

The Administrative Tribunal,

Considering the complaint filed by Mr R. v. S. against the European Patent Organisation (EPO) on 18 April 2007, the EPO's reply of 2 August, the complainant's rejoinder of 28 August and the Organisation's surrejoinder of 5 December 2007;

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 is a Dutch national born in 1948 who joined the European Patent Office, the secretariat of the EPO, on 1 June 1988 as "Head of Section" at grade B5. As a maintenance engineer with 16 years' reckonable experience he was graded in the first step of grade B5. At that time each post carried a specific grade. As from 1 January 1991 certain grades in categories B and C were grouped together; thus B-category posts were assigned to one of three grade groups: B1-B4, B3-B5 or B4-B6*. Since the latter grade group included only programmers, the complainant belonged *de facto* to grade group B3- B5.

Pursuant to Administrative Council Decision CA/D 11/98 of 10 December 1998, the Office introduced, as from 1 January 1999, a new career system in which the grade groups in category B were reduced from three to two. A new grade group B5/B1 was established, combining the former grade groups B1-B4 and B3-B5, which had previously overlapped. In addition, grade group B6/B4 was expanded to include employees other than programmers. Staff in grade group B5/B1 were referred to as "Administrative employees", whilst staff in grade group B6/B4 were given the title "Supervisor/head of section".

The job descriptions corresponding to grade groups B5/B1 and B6/B4, respectively, are embodied in the annex to Decision CA/D 11/98. That document provides details of the minimum qualifications required and the level of duties to be undertaken by employees in each group. In order to be placed in grade group B5/B1 an employee must have completed secondary education or, in exceptional cases, have equivalent professional experience, and have a working knowledge of the Office's official languages. With regard to the level of duties, the annex provides *inter alia* that "[t]he employee works largely on his own responsibility, and may be called upon to supervise the work of other staff". It further stipulates that to be placed in grade group B6/B4 an employee must have completed secondary education and have a diploma of post-secondary professional training, or equivalent professional experience acquired over many years of work. In addition, he or she must have eight years of relevant experience and a working knowledge of the Office's official languages. Concerning the duties of an employee belonging to grade group B6/B4, the annex provides *inter alia* that "[a]s head of a team, he performs all the tasks involved in managing a group of administrative employees and organising their work".

On 15 September 1999 the complainant was transferred to the Receiving Section. Having noticed that his job title was shown in his personal file as "Administrative Officer", he asked on 21 January 2000 that his job title be changed back to "Head of Section". By an e-mail of 31 January 2000 sent to the Personnel Department with a copy to the complainant, the *ad interim* Director of the Receiving Section, the complainant's supervisor, confirmed that the title "Head of Section" remained appropriate.

In October 2002 the complainant requested that his staff report for the period 2000-2001 be modified as it mistakenly showed his function as "Administrative Employee". He pointed out that he had been recruited in 1988 as "Head of Section" and had not been informed of any changes in that respect. In his final comments on that report, dated 3 January 2003, the complainant's supervisor agreed to the use of "Head of Section" to describe the complainant's function; he nevertheless added that the complainant belonged to grade group B5/B1. The complainant also indicated, on 26 March 2004, under point VIII of his pending staff report for the period from 1 January 1998 to 30 September 1999, that the correct title of his function was "Head of Section".

Following receipt of his staff reports, the Personnel Department informed the complainant, by an e-mail of 31 March 2004, that since he was in grade group B5/B1 his job title had to be “Administrative Employee”. It acknowledged that his job title was “Head of Section” when he joined the Office in 1988 but explained that pursuant to the 1999 review of the career system, all employees in group B5/B1 had been given the title “Administrative Employee”. It asked the complainant whether, in the light of this information, he wished to maintain his comments of 26 March. The latter replied, the following day, that he wished to maintain his position. The Director of Personnel wrote to the complainant on 8 April 2004 indicating that the title “Head of Section”, which originated from 1988 when the career system was different, did not entitle him to be placed in grade group B6/B4. He noted that the complainant had not been informed in 1990, when the career system was first modified, of the group to which he belonged. He added that a job survey, which could be useful to determine his grading and job title, was under way. He therefore agreed that the title “Head of Section” could remain in the complainant’s staff reports, but stressed that this title might be modified depending on the outcome of the job survey.

By a letter of 30 June 2004 the complainant filed an internal appeal against the decision of 31 March 2004 contending that he belonged to grade group B6/B4 and that his job title was “Head of Section”, as indicated in the letter of appointment dated 21 June 1988. He consequently requested that his job title be changed back to “Head of Section” and that he be placed in group B6/B4 instead of group B5/B1. He was informed, by a letter dated 30 August 2004, that the matter had been referred to the Internal Appeals Committee, since the President of the Office considered that his requests could not be granted.

In its opinion of 28 November 2006 the Committee noted that, in accordance with the job descriptions set out in the annex to Decision CA/D 11/98, lower-management positions fell in grade group B6/B4 whilst grade group B5/B1 was designed for “case-workers” who, with increasing experience, might be called upon to undertake supervisory functions. It observed that, according to the complainant’s staff report for the period from 1 January 1998 to 30 September 1999, his main task was to coordinate and supervise a group of technicians and he then occupied the position of “Head of Outsourcing and Procurement”. In its view, these elements clearly showed that the complainant performed “management functions”. It further observed that he fulfilled the minimum educational requirements for assignment to grade group B6/B4. It therefore recommended that the Office assign the complainant to that grade group with retroactive effect from 1 January 1999 and that his procedural costs be reimbursed. It rejected the complainant’s claim for moral damages on the grounds that it was not supported by any evidence.

By a letter of 25 January 2007, which is the impugned decision, the Director of Personnel Management and Systems informed the complainant that the President had decided to reject his appeal as unfounded. The latter considered that the complainant’s post had been correctly assigned to grade group B5/B1 because, in 1999, grade groups B4/B1 and B5/B3 had been combined into a single group B5/B1. Assignment to the new grade groups was dependent only on the grade held by an employee before the career system was modified. Contrary to the view held by the Internal Appeals Committee, the tasks of coordinating and supervising a group of technicians corresponded to those performed by an employee holding grade B5. The President had nevertheless decided to award him 500 euros in compensation and to reimburse him, upon production of relevant bills, for “reasonable legal costs” incurred in the internal appeal proceedings.

B. The complainant objects to the decision to place him automatically in grade group B5/B1 without considering the fact that he satisfied all the requirements for assignment to grade group B6/B4. He submits that, according to Article 3 of the Service Regulations for Permanent Employees of the Office, the group of grades to which a post belongs depends on the nature of the duties involved, the level of responsibilities and the qualifications required. He points out that the Internal Appeals Committee found that his qualifications, job description and level of responsibility warranted the classification of his post in grade group B6/B4. Indeed, from 1 January 1998 to 30 September 1999 his main task was to coordinate and supervise a group of technicians; he then held the position of Head of Outsourcing and Procurement, which was, in his view, a “managerial position of high responsibility”. He adds that he has also been a reporting officer.

He argues that the Office erred in considering that the tasks of coordination and supervision were “clearly” part of the duties of a B5 employee. The job description for employees holding grade B5 provides that they may be called upon to supervise other staff, but this merely means that they may supervise the “daily work of trainees and new recruits”. It is indeed “natural and reasonable” for an experienced staff member assigned to grade B5 to act as a mentor but, in his view, such duty does not constitute “management”.

Lastly, he submits that he has suffered moral injury due to the uncertainty surrounding his career prospects. He adds that the President's decision to reject his appeal was unsubstantiated, which also caused him prejudice.

The complainant asks the Tribunal to set aside the impugned decision and to confirm that his post belongs to grade group B6/B4. In addition, he seeks moral damages and costs.

C. In its reply the EPO indicates that the complainant has occupied three different posts since 1998 and that they were all correctly classified as belonging to grade group B5/B1. It explains that only posts already belonging to grade B6 could be classified in grade group B6/B4 at the time when the new career system was introduced. Since the complainant's post was then assigned to grade B5, it could only be allocated to grade group B5/B1. It contends that part of the tasks performed by the complainant from 1 January 1998 to 30 September 1999, i.e. coordination and supervision of technicians, even corresponded to tasks performed by employees in category C. His other duties, i.e. assisting in the preparation of budgets and in making technical specifications for tenders, belonged to grade group B5/B1.

The defendant asserts that the tasks currently performed by the complainant as well as those performed from 1 January 2000 to 31 December 2001, that is to say preparation and management of contracts, correspond to grade group B5/B1. It points out that the complainant was given the opportunity of having his job description examined by a specialised panel in 2004 and of participating in a job grade evaluation in September 2006; to date he has not availed himself of these opportunities. Lastly, it argues that the complainant has failed to substantiate his claim for moral damages.

D. In his rejoinder the complainant presses his pleas. He adds that the Organisation's contention that the tasks he performed between 1998 and 1999 were commensurate to those performed by staff in category C is "highly insulting", and that this should be taken into account when setting the amount of moral damages he should be granted.

E. In its surrejoinder the EPO submits that the complainant's rejoinder introduces no argument liable to modify its position, which it maintains.

CONSIDERATIONS

1. The complainant joined the European Patent Office on 1 June 1988. He was recruited to the post of "Maintenance Engineer" and appointed as "Head of Section" at grade B5. At that stage each post carried a specific grade. In 1991 the various B-category posts were assigned to three different grade groups. Those groups were B4/B1, B5/B3 and B6/B4. The posts in grade group B6/B4 were restricted to programmers and, thus, the complainant was placed in the grade group B5/B3. A further change was made to the B-category structure with effect from 1 January 1999: grade groups B5/B3 and B4/B1 were merged into a single category, B5/B1, and the scope of grade group B6/B4 was expanded to include non-programmers posts.

2. On 15 September 1999 the complainant was transferred to the Receiving Section at his then current grade. His personal file showed that he was an "Administrative Officer". He pointed out that he had previously been "Head of Section" and that he understood that this would continue to be the case after his transfer. His supervisor informed the Personnel Department that the complainant was "Head of Outsourcing and Procurement" and that "the title Head of Section remain[ed] appropriate".

3. The complainant's staff report for the period 1 January 2000 to 31 December 2001 showed his job title as "B5 – Administrative Employee". He asked that this be changed to "B5 – Head of Section". His supervisor noted in his comments that "[t]he title 'B5 Head of Section' can be used provided it is understood [the complainant] is in the B5/[B]1 career band". The complainant noted that comment on 25 March 2004 and, the next day, requested the same correction to his job title in his staff report for the period 1 January 1998 to 30 September 1999. The Personnel Department informed him by an e-mail of 31 March 2004 that, because he was in grade group B5/B1, his correct title following the rules introduced in 1999 was "Administrative Employee". However, on 8 April 2004 the Director of Personnel informed him that he could continue to use the title "Head of Section" pending clarification of his grading as part of the then ongoing job survey.

4. The complainant filed an internal appeal on 30 June 2004, challenging the decision contained in the e-mail

of 31 March 2004. The Internal Appeals Committee found that the complainant was entitled to be in grade group B6/B4 and to use the title “head of section”. On 25 January 2007 the President rejected that finding but, as an exceptional measure, decided to pay the complainant 500 euros by way of compensation and to reimburse him his reasonable costs of the internal appeal. That is the decision the complainant impugns before the Tribunal. It is not now in issue that the internal appeal was receivable. Nor is it disputed that the present complaint is receivable.

5. As pointed out in Judgment 2514, a similar case concerning the grade group in which certain persons holding C posts should be placed, the question that arises in cases such as the present is not one of “grading, as such, but the allocation of established grades to the correct career band”. That question is to be answered by reference to the specified minimum qualifications and the relevant descriptions of the level of duties for the different grade groups. It is not now disputed that the complainant has the necessary qualifications to be placed in grade group B6/B4.

6. The annex to Decision CA/D 11/98 relating to the B5/B1 group is headed “Administrative employee (B5/B1)” and relevantly describes the level of duties as follows:

“In the highest grade (B5), the employee must have considerable proven professional experience enabling him to perform all the administrative duties arising in a broad field of work. He must be able to express himself well both orally and in writing, recognise and solve reasonably difficult problems, and take decisions on his own responsibility in fairly difficult cases, drawing on experience of problem-solving in related fields. The employee works largely on his own responsibility, and may be called upon to supervise the work of other staff. His duties also include dealing with more difficult cases.”

7. The level of duties for the B6/B4 group, headed “Supervisor/head of section (B6/B4)”, is described as follows:

“In the entry grade (B4), the employee works within a specialised field and/or as head of a team, largely on his own responsibility.

As his professional experience increases, so does the range and/or difficulty of the work, and the degree of responsibility involved.

In the highest grade (B6), the employee must have considerable proven professional experience enabling him to perform, on the basis of his professional training, all the administrative duties arising in an extensive or highly specialised field of work.

As head of a team, he performs all the tasks involved in managing a group of administrative employees and organising their work. His duties may also include fairly frequent contact with outside bodies.

The employee must be able to express himself well both orally and in writing, and handle any problems arising, largely on his own responsibility and drawing considerably on experience of problem-solving in related fields.

His duties include dealing with all types of cases, particularly very difficult ones, and helping to solve general problems and those overlapping with other areas.”

8. An examination of the above descriptions shows that, to some extent, they overlap. The main differences, however, are that:

- while a person graded B5 in grade group B5/B1 may be called upon to supervise the work of other staff, the person in grade group B6/B4 manages and organises the work of other staff;
- the person graded B5 in grade group B5/B1 performs administrative duties in a broad field of work, whereas the person in grade group B6/B4 performs administrative duties in an extensive or highly specialised field of work;
- the person in grade group B6/B4 may be required to have fairly frequent contact with outside bodies, while there is no such requirement in grade group B5/B1.

9. In the complainant’s 1998-99 staff report, for the period before he was transferred to the Receiving Section, it was said that he was “in charge of the maintenance-team of the technical service[s]” and that “[h]is main task

was to coordinate and supervise a group of technicians who look after all installations, building and grounds". In his report for the period 1 January 2000 to 31 December 2001, in which he was described as "Head of Section", his main duties were said to be "the drafting of tenders, evaluation of bids and conclusion of contracts", the "handling of direct placements and smaller contracts", the implementation of the aforementioned contracts in consultation with the departments involved, and "maintaining contacts with contractors". The latter report makes no mention of supervisory or other managerial responsibilities. The report for the period 1 January 2004 to 31 December 2005 again describes the complainant as "Head of Section" and his duties are said to be "[p]reparation and management of contracts (outsourcing) [and] budget [...]".

10. The EPO points out that, notwithstanding the general descriptions, not all duties are at the same level and contends that the work of coordinating and supervising a group of technicians, as specified in the complainant's staff report for 1998-99 falls within the generic job description for the group C6/C4 which relevantly states that "[i]n the entry grade (C4) the employee works in a specialised field and/or as head of a team of technicians [...]. In the highest grade (C6), [...] he performs all the tasks involved in managing a group of service employees and organising their work". The reference to those duties does not assist the EPO's case. Rather, it suggests that, by way of symmetry, the same generic type of task within the B category falls within grade group B6/B4. Moreover, the reference to the possibility of performing supervisory functions in grade group B5/B1 suggests that they are not necessarily a regular aspect of the duties of an employee holding a B5 post in that group. Further, for the period prior to his transfer to the Receiving Section, the complainant was not merely required to supervise the work of others, but to coordinate the work of a team. Additionally, the comments in the complainant's staff report for 1998-99 describe him as "a manager" and "a respected Head of the maintenance-team". Even if the other duties specified in that report, namely providing assistance "in preparing budgets and planning" and "making technical specifications for tenders" are consistent with the description of "administrative duties arising in a broad field of work" in relation to grade group B5/B1, they are equally consistent with the description of "administrative duties arising in an extensive or highly specialised field of work" applicable to grade group B6/B4.

11. It follows from the above that, because of his managerial functions as at 1 January 1999, the complainant was then entitled to be placed in grade group B6/B4 with the title "Head of Section" as had been accorded to at all times prior to that date. For the sake of completeness, it may also be added that his job description since his transfer to the Receiving Section indicates that he is properly to be placed in grade group B6/B4. In this regard, he clearly works within a specialised field and, to the extent that he performs administrative functions, they are also in a highly specialised field of work. Further, his duties involve frequent contact with outside bodies.

12. Although the complainant is entitled to be placed in grade group B6/B4 and to use the title "Head of Section", it does not follow that he is entitled to an award of moral damages. The Director of Personnel Management and Systems has already agreed to pay the complainant 500 euros as compensation and this fairly represents the moral damage suffered by him. He is, however, entitled to costs associated with these proceedings in the sum of 400 euros.

DECISION

For the above reasons,

1. The impugned decision of 25 January 2007 is set aside to the extent that it rejected the complainant's claims to be placed in grade group B6/B4 and to use the job title "Head of Section", as is the earlier decision of 31 March 2004.
2. The EPO shall place the complainant in grade group B6/B4 with the title "Head of Section" with effect from 1 January 1999.
3. It shall pay the complainant's costs associated with these proceedings in the sum of 400 euros.
4. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 9 May 2008, Mr Seydou Ba, President of the Tribunal, Ms Mary G. Gaudron, Vice-President, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 9 July 2008.

Seydou Ba

Mary G. Gaudron

Dolores M. Hansen

Catherine Comtet

*These grade groups are also referred to as B4/B1, B5/B3 and B6/B4, respectively.