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work better for society.

DECISION n° 170

of the Management Board of the European Union Agency for Railways laying down implementing rules on temporary occupation of management posts

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS,

Having regard to the Treaty on the Functioning of the European Union;

Having regard to the Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004¹ (hereinafter referred to as “the Agency Regulation”);

Having regard to the Staff Regulations of Officials of the European Union (hereinafter referred to as the “Staff Regulations”) and the Conditions of Employment of Other Servants of the European Union (hereinafter referred to as the “CEOS”) laid down by Council Regulation (EEC, Euratom, ECSC) No. 259/68², and in particular Article 7 § 2 of the Staff Regulations and Article 10 of the CEOS;

Having regard to the Communication C(2014)6543 final of 26 September 2014 from Vice President Šefčovič to the Commission on the guidelines on the implementation of Article 110 § 2 of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular point 2.B thereof;

Having regard to the agreement of the European Commission pursuant to Article 110 § 2 of the Staff Regulations C(2017) 5308 of 25 July 2017,

After consulting the Agency Staff Committee,

Whereas:

- (1) Rules should be laid down for the application of Article 7 § 2 of the Staff Regulations which is applicable by analogy to temporary staff by virtue of Article 10 of the CEOS. Article 7 § 2 of the Staff Regulations states that the Appointing Authority may call upon officials to occupy a post in their function group in a grade which is higher than their own grade, such temporary posting being limited to one year except where it is to replace an official who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave;
- (2) It is necessary to adopt rules on temporary postings on the basis of Article 7 § 2 of the Staff Regulations which should take into account in an appropriate manner the need to recognise the

¹OJ L 138, 26.5.2016, p. 1-43.

² Regulation (EEC, Euratom, ECSC) No. 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

efforts made by temporary staff members to temporarily ensure the continuity of the service and the principle of equitable treatment;

- (3) Article 7 § 2 of the Staff Regulations should apply only where the temporary staff member is called upon to assume temporarily duties which entail responsibilities substantially greater than those involved in their own post. Only the difference in the level of responsibilities between non-management and management (not advisory) posts and between management posts of different levels can be considered as substantial for the purpose of applying Article 7 § 2 of the Staff Regulations;
- (4) The rationale of Article 7 § 2 of the Staff Regulations is to grant to the temporary staff member who takes up duties which entail responsibilities substantially greater than those involved in their own post for a substantial period a remuneration which corresponds to those greater responsibilities³;
- (5) It is necessary to ensure that Article 7 § 2 of the Staff Regulations is applied in an appropriate manner in view of the career system, in which there is a high degree of separation of grade and duties, as confirmed by the General Court⁴;
- (6) Deputising arrangements are to be distinguished from temporary postings and are not covered by this decision;
- (7) In the interest of clarity and legal certainty, the ERA Decision ERA-ED-DEC N° 393/13.05.2011 of 07.06.2011 on temporary occupation of management posts should be repealed and replaced by this decision,

HAS DECIDED AS FOLLOWS:

Article 1 – Posts to which temporary postings may be made

The middle and senior management posts which a temporary staff member may be called upon to occupy on a temporary basis shall be:

- director post in grade AD 14;
- head of unit posts in grades AD 9 to AD 14

Article 2 – Conditions for temporary postings

Temporary postings may be made:

- (1) where a new or vacant management post cannot be filled in the short term, or
- (2) to replace a temporary staff member who is seconded to another post in the interests of the service, is called up for military service or is absent on protracted sick leave or for other reasons preventing a temporary agent from exercising the assigned function.

The above-mentioned situations shall as a rule involve periods lasting longer than three months. Only a full-time and uninterrupted absence of the job holder can give rise to a temporary posting.

Only established temporary staff members who are not serving their probationary period can be called upon to temporarily occupy a post within the meaning of Article 7(2) of the Staff Regulations.

³. COJ, C-5/70, *Prelle/Commission* (ECLI:EU:C:1970:109).

⁴. CFI, T-56/07P, *Commission/Economidis* (ECLI:EU:T:2008:260).

Article 3 – Reference grade

For the purpose of calculating the differential allowance, the “reference grade” for a temporary posting will be fixed as follows:

- (1) As regards the director’s post as defined in Article 1, the reference grade shall be grade AD 14.
- (2) As regards head of unit posts as defined in Article 1, the reference grade shall be as a rule:
 - (a) where the post is published, the lowest grade in the range for which the post is published, as follows:
 - grade AD 9 for the range AD 9/AD 14 (for internal and inter-agency publication);
 - the grade of the external publication (publications of a single grade from AD 9 to AD 12).
 - (b) where the post is filled by transfer in the interest of the service or where the post is not vacant, grade AD 9 or AD 13 as set by the Authority authorised to conclude the contracts (“AACC”).

Article 4 – Differential allowance

From the beginning of the fourth month of a temporary posting, the temporary staff member concerned may receive a differential allowance equal to the difference in current remuneration of the temporary staff member and the remuneration according to the level of the temporary posting, as follows:

- (1) If the temporary staff member is in the grade immediately below the reference grade, the differential allowance shall be equal to the difference between the remuneration of the temporary staff member throughout the relevant period and the remuneration they would receive if they were reclassified to the reference grade.
- (2) In duly justified circumstances where the temporary staff member is in one of the grades below the grade immediately below the reference grade, as the differential allowance cannot be calculated by analogy to a reclassification, it shall be equal to the difference between the remuneration of the temporary staff member throughout the relevant period and the remuneration they would receive if they were newly recruited in the reference grade. The second step shall be awarded under the conditions laid down in the rules on step classification at recruitment.
- (3) If the temporary staff member is in a grade equal to or above the reference grade, except where the temporary staff member already receives the benefit on the basis of their post of assignment, the remuneration of the temporary staff member is increased according to Articles 44 and 46 of the Staff Regulations, which are applicable by analogy to temporary staff by virtue of Articles 20 § 4 and 15 respectively of the CEOS.

The increase in remuneration according to Articles 44 and 46 of the Staff Regulations will be calculated either on the basis of the grade of the temporary staff member concerned, or on the basis of the reference grade of the post that the temporary staff member temporarily occupies, depending on which option is the most favourable for the temporary staff member concerned.

Article 5 – Management experience

Management experience acquired through a temporary posting shall be taken into account for eligibility purposes in the context of applications for management positions.

Article 6 – Successive periods of temporary posting

Where the same temporary staff member is the subject of two or more temporary postings in respect of the same functions and those postings are consecutive, the second temporary posting shall be considered as a

continuation of the first and the differential allowance shall not be discontinued during the first three months of the second temporary posting.

For the purposes of this provision, a subsequent posting shall be considered to be consecutive if it begins no longer than three months after the end of the previous posting.

Article 7 – Procedure for temporary postings

- (1) Where the conditions in Article 2 are met, HR may submit a proposal for a temporary posting, stating the reasons and providing all relevant information. The temporary posting is proposed to the AACC.
- (2) The effective date of a temporary posting is fixed by the AACC in the temporary posting decision pursuant to Article 7 § 2 of the Staff Regulations, taking account of the proposal submitted by HR.
- (3) Abolition of the post on which a temporary posting has been made as a result of an amendment to the organisation chart automatically entails termination of the temporary posting.

Article 8 – Final provision

The ERA Decision ERA-ED-DEC N°393/13.05.2011 of 07.06.2011 laying down rules on implementing Article 7 § 2 of the Staff Regulations as regards the temporary occupation of management posts is repealed.

Article 9 – Date of application

This decision shall take effect the day following that of its adoption. It shall be published on the Agency's website.

Done at Valenciennes, on 13-02-2018

For the Management Board

The Chairperson
Clio LIÉGEOIS