

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

S.
v.
EPO

141st Session

Judgment No. 5189

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr J.-M. S. against the European Patent Organisation (EPO) on 5 January 2022, the EPO's reply of 10 May 2022, the complainant's rejoinder of 23 June 2022 and the EPO's surrejoinder of 28 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 challenges his transposition into a new job group, together with the refusal to grant him a salary increase to which he believed he was entitled, pursuant to the introduction of a new career regime applicable to chairmen and members of the Boards of Appeal.

The complainant joined the European Patent Office, the EPO's secretariat, in September 1988. He was appointed as a Board of Appeal member with effect from 1 January 2005.

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 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 now based on sustained performance and demonstrated competencies rather than time spent within a step or grade.

By letter of 9 June 2015, the complainant, who held grade A5, step 12, was informed that, with effect from 1 July 2015, he had been assigned grade G15, step 2, 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. 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. This decision amended Article 11 of the Service Regulations and provided that, on their first appointment, members of the Boards of Appeal would be assigned grade G14, step 1, and chairmen grade G16, step 1. Members who had completed at least a five-year term of office were to be assigned grade G15, step 1, provided they had been recommended for promotion to this higher grade and step by the President of the Boards of Appeal. In the absence of such a recommendation for promotion, they were to remain at their grade and step and continue to receive the net basic salary they were paid during their previous term.

On 20 December 2016 the complainant was informed that, as a result of decision CA/D 8/16 coming into force, he had been transposed to grade G14, step 1, with effect from 1 January 2017. He was also informed that the net basic salary he received in December 2016, being 13,825.04 euros, would be preserved under the guarantee contained in Article 8(2) of decision CA/D 8/16, as it was higher than the salary for grade G14, step 1.

In January 2017 the complainant received his payslip, established on the basis of his new situation, which showed that his net basic salary for that month was 13,825.04 euros. On 26 January 2017 he wrote to the Administration requesting that his payslip be corrected in that it showed that the EPO had failed to implement the salary advancement to which he believed he was entitled on 1 January 2017. He explained that, on 31 December 2016, he had completed 24 months in his grade, which entitled him to a salary advancement equivalent to the amount of one step in grade, pursuant to Article 2(1) of decision CA/D 4/15. The Administration replied on 2 February 2017, stating that the provisions of Article 2 of decision CA/D 4/15 applied “[a]s a transitional provision for 2015 or until any further decision [was taken] on [the] matter [...]” and that, consequently, they ceased to apply when decision CA/D 8/16, adopted on 30 June 2016, came into force on 1 January 2017.

On 27 March 2017 the complainant submitted a request for review of the decision of 20 December 2016 transposing him to grade G14, step 1, on the grounds that it had unlawfully breached his acquired rights, his legitimate expectations and his dignity, as well as the principles of non-retroactivity and equal treatment.

Two days later, on 29 March 2017, he submitted a second request for review, this time of his payslip for January 2017. He asked that the transitional measures in Article 2(1) and (2) of decision CA/D 4/15 be applied to him, that his payslips from January 2017 onwards be corrected accordingly and that he be paid the corresponding sums. He argued that decision CA/D 8/16, which abolished the transitional measures put in place by decision CA/D 4/15, had come into force on 1 January 2017, in other words, after he had completed 24 months’

service on 31 December 2016, entitling him to an advancement equivalent to the next step in his grade.

The two requests for review were registered under the same reference and rejected by a single decision on 4 May 2017. On 16 and 28 June 2017 the complainant lodged two separate internal appeals against that decision, expressly requesting that they be dealt with separately. The two appeals were nevertheless joined, on the grounds that there was a connection between them.

The complainant was appointed as chairman of a Board of Appeal and, accordingly, promoted to grade G16, step 1, with effect from 1 June 2018.

In its opinion of 6 July 2021 concerning several internal appeals, the Appeals Committee concluded, by a majority, that the transposition of the members of the Boards of Appeal, including the complainant, to grade G14, step 1, was compliant with the provisions of Article 11(3)(a) of the Service Regulations and Article 8(2) of Decision CA/D 8/16. It rejected the plea alleging infringement of acquired rights, pointing out, in particular, that the nominal value of the salaries of the members of the Boards of Appeal, taken into account for pension purposes, remained the same. Nor, according to the majority, was there any disguised sanction since the decision to transpose the members of the Boards of Appeal to grade G14, step 1, applied to all those members, and did not result in a lower salary or reduced responsibilities for those concerned. The majority of the Appeals Committee also considered that there had been no breach of the principle of equal treatment because, even though the complainant had been transferred to the same grade and step as newly-appointed members of the Boards of Appeal, he had retained a net basic salary higher than theirs. It therefore recommended that the complainant's appeal be dismissed. The Committee nevertheless recommended awarding him moral damages for the excessive length of the internal appeal procedure.

By letter of 13 October 2021, the complainant was informed of the Office's decision to reject his appeal for the reasons set out by the majority of the Appeals Committee in the opinion referred to above. 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 order that the transitional provisions under Article 2 of decision CA/D 4/15 be applied to him, allowing him to be credited with 24 months' service as at 31 December 2016 and to receive the corresponding salary increase. He also asks that his payslips for January 2017 to May 2018 be corrected accordingly and that interest for late payment be awarded to him. In addition, he asks to be reassigned with effect from 1 January 2017 to the grade he had reached on 31 December 2016 and that the step advancement regime established for the other EPO employees be applied to the members and chairmen of the Boards of Appeal. He also claims damages of 5,000 euros for denial of justice, 1,000 euros for abuse of authority and 1,000 euros for the delay in the internal appeal procedure. Lastly, he claims compensation of 20,000 euros for the moral injury suffered as a result of his transposition to grade G14, step 11. In his rejoinder, he states that he modifies his claim relating to his transposition on 1 January 2017. He seeks to retain on 1 January 2017 the grade he held on 31 December 2016, in other words, grade G15, step 2, or, should his complaint be allowed insofar as he challenges the refusal to grant him a step advancement in January 2017, grade G15, step 3.

The EPO asks the Tribunal to dismiss the complaint as irreceivable to the extent that it seeks an order for the complainant to be transposed with retroactive effect to the grade he had reached on 31 December 2016, on the grounds that this claim amounts to a request for an injunction. It considers that the complainant's request for the step advancement regime established for the other Office employees to be applied to him is also irreceivable because it is worded too vaguely. It also submits that the complaint is unfounded in its entirety.

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 13 October 2021 by which the Vice-President of Directorate-General 4 rejected two separate internal appeals, joined by the Appeals Committee, which had been lodged by the complainant against measures taken in his regard on the introduction, on 1 January 2017, 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 noted 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. The implementation of certain elements of this new career system – 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. The first of the complainant's two internal appeals, lodged on 16 June 2017, challenged the refusal, apparent from his payslip for January 2017, to grant him the salary advancement provided for in Article 2 of decision CA/D 4/15, which was intended to compensate for the temporary lack of step advancement available to members of the Boards of Appeal. The complainant believed that he was entitled to this increase because, on 31 December 2016, he had completed 24 months' service on his step, making him eligible for this extra pay.

The complainant's second internal appeal, lodged on 28 June 2017, was directed against the decision, dated 20 December 2016, by which he was assigned grade G14, step 1, with effect from 1 January 2017, rather than grade G15, step 2, to which he had initially been transposed on 1 July 2015 pursuant to decision CA/D 10/14. As the new reclassification entailed a reduction in salary, 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.

3. The complainant criticises the fact that his two internal appeals were joined by the Appeals Committee and the Office, whereas, in his view, they were "in no way connected". It is clear from the file that the complainant had attempted to oppose this joinder, as well as that of the two requests for review which preceded the appeals in question, in the course of the internal procedure. In his rejoinder, he supplements his arguments on this point by also contesting the fact that his appeals had been joined to those of other appellants and assimilated to some of the latter selected as test cases.

The Tribunal considers this line of argument to be unfounded. As regards the joinder of the complainant's two internal appeals, Article 10(b) of the Implementing Rules for Articles 106 to 113 of the Service Regulations permits the consolidation of "several appeals filed by the same appellant", and the appeals at issue here, which related to concomitant decisions in the context of the same reform, were sufficiently linked to warrant being joined. As for the joinder of the complainant's appeals with appeals lodged by other employees under a test-case procedure implemented pursuant to Article 9b of those rules, Article 10(a) thereof allows appeals lodged by different complainants to be consolidated where they "[concern] the same subject-matter". That criterion, which the Tribunal considers must be applied with a degree of flexibility, can be regarded as satisfied, in view, once again, of the common context of the various decisions in question.

The complainant is therefore wrong to claim that the disputed joinder was, in itself, an “abuse of power” and his claims for damages for such abuse will therefore be dismissed.

4. However, the complainant is right in contending that the matter challenged in his first appeal was not properly examined in the internal procedure. It is clear that the decision of 4 May 2017, which ruled on his requests for review as part of a joint ruling on the requests made by multiple employees in relation to the grade transposition made under decision CA/D 8/16, addressed that latter issue alone. This observation also applies, in essence, to the Appeals Committee’s opinion of 6 July 2021, which, while dealing incidentally with the abolition of the salary advancement mechanism provided for by decision CA/D 4/15, in no way addressed the specific issue challenged by the complainant in his first appeal. In fact, that opinion, delivered in the context of the test-case procedure, which itself only involved disputes about grade transposition, and, consequently, the final decision of 13 October 2021, by which the competent authority adopted that opinion, also related almost exclusively to that issue – in other words, the subject of the second appeal. Moreover, the decisions of 4 May 2017 and 13 October 2021 appeared, on their wording, to reject, respectively, one single request for review and one single appeal made by the complainant, whereas they were supposed to rule on two requests or two joined appeals.

The complainant is therefore right in submitting that his challenge to the refusal to award him the salary advancement provided for in Article 2 of decision CA/D 4/15 was not actually examined as part of the review and internal appeal procedures. Although the complainant incorrectly describes this anomaly as a “denial of justice” – bearing in mind that this concept, which is specific to judicial matters, cannot be applied to administrative decisions – the defect thus exposed nevertheless had a serious adverse effect on the complainant’s right to an effective remedy.

The complainant is therefore entitled to claim damages under this head. In the circumstances of the present case, and while it should be noted that, by a letter of 2 February 2017, the complainant had, prior to the review and internal appeal procedures, received some response to his challenge, the Tribunal considers it appropriate to award the complainant the indemnity of 5,000 euros he seeks as compensation for the moral injury thus caused to him.

5. As regards the Tribunal's own examination of the issue challenged in the first appeal, the EPO appears to maintain, in its surrejoinder, that the complainant's claim for the transitional provisions arising from decision CA/D 4/15 to be applied to him is irreceivable because such a request would amount to seeking an injunction against the Organisation. This plea of irreceivability is completely immaterial. Where an employee seeks to rely on the provisions of staff rules or regulations to obtain a pecuniary benefit to which he believes he is entitled under those provisions, this cannot in itself be construed as a request for an injunction.

6. On the merits, the Tribunal considers that the complainant's claims relating to the rejection of his first appeal must be upheld.

7. Article 2 of decision CA/D 4/15 provided as follows:

"1. As a transitional provision for 2015 or until any further decision on this matter, an employee appointed in accordance with Article 11(3) [of the European Patent Convention] as a Chairman or a Member of the Boards of Appeal, within the limit of the number of steps laid down for each relevant job group under the Service Regulations, shall be granted a salary advancement, equivalent to the amount of one step in grade, as follows:

(a) A Board of Appeal Chairman: [...];

(b) A Board of Appeal Member: after 12 months of service with a basic salary of or below the amount of G14 step 1, and after 24 months of service with a basic salary above the aforesaid amount;

2. The aforesaid salary advancement has the same effect for the purpose of the definition of the basic salary as a step advancement as foreseen under Article 48 of the Service Regulations and shall be granted during the transitional period as from the month following that in which the above-mentioned requirements are met."

8. In the present case, it is common ground that the complainant, who had been appointed to the former grade A5, step 12, on 1 January 2015, before being transposed to grade G15, step 2, on 1 July 2015 as part of the implementation of the new career system, had, on 31 December 2016, completed 24 months' service in his original grade and step referred to in Article 2(1)(b) of decision CA/D 4/15. He was therefore, in the normal course of events, eligible under the provisions of paragraph 2 of that decision for the disputed salary advancement with effect from 1 January 2017.

Of course, 1 January 2017 was, coincidentally, also the date when decision CA/D 8/16 entered into force, pursuant to Article 13 thereof, and its entry into force led, under Article 8(1), to the simultaneous abolition of the transitional provisions introduced by decision CA/D 4/15. It is apparent from the letter, referred to above, sent to the complainant on 2 February 2017 that it was because of this abolition of decision CA/D 4/15 on 1 January 2017 that the Office considered that the salary advancement for which the complainant should have been eligible on that date could not take effect.

However, the Tribunal considers that, since the requirement for 24 months' service laid down in decision CA/D 4/15 was fulfilled, in the complainant's case, on 31 December 2016, that is to say, before decision CA/D 8/16 entered into force the following day, a reasonable application of the provisions of those successive decisions should have led to the complainant's eligibility for the disputed salary advancement being effectively recognised with effect from 1 January 2017.

The Tribunal notes, moreover, that the Office itself had regarded this line of reasoning as appropriate at the time of the step advancement granted to the complainant with effect from 1 January 2015, which had occurred in similar circumstances. The record shows that this advancement was based on the completion of 24 months' service, which was achieved on 31 December 2014. The seniority-based step advancement regime under which that measure applied had been abolished, with effect from 1 January 2015, as a result of the entry into force of decision CA/D 10/14 and this had not prevented the Office from granting the complainant an additional step on that same date. There is no reason why a decision

could not have been taken this time again to apply the texts in such a reasonable manner in the present case.

9. It follows from the foregoing that the impugned decision should be set aside insofar as it rejected the complainant's internal appeal seeking the grant of the salary advancement in question with effect from 1 January 2017. The initial decision, reflected in the complainant's payslip for January 2017, not to award him that advancement, and the decision of 4 May 2017, insofar as it rejected the request for review of that earlier decision, must also be set aside.

10. It should be noted that, contrary to the view the complainant appears at times to take in his written submissions, the grant of the disputed advancement did not result in a change in the step he held at the time when the transposition took place pursuant to decision CA/D 8/16. While it is true that the amount of the advancement was equivalent to that attached to one additional step – in this case, the third step of grade G15 – in reality it only affected the complainant's salary itself. In any case, such a change in step would have had no impact on the transposition in question since – as explained below – the members of the Boards of Appeal in service on 31 December 2016 were reclassified at grade G14, step 1, on 1 January 2017, regardless of their previous grade and step.

11. However, all the legal consequences must be drawn from the setting aside of the refusal to grant the complainant the disputed advancement.

The EPO will thus have to pay the complainant the sums corresponding to the extra remuneration he would have received each month had he enjoyed the benefit of the salary advancement provided for in Article 2 of decision CA/D 4/15, for the period from 1 January 2017 to 31 May 2018 – bearing in mind that, according to the information the complainant himself provided, the rationale for that extra remuneration ceased when he was promoted on 1 June 2018 to grade G16, step 1, as a result of his appointment as chairman of a Board of Appeal. The sums

in question will be subject to the applicable deductions for contributions to the Office's pension and social security schemes.

The Organisation will be responsible for preparing, on this basis, new monthly payslips for the period in question, to replace those originally issued.

All sums payable in respect of this extra remuneration shall bear interest at the rate of 5 per cent per annum from the date when they fell due until the date when they are paid.

12. With regard to the challenge to the grade transposition announced by the decision of 20 December 2016, which formed the subject of his second appeal, the complainant submits first that there was "no legal basis" for this decision in that his reclassification in grade G14, step 1, with effect from 1 January 2017 resulted from a misinterpretation of the provisions of decision CA/D 8/16.

13. Article 2 of decision CA/D 8/16 amended Article 11 of the Service Regulations, entitled "Assignment", by introducing a paragraph 3 worded as follows:

"(3) Members of the Boards within the meaning of Article 1, paragraph 4, shall be assigned as follows:

(a) on their first appointment, grade G 14, step 1, for members, and grade G 16, step 1, for chairmen;

(b) grade G 15, step 1, for members who have completed at least a term of five years, provided they have been recommended for promotion to this higher grade and step by the President of the Boards of Appeal. In the absence of such a recommendation for promotion on re-appointment, they shall remain at their grade and step and continue to receive the net basic salary they were paid during their previous term.

[...]"

Article 8 of decision CA/D 8/16, which provided for transitional measures concerning the implementation of the reform resulting from this decision, stipulated the following in its paragraphs 2 and 4:

"(2) A member of the Boards within the meaning of Article 1, paragraph 4 [of the Service Regulations] already in service on 31 December 2016 shall be assigned to the grade and step specified for his job group in Article 11(3)(a) of the [Service Regulations]. If, however, his net basic

salary as at 31 December 2016, including any salary difference guaranteed under the new career system for all staff (Article 56(4) of [decision] CA/D 10/14) and any full advancement of salary acquired by that date, is higher than that payable for that grade and step, he shall continue to receive the higher salary until the end of his term. This higher salary shall also be taken into account for pension purposes.

[...]

(4) If, after expiry of his term, a member of the Boards in job group 3 already in service on 31 December 2016 is re-appointed in the same job group, he shall be assigned to a grade and step in accordance with Article 11(3)(b) [of the Service Regulations]. If, however, the net basic salary within the meaning of paragraph 2 above which he was paid during his previous term is higher than that payable for that grade and step, he shall continue to receive the higher salary until the end of his new term. This higher salary shall also be taken into account for pension purposes.”

14. It should be recalled that, according to the Tribunal’s case law applicable to the interpretation of staff rules and regulations, words are to be given their obvious and ordinary meaning and must be construed objectively in their context and in keeping with their purport and purpose (see, for example, Judgments 5018, consideration 7, 4796, consideration 3, 4639, consideration 3, or 4506, consideration 5).

15. In the present case, it follows from the combination of the aforementioned provisions of Article 8(2) of decision CA/D 8/16 and of Article 11(3)(a) of the Service Regulations, as amended by that decision, that the members of the Boards of Appeal already in service on 31 December 2016 were all to be assigned to grade G14, step 1, on 1 January 2017, irrespective of their previous grade and step. In this respect, it is clear from these provisions that the transposition of the employees concerned on that date had to be construed as a “first appointment” within the meaning of Article 11(3)(a) referred to above.

The complainant submits that, since he had already served two terms as a Board of Appeal member before decision CA/D 8/16 entered into force, his situation was covered by the second sentence of Article 11(3)(b), which, in his view, allowed him to retain his previous grade and step. However, the provisions of that sentence, which govern the situation of members of the Boards of Appeal already in service on

31 December 2016 only pursuant to the reference that Article 8(4) of decision CA/D 8/16 makes to them, and which concern the classification to be made in the event of a re-appointment – which is not the case here – were not applicable to the complainant. The complainant's situation therefore fell under Article 11(3)(a) referred to above.

Lastly, although the complainant submits that the new rules on grade and step classification resulting from decision CA/D 8/16 are contrary, on some points, to those under decision CA/D 10/14, that situation was brought about by the creation of a specific career regime for members of the Boards of Appeal and does not in itself render those new rules unlawful. On the contrary, since decisions CA/D 10/14 and CA/D 8/16 were both taken by the Administrative Council, the upshot is that the special provisions of decision CA/D 8/16 must take precedence, in the event of any such conflict, over the general provisions previously laid down by decision CA/D 10/14.

This argument will therefore be rejected in its entirety.

16. The complainant submits that the relegation in grade constituted by his transposition to grade G14, step 1, instead of grade G15, step 2, which he previously held, amounts to a disciplinary measure.

In the form in which it is presented, this plea is unfounded, 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 the complainant having a lower salary or reduced responsibilities. Finally, contrary to what the complainant believes, the fact that it resulted in a lower grade cannot be regarded, in view of the context in which the measure was taken, as an “affront to [his] dignity”. The complainant's subsequent appointment as chairman of a Board testifies, moreover, to the high regard in which he was held within the Organisation, which confirms, if confirmation were needed, that no intention to call into question the value of his professional merits lay behind his grade reclassification.

17. Admittedly, some of the consequences of the new statutory regime resulting from decision CA/D 8/16 could be seen as somewhat unusual, in that, for certain members of the Boards of Appeal, it could lead to a reduction in grade on their transposition. That same observation applies equally to the situation, also criticised by the complainant, where the only possibility of promotion available to those same employees in the performance of their duties is 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.

However, 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 can 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. The Tribunal considers that the peculiarities highlighted above are not sufficient to establish that the EPO, in defining the disputed career progression arrangements, committed a manifest error of this kind.

18. The complainant submits that the adoption of the new career regime resulting from decision CA/D 8/16 also infringed his acquired rights and breached the principle of non-retroactivity of administrative acts. But neither of these pleas is well founded.

With regard to the alleged infringement of acquired rights, the Tribunal had the opportunity to rule, in Judgment 5187, also delivered this day, on a complaint filed by another Board of Appeal member in which this same plea was raised. In considerations 7 to 15 of that judgment, the Tribunal rejected the plea on grounds which – except for

certain facts specific to that other complaint – also apply to the present case and to which reference will therefore be made here.

As for the plea alleging a breach of the principle of non-retroactivity, this must also be rejected, since decision CA/D 8/16 was of no effect before it was promulgated.

19. The complainant submits that the arrangements for grade transposition and promotion laid down by decision CA/D 8/16 breach the principle of equal treatment.

20. 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).

21. In that regard, the complainant first takes issue with the fact that, when the new career regime was implemented on 1 January 2017, he was reclassified at the same level – in other words, at grade G14, step 1 – as less senior colleagues or even new appointees, despite his being considerably senior as a Board of Appeal member and having held a higher grade.

However, the Tribunal notes that, while all the members of the Boards of Appeal were indeed transposed or newly appointed to the same grade and step, sometimes in dissimilar situations, that dissimilarity was taken into account by the applicable provisions. Those of them 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, appropriate to the dissimilarity in question (see, in relation to the analogous guarantee provided for on the transposition of officials to the new career system resulting from decision CA/D 10/14, Judgment 4712, consideration 5).

In addition, and as regards 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, and that is not, in itself, unlawful (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.

22. Secondly, the complainant takes issue with the fact that members of the Boards of Appeal do not have the same opportunities for advancement as other employees in the same job group, namely Group 3, as a result of the promotion arrangements that apply specifically to them pursuant to decision CA/D 8/16. However, as the Organisation rightly points out, the members of the Boards of Appeal are not in an identical or similar situation to that of those other employees, since the need to safeguard their independence, in view of the judicial nature of their duties, calls for the implementation of a specific career regime, and the complainant has not established that the differences in the career progression rules of which he complains are unrelated to that difference in their situations. This plea will, accordingly, also be rejected.

23. The complainant alleges that the President of the Office did not take any transitional measures to mitigate the adverse effects of the disputed grade transposition. In his view, the President thus ignored the provisions of Article 12 of decision CA/D 8/16, which instructed him to “take appropriate measures to ensure a smooth transition to the new system”. But the provisions referred to did not, in any case, enable the President to amend the rules governing the transposition, which had been laid down by the Administrative Council itself in decision CA/D 8/16.

24. None of the pleas put forward in the complaint against the impugned decision, insofar as it relates to the grade transposition that took place on 1 January 2017, can therefore be upheld.

It follows that the complainant's various claims, including those for compensation for moral injury, that are based on the alleged unlawfulness of that transposition must be dismissed.

25. Lastly, the complainant asks the Tribunal to order the EPO to pay him damages for the excessive length of the internal appeal procedure, specifically as regards the examination of his first appeal.

The Tribunal notes that a period of four years and four months passed between that appeal being lodged on 16 June 2017 and the final decision being delivered on 13 October 2021. Such a delay is clearly excessive. However, in the impugned decision itself, the complainant was awarded a sum of 350 euros for the time taken to examine his two appeals. He has failed to establish – regardless of what has been said above about the irregularity in the handling of the appeal in question – that this sum is insufficient to compensate him in full for the moral injury caused to him by the delay in the internal procedure.

This claim for compensation will therefore be dismissed.

26. It follows from all the foregoing that the complaint is well founded only in respect of the claims allowed in considerations 4, 9 and 11 above. All the complainant's other claims will therefore be dismissed in their entirety, without there being any need to rule on the EPO's objections to receivability beyond that examined in consideration 5.

DECISION

For the above reasons,

1. The impugned decision of 13 October 2021 is set aside insofar as it rejects the complainant's appeal for the grant, with effect from 1 January 2017, of the salary advancement provided for by Article 2 of decision CA/D 4/15. The decision, reflected in the complainant's payslip for January 2017, not to award him that advancement, and the decision of 4 May 2017, insofar as it rejected the request for review of that earlier decision, are also set aside.
2. The EPO shall pay the complainant, as indicated in consideration 11 above, the sums, together with interest, corresponding to the extra monthly salary he would have received for the period from 1 January 2017 to 31 May 2018 had he enjoyed the benefit of the salary advancement referred to in point 1 of this decision.
3. The Organisation shall pay the complainant moral damages in the amount of 5,000 euros.
4. All other claims are 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.