

The Administrative Tribunal,

Considering the complaint filed by Mr R.L. against the European Patent Organisation (EPO) on 24 February 2006, the EPO's reply of 29 May, the complainant's rejoinder of 29 June and the Organisation's surrejoinder of 26 September 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant, a German national born in 1952, joined the European Patent Office – the secretariat of the EPO – on 1 October 1982. On taking up his functions he held grade B5; he was promoted to grade B6 on 1 October 1993.

By a letter of 5 August 2003 the Principal Director of Personnel informed the complainant that following his successful application for a post of Analyst Programmer he had been appointed as Administrator with effect from 1 August 2003. Later that month he was notified that, based on the applicable salary scale, he was promoted from grade B6, step 13 to grade A2, step 13.

The complainant wrote to the Principal Director of Personnel on 26 September asking him to review the calculation of his incremental step on promotion or otherwise treat his letter as an internal appeal. He contended that the decision to assign him to grade A2, step 13, contravened Article 49(11) of the Service Regulations for Permanent Employees of the European Patent Office since it carried a basic salary that was equal to but not higher than that received in his former grade and step increased by the equivalent of one 12-monthly incremental step. He requested that he be assigned grade A3, step 7. The Director replied on 21 October that the disputed calculation was correct and referred to section III(C) of Circular No. 271, according to which “[s]taff promoted from grade B6 are graded A2”.

The Directorate of Employment Law informed the complainant on 23 October 2003 that the President of the Office considered that the relevant rules had been correctly applied and that his request could not be granted; the matter had therefore been referred to the Appeals Committee. In its opinion dated 12 October 2005, the Committee recommended that the appeal be dismissed on the grounds that his request to be assigned grade A3, step 7, was unfounded. However, noting that the rationale of Article 49(11) is that promotion should involve financial benefit greater than a one-step advancement in the former grade, it further recommended that a compensatory payment be made to the complainant so as to ensure that he would receive the minimum salary prescribed in that article. The amount of the compensation was to be determined by the Office, but the Committee expressed doubts as to whether the one-cent increase proposed by the Office would do justice to the sense and purpose of the promotion system.

By a letter of 13 December 2005 the Director of Personnel Management and Systems informed the complainant that the President of the Office had decided to reject his appeal but had nevertheless decided to grant him, as recommended by the Appeals Committee, a compensatory payment, which he had set at one cent per monthly basic salary as from the date of his promotion. That is the impugned decision.

B. The complainant contends that when calculating his monthly basic salary upon promotion, the EPO took into consideration only one of the two requirements of Article 49(11) of the Service Regulations, namely that his salary should be increased by “the equivalent of one 12-monthly incremental step in his former grade”. He alleges that the second requirement, i.e. that his basic salary in the new grade should be higher than that which he received in his former grade and step, increased by the equivalent of one step, was not taken into account.

In his view, the right to an increase in salary upon promotion, which is conferred on him by the Service

Regulations, cannot be denied to him on the basis of a circular, which is a “lower ranking norm”. He adds that the Organisation was aware of the existing discrepancies between Article 49(11) and Circular No. 271, since it proposed in November 2005 to raise the salary of employees holding grade A2, step 13, by one cent. He also argues that there was no legal basis for the President’s decision to set the compensatory payment at one cent per monthly basic salary and that such “symbolic” payment, apart from showing a lack of good faith, clearly deviates from the recommendation made by the Appeals Committee.

The complainant asks the Tribunal to set aside the impugned decision and to order that he be appointed to grade A3, step 7, as of 1 August 2003 and that he be paid the corresponding difference in salary and allowances from that date, as well as interest at 8 per cent per annum. He also claims costs in the amount of 2,000 euros.

C. In its reply the Organisation maintains that, by virtue of section III(C) of Circular No. 271, staff moving up from grade B6 to category A are graded A2. It adds that there is no provision for granting them grade A3.

Regarding the determination of step in the new grade upon promotion, it acknowledges that the complainant’s assignment to grade A2, step 13, did not comply with Article 49(11) of the Service Regulations. However, within grade A2, there was no step carrying a higher basic salary than the last step in category B, that is to say the one held by the complainant prior to his promotion, increased by the equivalent of one step. It further points out that the President has a certain amount of discretion in deciding which grade to grant after a change of category and that Circular No. 271 was issued on that basis. The rule contained in that circular whereby staff promoted to category A from grade B6 are assigned grade A2 is designed to ensure that these employees will not subsequently enjoy faster career progression than staff recruited directly in category A.

In addition, the EPO indicates that a new salary scale entered into force with retroactive effect from 1 July 2005 in which, in order to meet the higher salary condition laid down in Article 49(11), an extra cent was added to monthly salaries not fulfilling that requirement. It argues that, by awarding the complainant an extra cent on his monthly salary between 1 August 2003 and 1 July 2005, it complied with the requirements of Article 49(11).

It submits that the complainant has derived financial gain from promotion since his basic salary was increased by the equivalent of one step. It also points out that he will enjoy greater career prospects in grade A2 than he would have had in grade B6 where he had reached the last step. Indeed, further promotion in category A remains possible.

D. In his rejoinder the complainant reiterates that the EPO acted in breach of Article 49(11) of the Service Regulations in deciding that his new grade upon promotion would be A2, step 13. He also draws attention to the fact that the Office’s new salary scale applicable from 1 July 2005 was not approved until December 2005, that is more than two years after he was promoted to category A.

E. In its surrejoinder the Organisation maintains its position. It emphasises that the complainant did not suffer any prejudice since the extra one cent per month was granted retroactively to the date of his promotion.

CONSIDERATIONS

1. The complainant impugns the President of the Office’s decision – communicated to him by a letter of 13 December 2005 – to reject his internal appeal and to grant him compensation, which he had set at “one cent per monthly basic salary” as from the date of his promotion to grade A2.

2. He requests the Tribunal to allow the appeal, to set aside the impugned decision, to order that he be appointed to grade A3, step 7, as of 1 August 2003 and that he be paid an amount representing “the difference between the monthly amounts he received as basic salary plus allowances minus deductions since 1 August 2003 and the corresponding amounts he would have received if appointed [to grade A3, step 7]”, and that he be paid interest at 8 per cent per annum on the amount mentioned above. In addition, he claims costs in the amount of 2,000 euros.

3. As the complainant’s promotion from grade B6, step 13, to grade A2, step 13, did not provide him with a higher basic salary than the one received in his former grade and step, he submits that according to Article 49(11) of the Service Regulations he should be assigned to grade A3, step 7, as that is the “lowest step in the A grade which carries a higher basic salary than received in his former grade”.

4. In response to the complainant's request, the Office increased his new basic monthly salary by one cent and paid equivalent compensation in the interim in order to fulfil the basic salary requirement of Article 49(11).

5. Article 49(11) states that:

"[...] a permanent employee who obtains a higher grade shall be appointed to the lowest step in the new grade which carries a higher basic salary than that received in his former grade and step increased by the equivalent of one 12-monthly incremental step in his former grade."

6. On promotion the complainant received a salary equivalent to that received in his former grade and step (basic salary) plus one 12-monthly incremental step in his former grade. Since he was assigned to step 13, the highest in grade A2, and that Article 49(11) clearly states that any necessary higher step must be made within the new grade, in this case grade A2, the Tribunal finds that the Office's solution of raising the basic salary of grade A2, step 13, by one cent is a rational and legal solution conforming with the requirements of Article 49(11) of the Service Regulations. Therefore, the complaint is unfounded.

7. In the circumstances, there is no need for the Tribunal to deal with the other issues raised by the complainant.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 May 2007, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Mary G. Gaudron

Giuseppe Barbagallo

Catherine Comtet