

T. (No. 4)

v.

EPO

142nd Session

Judgment No. 5302

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed by Mr M. T. against the European Patent Organisation (EPO) on 4 May 2021, the EPO's reply of 14 January 2022, the complainant's rejoinder of 30 March 2022 and the EPO's surrejoinder of 28 June 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 non-transposition pursuant to the introduction of the new career system and the resulting loss of career advancement opportunities.

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. While horizontal step advancement and vertical promotion remained possible, career progression was now based on performance and demonstrated

competencies rather than seniority. The decision provided that transposition from the current to the new career system was to take place on 1 July 2015 taking into account the employee's 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 scale and to the salaries resulting from the transposition.

Article 57 of decision CA/D 10/14 provided that employees at grade A4(2), whose basic salary on 31 December 2014 was above the amount corresponding to grade G13, step 5, in the new salary scale, were not transposed into the new salary scale. However, they maintained *ad personam* the basic salary corresponding to their grade and step on 31 December 2014, which was subject to future adjustments in application of the salary adjustment method.

By letter of 30 April 2015, the complainant, who was an employee of the European Patent Office, the EPO's secretariat, was informed that as on 31 December 2014, he held grade A4(2), step 12, and received a basic salary above the amount corresponding to the new grade G13, step 5, and therefore Article 57(1) of decision CA/D 10/14 was applicable to him.

On 29 July 2015, the complainant requested a review of the decision relating to his transposition insofar as it failed to conserve his hierarchical level, abolished his horizontal career opportunities and contravened the fundamental principle of legal certainty both in respect of long-term remuneration and determination of the level of future pensions. He asked to be transposed to a higher grade and step as of the date of the transposition took place for all other employees and that decision CA/D 10/14 be quashed to the extent it stands against his individual transposition. His request for review was rejected and on 23 November 2015, he lodged an internal appeal against this rejection.

The complainant retired on 1 June 2018.

On 18 November 2020, the enlarged chamber of the Appeals Committee issued an opinion on several appeals against the new career system, which challenged in particular the abolition of automatic step advancement and the transposition of grades and which were brought,

in the main, by employees in the former grade A4(2) – such as the complainant – to whom specific provisions of decision CA/D 10/14 applied. As regards those appeals filed by employees who were not in grade A4(2) prior to the reforms, the Committee referred to its other opinion of the same date, the “master opinion”, on the appeals brought against the implementation of the new career system and, in particular, the abolition of automatic step advancement and the transposition of grades. The majority of the enlarged chamber of the Appeals Committee recommended rejecting the appeal brought by the complainant as legally unfounded and referred to certain points contained in the master opinion while expressly rejecting those arguments relating, in particular, to a breach of acquired rights, a breach of legitimate expectations and a breach of the Organisation’s duty of care. The enlarged chamber of the Appeals Committee also unanimously recommended that the complainant be awarded moral damages for the unreasonable length of the appeal proceedings.

By letter of 4 February 2021 from the Vice-President of Directorate-General 4 (DG4), the complainant was informed of the Office’s decision to follow the recommendations of the majority of the enlarged chamber of the Appeals Committee and dismiss his appeal. He was nevertheless awarded 600 euros in moral damages for the length of the appeal procedure and a further 100 euros in moral damages for the time that had elapsed since the deliberations of the enlarged chamber of the Appeals Committee. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, insofar as he was neither transposed into the new career system nor granted a post corresponding to his former grade A4(2), step 12, and to order the President of the Office to transpose him retroactively to grade G15, step 2, of the new career system with effect from 1 July 2015, to ensure his subsequent advancement to the grade and step corresponding to former grade A4(2), step 13, with effect from 1 September 2016, to determine the appropriate grade and step applicable at the time of his retirement, and to pay all resulting arrears with interest. Alternatively, he seeks the setting aside *ab initio* of decision CA/D 10/14. He also seeks the setting aside of decision

CA/D 34/07 of 25 October 2007, which integrated grade A4(2) into the group of grades A1/A4. He further asks that the rules previously applicable be restored and applied to him. Lastly, he claims 20,000 euros in moral damages, 5,000 euros for undue delays in the internal appeal procedure and 3,000 euros in costs.

The EPO asks the Tribunal to dismiss the complaint as partly irreceivable and, in any event, unfounded.

CONSIDERATIONS

1. The complainant is a former staff member of the Office who retired on 1 June 2018. He filed this complaint on 4 May 2021. In the latter part of 2014 and in the first half of 2015 events occurred which potentially bore upon his grading and salary. As will emerge shortly, the essential legal foundation of his complaint has already been determined by the Tribunal in other proceedings concerning other staff members of the Office particularly by Judgment 4990. There are other complaints considered by the Tribunal in this session which effectively raise the same central issue as raised in this complaint. Accordingly, much of what is said in this judgment will be repeated in Judgments 5305 and 5306.

2. The events of 2014 and 2015 commenced with the Administrative Council on 11 December 2014, adopting decision CA/D 10/14 which introduced a new career system for employees of the Office. The decision entered into force on 1 January 2015. It is unnecessary to detail the new career system nor the changes it effected to the pre-existing career system. Suffice it to note that the transposition from the current to the new career system was to take place on 1 July 2015 having regard to the employee's situation on 31 December 2014. There was to be no reduction in basic salary from the transposition. In the present case the complainant held a position at grade A4(2), step 12, and received a basic salary above the amount corresponding to the new grade G13, step 5.

3. On or about 30 April 2015, the complainant received a letter in the following terms (English translation of German original):

“You are currently classified to Remuneration Group A4(2), seniority step 12.

In view of the taking effect of the new Career System according to the Administrative Council’s decision CA/D 10/14 of 11 December 2014, we would like to notify you the following:

According to Article 57(1) of the said decision, your current Remuneration Group and Seniority Step are not transposed into the new Remuneration Table, and you maintain ad personam the basic salary corresponding to Remuneration Group and Seniority Step 12 as of 31 December 2014, that will be object for future salary adjustments through application of the Salary Adjustment Method.

You have further promotion possibilities through appointment to a higher post group. Till then you will be treated, as if you were in your current A4(2) function and listed in the administrative system independently from the new Remuneration Table.”

4. The complainant unsuccessfully sought review of this decision seeking transposition to grade G15, step 2, and, to the extent necessary, the quashing of decision CA/D 10/14. Centrally, the grounds for review involved an alleged breach of an acquired right, discrimination and contravention of the principle of legal certainty. Thereafter the complainant lodged an internal appeal on 23 November 2015 which was ultimately considered by the enlarged chamber of the Appeals Committee which furnished its advice to the Vice-President of DG4 who informed the complainant, on 4 February 2021, of the Office’s decision to dismiss the appeal. This is the decision impugned in these proceedings.

5. The grounds on which the complainant seeks to impugn the decision communicated by the Vice-President of DG4 can be described, in a summary way, as follows. Firstly, that staff have an acquired right to career advancement and he had lost a chance of advancement. Secondly, as a result of the transposition, he had been downgraded and lost hierarchical status. Thirdly, he had not been afforded equal treatment and was discriminated against. Fourthly, that the EPO had breached its duty of care and not acted in good faith.

6. As explained in Judgment 5298, also delivered this day, the principle of *stare decisis* applies to the present case. With one qualification, the pleas advanced by the complainant in this matter have been addressed in Judgment 4990 (or other judgments cited in that judgment) in which the complainant in that matter raised the same issues. Judgment 4990 is a detailed and considered analysis of those issues as they concerned a staff member who held a position at grade A4(2) leading to the conclusion that the approach and actions of the EPO were not unlawful. A more recent judgment, namely Judgment 5070, is to similar effect. There were no relevant material factual differences between those cases and the present one. The complainant's pleas should be rejected.

7. The qualification referred to in the preceding consideration concerns a plea, faintly put, by the complainant that the transposition has resulted in his downgrading from his previously obtained promotion, as illustrated by the abolition of the title "Directorate's Assistant", leaving only the title "Examiner". Occasions can arise where a change of title of a position held by a complainant is actionable. However, since the reform did not lead to the complainant having a lower salary or reduced responsibilities and in the absence of evidence that the change diminished the standing of the post occupied by the complainant, there was no failure to respect his dignity (see Judgments 5189, consideration 16, and 4672, consideration 7).

DECISION

For the above reasons,

The complaint is 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.