

The Administrative Tribunal,

Considering the complaint filed by Mrs E.P. against the European Patent Organisation (EPO) on 21 April 2005, the Organisation's reply of 29 July, the complainant's rejoinder of 3 November 2005 and the EPO's surrejoinder of 9 February 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 French national born in 1969, joined the European Patent Office, the secretariat of the EPO, on 1 December 1997 as an external expert in communication in Directorate-General 5 in Munich (Germany). In April 1999 she was appointed as an Administrative Employee, at grade B1, in the same Directorate-General. She was transferred on 1 February 2001 to Directorate-General 1 in The Hague (the Netherlands), where she was employed, at the same grade, as an Administrative Employee-Floater assigned to the PRAPECOM project. On 20 December 2001 she was promoted to grade B2 with retroactive effect from 1 December.

The complainant wrote to the President of the Office on 23 August 2002 requesting a retroactive regrading to category A, preferably from 1 February 2001, in recognition of her training and professional experience. Having received no reply, she lodged an internal appeal on 12 November 2002. She was informed in early January 2003 that the President had rejected her request for regrading and that her appeal had been referred to the Internal Appeals Committee.

By a letter of 22 January 2003 the Director of Personnel replied to the complainant's letter of 23 August 2002, stating that she was being retroactively assigned to the Personnel Development Department as of 1 January 2003 and that her new supervisor would provide her with a detailed job specification which would "observe the duties of the B1/B5 group of grades". On 24 January 2003 the complainant wrote to the Director of Personnel and contested her new job specification on the grounds that it did not correspond to the tasks she had been assigned during the past two years. She therefore requested that the job specification be redefined. This letter remained unanswered.

In February 2003 the complainant informed the Director of Personnel that her health had been impaired due to psychological harassment. As from 20 March 2003 she was placed on sick leave. She returned to work in November 2003 and since then has been assigned administrative tasks corresponding to grade B2.

In its opinion of 1 December 2004 the Internal Appeals Committee recommended that the complainant should receive appropriate financial compensation as she had performed duties corresponding to a higher grade between 1 March 2001 and 31 March 2003. It suggested that the level of the tasks she had performed should be determined by the Personnel Department, which possessed the necessary expertise in this regard, and that the Office should grant her compensation accordingly. It further stated that, in order to put an end to the dispute, the EPO could also improve the complainant's conditions of pay, which might be achieved by re-evaluation of her reckonable experience. However, it held that her claim for regrading to category A could not be granted because that would be tantamount to promotion. It further recommended that insofar as she claimed moral damages for harassment her appeal should be rejected.

By a letter of 7 February 2005, corrected on 23 February, the acting Principal Director of Administration informed the complainant that the President of the Office had decided to grant her compensation in an amount equal to twice the difference in basic salary between the first and second steps in her grade, together with interest at 8 per cent per annum, for the period between 1 March 2001 and 31 March 2003, by analogy with the acting allowance payable under Article 12(4) of the Service Regulations for Permanent Employees of the European Patent Office. Her other claims were rejected, "in accordance with the Appeal Committee's recommendation". That is the impugned

decision.

B. The complainant argues that the impugned decision fails to provide reasons for not endorsing the Committee's recommendations regarding the retrospective re-evaluation of her "reckonable experience" and the period to be taken into account to calculate the financial compensation. More specifically, she denounces the President's decision to apply Article 12(4) of the Service Regulations for the purpose of calculating compensation regardless of the Committee's view that that article was not directly applicable.

She accuses the EPO of unequal treatment, referring to the case of a colleague who performed "similar journalistic tasks" and held an A grade. She also asserts that as of 1 February 2001 she carried out tasks of a journalistic nature in the PRAPECOM project, which were inherent to an advertised post of journalist in grade group A4/1 (vacancy No. INT/EXT/1035). She had applied for this post in October 2000, but the EPO had later decided not to fill it. She claims that the Office "used [her] talents on a long-term basis and raised [her] legitimate expectations". She adds that her staff report for 2000-2001, finalised immediately prior to her transfer to the PRAPECOM project, clearly suggested that "[her journalistic] qualities could be useful for her future tasks". In view of her academic qualifications, she believes she is well qualified to hold an A-category post. Lastly, she points out that she suffered "unwarranted psychological pressure".

She seeks the quashing of the decision "not to reclassify her in grade A" as well as "retrospective reclassification to A-grade as of 1 February 2001 or, alternatively 1 February 2002 [...] and reassignment to journalistic tasks"; subsidiarily, failing "a retrospective classification", she seeks an award of financial compensation for the higher-level tasks she performed between 1 May 2001 and 24 November 2003, or the date of "effective reclassification" in an A grade – whichever is earlier – plus compound interest. She also claims compensation for "pain and suffering", moral damages and costs, as well as the re-evaluation of her reckonable experience, "as recommended by the Internal Appeals Committee".

C. In its reply the EPO argues that the complaint is unfounded. Concerning the alleged failure to re-evaluate the complainant's reckonable experience, it points out that "the Appeals Committee's proposal is nothing more than an additional form of remedy". It asserts that in deciding to apply Article 12(4) of the Service Regulations, the President complied with the Committee's main objective and compensated the complainant adequately for the period during which she carried out the duties of a higher-grade staff member.

The Organisation states that a reclassification in a higher grade constitutes a promotion, for which the requirements of Article 49(1)(b) or Article 49(1)(c) of the Service Regulations have to be fulfilled. It argues that the complainant did not satisfy those requirements because, although she had applied for A-grade posts, she had not been selected and neither the President nor the Administrative Council had proposed that her post be reclassified; consequently, she was not entitled to promotion.

It denies any breach of the principle of equal treatment insofar as the complainant's colleague was recruited to grade group A4/1 and performed higher-level duties. It also denies that she was led to believe that she would be permanently assigned to journalistic work and tasks of a higher grade, and emphasises that the President never confirmed that she carried out the tasks described in vacancy notice No. INT/EXT/1035.

Contrary to the complainant's contentions, the EPO alleges that she fails to meet the criteria to hold a post in the A category. Indeed, she studied journalism for three years at a private institution which was not under the scrutiny of the French Ministry of Education. The defendant points out that, to be eligible for appointment to category A, one must have a diploma of completed studies at university level or – in exceptional cases – equivalent professional experience. According to the French system of higher education, that criterion is fulfilled if a candidate holds a diploma delivered by a university or a national institution of higher education that is supervised by the French Ministry of Education and after having completed four years of university education. It adds that as far as "equivalent professional experience" is concerned, this criterion is only recognised by the President in exceptional cases in the exercise of his power of discretion. It points out that the President refrained from exercising that power since the calculation of the complainant's reckonable experience justifiably led to her appointment at grade B1, step 4, in 1999, which was not challenged by the complainant. It requests that the complainant be ordered to bear her own costs.

D. In her rejoinder the complainant maintains that as from the time of her transfer to The Hague in February 2001, she carried out journalistic work with a high degree of responsibility and autonomy, as shown by her staff

report for the period 2002-2003.

She also submits that the EPO improperly denied the validity of her journalism diploma, which in the French higher education system is considered to be at the level of a *Maîtrise*. She alleges bad faith on the part of the Organisation, as it claims that her professional experience is not sufficient to consider appointing her at an A grade, yet her credentials were sufficient to retain her under a consultancy contract from 1997 to 1999 to perform journalistic/communication tasks of grade A level. She further deplors the EPO's silence on her allegations of "psychological pain and suffering". Irrespective of the Tribunal's decision on the relief claimed, she requests "a declaration on the status of her diploma".

E. In its surrejoinder the EPO maintains its position. It adds that it was aware of the complainant's activity as a consultant but did not consider it to be relevant since "[she] applied for and accepted a permanent post in category B". It further submits that pursuant to Article II(5) of the Tribunal's Statute it doubts whether the Tribunal is competent to rule on the status of her diploma.

## CONSIDERATIONS

1. The complainant challenges a decision by the President of the European Patent Office partially allowing an appeal which she initiated with respect to her grade.

2. The complainant successfully completed a course in journalism at a private institute in France in 1993. Thereafter, she worked in various fields of journalism, including for two years as an external expert in communication at the EPO in Munich. In April 1999 she commenced employment with the EPO in Munich as an Administrative Employee, at grade B1. In October 2000 she applied for the post of journalist, in the grade group A4/1, with the EPO PRAPECOM project in The Hague. The EPO later decided not to fill that post. At about the same time, the complainant applied for a transfer to The Hague. On 13 December 2000 she was offered the post of Administrative Employee-Floater in the Personnel Department in The Hague, at the same grade and step as her post in Munich. She was informed that her manager would be the person responsible for PRAPECOM.

3. The complainant accepted the offer of the post in The Hague and commenced duty there on 1 February 2001. Although the post was that of an administrative employee, an internal communication issued at or about the time that she commenced duty identified the complainant as a journalist who would be working on the PRAPECOM project. In fact, she commenced work as a journalist immediately upon or shortly after her transfer to The Hague and continued to perform that work for the next two years. Thus, for example, a report relating to the Broad Consultation Process for the year 2001 reported that its "Awareness Program was led by a professional journalist" and identified the complainant as that journalist. Perhaps in recognition of the level of her duties, the complainant was promoted to grade B2 on 20 December 2001 with effect from 1 December of that year. However, the complainant's performance for that year was reported as far superior to that normally associated with a grade B2 employee.

4. On 23 August 2002 the complainant wrote to the President of the Office asking to be regraded to category A. Her request was not immediately forwarded to him and, having received no reply by 12 November, she initiated an internal appeal. The next day, after interviewing the President as part of her duties as a journalist, she informed him of her position. Later, on 10 January 2003, she was informed that her appeal would be referred to the Internal Appeals Committee.

5. After her appeal had been referred to the Appeals Committee, the complainant was informed, on 23 January 2003, that she would be placed under the direct responsibility of the Director of Personnel and that, in future, any requests for her to perform editorial work would have to be approved by him. Thereafter, a number of requests were made for her to perform work as a journalist. It is claimed and not denied that after one such request, the Director of Personnel informed the person concerned that, having regard to the complainant's pending appeal, it would not be wise to maintain his request. Again, it is claimed and not denied that at a later meeting concerning Communication restructuring, the President approached the complainant and informed her that, if she agreed to perform editorial tasks while retaining her B grade, a post would be found for her in the new Communication structure but, if not, he would be obliged to endorse the position of the Administration and she would have to be assigned administrative tasks.

6. Some days after her meeting with the President, the complainant took two days' sick leave. Later, she informed her supervisor, the Director of Personnel, that her health was deteriorating as a result of his psychological harassment. Her health deteriorated further and she was placed on sick leave from 20 March 2003. She later expanded her internal appeal to claim moral damages for psychological injury as a result of her working conditions.
7. The complainant was reintegrated into the work-force, at 60 per cent, in November 2003. Since then, she has mainly performed administrative tasks although some journalistic work was done by way of interview with the President's Office and a subsequent article in 2004. Of this work, it is reported that "the President [...] was very satisfied with the final article". However, it seems that the work was ascribed to "professional development".
8. On 1 December 2004, the Appeals Committee unanimously recommended that the complainant's appeal be allowed to the extent that she should be compensated for the work she had done which, it found, was well above that of an employee in the B5/B1 grade group. In this regard, it relied on the principle of "equal pay for work of equal value" and recommended that the Personnel Department, which possessed the necessary expertise, assess the exact level of tasks performed between March 2001 and March 2003. It also recommended that the complainant's reckonable experience be recalculated retrospectively. However, it held that her claim for regrading to category A could not be granted because that would be tantamount to promotion. It also said that it was not satisfied that there had been harassment warranting the award of moral damages or that there had been particular expenses associated with her appeal warranting an award of costs. Accordingly, it recommended that her appeal with respect to those matters be rejected.
9. The complainant was informed by letter of 7 February 2005 that the President had decided to compensate her for the higher duties performed between 1 March 2001 and 31 March 2004 (later corrected to 31 March 2003) by paying her an amount equal to twice the difference in basic salary between the first and second steps in her grade, together with interest at the rate of 8 per cent per annum. In the result, she was paid an amount calculated in that manner for the period between 1 May 2001 and 31 March 2003, apparently by analogy with the situation that would have obtained had she been acting in temporary duties of a higher grade. The sum paid, with interest, amounted to a little over 5,000 euros. It is that decision that is the subject of the complaint by which the complainant primarily seeks "reclassification" to category A and "reassignment to journalistic tasks". She also seeks re-evaluation of her reckonable experience, as recommended by the Appeals Committee, compensation for pain and suffering, moral damages and legal costs.
10. Before turning to the substance of the complaint, it is convenient to note that, apart from the PRAPECOM post, the complainant applied for a number of category A journalist posts but they were either not filled or the complainant was not interviewed for them. The complainant believes that this was the result of the failure of the EPO to accept her as qualified for an A-grade post because of its refusal to recognise her academic qualifications as "a diploma of completed studies at university level" and/or to properly calculate her reckonable experience. She asks the Tribunal to rule on the question whether she is qualified for appointment to a category A post. However, if any final decision was taken with respect to her qualifications, it was taken when she joined the EPO in Munich in 1999, and was not then contested.
11. There is no doubt that the post to which the complainant was transferred in The Hague was not an A-category post. A vacancy notice of 27 July 2000 described the post as available to "administrative employees" who have "[c]ompleted secondary education or – in exceptional cases – equivalent professional experience". The duties were described in that notice as temporary assignment "to meet manpower requirements arising in different departments as a result of heavy workload, vacant posts or absences due to illness, accident or maternity". The notice further stated that recruitment would be at "grade B1 to B4 depending on experience". The Tribunal pointed out in Judgment 2373 that it is the prerogative of the executive head of an international organisation to redefine the functions of a post and to determine the qualifications required for it. The same is true of the initial definition of the duties of and qualifications for a post. It is not for the Tribunal to redefine the duties of the post to which the complainant was transferred in The Hague and/or the qualifications necessary for that post. Certainly, it is not for the Tribunal to reclassify it as a category A post. It follows that the complainant's request for "reclassification" is misconceived. And for the same reason, so too is her request that the Tribunal order the reassignment of journalistic duties. However, it does not follow that the EPO was entitled to place the complainant in that post and then assign her duties as a journalist at a higher level than those which properly pertained to it.
12. The inescapable inference is that, although assigned to a post as an administrative employee, it was always intended that the complainant should perform the duties of a journalist. It is inconceivable, if that were not so, that

an internal communication issued at or about the same time as she was transferred to The Hague would announce that the complainant who had a background in journalism would work on the PRAPECOM project. Moreover, it is not otherwise explicable that she performed duties as a journalist for the first two years in which she held the post and ceased to perform them only after initiating an internal appeal with respect to her grading.

13. It may be assumed that the complainant's request for regrading and her subsequent appeal exposed what the Administration perceived to be an irregularity in her situation and that it attempted to rectify it by assigning duties, after her return from sick leave, that were consistent with the post to which she had been transferred. However, there was much more than an irregularity in her situation. It is well settled that an international organisation must act in good faith towards the members of its staff and must respect their dignity. Once it is accepted, as it must be, that it was always intended that, on her transfer to The Hague, the complainant would be engaged in work as a journalist, it must also be accepted that her transfer to the post of Administrative Employee-Floater was not an act undertaken in good faith. Further, to accept her work as a journalist whilst retaining the complainant in that post and paying her accordingly was to treat her with less than the dignity to which she was entitled. It was an even greater affront to her dignity to reveal to another staff member who had requested her services as a journalist that she had initiated an internal appeal and that, on that account, "it would not be wise to maintain [his] request".

14. As already indicated, it is to be assumed that the assignment of mainly administrative duties to the complainant after her return from sick leave was an attempt to regularise her situation, rather than retaliation for having initiated an appeal. However, in circumstances where the irregularity was the result of the intentional acts of the Administration, the subsequent assignment of administrative work can only be seen as further disregard of her dignity.

15. The EPO argued before the Appeals Committee that the complainant's claim for moral damages was irreceivable because it was not made until well after she requested the regrading. That argument is not maintained before the Tribunal. Instead, the EPO argues that, as the complaint is without foundation, her claim for moral damages should be dismissed along with her other claims. However, and as earlier indicated, the EPO failed to respect the complainant's dignity and it was an error on the part of the Appeals Committee not to find accordingly and, consequentially, not to make a recommendation for the payment of moral damages. Because the President's decision in relation to moral damages is based on the recommendation of the Appeals Committee, that decision also involves an error of law. Accordingly, and to that extent, it must be set aside.

16. So far as concerns the amount of moral damages that should be awarded to the complainant, it is appropriate to note that, apart from her own statements, there is no evidence connecting her ill health to her working conditions. However, there is no doubt that the complainant was ill for a substantial period. And while it is not possible based on the material before the Tribunal to make a finding of harassment, it is properly to be concluded that the failure to respect her dignity was a significant factor in her illness. Accordingly, there should be an award of moral damages in the amount of 5,000 euros.

17. Finally, it is necessary to turn to the question of the compensation that should be paid by the EPO for having obliged the complainant to perform work at a level in excess of that called for by her job specification. In this regard the clear finding of the Appeals Committee was that the tasks performed by the complainant exceeded the level of those pertaining to grades B1 to B5. As already indicated, it recommended that the Personnel Department determine the exact level of the tasks performed. The President rejected that recommendation. The EPO provides no explanation for that course.

18. Given the Committee's findings as to the level of the tasks performed by the complainant the Tribunal can only make a global award of damages. It is appropriate that this award be set in the amount of 20,000 euros in addition to the sum already paid by the EPO.

19. Although the complainant has been represented by a fellow staff member free of charge, there should be an award of costs in the sum of 1,500 euros.

## DECISION

For the above reasons,

1. The decision of 7 February 2005 is set aside in part.
2. The EPO shall pay the complainant moral damages in the amount of 5,000 euros.
3. It shall pay her damages of 20,000 euros in addition to the sum of 5,019.28 euros already paid.
4. It shall pay the complainant's costs in the amount of 1,500 euros.
5. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 5 May 2006, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Ms Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 12 July 2006.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet