

E. (No. 10)

v.

EPO

142nd Session

Judgment No. 5305

THE ADMINISTRATIVE TRIBUNAL,

Considering the tenth complaint filed by Ms B. E. against the European Patent Organisation (EPO) on 10 February 2021, the EPO's reply of 20 October 2021, the complainant's rejoinder of 27 October 2021 and the EPO's surrejoinder of 31 January 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 decisions to deny her the step advancements and associated salary increase warranted by her seniority.

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, she held grade A4(2), step 11, 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 her.

On 28 September 2015, the complainant requested a review of her payslip of September 2015. The request was denied, and she subsequently lodged an internal appeal on 7 December 2015. On 26 September 2017, she filed a second request for review, this time concerning her September 2017 payslip. She considered both payslips to constitute decisions not to grant her the corresponding step advancements of her former grade A4(2). On 12 October 2017, the Conflict Resolution Unit informed the complainant that her second request for review would be added to her ongoing appeal, a decision confirmed by a communication from the Secretariat of the Appeals Committee on 5 February 2018.

The complainant retired on 1 August 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 appeals 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 her appeals. She 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 requests the Tribunal to set aside the impugned decision and to order that she be deemed to have been granted grade A4(2), step 12 as of 1 September 2015 and step 13 as of 1 September 2017. She consequently seeks material damages corresponding to the difference between the remuneration and retirement benefits actually received and those to which she would have been entitled, up to and following her retirement, had those step advancements been granted, including all related emoluments, salary adjustments, and interest.

She further claims moral damages in the amount of 30,000 euros in respect of the length of the proceedings and 50,000 euros in respect of the allegedly degrading and discriminatory treatment resulting from the denial of step advancement and transposition comparable to that of A5 staff, as well as from not having held a grade for nearly three years prior to her retirement. Lastly, she seeks an award of 3,000 euros in costs.

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

CONSIDERATIONS

1. The complainant is a former staff member of the Office who retired on 1 August 2018. She filed this complaint on 10 February 2021. In the latter part of 2014 and in the first half of 2015 events occurred which potentially bore upon her grading and salary. Those events 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 11 and received a basic salary above the amount corresponding to the new grade G13, step 5.

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

“You are currently graded as A4(2) 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 as follows:

According to Article 57(1) of the said decision, your current grade and step will not be transposed into the new salary scale, and you keep *ad personam* the basic salary corresponding to grade A4(2) step 11 on 31 December 2014,

which is subject to future adjustments in application of the salary adjustment method.

You have further advancement opportunities on assignment to a higher job group. Until then you will be treated as if you continued to hold your present A4(2) function and will be handled by the administrative systems independently of the new salary scales.”

3. An issue was raised by the EPO about the receivability of this complaint having regard to the fact that the procedures concerning internal review and appeal were first invoked by the complainant on 28 September 2015, several months after she was informed (at least by 30 April 2015) of the general effect on her of the implementation of decision CA/D 10/14. It is unnecessary to deal with this issue as the complainant’s case on the merits is unfounded. Indeed it is also unnecessary to address the specifics of the decisions challenged in these proceedings beyond noting the relief that the complainant seeks in her complaint form filed in the Tribunal namely, *inter alia*, an “order that I be treated as if on 1 September 2015 and on 1 September 2017 I had been at A4(2) step 12 and A4(2) step 13 respectively”. On the complainant’s account, these career advancements would have occurred automatically but for the implementation of decision CA/D 10/14.

4. The complainant unsuccessfully sought a review of the two payslips which she considered constituted decisions denying her the step advancements of her former A4(2) grade. She subsequently lodged two internal appeals, which the Office, through a letter from the Vice-President of DG4, decided, on 4 February 2021, to dismiss. 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 her contract providing for automatic progression was breached, and she had an acquired right to career advancement which was also breached. An allied plea was that there had been a breach of promise. Next, she contends she had not been afforded equal treatment and also contends that the EPO had breached

the principle of non-retroactivity. She contends the EPO breached the principle of legitimate expectations and the *patere legem* principle. Lastly, she contends there has been a contravention of the principle of legal certainty.

6. As explained in Judgment 5298, also delivered this day, the principle of *stare decisis* applies to the present case. The pleas advanced by the complainant in this matter have mostly been addressed in Judgment 4990 (or other judgments cited in that judgment) in which the complainant in that matter raised substantially 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. In particular, that the removal of automatic progression for staff in the position of the complainant based on years of service was 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.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 4 May 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.