

B.-C. (No. 2), B., C. (No. 2), G., K. and R.

v.

EPO

123rd Session

Judgment No. 3782

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaints filed by Mrs A. D. A. M. B.-C. (her second), Mrs M. B., Mr W. A. A. J. C. (his second), Mrs C. D. G., Mr F.-J. K. and Mr A. R. against the European Patent Organisation (EPO) on 27 July 2011 and corrected on 31 October 2011, the EPO's single reply of 6 February 2012, the complainants' rejoinder of 14 May and the EPO's surrejoinder of 23 August 2012;

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

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

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

The complainants contest the classification of their posts.

Pursuant to Administrative Council Decision CA/D 11/98 of 10 December 1998 and Circular No. 253 of 21 December 1998, as from 1 January 1999, a new career system was introduced in the European Patent Office (the EPO's secretariat), in which the grade groups in category B were reduced from three to two. A new grade group B5/B1 was established, and 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 complainants, who held Unit Manager posts, were informed in November 2004 that the classification of their posts in grade group B6/B4 was confirmed. On 28 February 2005 some of the complainants requested a review of that decision as they disagreed with the outcome of the job grade evaluation (JGE). Their requests were examined and rejected by the Job Grade Evaluation Panel in May 2005. On 15 December 2006 the Principal Director of Personnel informed employees in categories B and C that, the final part of the implementation of the JGE results having been completed, the letter with the evaluation results sent to the staff concerned would take force of a decision as of 1 January 2007. He added that employees who continued to consider that the level of their tasks differed from the grading of their post may file an internal appeal within three months of 1 January 2007. Late March 2007 the complainants initiated the internal appeal proceedings contesting the decision not to upgrade their post. The Internal Appeals Committee (IAC) decided to join the appeals.

After hearing some of the complainants, the IAC recommended, on 28 February 2011, by a majority that the appeal be rejected as unfounded. The majority nevertheless recommended awarding each complainant 1,000 euros for the length of the proceedings, which had lasted almost four years. One member of the IAC issued a minority opinion noting that, following the JGE, two posts formerly belonging to category B had been reclassified as category A posts. He therefore proposed that the IAC should ask the Administration to disclose the scores attributed in the context of the JGE to the post of each complainant and to the two posts that had been reclassified as category A posts, in order to ascertain why the complainants' posts had not been treated in the same way. However, as the majority of the members of the IAC disagreed with his proposal, no such request was made, which meant that some doubts remained as to the basis on which the complainants' posts had been classified. He therefore recommended awarding 5,000 euros to each complainant, as well as 2,000 euros for the length of the proceedings.

By a letter of 28 April 2011 each complainant was notified that the Vice-President of Directorate-General 4, acting by delegation of power from the President of the Office, had decided to reject the appeal as unfounded and not to award them damages for the length of the proceedings,

which he considered to be justified in view of the complexity of the case. He explained that the evaluation of posts in category A was expressly excluded from the scope of the evaluation and that the Job Grade Evaluation Panel had no mandate to recommend an upgrade of their posts or to assess whether an upgrade of their posts would be appropriate. Each complainant filed a complaint with the Tribunal impugning that decision.

By way of relief, the complainants seek the upgrading of their Unit Manager posts to grade A4, the re-evaluation of their post on the basis of “an appropriate questionnaire reflecting all aspects of the job correctly”, disclosure of their personal scores and disclosure of the score of the “2 possible upgrades” to category A. Each of them also claims 5,000 euros in moral damages for undue delay, 5,000 euros in moral damages in view of the fact that the IAC issued a recommendation without knowing all material facts and 500 euros in costs.

The EPO asks the Tribunal to dismiss the complaints as unfounded.

CONSIDERATIONS

1. Six complainants filed complaints with the Tribunal challenging the identical decisions of the Vice-President of Directorate-General 4, dated 28 April 2011, endorsing the majority opinion of the IAC to reject their joined appeals as unfounded but rejecting the recommendation to award them damages for the length of the internal appeal procedure.

As the complaints are nearly identical, the Tribunal finds it convenient to join them.

2. The complainants base their complaints on the assertion that the majority of the IAC’s members made the recommendation to reject the appeals as unfounded without considering an essential fact (i.e. the exact scores allotted to the complainants’ posts by the external consulting firm responsible for evaluating the complainants’ posts) which vitiated the IAC’s recommendation and the subsequent final decision endorsing that recommendation. The complainants claim that the EPO breached the principle of equal treatment as two posts were upgraded to category A under the JGE procedure for posts in category B or C. The complainants

submit that there was an excessive delay in the IAC proceedings as the EPO waited three years before filing (on 31 March 2010) its position paper in reply to their internal appeals which they had filed at the end of March 2007, and another eight months passed before the IAC's hearings on 7 December 2010. The IAC's opinion was issued on 28 February 2011 and the final decision was dated 28 April 2011.

3. The claim that the IAC failed to consider an essential fact is unfounded: the fact that the exact scores were unknown to the IAC is immaterial to the decision impugned in the present complaint. As the IAC stated in its majority opinion, the study undertaken by the external consulting firm was confined to evaluating and grading posts within the B and C categories; upgrading posts to category A was not within their mandate. Circular No. 253 which concerned the "[i]mplementation of the career system for categories B and C" defined the limits of the JGE. In Section IV of Circular No. 253 it is stated in relevant part that:

"[a] Harmonisation Committee [...] will seek to ensure harmonisation, Office-wide, of the criteria for evaluating the level of the set of duties entrusted to one or more staff members graded in category B or C. [...] On the basis of the committee's recommendations, the Principal Director Personnel will advise line managers on the measures they should take as regards management of the careers of the B and C staff under their supervision, and will ensure harmonised application of the career system. [...]"

Considering that upgrading to category A was not a possibility, there was no need for the IAC to compare the exact scores of the various posts. The Tribunal finds no flaw in the IAC's reasoning and notes that upgrades to category A were not possible under the JGE procedure as an evaluation of posts in category A was outside the scope and subject of Circular No. 253 which outlined the duties of the Harmonisation Committee, and consequently, of the external consulting firm, which was tasked with evaluating the posts within the B and C categories.

4. The claim that the EPO breached the principle of equal treatment by upgrading two posts to category A while refusing to upgrade the complainants' posts is unfounded. As noted above, the JGE procedure was confined to the evaluation of posts within the B and C categories, thus upgrading posts into category A would be a violation of the norm referred to in Circular No. 253. The assertion that two posts were upgraded to category A is irrelevant as it does not mean that other posts could or should also have been upgraded to category A: there can be no equality in unlawfulness. Having said that, the Tribunal finds it useful to note that the two posts which were eventually upgraded were not in fact upgraded through the JGE procedure. The external consulting firm, tasked with evaluating posts in the B and C categories, found that two posts did not fit the B or C categories and informed the Administration of this fact. The Administration then decided to follow a separate procedure for evaluating the two posts in light of the potential for an upgrade in category, as permitted by Article 3.2 of the Service Regulations for permanent employees of the European Patent Office. At the end of that separate procedure, the posts were found to be improperly graded and were upgraded to category A. There is nothing to suggest that the EPO erred in finding that the complainants' posts were properly graded in the B category.

5. The claim for moral damages for the excessive delay in the internal appeal proceedings is founded. Consistent case law holds that an unjustified duration of four years for the processing of an internal appeal constitutes an excessive delay. In the present case, the EPO has not justified in any way the three-year delay from the time of the filing of the internal appeals and the filing of its position paper. Considering the length of the delay, the nature of the question raised, and the age of the complainants, the Tribunal sets the award of moral damages in the amount of 3,000 euros per complainant. As the complaints succeed in part, the complainants are also entitled to an award of costs which the Tribunal sets in the total amount of 1,200 euros.

DECISION

For the above reasons,

1. The EPO shall pay each complainant moral damages in the amount of 3,000 euros.
2. It shall also pay costs in the total amount of 1,200 euros.
3. All other claims are dismissed.

In witness of this judgment, adopted on 31 October 2016, Mr Giuseppe Barbagallo, Vice-President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 8 February 2017.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ