

E. (No. 21) and H. (No. 12)

v.

EPO

142nd Session

Judgment No. 5301

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Ms M. E. (her twenty-first) and Mr H. H. (his twelfth) against the European Patent Organisation (EPO) on 4 May 2021 and corrected on 22 March 2022, the EPO's replies of 18 October 2022, the complainants' single rejoinder of 28 February 2023, the EPO's surrejoinders of 5 June 2023, the complainants' further submissions of 20 October 2023 and the EPO's final comments thereon of 12 January 2024;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the cases may be summed up as follows:

The complainants challenge the abolition of automatic step advancement pursuant to the introduction of a new career system.

On 11 December 2014, the Administrative Council of the EPO adopted decision CA/D 10/14 introducing a new career system, which entered into force on 1 January 2015. The new career system substantially modified the way job categories were divided. It introduced a "single spine" structure consisting of 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. Decision CA/D 10/14 modified *inter alia* Articles 48 and 49 of the Service Regulations for permanent employees of the Office on step advancement and promotion.

The complainants are both employees of the European Patent Office, the EPO's secretariat. On 31 December 2014, Ms E. was an examiner and held grade A3, step 10, while Mr H., who was also an examiner, held grade A3, step 8. Each of them was notified, by letter of 30 April 2015, that they were transposed, as of 1 July 2015, into job group 4 and assigned respectively to grade G11, step 5, and grade G11, step 2, in the new salary scales. In accordance with Article 56(3) of decision CA/D 10/14, their current grade and step would be transposed to the next lower salary step in the new salary scale because the basic salary for their respective previous grade fell between two salary steps of the same grade in the new salary scale, and the difference between their basic salary and the basic salary of the next higher salary step in the new salary scale was more than 50 euros. However, in accordance with Article 56(4), their basic salary would remain at the same level.

Late February 2015, Mr H. received his February payslip, and late March 2015, Ms E. received her March payslip. They each filed a request for review challenging that payslip. In the main, they argued that the denial of one step advancement was applied retroactively as the seniority they had accrued in their step in 2014 was not taken into account when the new career system entered into force on 1 January 2015. They also alleged violation of their acquired rights insofar as the step advancement was now based on performance and not seniority, and that decision CA/D 10/14 was not lawfully adopted or implemented. The complainants sought in particular to be granted the step advancement due in February 2015 for Mr H. with interest and to be granted the step advancement due in March 2015 for Ms E. They also sought the transposition of their "total basic salary" in the new career system including the step advancement due. In addition, Mr H. requested the quashing of decision CA/D 10/14 and moral damages.

Their requests having been rejected, they each lodged an appeal with the Appeals Committee later in 2015 asking *inter alia* that the contested decision as well as decision CA/D 10/14 be set aside, that they be granted the step advancement due to them in February and March 2015 respectively as foreseen by the previous system, be awarded financial compensation deriving from the contested decision, interest on the said amount, moral damages, and costs. In the main, they alleged that decision CA/D 10/14 was flawed, that the denial of step advancement could be considered as amounting to a disciplinary measure since relegation of step was a disciplinary measure, and that their acquired rights and legitimate expectations were breached.

On 18 November 2020, the enlarged chamber of the Appeals Committee issued its opinion concerning several appeals lodged against the new career system, in particular regarding the abolition of the automatic step advancement and the grade transposition. The members of the enlarged chamber of the Appeals Committee unanimously stated that the request to quash decision CA/D 10/14 could be examined only in relation to the particular provisions of the regulations which were applied to the complainants and to the adverse effect the regulations may have had on them. The enlarged chamber of the Appeals Committee also noted that the legal situation surrounding the implementation of the new career system, in particular the difference between the entry into force of the reform in January 2015 and the transposition of staff as of July 2015, was unclear; therefore, it considered that appellants were allowed to challenge the transposition letter or their payslip, like the complainants did in the present case. The majority recommended rejecting the complainants' appeals as unfounded. In its view, decision CA/D 10/14 was lawfully adopted and the individual contested decision was lawful. In particular, it considered that there was no acquired right in relation to automatic step advancement as it could not reasonably be regarded as relating to a fundamental term of employment or a condition in consideration of which the complainants accepted their appointment or were induced to stay on. The majority also held that the reasons invoked to undertake the reform, that is to say performance management and financial prudence, were objectively justifiable. The impact of the reform on staff

members was proportionate to the objectives sought. The majority further found that the fact that the transposition date of 1 July 2015 did not coincide with the entry into force of the new career system on 1 January 2015 could not be considered as involving a legal flaw or as being irrational. Indeed, additional time was needed to properly transpose all staff and establish the new payslips. The majority was not convinced that the appellants' "seniority" had to be taken into account for the purposes of their transposition, noting that the concept of "pro-rata" steps did not exist. However, it was within the EPO's discretion to choose different cushioning measures. The enlarged chamber of the Appeals Committee unanimously recommended that the complainants be awarded moral damages for the unreasonable length of the appeal proceedings.

By letter of 4 February 2021, the complainants were each informed of the Office's decision to follow the recommendations of the majority of the enlarged chamber of the Appeals Committee for the reasons stated in its opinion. Consequently, their appeals were rejected as unfounded. They were nevertheless awarded 600 euros in moral damages for the length of the appeal proceedings and a further 100 euros in moral damages for the time elapsed since the deliberation of the enlarged chamber of the Appeals Committee. This is the decision impugned by each complainant.

The complainants each ask the Tribunal to order the EPO to quash the impugned decision of 4 February 2021 as well as the "individual decision" not to grant the automatic seniority-based step advancement, and "the general and implementing decisions", in particular the new Article 48 of the Service Regulations, Article 49 of the Service Regulations and Article 56 of decision CA/D 10/14 on the determination of the grade and step of each employee under the new career system. They also ask that their salary be recalculated in light of the progression they should have had under the old career system on the day of delivery of the judgment and taking into account the adjustment of the salary scales since 1 January 2015, plus interest "at the Tribunal rate". If the recalculation is not granted, they seek the salary increases, they would have had based on seniority from 1 January 2015 onwards under the

new career system. If this is impossible, they request to be granted the step advancement due in “February 2015” during the transitional period. They further claim reimbursement of the underpayment they faced since 2015 based on the progression indicated before, plus interest. In the alternative, they ask that their basic salary in the new salary scales be recalculated taking into account the steps that would be granted to them. In addition, they claim financial and material damages, moral damages, and costs. In their additional submissions, they request the production of “legal opinions and all intermediate updated versions” relating to the new career system.

The EPO asks the Tribunal to dismiss the complaints as irreceivable in part and otherwise unfounded. It opposes the complainants’ request for the production of documents in particular as being too vague.

CONSIDERATIONS

1. Two members of staff of the Office have filed complaints concerning events in 2015 relating to the introduction of a new career system. The legal issues they raise are the same and they do so in the context of facts which are similar. Accordingly, the two complaints should be joined and one judgment rendered.

2. The complainants request that oral proceedings be held. However, the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to allow the Tribunal to be properly informed of their arguments and the relevant evidence. That application is therefore dismissed. The application which was made for the production of documents is also dismissed because it is cast in the most general and imprecise terms which are an impermissible “fishing expedition” (see Judgment 4086, consideration 9).

3. It is instructive to recall what has been said by the Tribunal about the operation of the principle of *stare decisis*. Its content and rationale were discussed by the Tribunal in the following passage in Judgment 3450, consideration 8:

“[T]he rule of *stare decisis* [...] is to the effect that as a matter of judicial practice or of comity, the Tribunal will follow its own precedents and that ‘the latter have authority even as against persons and organisations who are not party thereto’ unless it is persuaded such precedents were wrong in law or in fact or that for any other compelling reason they should not be applied. Another element of the *stare decisis* rule entrenched in many legal systems is that courts lower in the judicial hierarchy are obliged to follow legal principles (including the interpretation of documents) established by appellate courts higher in the judicial hierarchy. This principle does not exist to create the appearance of deference to more senior members of the judiciary. Rather it serves a much more fundamental and important purpose of creating consistency and predictability in a legal system. Even though a judge or judges lower in the judicial hierarchy may believe that a principle established or an interpretation given by judges in an appellate court higher in the judicial hierarchy is wrong or perhaps even patently wrong, they are obliged to, and do, apply the principle or interpretation. Parties should be able to make informed decisions about their legal rights and about whether they should commence or defend legal proceedings. Thus it is important for the law to be stable, predictable and certain.

It is for this reason that the Tribunal has adopted the rule of *stare decisis* in relation to its own decision making. Internal appeal organs and senior decision-making officials are, of course, neither courts nor judges. However, it is for the same reasons discussed above that internal organs should follow and apply principles established by the Tribunal and adopt and apply interpretations by the Tribunal of normative legal documents applicable to the staff of the organisation. That is necessary in order to create a stable, predictable and certain legal system concerning the rights and obligations of both staff and organisations. If organisations and their internal organs feel unconstrained by decisions of the Tribunal, the result is likely to be legal instability and uncertainty. Also, as a practical matter, if a different position is adopted by the organisation or its internal organs and the Tribunal reverses the decision embodying that different approach, significant costs, both financial and in resources, are likely to have been expended in defending that different approach for no apparent good purpose.”

4. As is apparent in the passage quoted in consideration 3 above, the principle of *stare decisis* is not an entirely inflexible one and a court or tribunal may be persuaded that the precedent to which the principle

would otherwise apply was wrong in law or fact or there was some other compelling reason it should not be applied. But this is plainly intended to describe exceptions to the principle which are likely to rarely arise. In the present case the complainants' grounds for challenging the impugned decision and seeking to have decision CA/D 10/14 set aside and to have its application to their payslips nullified, are not so compelling as to warrant the application of these exceptions and disturbing the outcomes decided in the cases referred to in the next consideration.

5. The following issues have been determined by the Tribunal, expressly or by necessary implication, and are issues to which the principle of *stare decisis* applies. The adoption of decision CA/D 10/14 was lawful or, putting it slightly differently, the decision was lawfully made and was notwithstanding alleged procedural flaws in its making (see, for instance, Judgments 5091, consideration 5, and 4711). The new career system arising from the adoption of decision CA/D 10/14 and its elements, insofar as they are contested by the complainants, are lawful (see, for instance, Judgments 5089, consideration 5, and 4711). The system of transposing staff from a grade and step, and its application, in the classification model existing before the adoption of decision CA/D 10/14 into a grade and step in the model embodied in decision CA/D 10/14 is lawful (see, for instance, Judgment 4712). The system of transposition could lawfully result in alterations, inter alia, to opportunities for promotion or career advancement (see, for instance, Judgments 4889, consideration 7, and 4712, considerations 5 and 6).

6. It is not open to the complainants in these proceedings to relitigate the issues referred to in consideration 5 even if any given argument in support of unlawfulness they wish to put, has not hitherto been advanced. This is a consequence of the application of the principle of *stare decisis* which exists for the reasons just discussed above. Accordingly, it is unnecessary to address the specific arguments advanced by the complainants in their pleas, beyond what is said above. They are otiose.

7. The complaints should be dismissed.

DECISION

For the above reasons,
The complaints are dismissed.

In witness of this judgment, adopted on 30 April 2026, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 16 July 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.