

L.-B.

v.

EPO

133rd Session

Judgment No. 4491

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. L.-B. against the European Patent Organisation (EPO) on 23 April 2018 and corrected on 22 May, the EPO's reply of 3 September, corrected on 24 September 2018, the complainant's rejoinder of 10 January 2019, corrected on 22 January, and the EPO's surrejoinder of 2 May 2019;

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 dismiss her with immediate effect for serious misconduct.

The complainant and her husband, Mr G.M., divorced in 2008. The complainant gave birth to their first child in June 2010. On 1 September 2011 Mr G.M. and the complainant started employment in the Netherlands. Mr G.M. was transferred by the European Space Agency (ESA) to its base near The Hague and the complainant was recruited by the EPO. In February 2014 the complainant and Mr G.M. had twins.

Between 1 July 2013 and 27 May 2016 the complainant took more than 200 days of parental leave. The allowance she received was calculated at the higher rate based on her declaration that she was a single parent.

On 1 December 2015 ESA's Internal Audit and Evaluation Service contacted the EPO concerning a preliminary investigation into an alleged fraud which had potential implications for the EPO since Mr G.M. had claimed benefits from ESA since 1 September 2011 in violation of ESA's rules on cumulation of family allowances. In order to collect the factual evidence of the case for determining whether a fraud had occurred or not, the Internal Audit and Evaluation Service asked for the cooperation of the EPO on the matter. The investigation conducted by ESA established that the allegations of fraud against Mr G.M. were substantiated and he was dismissed.

The matter was referred to the EPO's Investigative Unit. On 5 April 2016 the complainant received the notification of allegations against her and was invited to attend an interview on 14 April. The investigative procedure had to be suspended in the course of 2016. On 7 March 2017 the complainant received the Investigative Unit's Summary of Findings in which the Unit concluded that by declaring that she was a single parent and unduly benefiting from the higher rate of parental leave allowance, she had breached the general obligations required of a permanent employee by Article 14(1) of the Service Regulations for permanent employees of the European Patent Office, the EPO's secretariat, in relation to Rule 2 (which deals with Article 45a on parental leave) of the Guidelines for leave provided for in Circular No. 22. The amount unduly paid to the complainant on the basis of her declaration was estimated at 3,658.06 euros. On 21 March the complainant sent her response to the Summary of Findings. She explained that she had not knowingly breached Circular No. 22 and emphasized that, as soon as the matter was raised during the interview, she withdrew her request for parental leave at single parent rate. She offered to reimburse the amount that was allegedly unduly paid to her. In its report to the President of the Office dated 22 May 2017 the Investigative Unit recommended considering the initiation of disciplinary actions.

By letter of 26 June 2017 the complainant was informed that, in view of the gravity of the breaches which appeared to amount to serious misconduct, it had been decided to suspend her from service with immediate effect and until further notice in accordance with Article 95(1) of the Service Regulations. During the period of suspension, her access to any EPO premises was forbidden. The report under Article 100 of the Service Regulations, bearing the same date, was attached to the letter. It stated that the Investigative Unit's report had determined that

the complainant had misrepresented her true status as a parent who was de facto bringing up her children together with their father, which amounted to a breach of Article 45a of the Service Regulations and Rule 2 of Circular No. 22. Accordingly, the complainant's misconduct qualified as misrepresentation and fraud. The Article 100 report concluded that the complainant's behaviour amounted to serious misconduct violating the standards of integrity and conduct required under Article 5(1) of the Service Regulations and was also in breach of Article 14(1), which requires an employee to conduct herself or himself solely with the interests of the Office in mind. In view of the fact that the relationship of mutual trust was irretrievably broken down, of the serious nature of the offence, of the existence of aggravating factors and of the lack of any convincing explanation on the part of the complainant, a disciplinary measure of up to dismissal from service seemed justified. The complainant submitted a statement of defence on 12 July.

The complainant was heard by the Disciplinary Committee on 17 July 2017. The Committee delivered a reasoned opinion on 18 July 2017. It unanimously considered that the following facts were established: the complainant and Mr G.M. had "commonly planned and created a situation for their lives that she explained to be 'non-standard'" by, after their divorce, a) choosing to move from their common residence in Germany to a common residence in The Hague, although on different floors of the same house; b) having three children together; and c) choosing to move to a new house, by buying two adjacent halves and joining them. It was also established that Mr G.M. was involved to a certain extent in the bringing up of the children. When requesting parental leave, the complainant did not declare the full situation to the Administration. She confirmed several times that she was living alone with her children although she was certainly aware of her obligation to disclose her full situation in order to allow the Administration to make a correct assessment of her entitlement to parental leave and the corresponding allowance. A majority of the Committee found that it was the duty of an EPO employee to disclose all facts that could possibly be relevant for taking correct decisions about benefits allocated to her or him and that not doing so constituted misconduct. It recommended the imposition of the disciplinary measure of downgrading. A minority found that the complainant showed a repeated lack of honesty in breach of the standards in Article 5 of the Service Regulations and recommended that the complainant should be dismissed.

On 31 August the complainant was given an opportunity to be heard by meeting the Principal Director of Human Resources (HR). By letter of 7 September 2017 the President of the Office informed the complainant that her behaviour amounted to serious misconduct and that she had violated the standards of integrity and conduct expected of an international civil servant (Article 5(1) of the Service Regulations) as well as the fundamental obligation of trust towards her employer and the duty to conduct herself solely with the interests of the Office in mind (Article 14(1) of the Service Regulations). Her actions were considered incompatible with maintaining the employment relationship. The President had therefore decided to dismiss her in accordance with Article 93(2)(f) of the Service Regulations. The complainant was informed that this decision would take effect immediately and that she remained excluded from entering the EPO premises.

On 6 December 2017 the complainant filed a request for review of the 7 September decision, asking that it be withdrawn. Considering that the complainant's fraudulent statements and intentional retention of information regarding her family status had been conclusively established and that the apology she had offered on 31 August 2017 could not outweigh the gravity of her actions neither change the assessment of her case, the President dismissed the request on 29 January 2018. That is the impugned decision.

The complainant seeks the quashing of the decisions of 7 September 2017 and 29 January 2018, her reinstatement with full retroactive effect and the retroactive withdrawal of Circular No. 342 dealing with the Guidelines for investigations at the EPO. She also asks the Tribunal to order the payment of the legal costs she incurred in defending herself before the Disciplinary Committee, before the President and before the Tribunal, interest on all amounts paid to her, 50,000 euros in moral damages in view of the numerous procedural violations and violations of privacy committed against her, as well as actual, consequential and exemplary damages. In addition, she asks the Tribunal to order the EPO to lift the ban imposed on her regarding access to all EPO premises and such other relief it may deem just, equitable and fair.

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

CONSIDERATIONS

1. Central to these proceedings is the definition of “single parent” in Circular No. 22. The definition is intended to govern the operation of elements of Article 45a of the Service Regulations. That Article creates an entitlement to parental leave for a permanent employee with a dependent child during which they are not remunerated but paid an allowance. The leave can be for working days or half working days and each period of parental leave must be for a minimum of 14 successive calendar days. Except for single parents, the total amount of leave which may be taken for each dependent child (before the child’s twelfth birthday) is 120 working days. Again, except for single parents, the allowance is 25 per cent of the salary of a specified grade (grade G4, step 4). The purpose of the provision is readily apparent. It is to afford permanent employees a comparatively lengthy period of leave during which they can attend to the needs of a child and meet the demands of child rearing while nonetheless receiving some income notwithstanding that they are not working. The principal benefit conferred by the provision is time.

2. The benefits conferred on a single parent are greater than for permanent employees who are not single parents. A single parent is entitled to up to 240 working days parental leave and the allowance is 33 per cent of the salary of the specified grade. Again, the purpose of conferring these additional benefits is readily apparent. The time required for a single parent to meet the needs of a child may well be greater as may well be the demands of child rearing. It is likely the payment of the allowance at a higher rate is based on the premise that a single parent taking large amounts of time on leave will be without full salary for longer periods.

3. Circular No. 22 sets out the guidelines for the operation and implementation of a number of provisions of the Service Regulations concerning leave. Rule 2 of the Circular concerns the operation and implementation of Article 45a, Parental leave. Rule 2(a), under the general heading “Entitlement”, defines “single-parent” in the following way:

“(ii) For the purposes of Article 45a of the Service Regulations, a single parent is defined as a permanent employee who declares himself to be de facto bringing up a child alone.”

Rule 2(a)(ii) goes on to say that the status of “single-parent” is to be established at the time each application for parental leave is made and also deals with circumstances in which the permanent employee’s status changes. That is, it deals with circumstances where the employee becomes a single parent having not hitherto been one or ceases to be a single parent.

4. Often a definition of this general character identifies a fact or facts which, when they exist, confer a specified status on a person or thing. However, the definition in Rule 2(a)(ii) takes an unusual form. It does not simply say that if a permanent employee is, de facto, bringing up a child alone they are, by definition, a “single parent”. Rather the defined status of “single parent” arises if the permanent employee “declares himself” to be, de facto, bringing up a child alone. It is the operative fact of making the declaration that attracts the defined status. No doubt the declaration must be bona fide and be reasonably based. But if it is, the definition is satisfied. The definition operates on the opinion of the employee embodied in the declaration. And the definition, framed in this way, must accommodate the possibility that even if the declaration was bona fide and reasonably based, the employee was mistaken at least as perceived by others. Moreover, the scope and terms of the declaration are identified in the definition itself.

5. Against the background of the above discussion, it is necessary to identify the misconduct for which the complainant was dismissed. A Report of 26 June 2017 under Article 100 of the Service Regulations (the Disciplinary Report) was submitted to the Disciplinary Committee and identified the complainant’s misconduct in the following terms:

- “29. [...] the [complainant] has within a period of 4 years and on 7 occasions of parental leave misrepresented her true status as a parent who is de facto bringing up her children *together* with their father. This amounts to a breach of Art[icle] 45a [of the Service Regulations] and Circular No. 22, Rule 2 on Article 45a, (a) (ii). With these misrepresentations she induced the Office to pay her the increased amount of monthly allowance (33% instead of 25% of the reference) and eventually to an undue payment of EUR 3,658.06.
30. The above misconduct qualifies as misrepresentation and fraud. At the same time, it qualifies also as a severe breach of the [complainant]’s general and fundamental obligations of loyalty and good faith under Articles 5 and 14 (1) [of the Service Regulations] and the Code of Conduct.”

6. Underpinning these allegations was the Report of the Investigative Unit of 22 May 2017 (the Investigation Report). On a fair reading of the Report, insofar as it concerns the claim for and payment of parental leave, it manifests a distortion of the evidence favouring the allegation of misconduct. One example is found in paragraph 103, which is in a section of the Report addressing the written comments made by the complainant responding to the Summary of Findings. This section is headed “SUBJECT’S COMMENTS TO THE SUMMARY OF FINDINGS”. That is to say, it is the recitation of things said by the complainant, effectively by way of admission, in the written response. Paragraph 103 commenced by saying: “The subject [the complainant] further claims that the reason why she kept cohabiting with her ex-husband is because she is a catholic and she wanted her children to *‘know their father and have access to him’*”. The clear import of this paragraph is that the complainant admitted to having cohabited with her ex-husband and this constituted the explanation why. However the reference to her being a catholic was in a section of her response headed “No Co-habitation” in which she developed a credible argument that she had not been cohabiting with her ex-husband. Not only was no admission to that effect made by the complainant, the entire hypothesis of cohabitation was being challenged by her.

7. Similarly, paragraph 102 contained the observation that: “[The complainant] admits that she was living in the same house as her former husband”. This is a distortion of what the complainant was saying. The expression “same house” involves an unfair synthesis of the complainant’s explanation of her living circumstances. Mostly, but not always, when claims for parental leave were made, the complainant and her ex-husband were, on her account, living in contiguous semi-detached residences (one owned by her and the other by her ex-husband) though they created access at two points from one to the other. The complainant provided a detailed and credible explanation concerning the ownership of each of the residences supported by extrinsic evidence. No simplistic admission as referred to in the Investigation Report was made by the complainant.

8. Finally, by way of further example, was the important finding in the Investigation Report that: “[t]he HR department made the meaning of the applicable provision [Rule 2(a)(ii)] very clear in its repeated

requests and [the complainant] deliberately misrepresented the real situation”. This conclusion was based, in part, on email exchanges between HR and the complainant in 2014 and 2016. In the first exchange in 2014 the complainant was initially asked to confirm she was a single parent with her child and later whether she was living alone with her children. In relation to each request, the complainant did provide confirmation by simply affirming each was correct. But this can scarcely be described as a very clear exposition of the meaning of the provision and did not purport to be. Similarly, in the second exchange in 2016, she was asked whether she was living alone with her child. She said she was. Again, this can scarcely be described as a very clear exposition of the meaning of the provision and again did not purport to be. While it is true the complainant explained the physical circumstances of proximity and access and acknowledged in her response to the Summary of Findings that her ex-husband provided babysitting when she could not find a nanny and paid small medical bills if he took the children to the doctor when she was at work or ill, these admissions do not constitute a firm factual foundation to say her answers in the email exchanges were wrong, let alone that she “deliberately misrepresented the real situation”.

9. The Disciplinary Report contained, as an attachment, the Investigation Report. While the Disciplinary Committee were divided on what was the appropriate sanction, all members identified circumstances about the living arrangements of the complainant and her ex-husband and at least impliedly concluded they were most unusual (which they were) and did not clearly establish that the complainant was, de facto, bringing up her children alone. The relevant facts concerning the complainant’s living arrangements with her children found by the Disciplinary Committee as set out in its opinion were:

- “66. It is established that the [complainant] and her ex-husband have commonly planned and created a situation for their lives that she explained to be ‘non-standard’, by – after their divorce –
- 66.1. choosing to move from their common residence in Germany to a common residence in The Hague (albeit on different floors of the same house).
 - 66.2. having three common children.
 - 66.3. choosing to move to a new house, buying two adjacent halves of the same house and joining these two halves with an opening on ground floor and a door on the first floor.

66.4. The ex-husband being involved to a certain extent in the bringing up of the children.”

10. In the next two paragraphs of its opinion, the Disciplinary Committee recited how, in its view, the complainant had not “declare[d] the full situation to HR” and that when asked about her status had given the absolute minimum of information. The majority then expressed its finding about the conduct of the complainant. It recommended the sanction of downgrading. It observed that it was the duty of an EPO employee to disclose all facts that could possibly be relevant “for taking a correct decision about benefits allocated to [an] employee” and a failure to do so was misconduct. But this was not the misconduct charged. What was alleged against the complainant was that she had misrepresented her true status and had engaged in fraud. Fraud entails an intention to obtain financial advantage by deception (see, for example, Judgments 4238, consideration 5, and 3402, consideration 9). If the majority of the Committee had believed there had been deliberate misrepresentation and fraud, bearing in mind that the Organisation had to establish this beyond reasonable doubt, it should have said so and could be expected to have done so. But it can be inferred the majority was not satisfied there had been fraud as charged proved beyond reasonable doubt, particularly given the contrasting conclusion of a minority which concluded, in effect, there had been fraud and recommended dismissal.

11. Following upon the provision of the opinion of the Disciplinary Committee, the President made his decision to dismiss the complainant for serious misconduct and informed the complainant by letter dated 7 September 2017. It is unnecessary to dwell on the President’s reasons disclosed in that letter as the complainant sought a review of this decision which resulted in the impugned decision of the President of 29 January 2018 rejecting her request for review and maintaining the earlier decision in its entirety. Nonetheless, some of the flaws shortly discussed in the 29 January 2018 letter were also manifest in the 7 September 2017 letter.

12. The 29 January 2018 letter commenced with two brief introductory paragraphs. They were followed by commentary under the general heading “Summary of facts” and a series of subheadings. The first subheading was “*Investigations and charges*”. Reference was made to the report of the Investigative Unit and the consequential

charging of the complainant. The charge was described in the letter as the complainant “having incorrectly and deliberately declared that [she was] a single parent living with [her] children alone and, as a consequence, having unduly benefited from the enhanced parental leave entitlements offered by the Office to single parents”. This summary misstates the charge in a material respect. The charge, consistent with the provision in Circular No. 22, included that the complainant had declared she was a parent who was de facto bringing up her children. There is a significant difference, at least potentially, between “living with” and “bringing up” and the facts necessary to establish each could be quite different. It is unnecessary to elaborate on the difference. The use of the expression “living with” might be thought to be an excusable looseness of language of no significance which is not used later in the letter. However, at the very least, its use manifests a lack of attention to detail and lack of focus in a letter confirming a dismissal for fraudulent conduct, a matter of considerable gravity.

13. The letter continued over several pages before addressing the misconduct. It did so under a general subheading “*B. Fraudulent statements and intentional retention of information regarding your family situation*”. The third specific sub-subheading was “*B.3. Your family situation*”. The discussion under this sub-subheading commenced with what was described in the letter as the “main facts” which the Disciplinary Committee had established concerning the complainant’s family situation. This included that the complainant and her ex-husband had planned and created a family and had been “continuously residing together” in Germany and subsequently the Netherlands. This is said to have been established by paragraph 66 of the opinion of the Disciplinary Committee. While that paragraph does refer to the creation, in the Netherlands, of internal access points between two houses, no finding of fact was made by the Committee that the complainant and her ex-husband had been residing together. The letter does not identify any other basis on which this factual conclusion might be founded and it was completely at odds with what the complainant had repeatedly said, including in paragraph 58 of her request for review, which provides a credible explanation of her circumstances. They were that she had no intention to own a common property with her ex-husband and raise their children together but rather wanted to ensure that, within the applicable law, she had emergency support and access to their father

for her children. For the President to have reached this conclusion about “residing together”, he must have been satisfied what the complainant was saying was a lie and that by reference to other unspecified evidence he was satisfied, at least inferentially, beyond reasonable doubt the two individuals were residing together. It is difficult to see how this conclusion can be justified, let alone at the standard of beyond reasonable doubt. The same can be said of a later conclusion under the same sub-subheading that the ex-husband was living in the same residence as his own children and their mother.

14. After referring to what had been determined by the Disciplinary Committee, the letter turned to admissions said to have been made by the complainant in her request for review which confirmed the family situation described in the opening paragraph of this part of the letter. References were made to the paragraphs in the request for review in which these admissions were said to be made. The first admission (based on admissions actually made about the creation of two internal access points between two adjoining houses) was said to be that the complainant admitted she and her ex-husband “united two houses into one”, that is, into one house. If so, it gave a clear colour to the nature of the relationship. But no such admission was made. What the complainant said was that she and her ex-husband lived in adjoining houses or adjoining properties with two internal access points, but nothing more.

15. The next admission was said to be that the complainant confirmed that her ex-husband “was participating in the caretaking and upbringing of [the] children as *[he] was babysitting them*’ from time to time”. No such admission was made. The use of the expression “from time to time” both colours and distorts what the complainant actually said. What was said in the request for review was that the only help her ex-husband provided was babysitting the children at those times when she could not find a nanny and paying small medical bills if he took the children to the doctor when she was at work or ill. In addition, this statement by the complainant goes nowhere near establishing, by way of admission, that the ex-husband was participating in the caretaking and upbringing of the children. To the contrary, the complainant was seeking to demonstrate how very little the ex-husband actually did.

16. The letter then addressed the payment of medical bills by the ex-husband. Mainly the complainant explained she was unaware of the insurance arrangements and the payments. The President then said “[t]hese reimbursements, regardless of the medical background, constitute an obvious and substantial financial contribution to the children’s upbringing”. But, as discussed earlier, the principal benefit conferred by Article 45a is time and it is likely the payment of the allowance at a higher rate to a single parent is based on the premise that a single parent taking large amounts of time on leave will be without full salary for longer periods. The definition of “single parent” must be construed having regard to the purpose of the provision. It is by no means obvious that if one parent paid some, or indeed all, medical expenses this has a bearing on whether the other parent can be characterised as *de facto* bringing up a child alone. That is because it has no bearing on the time that latter parent might need (for reasons explained earlier) by taking parental leave.

17. The next sub-subheading was “*Fraudulent statements and intentional retention of information*”. In this section the President first discussed the 2014 email exchange referred to in consideration 8 above in which the complainant said she was a single mother with babies and confirmed that she lived alone with her children. The letter went on to say “[a]s demonstrated by the fact that the HR asked specifically whether you were living *alone* with your children, the presence of the father of your children at the same residence (combined with a joint custody) was clearly critical and sufficient to deprive you of the enhanced parental leave entitlements”, and in the next paragraph “[t]he fact that you provided misleading information to these repeated statements show[s] that you acted wilfully in order to induce the Office to believe that you were raising your children *alone and without any help*. It did not allow the HR services to make a correct assessment of your entitlements.”

18. There are a number of fundamental problems with this commentary. Firstly, it proceeds on a premise which was not admitted by the complainant (indeed it was disputed by her) nor established by other evidence referred to in the letter or elsewhere, let alone established to the standard of beyond reasonable doubt, that the complainant and her children and her ex-husband lived in the same

residence. Secondly, the complainant's response was precisely what was called for, namely an affirmation she was a single mother and that she lived alone with the children. Even assuming that the complainant should have been more expansive in her response, the fact that she was not does not establish beyond reasonable doubt her response was intended to gain a benefit by deception. Thirdly, the additional criterion of "without any help" is not part of the definition of single parent expressly, nor does it arise by necessary implication. It is true the definition uses the word "alone". But that is intended to signify that the claimant for parental leave as a single parent is not bringing up a child with a spouse or partner or other significant person. One can readily imagine situations where a person who is uncontrovertibly a single parent pays for help (for example for cleaning, cooking or babysitting) or secures some help from a relative such as a grandparent. It is simply wrong to say this criterion needed to be satisfied to establish, as a single parent, an entitlement to the additional parental leave benefits. It is consequentially wrong to impute fraudulent intent to the complainant for allegedly conveying the impression that she was raising her children without any help. Indeed and in any event, it is extremely difficult to see how her statement that she was living alone with her children or was a single mother says anything about whether she had or did not have help.

19. The case law of the Tribunal in a situation such as the present is clear. A staff member accused of wrongdoing is presumed to be innocent and is to be given the benefit of the doubt (see, for example, Judgment 2913, consideration 9). The burden of proof of allegations of misconduct falls on the organisation and it must be proved beyond reasonable doubt (see, for example, Judgment 4364, consideration 10). In reviewing a decision to sanction a staff member for misconduct, the Tribunal will not ordinarily engage in the determination of whether the burden of proof has been met but rather will assess whether a finding of guilt beyond reasonable doubt could properly have been made (see, for example, Judgment 4362, considerations 7 to 10).

20. In the present case, beginning with the Investigation Report and concluding with the impugned decision of the President, there has been a clear reluctance, or indeed refusal, to accept what the complainant said was true. Obviously, a person who is guilty of fraud may well often lie and contrive false facts to avoid the consequences of their fraudulent

conduct. Equally obviously, an organisation must be alive to this possibility when investigating and dealing with conduct of a member of staff believed or suspected of being fraudulent. But in the present case, proof of the hypothesis that the complainant's narrative and explanation were false and she acted fraudulently involved an unfair and distorted analysis of the facts. The Tribunal is satisfied a finding of guilt beyond reasonable doubt of the charge alleged could not properly have been made.

21. Also, as discussed above, the complainant was entitled to parental leave as a single parent if she declared, as she did, she was a single parent and that declaration was made bona fide and was reasonably based. Overwhelmingly, the evidence is supportive of her declaration being of that character. Of course, others viewing the complainant's quite unusual circumstances may have concluded that she was not a single parent. Plainly this was the view of at least some in the EPO, including the President, when evaluating her conduct. But this does not mean the complainant was not entitled to parental leave as a single parent, let alone that in claiming it, she was acting fraudulently.

22. The principal relief sought by the complainant is an order for reinstatement. No specific submission is made by the EPO in its pleas that, in the event that the complainant demonstrates her dismissal was unlawful, she nonetheless should not be reinstated. It is, in the circumstances, the appropriate relief (see Judgment 4043, consideration 25). The original decision to dismiss her and the impugned decision should be set aside. The complainant will be reinstated as from the date of public delivery of this judgment. The Tribunal has approached the determination of the date of reinstatement, in the unusual circumstances of this case, having regard to the point made by the Disciplinary Committee, namely that the complainant should have been more forthcoming about her personal situation.

23. In her pleas, the complainant raises a multitude of principally procedural arguments about various steps taken which ultimately led to her dismissal. Given the Tribunal's conclusion about the unlawfulness of the dismissal it is unnecessary to consider their correctness or relevance, if any, to the ultimate decision to dismiss the complainant. However the complainant expressly requests moral damages for these

alleged procedural failures. But again, it is unnecessary to address these issues because no specific moral damage is established for these failures (see, for example, Judgment 4156, consideration 5) beyond the manifest moral damage, involving considerable personal distress, occasioned to the complainant by her being investigated, charged with fraudulent misconduct, found to have engaged in that misconduct and ultimately dismissed. Those moral damages are assessed in the sum of 30,000 euros. Exemplary damages are not appropriate. The complainant is entitled to costs assessed in the sum of 8,000 euros.

24. The complainant sought costs for the disciplinary proceedings and the proceedings before the President, that is, the request for review. Even if it is open to the Tribunal to make such orders, there would be no rational basis for treating such a request differently to a request for costs in the internal appeal. Such orders are only made in extraordinary circumstances (see Judgments 4392, consideration 13, and 4399, consideration 13) which do not exist in the present case. The complainant also seeks an order requiring the EPO to withdraw Circular No. 342. No legal or factual foundation has been established for this order. Finally, she seeks an order lifting the ban concerning access to EPO's premises. Access will be a necessary consequence of the order of reinstatement.

DECISION

For the above reasons,

1. The impugned decision dated 29 January 2018 is set aside, as is the original decision of 7 September 2017 to dismiss the complainant.
2. The EPO shall reinstate the complainant from the date of delivery of this judgment in public.
3. The EPO shall pay the complainant moral damages in the amount of 30,000 euros.
4. The EPO shall also pay the complainant 8,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 1 November 2021, Mr Michael F. Moore, President of the Tribunal, Mr Patrick Frydman, Vice-President of the Tribunal, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 27 January 2022 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

PATRICK FRYDMAN

HONGYU SHEN

DRAŽEN PETROVIĆ