

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

B.
v.
EPO

141st Session

Judgment No. 5190

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr D. B. against the European Patent Organisation (EPO) on 15 March 2022 and corrected on 31 May 2022, the EPO's reply of 12 September 2022, the complainant's rejoinder of 12 October 2022 and the EPO's surrejoinder of 11 January 2023;

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 the fact that he was not promoted following 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 1990. He was appointed as a Board of Appeal member with effect from 1 October 2011, and re-appointed with effect from 1 October 2016.

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.

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.

In December 2017 the President of the Boards of Appeal stated, in his Communiqué 2/17 setting out the “[g]uidelines for the evaluation of the performance of members and chairmen of the Boards of Appeal”, that any opinion on re-appointment and recommendation for promotion was to be based on the evaluation report for the member’s or chairman’s current term of office. He added that opinions given before 1 January 2023 would also be based on their performance during their term of office prior to the entry into force, on 1 January 2018, of Communiqué 2/17.

In Communiqué 02/2018 of 30 January 2018, the President of the Boards of Appeal laid down the rules on promotions for members of the Boards of Appeal during the period prior to 1 January 2023. He explained that the principle of performance-based promotion would be applied for the first time when he made his recommendations for promotion to the Administrative Council for decision in March 2018, including for members of the Boards of Appeal whose re-appointment took effect in 2017 or early 2018.

In a statement issued on 21 March 2018, the President of the Boards of Appeal announced the Administrative Council's decisions on the appointments and re-appointments of members of the Boards of Appeal and their possible promotion to grade G15, step 1. The names of employees appointed or re-appointed were listed, but not the names of those who had or had not been promoted. On 11 June 2018 a list of the members promoted to grade G15, step 1, was published. The complainant was not one of them.

On 20 June 2018 the complainant submitted a request for review of the decision not to promote him to grade G15, step 1. The Administrative Council, ruling on this request as the competent appointing authority for the complainant, rejected it as irreceivable in its decision CA/D 17/18 of 10 October 2018. The complainant was notified of this decision on 19 November 2018. On 31 January 2019 he lodged an internal appeal, in which he requested that his individual situation be considered for promotion to grade G15, step 1, or, in the alternative, that he be paid compensation.

In its opinion issued on 21 September 2021, the Appeals Committee unanimously found that Article 11(3)(a) and (b) of the Service Regulations, as introduced by decision CA/D 8/16, when read in conjunction with Article 8 of that decision led to the conclusion that the members of the Boards of Appeal were transposed to grade G14, step 1, on 1 January 2017, being the date on which decision CA/D 8/16 entered into force, and that their promotion to grade G15, step 1, could only take place in the event of their re-appointment on a date subsequent to 1 January 2017. The majority of the Appeals Committee considered that the difference in treatment of the members of the Boards of Appeal

in terms of their promotion opportunities, based on the date of their re-appointment, did not constitute a breach of the principle of equal treatment. It also considered that the date for the entry into force of decision CA/D 8/16 was appropriate and reasonable, and that the rules on the promotion of members of the Boards of Appeal were based on objective and legitimate considerations. The majority noted that the Administrative Council had acknowledged in its pleadings that certain members of the Boards of Appeal, who had been re-appointed in 2017, had, exceptionally, received a promotion by way of the decision of 21 March 2018. According to the majority, to promote the complainant, who had been re-appointed in 2016, would have led to a disconnection between the re-appointment and the promotion, which the reform had been specifically designed to avoid. The minority of the Appeals Committee members took the view that the difference between the date of the complainant's re-appointment and the date of re-appointment of those members who had been promoted exceptionally was not a relevant factor justifying a difference in treatment. All those concerned had been re-appointed during the transitional phase to the new career system, in other words, before 1 January 2023, and there was no legal basis for promoting some of them and not others. Accordingly, the minority recommended that decision CA/D 17/18 of 10 October 2018 be set aside and that the matter be referred back to the Administrative Council for reconsideration. In addition, the Appeals Committee unanimously recommended that the complainant be reimbursed for the appeal registration fee and that he be awarded moral damages of 200 euros for the excessive length of the internal appeal procedure.

By a communication of 23 December 2021, the complainant was informed that, as the appointing authority ruling on his internal appeal, the Administrative Council had rejected it as unfounded, by its decision CA/D 18/21 of 14 December 2021. Nonetheless, the Administrative Council awarded him 200 euros as compensation for the length of the internal appeal procedure. That is the impugned decision.

In the meantime, the complainant was re-appointed and promoted to grade G15, step 1, with effect from 1 October 2021.

In his complaint before the Tribunal, filed on 15 March 2022, the complainant, in addition to seeking the setting aside of the Administrative Council's decision of 14 December 2021, and also of the decisions of 21 March and 10 October 2018, asks to be considered for promotion to grade G15, step 1, and/or promoted retroactively from 1 January 2017. Subsidiarily, in the event that the latter claims are rejected, he seeks compensation in an amount equivalent to the difference between his current salary and the salary corresponding to grade G15, step 1, for the period from 1 October 2016 to 1 October 2021. He also seeks compensation of 20,000 euros for the "damage inflicted on the remainder of [his] professional career at the EPO".

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

CONSIDERATIONS

1. The complainant impugns before the Tribunal the decision of 14 December 2021 by which the Administrative Council, in accordance with the recommendation of the majority of the Appeals Committee, confirmed the decision not to promote him from grade G14, step 1, to grade G15, step 1, during the first promotion exercise that followed the implementation of the new career regime specific to members of the Boards of Appeal provided for by decision CA/D 8/16 of 30 June 2016.

It should be noted that the adoption of this specific career regime formed part of the introduction of the new career system for the Office's employees resulting from decision CA/D 10/14 of 11 December 2014. 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, which took effect on 1 January 2017.

2. The decision not to promote the complainant, which is at the heart of the present dispute, was contained in a deliberation of the Administrative Council of 21 March 2018, the purpose of which was to decide on applications for re-appointment, and potential promotion on re-appointment, of members of the Boards of Appeal whose five-year term of office was due to expire in 2017 or early 2018. The complainant was considered ineligible for promotion because, since his initial term of office had been renewed on 1 October 2016, he did not fall within the group of staff concerned.

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

In this respect, the complainant primarily criticises the fact that, although he had submitted his request for review and his internal appeal in French, the decisions ruling on them were issued in English. In his rejoinder, he expands on that criticism by arguing, in that regard, that “a standard response” to his claims had been provided in those decisions, showing that “[his] appeal [had been] dealt with collectively and not individually”.

4. It is clear from the file that, in view of the large number of challenges made to the aforementioned deliberation of 21 March 2018, the Administrative Council – which is the appointing authority for members of the Boards of Appeal and therefore competent to deal with them – had decided to rule on the various requests for review submitted by the employees concerned, and then on the internal appeals lodged by some of them, by means of joint decisions. In addition, in the interests of procedural economy, the Appeals Committee examined the complainant’s

appeal together with those of two other employees under one single opinion.

The Tribunal notes that this approach, which was decidedly appropriate in the circumstances, did not contravene any rule in force. With regard to the applicable procedure before the Appeals Committee, the consolidation of appeals lodged by different appellants is expressly provided for in Article 10(a) of the Implementing Rules for Articles 106 to 113 of the Service Regulations. Moreover, in view of the Appeals Committee's opinion, which was endorsed by the Administrative Council in the impugned decision and the grounds for which were particularly detailed, consisting of no fewer than 127 paragraphs, it is clear that the complainant cannot rightly maintain that the appeal bodies did not "respond [...] to any of [his] arguments". Lastly, although the complainant seems to criticise the fact that the decision and opinion in question addressed pleas that he had not raised in his own appeal, that was due to the cases being joined and does not, in itself, constitute an irregularity.

5. As regards the use of English, the Tribunal observes that, while, in absolute terms, it would certainly have been preferable for the decisions and opinions issued to have been drafted in the language used by the complainant in his request for review and his appeal, the competent bodies of the Office were under no legal obligation to do that. The Implementing Rules referred to above make it clear that the review and internal appeal procedures do not have to be conducted in a specific procedural language and that these bodies are therefore free to express themselves in any of the three official languages of the EPO – one of which is English.

It should also be noted that Article 8(3)(f) of the Service Regulations stipulates that employees must have "sufficient language knowledge for performing [their] duties" and that Circular No. 364, with particular regard to "[m]inimum 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". Furthermore, the complainant has

not submitted that his knowledge of English is insufficient to allow him to understand the decisions and opinions communicated to him.

It follows that the arguments alleging that the review and internal appeal procedures were legally flawed will therefore be rejected.

6. The complainant further submits that the new career regime resulting from decision CA/D 8/16 could not lawfully have entered into force during his five-year term of office that was in progress on 1 January 2017 without his first being consulted on the matter.

However, the complainant does not cite any text or principle in support of this assertion. Firstly, there was nothing to prevent the reform of the regulations in question from taking effect during the term of office of the members of the Boards of Appeal then in service, which was, in fact, inevitable. Secondly, it follows from the Tribunal's case law that the principle protecting an official's right to be heard before an individual decision is taken to his detriment cannot be applied to a general decision (see Judgments 4593, consideration 7, and 4283, consideration 6). There was therefore no requirement to consult the complainant before decision CA/D 8/16 was applied to him.

7. In the same vein, the complainant also maintains that the "decision taken by the [P]resident of the Boards of Appeal" was irregular because it was not preceded by a consultation with the members of the Boards of Appeal or a committee including representatives from among their number.

However, apart from the fact that the complainant does not clearly identify the "decision" to which he is referring here and appears, in reality, to mean the recommendations on promotion made by the President of the Boards of Appeal to the Administrative Council, he does not cite any staff rules or regulations which would have required such a consultation to take place. According to the Tribunal's case law, there is only a legal requirement to consult staff or any body when the obligation to do so is laid down in a text (see, in particular, Judgment 3921, consideration 9). Moreover, the plea in question is in reality of no avail, since the complainant's non-promotion did not, in

the present case, result from the recommendations of the President of the Boards of Appeal but – as will be explained below – from the application of decision CA/D 8/16 itself.

8. The complainant contests the fact that the provisions of decision CA/D 8/16 were interpreted to mean that members of the Boards of Appeal who had been re-appointed before 1 January 2017 were not eligible for promotion to grade G15, step 1, before the next renewal of their five-year term of office. In the complainant's view, this interpretation was the result of an "incomprehensible, arbitrary and discriminatory choice" which did not stem from any requirement under the provisions themselves, particularly since they did not specify the date on which such a promotion could occur.

9. 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 [...];

(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.”

10. 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).

11. In the present case, it follows from the combination of the aforementioned provisions of Article 8(2) of decision CA/D 8/16 and 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 to be assigned to grade G14, step 1, on the date when that decision came into force, in other words – pursuant to Article 13 of the decision – on 1 January 2017. 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. These various points are not disputed as such by the complainant.

In addition, the Tribunal considers that it follows from the combination of the abovementioned provisions of Article 8(4) of decision CA/D 8/16 and of Article 11(3)(b) of the Service Regulations, to which Article 8(4) refers, that, contrary to what the complainant maintains, members of the Boards of Appeal who underwent this reclassification on 1 January 2017 could only be promoted to grade G15, step 1, on a renewal of their term of office after 31 December 2016.

Although the complainant argues, in support of his contention, that Article 11(3) of the Service Regulations does not specify that, he fails to take into account the provisions of Article 8(4) of decision CA/D 8/16, which specifically govern the situation of a Board of Appeal member already in office on 31 December 2016, who, according to those provisions, could only be promoted “after the expiry of his term”. Given the context for this wording, it is clear that the term being referred to was the one that was in progress when the reform entered into force.

The Administrative Council was therefore right to consider that members of the Boards of Appeal who had been re-appointed before 1 January 2017 could only be promoted – if such a promotion was recommended by the President of the Boards of Appeal based on their merits – on any subsequent renewal of their term.

12. It follows from what has just been said that the choice to apply that rule to the promotion exercise at issue, criticised by the complainant in the terms referred to above, was in fact down to the actual wording of decision CA/D 8/16.

Admittedly, the approach taken by the authors of this text had some rather unusual consequences. It led to the situation where, for reasons that had nothing to do with the assessment of employees’ comparative merits, members of the Boards of Appeal who had been appointed since 2012 could be promoted to grade G15, step 1, on the basis of their dates of appointment – and, consequently, dates of re-appointment – from 2017 onwards, whereas those appointed before 2012 – who had therefore been re-appointed prior to 1 January 2017 – had to wait longer to be eligible for such promotion, even though they had, by definition, been in office longer. The Tribunal notes that the complainant, who had been appointed as a member of the Board of Appeal on 1 October 2011 and whose term of office had therefore been renewed on 1 October 2016, was disadvantaged in this exact manner, since he was not eligible for promotion – which, when it ultimately came, was merit-based – until 1 October 2021.

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 with decisions taken by an organisation in these areas in the event of a manifest error indicative of an abuse of this discretionary power. The Tribunal considers – in particular for the reasons which will be explained in the following considerations – that the peculiarities highlighted above are not sufficient to establish that the EPO, in defining the disputed transitional measures for career progression of the employees concerned, committed a manifest error of this kind.

13. The complainant submits that the promotion arrangements laid down by decision CA/D 8/16 for members of the Boards of Appeal in service on 31 December 2016 breached the principle of equal treatment.

14. 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).

15. The complainant, in effect, takes issue with the Organisation's decision to apply the same rule, namely eligibility for promotion to grade G15, step 1, on the first re-appointment after 31 December 2016, to all members of the Boards of Appeal already in service on that date,

even though those who had already completed a full term of office were not in the same situation as those whose first term was still in progress.

The complainant argues that the choice thus made in decision CA/D 8/16 breached the principle of equal treatment because it led – as the Tribunal has already noted above – to certain employees being objectively disadvantaged in terms of promotion opportunities, for reasons that were unrelated to their merits, compared with others who had spent less time as members of the Boards of Appeal. In this regard, he cites the case of two colleagues, appointed in 2012 and 2013, who were promoted on 1 October 2017 and 1 January 2018 respectively, whereas, although he himself had been appointed in 2011, it was not possible for him to be promoted, as has been said, until 1 October 2021, despite very positive performance reviews.

16. However, the Tribunal considers that, while the arguments put forward by the complainant in this regard are certainly not without substance, they cannot be accepted for the reasons set out below.

17. The Tribunal notes first of all that the delayed progression suffered by those members of the Boards of Appeal who had already completed a full term of office on 31 December 2016, compared with those whose first term of office was still in progress on that date was – at least partially – compensated for, in terms of remuneration, by the guarantee to preserve their previous basic salary contained in Article 8(2) of decision CA/D 8/16. While it is true that, unlike some of his colleagues who had also completed a first term, the complainant did not, prior to his promotion to grade G15, step 1, receive a salary equal to or higher than that attaching to that grade and step, it is clear from the evidence that this guarantee nevertheless enabled him to receive a salary higher than that corresponding to grade G14, step 1, which therefore mitigated the consequences of the delayed progression complained of.

18. Dealing, more fundamentally, with entitlement to promotion as such, it should be emphasised that, where an international organisation is required to apply the principle of equal treatment to officials in

dissimilar situations, the Tribunal's case law recognises the broad discretion that the organisation has in assessing the scope of the dissimilarities in question in the light of the rules concerned and in defining rules appropriate to those dissimilarities (see, in particular, Judgments 5071, consideration 14, 4995, consideration 16, 3034, consideration 24, 2194, consideration 6(a), and 1990, consideration 7). However, it is inevitable that, when a reform of staff regulations is implemented, as in the present case, certain categories of employees will be affected differently depending on their particular attributes, such as their seniority or career progression, and, obviously, the organisation cannot be expected to define a specific legal regime for each of these categories. The choices made by the organisation in this respect can therefore only be censured in the event of a manifest error constituting an abuse of its discretion in the matter.

19. In the present case, the Tribunal considers that the respective situations of those members of the Boards of Appeal who had already completed a full term of office and those whose first term of office was still in progress were not so dissimilar, in the light of the statutory provisions in question, as to require the EPO to apply separate rules to those categories of employees. Decision CA/D 8/16 cannot, therefore, be regarded as tainted, on this point, by a manifest error of assessment.

The Tribunal notes, moreover, that, were it to find it appropriate to interfere with the choice made by the Organisation in this matter, this would potentially open the door to other similar challenges, for example, to the fact that members of the Boards of Appeal who had already completed several terms of office when the reform came into force were treated in the same way as those who – like the complainant – had completed only one term, or the fact that there was only one possibility of promotion available to members newly appointed to, or reclassified in, grade G14, step 1, regardless of the number of terms they subsequently served. However, it would undoubtedly be inappropriate for the Tribunal to exercise its power of review over the merits of such choices, which – unless they are clearly unreasonable – each fall within the scope of the freedom to manage its staff that the Organisation is acknowledged to have.

Lastly, although, in his written submissions, the complainant proposes various alternative solutions to the approach taken by decision CA/D 8/16, in terms of how promotion criteria for Board of Appeal members who had already completed a term of office on 31 December 2016 should have been dealt with, in so doing, he misunderstands the Tribunal's role. The Tribunal cannot substitute its own assessment for that of an organisation as regards the content of rules that should have been adopted, but can only review whether the provisions that have been enacted are unlawful.

20. The complainant maintains that there were no transitional measures associated with the reform of the career arrangements for members of the Boards of Appeal resulting from decision CA/D 8/16 and that this amounts to a breach of the EPO's duty of care towards its employees.

However, that argument overlooks the fact that the abovementioned provisions of Article 8(2) and (4) of decision CA/D 8/16 were, as has been said, transitional measures themselves. Those measures included, in particular, the guarantee that on 1 January 2017 the previous basic salary would be preserved, which was in addition to a guarantee of the same type previously established for all employees by Article 56(4) of decision CA/D 10/14. Furthermore, it should be recalled that the introduction of the new career regime under decision CA/D 8/16 was preceded by decision CA/D 4/15, the very purpose of which was to lay down transitional provisions as part of the reform in question, and Article 2 of which had, for that reason, introduced an automatic salary advancement mechanism producing an effect equivalent to a step advancement in terms of the amount of remuneration involved. Lastly, with regard to the new arrangements for the evaluation of the performance of members of the Boards of Appeal, Communiqué 2/17 of 22 December 2017 from the President of the Boards of Appeal, which set out the guidelines applicable in this respect, had, in Article 12(3), also established transitional measures dealing, in particular, with recommendations given up until 31 December 2022 for the promotion of those already in service, and further provisions in this regard were also subsequently adopted, allowing staff to be promoted

retroactively from 2017, even though that communiqué did not take effect until 1 January 2018.

It is undisputed that the complainant himself benefited from a large part of these transitional measures. His sole grievance against the EPO is, in reality, that it did not make provision to deal more favourably with the situation of members of the Boards of Appeal who, like him, were re-appointed shortly before 1 January 2017. However, the Tribunal considers, in the light of all the measures adopted to mitigate the adverse effects of the implementation of the new career regime, that the Organisation did not breach its duty of care towards its employees by failing to take other transitional measures, such as those sought by the complainant (see, for the rejection of similar pleas in relation to the statutory reform resulting from decision CA/D 10/14, Judgments 5072, consideration 20, 4889, consideration 9, and 4711, consideration 10).

21. 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.