

T. (No. 53)

v.

EPO

142nd Session

Judgment No. 5306

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifty-third complaint filed by Mr I. H. T. against the European Patent Organisation (EPO) on 25 March 2021 and corrected on 26 July 2021, the EPO's reply of 27 October 2021, the complainant's rejoinder of 18 January 2022 and the EPO's surrejoinder of 25 April 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 decision not to transpose him to a post of a corresponding grade and step into the 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. 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 13, 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.

In late July 2015, the complainant filed a request for review with both the Administrative Council and the President of the Office regarding the decision not to transpose him as manifested in his payslip of July 2015. The request to the Administrative Council was referred to the President. The request was denied on 22 September 2015, and he subsequently lodged an internal appeal on 18 December 2015.

The complainant retired on 1 March 2019.

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 recommended unanimously 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 President’s decision not to assign him in the new career system to a generic post that would reflect the former salary and hierarchical rank he had in 2003. Alternatively, should such assignment not be granted, he requests the Tribunal to quash, with retroactive effect, general decisions CA/D 10/14 and CA/D 34/07 and to restore the previous legal situation by assigning him to “Grade 14(2), Step 13”, at a rank immediately above former grade A4. He further seeks 70,000 euros in moral damages for discriminatory treatment and infringement of his dignity, 30,000 euros in punitive damages for the abuse and misuse of authority in the planning, adoption and implementation of decision CA/D 10/14, 8,000 euros in compensation for undue delays in the internal appeal proceedings and 8,000 euros in costs.

The EPO requests the Tribunal to dismiss the complaint as irreceivable insofar as the complainant asks the Tribunal to set aside general decisions CA/D 10/14 and CA/D 34/07 and, in any event, unfounded.

CONSIDERATIONS

1. The complainant is a former staff member who retired on 1 March 2019. He filed this complaint on 25 March 2021. In the latter part of 2014 and in the first half of 2015 events occurred which potentially bore upon his 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 13 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 classified to Remuneration Group A4(2), Seniority Step 13.

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 13 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.”

3. The complainant’s case on the merits is unfounded. It is unnecessary to address the specifics of the decision challenged in these proceedings beyond noting the relief that the complainant seeks in his complaint form filed in the Tribunal namely, *inter alia*, an order “[setting] aside [...] the President’s refusal to assign the complainant to grade G15 Step 3 in the [new career system] adopted through decision CA/D 10/14”, as well as orders requiring payment of moral damages and punitive damages. On the complainant’s account, this career advancement would have occurred automatically but for the implementation of decision CA/D 10/14.

4. The complainant unsuccessfully sought a review of the decision not to transpose him, as manifested in his payslip of July 2015, and thereafter he lodged an internal appeal which the Office, through a letter of 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, there had been a misuse of authority. Secondly, there had been discrimination and disrespect of the complainant’s dignity. Further, the transposition has resulted in the complainant’s downgrading and the breach of his acquired rights. Next, the EPO had created risks concerning the security of pensions. Lastly, there had been a breach of the principles of equivalence, equality and proportionality and of the EPO’s duty of care.

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. Moreover, the Tribunal rejects the allegation of downgrading since the reform did not lead to the complainant having a lower salary or reduced responsibilities (see Judgment 5189, consideration 16). The complainant does not provide evidence of any wrongdoing on the part of the EPO in that respect (see Judgment 4971, consideration 4). The complainant's pleas should be rejected.

7. However, one further specific matter should be addressed briefly. It is a plea by the complainant that "the implementation of decision CA/D 10/14 brings risks of causing injury in the future" in relation to pension entitlements. This plea should be rejected as the complainant did not show that the transposition in the new career system would compromise his pension rights (see Judgments 5090, and 4712, consideration 5). A cause of action, in this regard, would arise only if there was a liability to cause injury in the sense that there is a measure of likelihood about the occurrence of the injury (see Judgment 5040, considerations 7 and 8). This is not demonstrated in the present case.

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.