

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

F. (No. 2)

v.

EPO

141st Session

Judgment No. 5188

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr P. F. against the European Patent Organisation (EPO) on 15 December 2021 and corrected on 24 January 2022, the EPO's reply of 10 May 2022, the complainant's rejoinder of 15 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 January 2017, as a result of the introduction of a new career regime.

Certain facts relevant to this case are set out in Judgment 5186, also delivered this day, concerning the complainant's third complaint. Suffice it to recall that the complainant was appointed as a member of a Board of Appeal of the European Patent Office, the EPO's secretariat, with effect from 1 June 2007.

On 11 December 2014 the Office's 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. 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 the latter 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, who held grade G14, step 1, was informed that, with effect from 1 January 2017, he had been assigned the same grade G14, step 1, as a result of the introduction of decision CA/D 8/16. Pursuant to Article 8(2) of that decision, the level of basic salary he was previously receiving, which was higher than that of the basic salary provided for this grade, was preserved, as had been the case at the time of the initial transposition, on 1 July 2015, from grade A5, step 9, to grade G14, step 1, as a result of the introduction of decision CA/D 10/14. On 25 March 2017 the complainant submitted a request for review of the decision of 20 December 2016.

By a letter sent on 4 May 2017 to several employees who had challenged the decision to transpose them with effect from 1 January 2017, the Principal Director of Human Resources rejected the complainant's request for review. She stated that the matter at stake had been assessed comprehensively and, therefore, that the notified decision might include arguments that he had not put forward. In particular, the Director explained that, as part of the reform introduced by decision CA/D 10/14, the EPO had been careful to ensure that employees' basic salaries were preserved on their transition to the new career system. She added that special attention had been paid to the situation of members of the Boards of Appeal, as demonstrated by the issuance of transitional provisions (introduced by decision CA/D 4/15). As a result, they had received a salary advancement in lieu of a step advancement. She also explained that, under Article 8(2) of decision CA/D 8/16, a higher net basic salary received by a Board of Appeal member continued to be paid until the end of her or his term of office. The complainant had not suffered any financial loss as a result of his transposition to grade G14, step 1. The Director also concluded that there was no breach of acquired rights, that the organisation had the power to modify the conditions for promotion and step advancement, and that the transposition decision did not constitute a hidden disciplinary measure.

On 26 June 2017 the complainant lodged an internal appeal against that rejection decision. He claimed that the decision to make him subject to the “scheme” put in place by decision CA/D 8/16 should be set aside and that the career system in force on 31 December 2014 should be applied to him, allowing him to enjoy the principle of step advancement that was in force at the time of his recruitment in 1990 and until 31 December 2014. In the alternative, he sought the benefit of the step advancement provisions in force until 31 December 2016, under which step advancement was possible every two years, enabling him to reach the last step of grade G15. The complainant was promoted to grade G15, step 1, with effect from 1 June 2017.

In July 2017 the Secretariat of the Appeals Committee informed the complainant that the Committee intended to use a test appeal procedure. The complainant objected to this approach and asked for his appeal to be examined separately. The Committee replied that the arguments put forward in the various internal appeals would be taken into consideration under the test appeal procedure. The complainant was informed on 19 July 2019 that the test appeal procedure would be applied to him.

In its opinion of 6 July 2021, the Appeals Committee unanimously recommended that the appeals 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 also recommended dismissing as irreceivable the claims to set aside the general decisions which formed the basis for the individual decisions challenged. According to the majority, there were no acquired rights to a grade or step since the EPO was entitled to make changes to its salary structure and grading system in accordance with the Tribunal’s case law. Furthermore, the changes made to the grading system were lawful and 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. The new grading system had no impact on the appellants' basic salary because of the guarantee to preserve the nominal value of the salary of Board of Appeal members taken into consideration for pension purposes. The majority also rejected the allegations of breach of legitimate expectations on the grounds that the appellants had not provided evidence that the Office had undertaken to ensure that they would continue to benefit from an automatic salary increase, either under the transitional arrangements for step advancement or under any other provision.

By a letter dated 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 and to "recognise" that the career system that was in force on 31 December 2014 should apply to him, 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 of all rights pertaining to the advancement system in force at that time, particularly in terms of the basis on which his pension is calculated. In the alternative, he claims entitlement, with effect from 1 June 2017, to a step advancement every two years, thus allowing him to reach the last step of grade G15, together with all the rights 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, 11,000 euros for the moral injury resulting from the refusal to hear him and 10,000 euros for the moral injury resulting from the inconsistency between decision CA/D 8/16 and the arguments that had been used against him a few months earlier concerning his ability to reach the last step in his grade.

The EPO asks the Tribunal to dismiss the complaint as irreceivable, on various grounds, insofar as the complainant seeks the application of decision CA/D 10/14, and as entirely 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 related to 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 giving rise to the present dispute, the complainant was assigned grade G14, step 1, with effect from 1 January 2017, in other words, the same grade and

step that had been assigned to him under the transposition to the new career system effected on 1 July 2015 pursuant to decision CA/D 10/14. However, the basic salary that the complainant was receiving on 31 December 2016 was higher than that for grade G14, step 1, due to the fact that, on the first transposition, his salary under the old career system had been preserved and had been increased, in July 2015, as a result of an automatic salary advancement mechanism introduced as a transitional measure by Article 2 of decision CA/D 4/15. The decision of 20 December 2016 therefore 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.

3. 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 in file, the Tribunal considers that it is fully informed of the case and finds it unnecessary to grant this request.

4. In support of his claims, the complainant first submits 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 May 2017 rejecting his request for review of the initial contested decision nor the opinion of the Appeals Committee of 6 July 2021, whose recommendation the competent authority endorsed in the final decision of 13 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 arguments, had the effect of breaching his right to be heard.

5. These criticisms evidently stem from the particular way in which the challenges to the adoption of the new career regime for members of the Boards of Appeal resulting from decision CA/D 8/16 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 of this kind by way of a common model decision. In addition, in the interests of procedural economy, the Appeals Committee examined the various appeals lodged by Board of Appeal members on this topic, some of which had been selected as test cases, in one single opinion.

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 substantial 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 its opinion, stating that the opinion "cover[ed] all relevant arguments raised by appellants, though not necessarily each argument raised by each individual appellant". A further consequence of this approach was, as the complainant points out, that those decisions and opinions responded to grievances which he himself had not raised, such as the argument – which did not affect his own situation – that the transposition carried out pursuant to decision CA/D 8/16 could lead to a loss of grade or step. The decision of 4 May 2017 expressly emphasised this, stating that "[a]s the matter at stake was assessed comprehensively, [the] decision [might] include arguments which [he] [might] not have put forward to substantiate [his] request [for review]".

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.

6. However, the Tribunal notes that the decision of 4 May 2017 did include reasoning that, in essence, responded to all the pleas put forward by the complainant in his request for review. Contrary to what the complainant maintains, there is nothing to suggest that the arguments he had put forward in support of his request had not been taken into consideration as a whole, and neither the fact that the decision in question dealt globally with several employees' requests, nor the fact that, as a result, a grievance which he himself had not raised was addressed, amounts to a breach of the principle of good faith such as would render that decision legally flawed.

With regard to the Appeals Committee's opinion, the grounds for which were particularly detailed, consisting of no fewer than 187 paragraphs, it is true that some of the arguments put forward by the complainant in his appeal were not specifically addressed. However, 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). Moreover, and as the Appeals Committee rightly observed referring on this point to its parallel opinion on the appeals relating to the implementation of decision CA/D 10/14, some of the complainant's arguments not addressed by the Committee in fact related to the abolition of seniority-based step advancement resulting from the latter decision, rather than to the transposition decisions made pursuant to decision CA/D 8/16, and were thus of no avail in the present case.

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.

7. 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 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.

8. As to the merits, the Tribunal notes from the outset that the transposition decision of 20 December 2016, under which, as has been said, the complainant was assigned the same grade and step as he had been on 1 July 2015 and under which his previous basic salary was preserved, does not in itself harm his interests. Examination of the complaint reveals that the criticisms levelled against that decision do not relate to that transposition as such but rather, on the one hand, to the

abolition of seniority-based advancement under the career system in force until 31 December 2014 and, on the other hand, to the fact that it was no longer possible for members of the Boards of Appeal under the new career arrangements introduced by decision CA/D 8/16 to reach the final step – that is the fourth step – of grade G15.

With regard to the abolition of seniority-based step advancement, it should be emphasised that this measure, which took effect on 1 January 2015, was the result of decision CA/D 10/14, and not of decision CA/D 8/16 which formed the basis for the decision of 20 December 2016. The complainant's arguments on this point therefore relate, in reality, to the lawfulness of the initial decision to transpose him to grade G14, step 1, which took effect on 1 July 2015 and which he challenges in his third complaint. However, in Judgment 5186, also delivered this day, the Tribunal dismissed that complaint. Although, in the present case, the complainant reiterates the contention put forward in his third complaint that the provisions of decision CA/D 10/14 relating to 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, they are of no avail in the context of the present dispute.

Accordingly, only those of the complainant's arguments that relate to the career arrangements for members of the Boards of Appeal introduced by decision CA/D 8/16 will be examined below.

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

10. 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).

11. 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 was also clear 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 office on 31 December 2016 on their transposition into the new career system and on any subsequent re-appointment, respectively.

12. The complainant submits that these various provisions introduced by decision CA/D 8/16 breached his acquired rights as they 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 the consequences of the new statutory regime resulting from decision CA/D 8/16 on this point 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.

13. According to the Tribunal's case law on the protection of acquired rights, as established *inter alia* 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).

14. 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).

15. 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 arrangement for members of the Boards of Appeal introduced by decision CA/D 8/16, which does not fundamentally affect the career progression prospects available to them before that decision came into force, cannot be regarded as having breached acquired rights.

16. 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.

17. 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.

18. 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 submissions 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 regarded as unreasonable, and there is nothing in the submissions to indicate that the measures adopted to achieve them were an abuse of the discretion granted to the Organisation in this area.

19. 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, particularly in view of the career progression opportunities available to them. 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. It should also be noted that, in the present case, the complainant benefited from such a promotion with effect from 1 June 2017, that is to say, only five months after his

transposition on 1 January. In addition, members of the Boards of Appeal have several career outlets available to them, such as becoming chairman of one of the Boards. On the latter point, the Tribunal notes that, contrary to what the complainant appears to maintain, 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.

20. It should be added that the complainant takes issue with the abolition, by Article 8(1) of decision CA/D 8/16, of the mechanism provided for on a transitional basis by Article 2 of decision CA/D 4/15, which gave members of the Boards of Appeal the benefit of automatic salary increases with an effect equivalent to the award of an additional step in terms of their basic salary. However, the Tribunal has already had occasion to state that they had no acquired right to the continuation of the mechanism in question (see Judgment 5072, consideration 10).

21. 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 complainant's plea alleging a breach of his acquired rights cannot, therefore, be upheld.

22. Lastly, 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 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 that governed the career development of Boards of Appeal members was not, in itself, in any way unlawful.

23. 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 the decision of 4 November 2015, which rejected his request for review of his transposition into the new career system with effect from 1 July 2015, the Tribunal does not consider that decision to contain any formal assurances as would constitute such an undertaking on the part of the Organisation. The complainant points out that that decision included 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. However, 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 to submit, as he does in the alternative, that the decision contained misleading information.

Neither is the complainant justified in claiming that his legitimate expectations were breached by the Administrative Council’s decision CA/D 6/16 of 30 June 2016, which introduced into the Implementing Regulations to the European Patent Convention new rules amending the way in which the Boards of Appeal were managed. The complainant criticises the fact that, under Rule 12d(3) of those regulations, which

resulted from the decision in question, the promotion of members of the Boards to grade G15, step 1, on re-appointment is subject to the availability of vacant posts at the corresponding level, regardless of their performance evaluation. However, the complainant does not cite any commitment on the part of the EPO which would be inconsistent with these provisions, which, moreover, merely confirm the legal reality, recognised by the Tribunal's case law, that the right of any official to advancement is limited by the budgetary resources of the organisation concerned (see Judgments 4281, consideration 2, 3495, consideration 11, and 3404, consideration 8).

24. 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 made 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.