

F. (No. 19)

v.

EPO

136th Session

Judgment No. 4710

THE ADMINISTRATIVE TRIBUNAL,

Considering the nineteenth complaint filed by Mr T. F. against the European Patent Organisation (EPO) on 14 December 2021, the EPO's reply of 30 May 2022, the complainant's rejoinder of 28 November 2022 and the EPO's surrejoinder of 30 January 2023;

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

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

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

The complainant challenges the Administrative Council decision CA/D 10/14 to modify the career system.

In December 2014, the Administrative Council of the European Patent Office, the EPO's secretariat, 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 held grade A3, step 4, on 31 December 2014. In March 2015, he requested the Administrative Council to review decision CA/D 10/14 “insofar as [it had] direct effects that [did] not require an individual implementation”. He was informed on 14 July 2015 that the Administrative Council had decided to reject his request as manifestly irreceivable. Pursuant to the public delivery of Judgment 3796 in November 2016, the Administrative Council withdrew its decision, and the matter was remitted to the President of the Office, who was considered to be the competent appointing authority, and thus the one to make the decision regarding the request for review. Having examined the request for review, the President rejected it in April 2017 as manifestly irreceivable and, in any event, unfounded. He held in particular that decision CA/D 10/14 was a general regulatory decision that had no direct and immediate adverse effect on the complainant. He explained that the practical effect occurred when the appointing authority took a decision to apply the amended regulations to an employee, for instance with regard to the individual transposition from one grading system to another. On 30 June 2017, the complainant filed an appeal with the Appeals Committee.

In its opinion of 9 April 2021, the Appeals Committee recommended that the complainant’s appeal be rejected as manifestly irreceivable. It held in particular that, according to the Tribunal’s case law, general rules may not in principle be directly challenged if they require individual implementation. The complainant had failed to demonstrate that decision CA/D 10/14 did not require individual measures of implementation to affect him. The Appeals Committee considered that decision CA/D 10/14 was clearly subject to implementation by the President of the Office in order for it to exercise its effects on employees. Article 56(5) of the decision provided that staff were to be transposed into the new career system with effect from 1 July 2015 and that each employee was to be informed of her or his grade and step in the new salary scales. The Appeals Committee also recommended that the costs incurred in connection with the filing of the complaint that led

to Judgment 4255 be reimbursed based on justification of the costs incurred.

On 17 September 2021, the complainant was informed of the Office's decision to follow the recommendation of the Appeals Committee and to reject his appeal as manifestly irreceivable. He was asked to provide evidence of the costs incurred in connection with the complaint he brought before the Tribunal leading to Judgment 4255 in order to be reimbursed. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to set aside decision CA/D 10/14 to the extent that it "impinges on [his] rights [...] without the further need of individual implementation". As a consequence, he also seeks the setting aside of all subsequent decisions and circulars taken on the basis of decision CA/D 10/14. He asks the Tribunal to order that his salary be recalculated in light of the progression he should have had under the former system on the day the Tribunal delivers its judgment and taking into account the adjustment of the salary scales since 1 January 2015. He further claims reimbursement of the underpayment received since 2015 taking into account the progression made as described above. He claims payment of interest on these amounts. In addition, he seeks moral damages, including for undue delay in the internal appeal proceedings, and costs.

The EPO asks the Tribunal to reject the complaint as irreceivable because decision CA/D 10/14 is a general decision that does not immediately and adversely affect the complainant's individual rights. It also contends that the complaint is irreceivable to the extent that the complainant seeks the setting aside of aspects of decision CA/D 10/14 that were not applied to him. According to the Organisation, the request to set aside "subsequent decisions and circulars" is unclear, and should be rejected as too vague. On a subsidiary basis only, it asks the Tribunal to reject the complaint as unfounded. The EPO also asks the Tribunal, when examining the receivability of the present complaint and when examining the claim for moral damages and costs, to consider the fact that the complainant seeks compensation for the same claims in separate proceedings. According to the Organisation, the reliefs claimed in that

respect should not be granted. In the surrejoinder the EPO asks the Tribunal to order the complainant to bear his costs.

CONSIDERATIONS

1. The Organisation in its reply seems to ask for a joinder of the present complaint with two further complaints (the fifteenth and the sixteenth complaints) filed by the complainant. While the facts in each of these three complaints are part of the same continuum of events, the legal issues raised and the decisions impugned are partially discrete. Accordingly, the present complaint will not be joined with the others.

In the three cases, the complainant is, in substance, challenging the introduction of the new career system based on decision CA/D 10/14. The Tribunal has a principle that “the same question cannot be the subject of more than one proceeding between the same parties” (see Judgments 4530, consideration 7, and 3058, consideration 3). It is conceivable that one or more of the complaints could have been dismissed by application of that principle. However, the broad subject matter of each of the complaints is plainly a matter of fundamental importance to the staff of the EPO, including the complainant. In these circumstances, the Tribunal will address each of the complaints individually.

2. Firstly, the Tribunal points out that the scope of the present complaint is the challenge to the general decision CA/D 10/14 insofar as it abolished the automatic step advancement in the new career system (see Article 48 of the Service Regulations, as amended by said general decision).

3. The complainant’s pleas can be summed up as follows:

- (i) procedural flaws occurred at the “elaboration” stage of decision CA/D 10/14;
- (ii) procedural flaws occurred at the “adoption” stage of decision CA/D 10/14;

- (iii) the new step advancement system infringed an acquired right of the complainant;
- (iv) the contested decision breached his legitimate expectations.

4. All the pleas submitted in the present complaint were also advanced in the same terms in another complaint (the complainant's fifteenth complaint), adjudicated by the Tribunal in Judgment 4711, delivered in public on the same day as the present judgment. In that judgment, the complaint has been dismissed. Based on the considerations of that judgment, the complainant's pleas in the present complaint are unfounded.

5. As to the claim for moral damages in the amount of no less than 5,000 euros for the unduly length of the internal proceedings and to the claim for moral damages in the amount of no less than 2,000 euros for the dismissal of the internal appeal with a summary procedure, the Tribunal observes that these claims are not supported by specific pleas and allegations. Moreover, the Organisation has already awarded the complainant 700 euros for the length of the separate internal appeal procedure by which the complainant challenged the general decision together with the May 2015 payslip. The complainant does not substantiate before the Tribunal that his injury warrants a higher amount.

6. Since the complaint is unfounded on the merits, the Tribunal will not address the receivability issue raised by the Organisation, related to the question whether in the material case the general decision is directly and immediately challengeable.

7. In conclusion, all the complainant's claims will be rejected.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 23 May 2023, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ