

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

S. (No. 3)

v.

EPO

142nd Session

Judgment No. 5304

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr D. S. against the European Patent Organisation (EPO) on 5 May 2021, the EPO's reply of 9 November 2021, the complainant's rejoinder of 3 February 2022 and the EPO's surrejoinder of 16 May 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 the transposition to a new grade following 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.

The complainant, a permanent employee of the European Patent Office, the EPO's secretariat, held grade A4, step 11, on 31 December 2014. He was notified, by letter of 30 April 2015, that he was transposed, as of 1 July 2015, into job group 4 and assigned to grade G13, step 2, in the new salary scale. In accordance with Article 56(3) of decision CA/D 10/14, his current grade and step would be transposed to the next lower salary step in the new salary scale because the basic salary for grade A4, step 11, fell between two salary steps of the same grade in the new salary scale, and the difference between his 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), his basic salary would remain at the same level.

On 30 June 2015, the complainant filed a request for review against the transposition letter. He mainly contested the new career system insofar as it did not provide a guarantee regarding the salary he would have received in his former grade A4 through seniority-based step advancement as foreseen under the previous career system.

The complainant filed a second request for review, on 28 July 2015, contesting a decision of 12 May 2015, which he indicated was the date on which he had acknowledged receipt of the transposition letter of 30 April 2015. By challenging the transposition decision, he also explicitly contested general decision CA/D 10/14 and the subsequent circulars, on which the transposition was based. The complainant asked that the previous system remained applicable or, in the alternative, that the system be modified in a way that he would not suffer any material or moral damages.

On 31 August 2015 and 1 September 2015 respectively, the complainant was informed that his first and second requests for review were rejected. Late November 2015, he lodged an internal appeal against both decisions arguing, *inter alia*, that he had been deprived of a right to obtain the salary corresponding to former grade A4, step 13, in the previous career system.

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 regarding the abolition of automatic step advancement and the grade transposition. The majority recommended rejecting the complainant's appeal as unfounded. In its view, decision CA/D 10/14 was lawfully adopted, noting in particular that appropriate consultation took place with the General Consultative Committee (GCC). It also found that the individual contested decision was lawful concluding, *inter alia*, 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 complainant accepted the appointment or was induced to stay on. It 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. In addition, it found that the complainant did not show that the Office had breached his legitimate expectations, as he did not demonstrate that an enforceable promise was made to him that he would receive a particular level of salary or pension or that a particular methodology would apply or that his opportunity for career advancement would never be changed. However, the enlarged chamber of the Appeals Committee unanimously recommended that the complainant be awarded 600 euros in moral damages for the unreasonable length of the appeal proceedings.

By letter of 4 February 2021, the complainant was 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, his appeal was rejected as unfounded. He was 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 impugned decision.

The complainant asks the Tribunal to order the EPO to pay him the following amounts together with interest: payment, as from 1 August 2016, of the basic salary that matches the basic salary for grade A4, step 12, calculated based on the salary adjustments due for 2015 and 2016 for Germany, and further including the salary adjustments for Germany starting from 1 July 2017 and 1 July 2018 respectively, taking effect from these dates, and payment, as from 1 August 2018, of a basic salary matching the then applicable basic salary for grade G13, step 5, in Germany with all salary adjustments until his retirement date. He further claims “all the financial entitlements including allowances and emoluments due with these two basic salary steps”, and that his pension entitlements be calculated on the basis of the basic salary for grade G13, step 5, as of his retirement date. In addition, he seeks moral damages for “injustice” and for undue delay in the internal appeal proceedings, and costs. Lastly, he asks the Tribunal to grant him such other relief that it may deem just, fair and equitable.

The EPO asks the Tribunal to dismiss the complaint as irreceivable insofar as the complainant lacks a cause of action regarding some claims for relief, in particular regarding the two additional steps he is seeking. It also asks the Tribunal to dismiss 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.

2. The complainant, who is a serving employee of the Office, sought a review and subsequently lodged an internal appeal challenging his transposition into the new career system. His appeal was unsuccessful.

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

“You are currently classified in grade A4, step 11.

In view of the entry into force of the new career system according to Administrative Council Decision CA/D 10/14 of 11 December 2014, we would like to inform you of the following:

With effect from 1 July 2015, your current grade and step will be reclassified to grade G13 step 2 within job group 4.

Your transposition is pursuant to Article 56 (3) of the aforementioned Council Decision:

- The basic salary of grade A4 step 11 falls between two salary steps of the same grade in the new salary scale.
- The difference between your basic salary and the basic salary of the next higher salary step in the new table is more than EUR 50.

Therefore, your current grade and step will be transposed to the next lower salary step in the new salary scale. But, pursuant to Article 56(4) of the aforementioned Council Decision, your basic salary will remain at the level of your current salary.”

4. In this complaint, the complainant impugns the decision to reject his internal appeal.

5. The Tribunal notes that the matters raised by the complainant have already been ruled upon in substance in Judgments 4711 and 4712, delivered on 7 July 2023. As explained in Judgment 5298, also delivered this day, the principle of *stare decisis* applies to the present case.

6. In Judgment 4711, the Tribunal ruled on the fifteenth complaint filed by another EPO employee, Mr F., who had pursued an internal appeal challenging his May 2015 payslip insofar as it

implemented the 30 April 2015 decision to transpose him to a job group and a grade in the new salary scale. The payslip showed that he was denied the automatic step advancement that he should have received if decision CA/D 10/14 had not been implemented. That complaint was selected by the Tribunal to be the lead complaint in a series of cases raising concerns as to the lawfulness to the new salary scale introduced by decision CA/D 10/14.

7. In Judgment 4711, the Tribunal dismissed the complaint as unfounded. For present purposes, suffice it to recall that the Tribunal found that general decision CA/D 10/14 was lawful. It noted in particular that it was lawfully adopted (see Judgment 4711, considerations 4 and 5), that it introduced a new career system in which the employees' former salary was preserved, and future step advancements were not precluded, but were only related to the discharge of the employee's obligations. Consequently, there was no unreasonable alteration of the balance of contractual obligations. The Tribunal added that the mere fact that step advancements were based on performance did not render them arbitrary or not transparent. Therefore, it concluded that the new step advancement system did not infringe an acquired right.

8. Judgment 4711 was contested in an application for review filed on 27 September 2023, which the Tribunal dismissed in Judgment 4888, delivered on 8 July 2024. The Tribunal's findings in Judgment 4711 were reiterated in Judgment 4990, delivered on 6 February 2025, in which the Tribunal confirmed the lawfulness of the reform, including the particular situation of certain employees holding the former grade A4(2).

9. In Judgment 4712, the Tribunal rejected the sixteenth complaint filed by Mr F. who challenged his transposition to a particular job group and grade alleging in particular that it was based on decision CA/D 10/14 that was procedurally flawed, and that the transposition decision breached his acquired rights and compromised his pension rights, as well as the principle of equal treatment and his

legitimate expectations and that the EPO did not abide by its duty of care.

10. The Tribunal finds that this complaint is in essence identical to the complaints leading to Judgment 4711, and Judgment 4712 insofar as the complainant also alleges in the main: procedural flaws in the adoption of decision CA/D 10/14, as well as breach of acquired rights, legitimate expectations and of the principle of equal treatment. He also submits that the EPO failed to abide by its duty of care. There is no basis for the Tribunal reaching a different conclusion to that reached in other proceedings.

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.