based step advancement could not lawfully be applied to the members of the Boards of Appeal, the arguments he puts forward in that regard must be rejected. Aside from being unfounded, on the same grounds as those set out in the judgment in question, those arguments are of no avail in the context of the present dispute, which concerns the implementation of decision CA/D 8/16.

4. The complainant next submits that the new career regime applied to members of the Boards of Appeal pursuant to decision CA/D 8/16 breached his acquired rights to have the previous provisions of the Service Regulations preserved.

5. 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 5072, consideration 9, 4889, consideration 9, 4274, consideration 15, or 3275, consideration 8). The same goes for the definition of transitional measures that may accompany a reform of staff regulations (see, in particular, with regard to the implementation of the new career system resulting from decision CA/D 10/14, 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.

Such decisions do, however, still need to be taken with due regard for any acquired rights that employees may have (see, for example, Judgment 5072, consideration 10).

6. Article 11 of the Service Regulations, entitled “Assignment”, as amended by decision CA/D 8/16, provides, in paragraph 3, that members of the Boards of Appeal are to be assigned grade G14, step 1 on their first appointment to a five-year term of office, and may be promoted to grade G15, step 1, on re-appointment, provided that such promotion has been recommended by the President of the Boards of Appeal. It also followed from Article 8(2) and (4) of decision CA/D 8/16, which laid down transitional provisions for the implementation of the reform, that the same rules applied to the members of the Boards of Appeal already in service on 31 December 2016 on their transposition into the new career system and on any subsequent re-appointment, respectively.

7. The complainant maintains that the various provisions introduced by decision CA/D 8/16 breached acquired rights in two respects.

Firstly, they led to all serving members of the Boards of Appeal being reclassified at grade G14, step 1, even though some of them previously held a higher grade or step, which meant they moved down the index scale. This was his own situation, as he previously held grade G14, step 4, and so, as a result of the reform, lost three steps.

Secondly, the new provisions meant that the only possibility of advancement available to members of the Boards of Appeal in the performance of their duties was now a promotion to grade G15, step 1, on a renewal of their term, whereas previously it was possible for them to progress to grade G15, step 4.

The complainant's interpretation of the provisions in question is correct and some of the consequences of the new statutory regime resulting from decision CA/D 8/16 could, admittedly, be seen as somewhat unusual. However, this does not mean that the decision breached acquired rights, in view of the considerations set out below.

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 to the applicable text must, according to Judgment 832, relate to a fundamental and essential term of employment (see, for example, Judgments 4711, consideration 8, 4662, consideration 20, 4593, consideration 10, 4398, consideration 11, or 3074, consideration 16).

9. With particular regard to terms of employment concerning grade structure and advancement, it is well settled in the case law that the provisions providing for the grant of promotion within an international organisation do not confer any acquired rights on staff. The reason for this is that, on recruitment, staff cannot foretell how they will fare in their career. Unless the new rules substantially deprive staff of their former prospects for advancement, an organisation always has the ability to amend those promotion arrangements according to need (see Judgments 4889, consideration 7, 3524, consideration 3, 3256, consideration 14, or 1025, consideration 4).

10. In the light of all the case law referred to above, the Tribunal considers that the change to the grade structure and to the promotion arrangements for members of the Boards of Appeal introduced by decision CA/D 8/16, which does not fundamentally affect the career progression prospects that were available to them before that decision came into force, cannot be regarded as having breached acquired rights.

11. The application to the present case of the three criteria identified by the Tribunal in Judgment 832 cited above and normally used by it as a means of determining whether a breach of acquired rights has occurred, namely the nature of the altered terms of employment, the reason for the change and the consequences of that change, confirms that no such breach is to be found here.

12. Regarding the nature of the altered terms of employment, these stemmed not from a clause in the employment contract of the employees concerned or an individual decision concerning them, but from provisions of staff rules and regulations. While the terms of a contract and some decisions will in principle give rise to acquired rights, this is not necessarily true of such provisions.

13. As far as the reasons for the disputed change are concerned, there is no doubt that it rested on legitimate grounds. Indeed, it is clear from the evidence in file that the purpose of the new rules, described above, that resulted from decision CA/D 8/16 was to strengthen the independence of the members of the Boards of Appeal, to simplify the career regime applicable to them and to ensure that this regime was consistent with the principles of the new career system resulting from decision CA/D 10/14. Such objectives cannot be considered unreasonable. In addition, it should be noted that, while the complainant maintains that some of the provisions adopted were not relevant in the light of those objectives, there is nothing in the file to indicate that they amounted to an abuse of the discretion that the Organisation has in this matter.

14. As for the consequences of the disputed change, the Tribunal considers these to be altogether limited and not capable of adversely affecting the balance of the conditions of employment of members of the Boards of Appeal, in view of both the guarantee preserving Board members' previous remuneration and the career progression opportunities available to them.

In the first place, members of the Boards of Appeal already in service on 31 December 2016 who were transposed to a salary level below that payable for their previous grade and step benefited from the basic salary preservation guarantee, already referred to above, set out in Article 8(2) of decision CA/D 8/16. What is more, this guarantee, which continued to apply on any subsequent re-appointment pursuant to Article 8(4), pertained to the salary including the increase awarded under the automatic salary advancement mechanism established on a transitional basis by Article 2 of decision CA/D 4/15. It should be recalled that the complainant himself benefited from these arrangements.

In the second place, the Tribunal considers that the possibility for members of the Boards of Appeal to be promoted to grade G15, step 1 on re-appointment provides them with a valuable career progression opportunity. The complainant, moreover, obtained such a promotion on 1 October 2020 and, although he argues that, in his particular case, this did not lead to a pay increase because of the corresponding reduction in the amount received under the salary preservation guarantee, that was down to the way in which the guarantee operated and is not indicative of any inadequacy in the career progression arrangements provided for. It should be added that members of the Boards of Appeal have several career outlets available to them, such as becoming chairman of one of the Boards. While the complainant contests this last point, the Tribunal observes that, contrary to what the complainant appears to maintain, the post of chairman of a Board of Appeal, like that of a Board member, falls within the technical path rather than the managerial path. In addition, just because the position of chairman of a Board requires special skills, and involves a selection procedure, that does not mean that it cannot be regarded as a career outlet.

15. Having regard to these various considerations, the Tribunal considers 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 the complainant's acquired rights cannot, therefore, be upheld.

16. In the course of his line of argument on the question just addressed, the complainant maintains that the reduction in step caused by his transposition to grade G14, step 1, in the new career regime for members of the Boards of Appeal amounted to a disciplinary measure.

This plea is immaterial, since the reclassification resulting from the transposition arose through the simple application of general statutory regulations and, therefore, could clearly not be regarded as a sanction for personal conduct. Furthermore, this reclassification did not lead to a lower salary or reduced responsibilities on the complainant's part and, contrary to his contention, the fact that it involved a loss of three steps cannot be considered, in view of the context in which this measure was taken, as an affront to his dignity.

17. The complainant submits that making changes to the career progression arrangements enjoyed by members of the Boards of Appeal before decision CA/D 8/16 came into force, in particular the potential for salary advancements resulting from the transitional measures in decision CA/D 4/15, breached his legitimate expectations.

However, 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. Moreover, the Tribunal has already had occasion to find, in Judgment 5072, ruling on the complainant's third complaint, that the abolition of the automatic

salary advancement mechanism provided for, on a transitional basis, by decision CA/D 4/15 was not 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 the 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 documents, submitted in evidence, which were issued by the President of the Office, the Tribunal considers that none of them contains any sufficiently specific assurances as would constitute such an undertaking on the part of the Organisation.

18. The complainant submits that the arrangements for grade transposition laid down by the transitional provisions of decision CA/D 8/16 breached the principle of equal treatment.

19. 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).

20. In this regard, the complainant criticises the fact that, when the new career regime was implemented on 1 January 2017, members of the Boards of Appeal who were already in service were all transposed to grade G14, step 1, regardless of their seniority, which, in his view, meant that the transposition amounted to a "promotion" for some but a "downgrading" for others. More specifically, the complainant takes issue with the fact that members of the Boards of Appeal who had already served at least one five-year term – as he himself had – and those whose first term was still in progress were treated in the same way, even though they were not, in his view, in the same situation.

However, apart from the fact that, as the Organisation rightly observes, the terms “promotion” and “downgrading” do not reflect the legal reality of a grade transposition effected as part of the entry into force of a new career regime, that argument is unfounded.

Firstly, the Tribunal notes that, while all the members of the Boards of Appeal in service on 31 December 2016 were indeed reclassified at the same grade and step while sometimes in dissimilar situations, that dissimilarity was taken into account by the applicable provisions. Those who – like the complainant – had previously received a basic salary higher than that for grade G14, step 1, saw their previous salary preserved under the guarantee provided for in Article 8(2) of decision CA/D 8/16. A different rule was therefore applied to them, which was appropriate to the dissimilarity in question (see, as regards the analogous guarantee provided for on the transposition of employees to the new career system resulting from decision CA/D 10/14, Judgment 4712, consideration 5).

Secondly and regarding the grade transposition as such, 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.

21. The complainant alleges 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 decision CA/D 8/16 on career progression for Board of Appeal members.

However, the Tribunal notes that the Organisation did take steps to mitigate those adverse consequences by guaranteeing the employees concerned, pursuant to Article 8(2) and (4) of that decision, that their previous basic salary would be preserved and by giving them the opportunity to be promoted to grade G15, step 1, on re-appointment. In the circumstances, the plea alleging a breach of the duty of care cannot be upheld (see, for the rejection of similar pleas in relation to the reform of the Service Regulations resulting from decision CA/D 10/14, Judgments 5072, consideration 20, 4889, consideration 9, and 4711, consideration 10).

22. 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 a period of around four years and three months passed between the complainant lodging his internal appeal on 28 June 2017 and the final decision on his appeal being issued on 13 October 2021. Such a delay is clearly excessive. However, the complainant was awarded on that account 350 euros in the impugned decision itself, and he fails to establish that the injury caused to him by the delay in the internal appeal procedure warrants the award of a greater sum.

This claim for compensation will therefore be dismissed.

23. It follows from the foregoing that the complaint must be dismissed in its entirety.

#### 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.