

K.
v.
EPO

142nd Session

Judgment No. 5311

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr F. K. against the European Patent Organisation (EPO) on 30 April 2021 and corrected on 27 July 2021, the EPO's reply of 1 February 2022, the complainant's rejoinder of 4 May 2022, corrected on 14 June 2022, and the EPO's surrejoinder of 13 September 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 introduction of the new career system and his transfer to a new technical field.

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, a permanent employee of the European Patent Office, the EPO's secretariat, held grade A3, step 10, on 31 December 2014.

On 14 April 2015, the complainant filed a request for review against the new career system. He indicated that, on 1 January 2015, he was transferred to a new technical department. He argued that since the new career system was based on performance, it would negatively impact him because he would not be able to maintain his productivity, which was higher than average in the past. Consequently, he would not be "promoted" as rapidly as he would have been under the previous system. He also argued that the new career and remuneration system led to considerable "irritation [and] uncertainty" among staff and massive complaints. He therefore believed that the new career system should be fundamentally changed.

In June 2015, the complainant was informed that the Office rejected his request for review as irreceivable for lack of a cause of action as he contested a general decision which had no adverse effect on him. It also found that the effects he anticipated regarding the assessment of his competencies and promotion opportunities were speculative, and that he had no acquired right to the conditions laid down for grading, step assignment or promotion. Hence, his request for review was in any event unfounded. In late July 2015, the complainant lodged an internal appeal contesting that rejection.

In the meantime, on 30 April 2015, the complainant was notified that he was assigned to grade G11, step 5, in the new salary scales with effect from 1 July 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 complainant was heard orally regarding his individual circumstances and was given the possibility to clarify which decision he was challenging and the reliefs he claimed; however, he did

not do so. The majority of the enlarged chamber of the Appeals Committee recommended dismissing his appeal as irreceivable as it could not identify the contested decision. It added, regarding the allegations about his transfer, that he should have challenged the decision to transfer him to the new technical field if he felt that it had caused him harm. Two members issued a minority opinion also recommending that the complainant's appeal be rejected as irreceivable but they noted that, in his request for review, he indicated that 1 January 2015 was the date of the challenged decision while submitting his request for review on 14 April 2015. Hence, his request was time-barred as it was made more than three months after he was informed of the challenged decision.

By letter of 4 February 2021, the complainant was informed 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 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. This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision, to quash the decision to transfer him to the new technical field and to order the "restoration of the status qua ante", in particular regarding step advancement and promotion, and regarding his promotion to grade G13 "without requirements for core competencies described in circular 365" as a compensation for his "experience loss and recognition of his achievements" in the new technical field. He also seeks exemplary damages in particular for abuse of power, as well as moral damages and costs. Lastly, he asks the Tribunal to grant him such other relief that it may deem just, fair and equitable.

The EPO asks the Tribunal to dismiss the complaint as irreceivable for failure to exhaust internal means of redress insofar as it concerns the transfer decision and outside of the scope of the Tribunal's jurisdiction insofar as he contests the new career system in general, regarding which he has in addition not demonstrated a cause of action. On a subsidiary basis, it asks the Tribunal to dismiss the complaint as unfounded.

CONSIDERATIONS

1. The complainant is a staff member of the Office. He filed this complaint on 30 April 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 in all respects 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.

2. However, an issue is raised in these proceedings about whether the complainant has challenged the general decision embodied in decision CA/D 10/14 together with an implementing decision affecting him or if he has challenged some other decision and, if so, whether he has exhausted internal means of redress in relation to that other decision as required by Article VII of the Tribunal's Statute. Ultimately these issues bear upon the question of whether this complaint is receivable. The EPO argues it is not.

3. In January 2015, the complainant was transferred to a new technical department within the EPO. On 14 April 2015, the complainant filed a request for review. The document commenced:

"I would like to officially file a complaint against the new career system.

My complaint is based on three main reasons, on the one hand of a general nature, but on the other hand relating to my personal situation."

Thereafter the complainant noted his transfer in January 2015 to the new technical department and the negative impact of the new career system on his promotional prospects.

4. During the process of review and internal appeal, uncertainty emerged about what was the decision the complainant was challenging. So much so that the enlarged chamber of the Appeals Committee in its opinion of 18 November 2020 addressed the particular circumstances of the complainant's appeal noting that the applicable rules required an internal appeal to identify the decision challenged and further noting that "it [was] not clear which individual decision [the complainant] was challenging and what claim he was making".

5. The question of what decision the complainant was challenging in the proceedings in the Tribunal again emerged in the pleas. The complainant clarified in his rejoinder that he was contesting, in the proceedings in the Tribunal, the decision to transfer him in January 2015. In its surrejoinder, the EPO acknowledges the subject matter of the proceedings before the Tribunal, as intended by the complainant, was his transfer to the new technical department in January 2015. But the EPO argues, correctly, that the subject matter of the request for review and the internal appeal concerned the general decision introducing the new career system and that the complainant had not pointed to how, by way of an individual implementing decision, decision CA/D 10/14 adversely affected him.

6. In the result, the EPO is correct in arguing that the complainant has failed to exhaust internal means of redress in relation to the decision to transfer him to the new technical department in January 2015. Accordingly, the complaint is irreceivable and should be dismissed.

7. The complainant requests that oral proceedings be held. However, the Tribunal considers that the parties have presented sufficiently extensive and detailed submissions and documents to allow the Tribunal to be properly informed of their arguments and the relevant evidence. That application is therefore dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 7 May 2026, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, 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

ROSANNA DE NICTOLIS

RENÉ M. VARGAS M.