

**L. (No. 5)**

**v.**

**EMBL**

**137th Session**

**Judgment No. 4744**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr V. L. against the European Molecular Biology Laboratory (EMBL) on 16 March 2020 and corrected on 23 April, EMBL's reply of 21 July 2020, the complainant's rejoinder of 9 November 2020 and EMBL's surrejoinder of 4 February 2021;

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 decision to amend his job title.

Facts relevant to this case may be found in Judgment 3850, delivered in public on 28 June 2017, concerning the complainant's first complaint. The complainant joined EMBL in 1991 as a postdoctoral fellow at the EMBL's outstation in Hamburg, Germany, and became a staff member in April 1995. In January 1997, when he became a Group Leader, he was also given the role of Deputy Head of the Hamburg outstation. The complainant's fixed-term contract for the period 1 January 1997 to 31 December 2012 did not mention a job title as such, but it indicated under the heading "Function" that he was "Deputy Head of Outstation and Group Leader in Crystallography".

In 2003, the complainant obtained an open-ended contract. This contract indicated under the heading “Conditions” that his “job function” was “Scientific Group Leader” and that his “job title” was “Deputy Head of Outstation and Group Leader in Crystallography”.

In 2011, the complainant was appointed as Project Coordinator for a project known as the “XBI Project”. In 2014, a strategic review of the XBI project was undertaken by a panel of scientists who, according to EMBL, were very critical of the complainant’s leadership of the project. Shortly afterwards, the Director General decided to remove the complainant from his role as XBI Project Coordinator – a decision which the complainant did not challenge. However, at the same time, the Director General decided that the complainant’s job title would change to simply “Group Leader” because, without the Project Leader role, the functions that he was then performing did not warrant the additional title of “Deputy Head of Outstation”.

In February 2015, the complainant lodged an appeal challenging the change to his job title. The Director General decided to reject that appeal as being time-barred. In Judgment 3850, the Tribunal set aside the Director General’s decision because he had failed to consult the Joint Advisory Appeals Board (JAAB), as required by Staff Regulation R 6 1.05. The case was remitted to EMBL for a new decision to be taken after consultation of the JAAB. Meanwhile, a new Director General of EMBL took office in January 2019.

The JAAB issued its report on the complainant’s appeal on 9 December 2019. Having noted that there was some uncertainty as to precisely when the complainant was notified of the decision to change his job title, it decided to give him the benefit of the doubt and to treat the appeal as receivable. The JAAB considered that the challenged decision was lawful. It noted that, prior to July 2017, the Staff Rules and Staff Regulations did not require a job title to be specified in staff members’ contracts. It found that the complainant had not suffered any damage to his reputation, particularly since the substance of the conditions of his contract had not changed as a result of the change of job title. The JAAB therefore recommended that the appeal be dismissed. By a letter of 20 December 2019, the new Director General informed the complainant

that she had decided to accept that recommendation for the reasons stated in the JAAB's report. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order that his "contractually agreed title" be restored and that "internal communications and corresponding public materials" be corrected. He also claims moral damages in the amount of 150,000 euros, costs, and such other relief as the Tribunal considers just and proper.

EMBL invites the Tribunal to dismiss the complaint as unfounded.

#### CONSIDERATIONS

1. In his internal appeal, lodged on 12 February 2015, the complainant challenged the Director General's decision to change his job title from "Deputy Head of Outstation and Group Leader in Crystallography" (as stated under the "Conditions" heading in his then subsisting 2003 contract) to "Group Leader in Crystallography and Senior Scientist". Thereby, "Deputy Head of Outstation" was dropped from his job title.

2. The complainant had been appointed in 2011 as the Project Coordinator for a project known as the "XBI Project". His job title under his then subsisting 2003 contract was not amended as a result of this appointment. The decision to change his job title was made after a 2014 strategic review of the project was undertaken by a panel of scientists, who relevantly stated as follows in their 16 September 2014 report: "The Panel is not comfortable with progress made towards key objectives during the last two years. The scientific vision needs to be substantially revised according to the following priorities: [...] *Third priority*: Improve coordination and develop partnerships with key strategic partners". They set out what steps were needed to realign the project to achieve the stated key priorities.

3. In the letter, dated 20 December 2019, containing the final decision which the complainant impugns, the Director General accepted the recommendation of the Joint Advisory Appeals Board (JAAB) to dismiss his internal appeal on the basis that, at the time of the decision in question, the job title was not one of the elements that had to be recorded in the contract, and that the change in the complainant's job title reflected his changed responsibilities at EMBL but did not change the substance of the conditions of appointment stated in his contract. The JAAB had stated, among other things, that although the complainant's job title was mentioned in his 2003 contract, Staff Rule 2 1.03 and Staff Regulation R 2 1.11 (in force at the material time) did not require the job title to be therein and there was no requirement for it to be stated in an EMBL contract of appointment until July 2017. The JAAB further reasoned that Staff Regulation R 2 1.14 (in force at the material time) was intended to ensure that the Director General could not abuse his position "by changing an employee's **working conditions**, such as the subject of his/her work activity, salary, working hours etc. without the agreement [of] the employee" (original emphasis).

4. Staff Rule 2 1.03 stated as follows:

"The contract for staff members shall set out in writing the following conditions of appointment where applicable:

- the category of personnel as being 'Staff Member';
- the classification of his work, i.e. the function to be exercised;
- the starting date and the date of expiry of the contract;
- the probation period (maximum 12 months);
- the grade and step and the basis of calculation of the remuneration payable;
- the home base and residential category;
- the duty station;
- part-time employment and work outside normal working hours;
- any other provisions essential to the employment of the staff member concerned;
- the scientific program, group or section to be worked for;

- the Social Security System to which the person belongs and the current social security contributions with the indication that changes are possible following decisions of Council;
- a reference to those Staff Rules and Staff Regulations important for the execution of the contract and to instructions the Director-General may issue;
- provisions about professional activities outside [EMBL] including the rules about patent rights.”

Staff Regulation R 2 1.11 provided, in effect, that every appointment shall be recorded in a contract of appointment signed by both the Director General and the staff member, which contract shall indicate particulars that are the same particulars required under Staff Rule 2 1.03, quoted above. Staff Regulation R 2 1.14 relevantly stated that “[a]ny change in the conditions set out in the contracts shall require an amendment accepted and signed by both parties”.

5. The complaint is well founded. As the complainant argues, in effect, at the time when the decision was taken to change his job title, his contract specifically included the job title “Deputy Head of Outstation and Group Leader in Crystallography” under the “Conditions” heading of that contract. Accordingly, pursuant to Staff Regulation R 2 1.14, EMBL was obliged to seek his consent and signature before it amended and issued him a new contract. The Tribunal holds that inasmuch as that job title was included under the “Conditions” heading of his 2003 contract, EMBL could not then resile from what it so specified to argue, as it does, that Staff Regulation R 2 1.14, Staff Rule 2 1.03 and Staff Regulation R 2 1.11, read together, show that, prior to July 2017, the complainant’s job title was not one of the elements that had to be mentioned in the contract so that the JAAB correctly concluded that the substance of the conditions of the contract had not been changed when the title changed, and the Director General did not abuse his power. Moreover, by not seeking the complainant’s consent prior to changing his job title, as Staff Regulation R 2 1.14 required, and by changing his job title in a manner that was abrupt in the circumstances of this case, EMBL did not respect the complainant’s dignity and thereby violated its duty of care towards him. In the foregoing premises, the impugned

decision must be set aside, without there being any need to rule on the complainant's other pleas concerning the lawfulness of the decision to change his job title.

6. Whilst the Tribunal has determined that the decision to change the complainant's job title was unlawful, this does not in itself show that the decision was made in bad faith or in breach of mutual trust. The complainant has not discharged his burden to prove bad faith, in keeping with the Tribunal's case law stated, for example, in consideration 16 of Judgment 4451 (see also Judgments 4683, consideration 18, and 4262, consideration 8). Moreover, the complainant's submission that the length of the internal appeal procedure was due to a conscious decision by EMBL to cause delay does not accord with the factual circumstances. The complainant provides no evidence from which it may be inferred that the length of those proceedings occurred because the Director General deliberately took a long time to reconvene the JAAB after the case was remitted to EMBL or resulted from a conscious decision to change his job title which amounted to bad faith, misuse of authority and breach of due process, as he submits. Neither has he substantiated his submission that his reputation was tarnished by the decision or its publication on EMBL's website, or that the length of the proceedings further tarnished his reputation.

7. As the complainant provides no evidence of a causal link between the unlawful decision to change his job title and the injury he suffered to justify an award of material damages, his claim for such an award is dismissed. However, the Tribunal will award him 15,000 euros in moral damages for EMBL's breach of its own rules and its duty of care towards him. It is tolerably clear that the complainant suffered a moral injury arising from the narrower recasting of his title, which would have caused offence and upset. His request for an order that his contractually agreed job title be restored has been overtaken by the event that he is no longer in the employment of EMBL. His claim for moral damages for delay in the internal appeal procedure is dismissed given the Tribunal's conclusions in consideration 6 of this judgment, and the fact that the complainant has not articulated the loss he may

have suffered as a result of the length of that process (see, for example, Judgment 4231, consideration 15). The complainant's request for such other relief as the Tribunal considers just and proper given the circumstances of the case, is too vague to be receivable (see, for example, Judgment 4719, consideration 7, and the case law cited therein).

8. The complainant's request for an order that internal communications be corrected will be satisfied by an order that a copy of this judgment be placed on his personal file. However, the complainant's request for an order that EMBL corrects public materials it may have published concerning this complaint is irreceivable as the Tribunal is not competent to make orders of that kind. As he prevails in this complaint, EMBL will be ordered to pay him 10,000 euros in costs.

#### DECISION

For the above reasons,

1. The impugned decision, dated 20 December 2019, is set aside.
2. EMBL shall place a copy of this judgment on the complainant's personal file.
3. EMBL shall pay the complainant 15,000 euros in moral damages.
4. It shall also pay him costs in the amount of 10,000 euros.
5. All other claims are dismissed.

In witness of this judgment, adopted on 23 October 2023, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 31 January 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER