

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 8)

v.

EPO

142nd Session

Judgment No. 5303

THE ADMINISTRATIVE TRIBUNAL,

Considering the eighth complaint filed by Mr J. A. S. against the European Patent Organisation (EPO) on 9 March 2021, the EPO's reply of 19 January 2022, the complainant's rejoinder of 5 April 2022 and the EPO's surrejoinder of 5 July 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 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. Article 41 of decision CA/D 10/14 modified Annex I of the Service Regulations for permanent employees of the European Patent Office, the EPO's secretariat, listing in a table the new job groups and the corresponding ranges of grades. The table showed that the positions of senior expert and member of a Board of Appeal fell within job group 3, which included grade G13, step 3, to grade G15, step 4. The positions of examiner, administrator and lawyer fell within job group 4, which included grade G7, step 1, to grade G13, step 5. In the new career system, the lowest grade was grade G1 and the highest grade was grade G17.

The complainant joined the Office in 2001 as an examiner at grade A3, step 3. In January 2015, he was promoted to the position of Directorate Assistant/Adviser at grade A4(2) with effect from 1 January 2014. He was notified, by letter of 30 April 2015, that he was transposed, as of 1 July 2015, to grade G11, step 3, in job group 4 in the new salary scale as he held, on 31 December 2014, grade A4(2), step 7. In accordance with Article 56(3) of decision CA/D 10/14, his current grade and step would be transposed to the higher step in the new salary scale, and the new basic salary would be applied accordingly.

In July 2015, he filed a request for review against the decision of 30 April 2015. This request having been rejected, he lodged an appeal with the Appeals Committee in September 2015.

On 18 November 2020, the enlarged chamber of the Appeals Committee issued its opinion concerning the complainant's appeal and several others lodged by staff members against the new career system, in particular the abolition of automatic step advancement and the transposition or non-transposition of grades for employees in the former grade A4(2). The complainant testified before the Appeals Committee regarding the Office's allegation that his appeal was moot since he had been awarded a merit-based step advancement with retroactive effect from July 2015. The enlarged chamber of the Appeals Committee rejected the allegation on the ground that his appeal was not limited to the issue of grade upon transposition; indeed, he also claimed unequal treatment compared to his colleagues, who retained their grade A4(2)

ad personam. The enlarged chamber of the Appeals Committee found that the material difference in treatment operated between two categories of staff within the former grade A4(2) regarding their transposition or not to the new salary scale was objectively and reasonably justified in light of the aims pursued by the reform. The difference in salary ceiling between the complainant and grade A4(2) colleagues, who “had been classified as *ad personam*” was likewise objectively and reasonably justified, as those former grade A4(2) colleagues – like all other staff members – maintained the salaries to which they were entitled under the previous career system. In addition, the enlarged chamber of the Appeals Committee found that the complainant’s retroactive promotion to grade A4(2) had no bearing on his transposition in comparison with the rest of the grade A4(2) staff members. Consequently, the majority of the enlarged chamber of the Appeals Committee recommended rejecting his appeal as unfounded. However, the enlarged chamber of the Appeals Committee unanimously considered that the length of the internal appeal proceedings was unreasonable and therefore recommended that the complainant be awarded moral damages.

By letter of 4 February 2021, the Vice-President of Directorate-General 4 informed the complainant of the Office’s decision to follow the recommendations of the majority of the enlarged chamber of the Appeals Committee regarding appeals against transposition letters and automatic step advancement of grade A4(2) and A4(2) *ad personam* for the reasons stated in its opinion. Consequently, his appeal was rejected as unfounded. He was nevertheless awarded 600 euros in moral damages for the length of the internal 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 unless he had already received damages for another appeal covered by the opinion of the enlarged chamber of the Appeals Committee. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision, to find his transposition into the new career system unlawful and to order that he be lawfully transposed into the new career system

as a Senior Expert, with a progression of two steps per year for the following years as being at least equivalent to the performance bonuses received during this time period. He also seeks payment of all salary arrears together with interest at the rate of 8 per cent per annum. In addition, he claims material damages to compensate for the loss of salary and pension, and moral damages for “loss of status” and for the length of the proceedings. Lastly, he asks the Tribunal to award him costs, and “[p]ronounce [itself] on any questions of law that may arise”.

The EPO asks the Tribunal to dismiss the complaint as irreceivable insofar as the complainant asks to be transposed to a particular job group, grade or post, and insofar as he requests to be treated in accordance with the rules applicable under the previous career system. It asks the Tribunal to reject the complaint as otherwise unfounded.

CONSIDERATIONS

1. This complaint is part of the extensive litigation submitted to the Tribunal concerning the new career system introduced by the Administrative Council’s decision CA/D 10/14 of 11 December 2014, which came into force on 1 January 2015. It should be recalled that the new system significantly altered the structure of employees’ grades by introducing new “career paths” and providing that progression was based on sustained performance and demonstrated competencies rather than time spent within a step or grade. By administrative decision, staff were transposed from the old structure into the new structure.

2. The complainant is a staff member of the Office. He was affected by changes brought about by decision CA/D 10/14. In his complaint filed on 9 March 2021, he challenges a decision of the Office in a letter dated 4 February 2021. By that decision the Office rejected an internal appeal against the complainant’s transposition.

3. On or about 30 April 2015, the complainant received a letter in the following terms addressing his transposition:

“You are currently in grade A4(2), step 07.

In view of the entry into force of the new career system in accordance with Administrative Council decision CA/D 10/14 of 11 December 2014, you are hereby informed as follows:

Pursuant to Article 57(2) of the aforementioned decision, with effect from 1 July 2015, your current grade and step will be transposed to grade G13, step 3, within job group 4. [...]

Your transposition has been determined pursuant to Article 56(3) of the aforementioned Council decision:

- The basic salary at grade A4(2), step 07, falls between two steps within the same grade in the new salary scale.
- The difference between your basic salary and the basic salary for the next immediate higher step in the new scale is equal to or less than EUR 50.

On the basis of the above, your current grade and step will be transposed to the higher step in the new salary scale, and the new basic salary will be applied accordingly.”

4. The complainant advances, in substance, one ground in challenging his transposition namely that it was arbitrary and in breach of equal treatment and therefore discriminatory. The gravamen of the case he advances is that staff who had held grade A4(2) positions were treated differently. He and some other staff holding such positions were transposed into the new career system, others were not. If, in truth, that is a fair characterisation of what occurred and reveals a negative impact on him arising directly from the unequal treatment, then there is arguably a case of unequal treatment founding a cause of action on his part. However, his real grievance is not that he was injured by unequal treatment but rather that having been transposed, the new career system did not offer him benefits he would have enjoyed had he not been transposed. This is not a case where the alleged unequal treatment caused injury.

5. Regarding the alleged injury, the complainant submits that the change in his job title and his transposition to job group 4 were an affront to his dignity and had “profound psychological effect” on him. This plea is also unfounded. The Tribunal finds no failure to respect his dignity since the reform did not lead to him having a lower salary or

reduced responsibilities, and he did not show that the changes made to his situation diminished the standing of the post he occupied (see Judgments 5189, consideration 16, and 4672, consideration 7).

6. The complaint should be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 1 May 2026, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, 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

HUGH A. RAWLINS

HONGYU SHEN

RENÉ M. VARGAS M.