

R. (No. 22) and S. (No. 13)

v.

EPO

142nd Session

Judgment No. 5307

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mr L. R. (his twenty-second) and Mr D. M. S. (his thirteenth) against the European Patent Organisation (EPO) on 8 April 2021 and corrected on 10 May 2021, the EPO's single reply of 21 October 2021, the complainants' single rejoinder of 23 December 2021 and the EPO's single surrejoinder of 6 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 none of the parties has applied;

Considering that the facts of the cases may be summed up as follows:

The complainants challenge the exclusion of former A4(2) staff, step 9 and higher, from the new career system following transposition "off-scale".

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 complainants, both employees of the European Patent Office, the EPO's secretariat, were informed that as on 31 December 2014, they held grade A4(2), step 9 for Mr R. and step 10 for Mr S., 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 them.

On 5 June and 25 June 2015 respectively, Mr S. and Mr R. each filed requests for review against their transposition letters. The requests were both denied on 5 August 2015. Subsequently, the complainants lodged internal appeals on 18 September and 25 September 2015, respectively.

Mr S. retired on 31 May 2021.

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 complainants – 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 complainants 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 complainants be awarded moral damages for the unreasonable length of the appeal proceedings.

By letters of 4 February 2021 from the Vice-President of Directorate-General 4 (DG4), the complainants were informed of the Office’s decision to follow the recommendations of the majority of the enlarged chamber of the Appeals Committee and dismiss their appeals. Nevertheless, they were each awarded 600 euros in moral damages for the length of the appeal procedure and a further 100 euros each in moral damages for the time that had elapsed since the deliberations of the enlarged chamber of the Appeals Committee. These are the impugned decisions.

The complainants ask the Tribunal to quash the decision to assign them to an “off-scale” position in the new career system, precluding them from step advancement to the end-of-career salary. They further request the Tribunal to instruct the EPO to award them the steps commensurate with their performance from the entry into force of the new career system to the date of judgment, including all related salary increases, pension rights, arrears, and interest, at a minimum of one step per two years of service and, for Mr R. only, to instruct the EPO to assign him tasks and responsibilities equivalent to those of his former A4(2) position. They further seek an award of 10,000 euros in moral damages each, together with costs.

The EPO requests the Tribunal to dismiss the complaints as unfounded.

CONSIDERATIONS

1. In the latter part of 2014 and in the first half of 2015 events occurred which potentially bore upon the grading and salary of all staff of the Office. The events commenced with the Administrative Council of the EPO 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 should be recalled that the new system significantly altered, for many staff, 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. Two complaints were filed with the Tribunal on 8 April 2021. One was by Mr R. and the other by Mr S. It appears Mr S. assisted Mr R. in preparing his complaint. A common brief was filed in relation to the two complaints. The complainant, Mr S., is a former staff member of the Office, who retired on 31 May 2021. There is nothing in the material to suggest that Mr R. does not remain a staff member of the Office.

3. The way the proceedings were commenced in the Tribunal appears to have involved an assumption by the two complainants that their complaints would be joined. No application for joinder of the complaints has been made, let alone granted. Joinder is a legal step of potentially some consequence (see, for example, Judgment 4822). Joinder should arise from a determination by the Tribunal and not from the way several complaints are framed when they are filed. At least ordinarily, complaints should not be joined in the absence of an application for joinder. Perhaps, in the present case, such an application is implicit in the way the brief is framed. The relief initially sought in each complaint was:

"1. that the impugned decision to assign them to an 'off scale' position in the [new career system] with no access to step advancement to the end-of-career salary be quashed

2. that [the] defendant organisation be instructed to award the complainants steps commensurate with their performance from the entry into force of the [new career system] to the date of the judgment – in light of their continued high performance level, the complainants claim this to be of at least one step for each two years of service – together with all due salary increases, increased pension rights, arrears and interest
3. [only] for complainant R.: that the defendant organisation be instructed to assign him tasks and responsibilities of the level of his previous A4(2) tasks and responsibilities [...]
4. [...] 10,000 [euros] each in moral damages
5. costs”.

4. It is appropriate to join these two complaints.

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

“You are currently graded in grade A4(2), step 09.

In view of the entering into force of the new career system in accordance with the decision of the Administrative Council CA/D 10/14 of 11 December 2014, we would like to inform you of the following:

In accordance with Article 57(1) of the decision mentioned above, your current grade and step will not be transposed to the new salary table. You will keep ad personam the basic salary corresponding to the grade A4(2), step 09, as of 31 December 2014. This salary will be subject to future adjustments in application of the salary adjustment procedure.

You have further possibilities for career progression following promotion to a higher grade. Until such point in time you will be treated, as if you had kept your former A4(2) functions and will be present in the administrative systems independently from the new salary tables.”

A letter in substantially the same terms was sent to Mr S.

6. The complainants unsuccessfully sought review of these decisions. Thereafter the complainants each lodged an internal appeal in September 2015 which were ultimately considered by the enlarged chamber of the Appeals Committee which furnished its advice to the Vice-President of DG4 who informed the complainants, on 4 February 2021, of the Office’s decision to dismiss the appeals. This is the decision impugned in these proceedings.

7. The grounds on which the complainants seek to impugn the decision communicated by the Vice-President of DG4 can be described, in a summary way, as follows. Firstly, that the EPO would honour statements and promises that the complainants' end-of-grade salary would be maintained and this created a legitimate expectation which was not met. Secondly, that the EPO breached its duty of care and failed to respect their dignity. Thirdly, that they had been the subject of discrimination and had not been afforded equal treatment. Fourthly, there had been a breach of an acquired right.

8. As explained in Judgment 5298, also delivered this day, the principle of *stare decisis* applies to the present case. The pleas advanced by the complainants 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. Moreover, the Tribunal rejects the allegations that the implementation of decision CA/D 10/14 violated their dignity since the reform did not lead to the complainants having a lower salary or reduced responsibilities (see Judgment 5189, consideration 16) nor did it diminish the standing of the posts occupied by the complainants (see Judgment 4672, consideration 7). The complainants' pleas should be rejected.

DECISION

For the above reasons,

The complaints are 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.