

Organisation internationale du Travail  
*Tribunal administratif*

International Labour Organization  
*Administrative Tribunal*

*Registry's translation,  
the French text alone  
being authoritative.*

**G. (No. 6)**

**v.**

**EPO**

**136th Session**

**Judgment No. 4731**

THE ADMINISTRATIVE TRIBUNAL,

Considering the sixth complaint filed by Ms M.-F. G. against the European Patent Organisation (EPO) on 7 June 2019, the EPO's reply of 23 September 2019, the complainant's rejoinder of 10 March 2020 and the EPO's surrejoinder of 24 July 2020;

Considering the documents and information provided by the EPO on 21 February 2023 at the Tribunal's request and the email of 12 April 2023 informing the complainant of these communications;

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 her staff report for the period 2008-2009.

At the material time, the complainant, a permanent employee of the European Patent Office, the EPO's secretariat, held the post of examiner at grade A2 in Directorate 1526. On 1 August 2009, she was transferred to Directorate 1528. In May 2010, the countersigning officer and the reporting officer signed the initial version of her staff report for the period from 1 January 2008 to 31 July 2009, in which she was rated as "good" under all headings. On 13 July 2010, the complainant also

signed this version of the report. She contested the rating given to her for productivity and asked for this to be raised, for some unfavourable comments about her to be removed and for factual corrections to be made to the number of interviews held with the reporting officer during the reference period. On 3 September 2010, the reporting officer responded to her comments and signed the report, annexing a note in which he explained the reasons why he refused to amend it. The countersigning officer also signed the report without adding any comments.

On 16 April 2011, the complainant requested that a conciliation procedure be initiated under Section D of Circular No. 246, entitled “General guidelines on Reporting”. On 14 December 2011, following the conciliation meeting, the mediator noted that it had not been possible to reach an agreement and asked the competent authority to take a definitive decision about the disputed staff report. On 14 March 2012, the President of the Office signed the report, which remained as it had been drawn up in 2010. The complainant then signed it on 11 May 2012.

On 8 June 2012, the complainant lodged an internal appeal against this decision and asked for it to be revised “by replacing the existing comments with the alternatives proposed in [her] written reply of 13 July 2010”<sup>\*</sup> and removing certain pages from the disputed report.

On 24 March 2015, while the appeals procedure was in progress, she received an amended staff report in which a comment relating to the productivity factor had been removed.

The Appeals Committee issued its opinion on 20 May 2015. It recommended that the appeal should be rejected as unfounded and this was endorsed by decision of the President of 6 July 2015. The complainant impugned that decision in her second complaint, leading to Judgment 4256, delivered in public on 10 February 2020.

Following the public delivery of Judgments 3694 and 3785 on 6 July and 30 November 2016 respectively, in cases that did not involve the complainant but in which the Tribunal had found the Appeals Committee to be improperly composed at the time of its opinion of

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<sup>\*</sup> Registry’s translation.

20 May 2015, the President withdrew his decision of 6 July 2015 and referred the complainant's internal appeal back to a newly constituted Committee.

After a fresh examination of the appeal, the Appeals Committee issued a unanimous opinion on 23 January 2019. It recommended that the appeal be rejected as unfounded and that 600 euros be awarded to the complainant for the undue length of the procedure. By letter of 21 March 2019, the Principal Director of Human Resources informed the complainant that she had decided, by delegation of power from the President, to follow that opinion. A final version of the staff report, with certain remarks removed, was annexed to that decision. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order that her staff report for the period 2008-2009 be amended by the removal of the annex containing statistical information. She also seeks the payment of three months' salary in respect of moral damages, compensation for the undue length of the procedure, and the award of costs.

The EPO asks the Tribunal to dismiss the complaint as entirely unfounded.

### CONSIDERATIONS

1. The complainant asks the Tribunal to order that her staff report for the period 2008-2009 be revised, first, by the removal from the annexes to that report of the statistical information which served as an objective assessment of her productivity and, secondly, by the rewording of the reporting officer's comments under two of the headings since they are, in her view, incompatible with the "good" rating which appears on the report. She also claims compensation equivalent to three months' salary for the moral injury she alleges she has suffered, damages for what she regards as the undue length of the internal appeals procedure, and costs.

The complainant does not, however, challenge the “good” rating given to her in the report under each of the headings, which are “Work done” (covering quality and productivity), “Aptitude” to carry out job-related duties, “Attitude to work and dealings with others” and “Overall rating”.

2. Although the complaint form does not contain an explicit claim to that effect, the Tribunal understands from the complainant’s position that she seeks the setting aside of the decision of 21 March 2019 of the Principal Director of Human Resources, taken by delegation of power from the President, endorsing the unanimous opinion of the Appeals Committee of 23 January 2019.

In that decision, the Principal Director awarded the complainant the sum of 600 euros for the undue length of the internal appeals procedure, in accordance with the Committee’s recommendation. By that decision, the Principal Director also transmitted the complainant her final staff report from which two comments under two headings, describing the complainant’s evaluation as “in the lower range of good”, had been removed.

In her submissions, the complainant acknowledges that it is on this redacted version of the final report that the Tribunal has to rule.

3. With regard, first of all, to the annex to the final staff report containing statistical information, which the complainant considers as flawed, the Tribunal notes that the complainant is unable to identify any provision of the Service Regulations that would preclude objective information of this kind, which allows her achievements and her productivity to be better assessed, from being annexed to the staff report. Neither does she explain how the fact that this statistical information was annexed to the disputed report caused her injury, particularly in view of the fact that the resulting assessment led to the award of the “good” rating, which the complainant does not challenge in these proceedings.

The complainant’s claim for the removal of the annex in question is therefore devoid of merit.

4. As for the complainant's claim for the revision of some of the comments in the final staff report, the Tribunal notes firstly that it is difficult to understand how the complainant could have been adversely affected by those comments as such, given that she does not, in any case, dispute the "good" ratings ultimately awarded to her under those headings.

Above all, however, in requesting the Tribunal to review and rewrite some of the comments that appear under two of the headings in her staff report, the complainant plainly misunderstands the nature of the review with which the Tribunal is tasked. It is not for the Tribunal, whose role is not to supplant the administrative authorities of an international organisation, to conduct an assessment of an employee's merits instead of the competent reporting officer or the various supervisors and appeals bodies which may be called upon to revise that assessment (see Judgment 4564, consideration 2). In the matter of staff appraisal, the Tribunal exercises only a limited power of review (see, for example, Judgment 4637, consideration 13, and the case law cited therein), which does not involve reassessment of performance (see also Judgments 4258, consideration 2, and 4257, consideration 3). It is clear from consideration 3 of Judgment 4564 that:

"The Tribunal will [...] intervene only if the staff report was drawn up without authority or in breach of a rule of form or procedure, if it was based on an error of law or fact, if a material fact was overlooked, if a plainly wrong conclusion was drawn from the facts, or if there was abuse of authority. Regarding the rating of EPO employees, those criteria are the more stringent because the Office has a procedure for conciliation on staff reports and the Service Regulations entitle officials to appeal to a joint body whose members are directly familiar with the workings of the Office (see, for example, Judgments 1688, consideration 5, 3062, consideration 3, 3228, consideration 3, 3268, consideration 9, 3692, consideration 8, and 4258, consideration 2)."

5. The Tribunal has already indicated that a request for a staff report to be amended which does not meet these criteria can only be dismissed (see, to that effect, Judgments 4564, consideration 2, and 4258, considerations 2 and 3). The same applies to a request for amendment which does not concern the final rating given in the

disputed staff report but relates to the wording of the observations and/or comments which formed the basis for that rating, especially where the rating is not challenged by the employee in question. In Judgment 3692, consideration 8, the Tribunal also stated that the limitation on its power of review “naturally applies to both the rating given in a staff report and the comments accompanying that rating”.

6. In her submissions, the complainant takes particular issue with certain comments made by the reporting officer under the heading “Attitude to work and dealings with others” in the staff report for 2008-2009, according to which she “had agreed that for this appraisal period she would get more involved in the life of the Directorate: fixed days, case distribution, miscellaneous discussions”\*. According to the complainant, this referred to the initial version of her staff report for the period 2006-2007 which was subsequently the subject of conciliation, following which the report was amended to state: “[the complainant] should get more involved in the life of the Directorate: fixed days, case distribution, miscellaneous discussions”\*. The Tribunal notes that the reporting officer did commit an error in finding that the complainant had undertaken to change her behaviour in this regard whereas, in the final version of the report in question, there was no mention of any such undertaking but only of the expectations of her supervisors in this area. In view of the overall assessments under that heading, however, the Tribunal considers that the error committed cannot have been a determining factor in awarding a “good” rating to the complainant in this regard.

The complainant’s claim for the revision of some of the comments in the final staff report must therefore be dismissed.

7. The complainant also submits that the final staff report for the period 2008-2009 is flawed since it was – incorrectly – based on the report drawn up by the mediator in another case leading to Judgment 3617, delivered in public on 3 February 2016, concerning her first complaint. However, the Tribunal notes, as the EPO rightly states in its submissions,

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\* Registry’s translation.

that there is no reference, either express or implied, to the procedure that led to the mediator's report in the final staff report or in the accompanying comments, and thus this claim is unsubstantiated. The Tribunal cannot speculate, as the complainant suggests, and conclude that the report drawn up by the mediator would have had an impact on the comments contained in the final staff report which the complainant seeks to be rewritten.

The arguments raised by the complainant about the comments under the disputed headings are therefore without merit.

8. Lastly, the complainant asserts that the final staff report for the period 2008-2009 delayed her promotion from her current grade A2 to grade A3 by six months. However, the Tribunal notes that this statement cannot, in any event, have any effect on the lawfulness of the report in question. This plea is therefore of no avail and will be dismissed.

9. It follows from the foregoing that the complainant's claim for damages for moral injury arising from the alleged unlawfulness of the disputed staff report must be dismissed.

10. Lastly, with regard to the complainant's claim for compensation for the undue length of the internal appeals procedure, the Tribunal notes that, in accordance with the unanimous recommendation of the Appeals Committee, a sum of 600 euros has already been paid to her by the Organisation in this regard. The Tribunal finds that the complainant has not put forward any argument to justify the award of an additional amount.

11. It follows from all of the foregoing that the complaint must be dismissed in its entirety.

DECISION

For the above reasons,  
The complaint is dismissed.

In witness of this judgment, adopted on 25 April 2023, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

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

*(Signed)*

PATRICK FRYDMAN    JACQUES JAUMOTTE    CLÉMENT GASCON

DRAŽEN PETROVIĆ