

L. (No. 6)

v.

EPO

142nd Session

Judgment No. 5310

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Mr H. L. against the European Patent Organisation (EPO) on 8 April 2021, the EPO's reply of 2 November 2021, the complainant's rejoinder of 15 December 2021, corrected on 10 January 2022, the EPO's surrejoinder of 15 April 2022, the complainant's additional submissions of 17 January 2025 and the EPO's final comments thereon of 28 February 2025;

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 grade to which he was transposed 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 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 14 July 2015, the complainant filed a request for review against the transposition letter alleging, *inter alia*, breach of acquired rights, unequal treatment, discrimination and lack of respect for his dignity. He asked that the previous system be restored, or, in the alternative, that the new system be modified to ensure that he suffered no material or moral damages.

His request for review was rejected, and he lodged an internal appeal against that decision in late October 2015.

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, concluding in particular that appropriate consultation took place with the General Consultative Committee. The majority also found that the individual contested decision was lawful on the ground, *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, and the impact of the reform on staff members was proportionate to the objectives sought. In addition, the majority held that there could be no discrimination “by reason of falling on different sides of the line drawn” by the effective date of entry into force of the new career system. Even if having a cut-off date to determine the transposition to a particular grade and step could be regarded as involving a difference of treatment between staff members in a comparable factual and legal situation, such measure had a reasonable and objective justification and could not be considered arbitrary. 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 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 unfounded. He was nevertheless awarded 600 euros in moral damages for the length of the internal 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 unless he had already received damages for another appeal covered by the opinion of the enlarged chamber of the Appeals Committee. This is the impugned decision.

The complainant asks the Tribunal to order that he be transposed taking into account the step advancement he would have benefitted from on 1 April 2015 under the previous grading system, that is to say to grade A3, step 10; in the alternative, he asks that, “at least” the period of 21 months he served in grade A3, step 9 in the previous system be considered and that he be transposed to grade G11, step 5. He also seeks recalculation of his basic salary in the new grading system to take into

account the two steps that were granted to him between 2015 and March 2021. 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 compensation to cover his out-of-pocket expenses, “time and trouble” as well as costs related to bringing the “present appeal”.

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. The EPO also asks the Tribunal to reject 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 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. By administrative decision, staff were transposed from the old structure into the new structure.

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 8 April 2021, he challenges a decision of the Office in a letter dated 4 February 2021 from the Vice-President of DG4. By that decision the Office rejected an internal appeal against the complainant’s transposition.

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 in grade A3, step 9.

In view of the entry into force of the new career system in accordance with Administrative Council decision CA/D 10/14 of 11 December 2014, you are hereby informed as follows:

With effect from 1 July 2015, your current grade and step will be transposed to grade 11, step 3, within job group [4].

Your transposition has been determined pursuant to Article 56 (3) of the aforementioned Council decision:

- The basic salary at grade A3, step 9, falls between two steps within the same grade in the new salary scale.
- The difference between your basic salary and the basic salary for the next immediate higher step in the new scale is greater than EUR 50.

On the basis of the above, your current grade and step will be transposed to the lower step in the new salary scale. Please note that, pursuant to Article 56 (4) of the aforementioned Council decision, your basic salary will remain at the level of your current salary.”

4. The complainant advances three general grounds for challenging this transposition decision. The first ground is a direct challenge to the adoption of decision CA/D 10/14 and the appeal process following its contested adoption. The second ground is that his transposition involved a breach of an acquired right. The third ground is that the transposition was arbitrary and in breach of equal treatment.

5. The first ground contains two elements. The first element concerns the composition of the General Consultative Committee which the complainant contends, tainted the consultative process leading to the adoption of decision CA/D 10/14. It is unnecessary to descend into detail. Suffice it to note that in Judgment 4322, the Tribunal concluded that the prerogative of an advisory body, having regard to its potentially flawed composition, is only affected in the case of manifest perversity. There is no manifest perversity evident in the present case. The second element concerns the composition of the Appeals Committee. Even assuming, for present purposes, there was some defect in its

composition, two factors militate against the Tribunal granting relief. As discussed in Judgment 4798, the Tribunal, in similar circumstances, would not intervene because the complainant did not request that the case be referred back to the EPO. The second factor was that the complaints were devoid of merit. The same is true in the present case and, accordingly, any deficiency in the composition of the Appeals Committee is of no legal moment. The first ground is unfounded.

6. The second ground is that the complainant's transposition involved a breach of an acquired right. This issue has been raised in a number of cases before the Tribunal and recently addressed in Judgment 5090, consideration 5. That judgment was based substantially on Judgment 4712. Suffice it to recall that the Tribunal concluded in that latter case that the general decision CA/D 10/14 was lawful and did not breach acquired rights. Insofar as the specifics of the complainant were concerned in that case, the Tribunal noted that the complainant's previous basic salary was preserved and not reduced. Step advancement remained possible and there was no evidence that the transposition into the new career system would compromise the complainant's pension rights. In that case the Tribunal noted that an organisation has wide discretion when altering salary structures and grading systems, and when classifying officials individually such decisions are subject to only limited review before the Tribunal. There are no discernible material differences between the circumstances of that case and the present. The second ground is unfounded.

7. The third ground is that the transposition was arbitrary and in breach of equal treatment. Similarly, this issue has been raised in a number of cases concerning the implementation of decision CA/D 10/14 and variants of the pleas raised by the complainant in this matter have been considered and rejected by the Tribunal. They also should be rejected in the current proceedings (see Judgment 4712, considerations 5 and 6). The third ground is unfounded.

8. In additional submissions, the complainant points to an anomalous outcome when comparing his position with that of the complainant in Judgment 4889. The EPO says there was a mistake in that judgment due to the parties' making an incorrect submission. The EPO has provided convincing evidence that the complainant suffered no unequal treatment when transposed and that the Tribunal's findings in Judgment 4889 do not support the contrary.

9. 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.

10. 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.