Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 5)
v.
EPO

142nd Session **Judgment No. 5309**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr H. L. against the European Patent Organisation (EPO) on 2 March 2021, the EPO's reply of 2 November 2021, the complainant's rejoinder of 14 December 2021, corrected on 4 January 2022, and the EPO's surrejoinder of 15 April 2022;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

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

The complainant challenges the abolition of automatic step advancement 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.

The complainant joined the European Patent Office, the EPO's secretariat, in September 2003. As of April 2013, he held grade A3, step 9. He was notified, by letter of 30 April 2015, that he was transposed, as of 1 July 2015, to grade G11, step 3, in the new salary scale as he held, on 31 December 2014, grade A3, step 9. 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 A3, step 9, 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 31 July 2015, he filed a request for review against decision CA/D 10/14 "insofar as already having direct effects on [him]". More particularly, he alleged violation of acquired rights and legitimate expectations explaining that seniority was recognised to be based on time and not on performance. He explained that the adverse effects of decision CA/D 10/14 were reflected in his April 2015 payslip, which showed that he did not receive the step advancement he should have under the previous system. He attached that payslip and others to his request for review.

The complainant's request for review was rejected in November 2015, which he contested shortly after by lodging an internal appeal alleging, inter alia, that the refusal to grant him a step advancement in April 2015 was based on decision CA/D 10/14 that was flawed, and that his acquired rights to step advancement were violated.

The complainant initiated several internal appeal proceedings in relation to the new career system. In particular, he contested the refusal to grant him the bi-annual step advancement that was due in April 2019 under the previous career system. This appeal was given reference RI/2019/075.

In July 2019, the Appeals Committee's Secretariat informed him that his appeal RI/2015/094b (which included RI/2015/190 and RI/2015/094) and appeal RI/2019/075 would be dealt with in a single opinion as they concerned his transposition in the new career system.

On 18 November 2020, the enlarged chamber of the Appeals Committee issued its opinion concerning the complainant's appeals 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 enlarged chamber of the Appeals Committee unanimously found appeal RI/2019/075 irreceivable as he contested the absence of automatic step advancement, which was a mere follow-up and repetition of his initial appeals. Indeed, if his initial appeals were successful, the Office would be obliged to apply the relevant outcome to the following years. Regarding appeal RI/2015/094b, the majority recommended rejecting the appeal as unfounded. In its view, decision CA/D 10/14 was lawfully adopted, and was lawful. It found in particular 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, and the impact of the reform on staff members was proportionate to the objectives sought. 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 600 euros in moral damages.

By a letter of 4 February 2021, the Vice-President of Directorate-General 4 (DG4) informed the complainant 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 irreceivable and unfounded. He was nevertheless awarded 600 euros in moral damages for the length of the internal appeal proceedings unless he had already received damages for another appeal covered by the opinion of the enlarged chamber of the Appeals Committee. He was awarded 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 set aside the impugned decision and declare decision CA/D 10/14 illegal. He also asks to be granted the steps to which he was entitled under the previous system, and that his basic salary in the new salary scale be recalculated taking into account the steps that he is granted. He claims compensation for the financial consequences resulting from the impugned decision together with interest at the rate of 5 per cent on the amounts due to him on the basis of the aforementioned claims from the date on which they became due until the date on which payment is made. In addition, he seeks moral damages and such other relief as the "I[nternal] A[ppeals] C[ommittee]" may deem fair, just and equitable. Lastly, he claims costs in relation to the "present appeal", including the payment of the 200 euros he had to pay to file his two internal appeals.

The EPO asks the Tribunal to dismiss the complaint as irreceivable insofar as it is, in certain aspects, a duplication of other complaints. Subsidiarily, the complaint is 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 for the employees of the Office. 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 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 2 March 2021, he challenges a decision of the Office in a letter dated 4 February 2021 from the Vice-President of DG4. In the letter, reference is made to several appeals which had been the subject of an opinion of 18 November 2020 by an enlarged chamber of the Appeals Committee. The enlarged chamber, by a majority, concluded, in substance, that decision CA/D 10/14 was lawful and its implementation was likewise lawful and, in relation to the complainant's appeal RI/2019/075, it was irreceivable.

3. It is unnecessary to address the question of receivability as the complaint is unfounded.

4. The Tribunal has repeatedly upheld the lawfulness of decision CA/D 10/14 and its implementation, in the face of a variety of challenges to it (see, for example, Judgments 5091, 5089, consideration 5, 4888, 4711 and 4710). Nothing is put by the complainant in his pleas, centrally challenging decision CA/D 10/14, which would suggest that this consistent line of case law is incorrect. Apart from the complainant's central claim concerning the lawfulness of decision CA/D 10/14, mostly the other claims made are premised on its unlawfulness. They are thus unfounded. He claims costs of these proceedings and fees associated with internal appeals. No principled basis is identified for awarding this claim and it is rejected.

5. The complainant requests that oral proceedings be held. However, the Tribunal finds the written submissions to be sufficient to reach a reasoned decision and thus the request is rejected.

6. The complaint should be dismissed.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 5 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.