

Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

L. (No. 3)

v.

EPO

126th Session

Judgment No. 4050

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr M. L. against the European Patent Organisation (EPO) on 15 April 2015, the EPO's reply of 6 August, the complainant's rejoinder of 17 September and the EPO's surrejoinder of 15 December 2015;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision to impose on him the disciplinary sanction of relegation in step.

At the material time the complainant, a permanent employee of the European Patent Office, the EPO's secretariat, was a full member of the Internal Appeals Committee (IAC) who had been appointed by the Central Staff Committee, but he was not an elected staff representative. On 28 March 2014 the Administrative Council issued decision CA/D 2/14, which provided for modifications concerning the IAC, in particular as to the fact that the Central Staff Committee had to appoint IAC members from among elected members of the Central Staff Committee or of the Local Staff Committee. The President of the Office subsequently adopted Circular No. 356 (which entered into force on 1 July 2014) regarding the resources and facilities to be granted to the Staff Committee.

Circular No. 356 replaced Communiqué No. 45 (in force until 30 June 2014) regarding time allocation for staff representation activities, and it provided transitional measures for employees who had not been elected to the Staff Committee but who were involved in staff representation activities up to 30 June 2014.

In an email of 14 April 2014 the complainant informed the Chairperson of the IAC that, in light of provisions in Circular No. 356, he would not participate in the IAC's July session. An exchange ensued between the IAC Chairperson and the complainant on this issue. The complainant ultimately did not participate in the IAC session that was held from 30 June to 4 July 2014 (hereinafter "the July session").

On 30 September 2014 a Communiqué was issued by the Administration about the "Functioning of the settlement of disputes system." In a letter of 2 October the complainant informed the President that he would withdraw from any further work for the IAC as from 10 October if the Communiqué was not retracted by that date. In the absence of the requested retraction, the complainant withdrew from further work for the IAC with effect from 11 October 2014.

In November 2014 the Principal Director of Human Resources initiated disciplinary proceedings against the complainant by drawing up a report under Article 100 of the Service Regulations for permanent employees of the European Patent Office. She stated, among other things, that the complainant had unilaterally refused to perform his tasks as an IAC member, obstructed the work of the IAC by not participating in its July session, and had further obstructed the work of the IAC by withdrawing from any further IAC work in October. The Principal Director concluded that the complainant's actions qualified as misconduct and as a breach of his general obligations under Articles 5(1), 14(1) and 24(1) of the Service Regulations. She recommended the disciplinary measure of downgrading and the matter was referred to a Disciplinary Committee.

Following an oral hearing the Disciplinary Committee issued a reasoned opinion on 17 December 2014. It unanimously found that by not attending the July session of the IAC the complainant had breached Article 2(3) of the IAC Rules of Procedure that were de facto in force

until 10 July 2014, but that this did not constitute a breach of Article 5 of the Service Regulations. It also unanimously found that the complainant had not breached Article 14 of the Service Regulations. A majority of the members found that Article 24(1) of the Service Regulations was not applicable to the complainant's case. The Disciplinary Committee unanimously recommended the disciplinary measure, under Article 93(2)(d) of the Service Regulations, of relegation by one step to grade A4, step 12.

In a letter of 15 January 2015 the President informed the complainant that his actions qualified as misconduct which did not comply with the general standards of conduct required under Articles 5(1), 14(1), 20(1) and 24(1) of the Service Regulations, nor with the specific provisions governing the work of the IAC. He stated that he had taken note of the opinion of the Disciplinary Committee, which he endorsed in general with some exceptions related to the legal reasoning, and that he had decided to impose on the complainant, with effect from 1 February 2015, the disciplinary sanction of relegation of three steps.

On 2 February 2015 the complainant filed a request for review of the decision of 15 January. On 16 March 2015 the President rejected that request for review as unfounded and stated that the complainant could challenge the decision by way of a complaint filed with the Tribunal. That is the impugned decision.

The complainant asks the Tribunal to quash the President's decisions of 15 January and 16 March 2015 and to order the restoration of the steps that he has lost, i.e. to return him to grade A4, step 13. He seeks reimbursement of all lost income and benefits, including any future impact on accrued pension rights. He asks to be granted the maximum yearly accreditation of steps from grade A4, step 13, every year until all awards due to him are paid. He further asks the Tribunal to publish the "erroneous findings of the President" in the aforementioned decisions and to order the removal from his personnel file of any evidence of or reference to the disciplinary proceedings. He claims moral damages and reimbursement of all legal costs. He also claims interest and any other relief the Tribunal finds to be just, fair and appropriate.

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

CONSIDERATIONS

1. The complainant impugns the 16 March 2015 decision of the President of the EPO rejecting his 2 February 2015 request for review of the President's previous 15 January 2015 decision to apply the disciplinary sanction of relegation in step by three steps with effect from 1 February 2015.

2. Following a disciplinary procedure regarding the complainant's alleged misconduct, the Disciplinary Committee unanimously found that by not attending the IAC's July session the complainant had breached Article 2(3) of the Rules of Procedure of the IAC, but that he had not violated Articles 5 and 14 of the Service Regulations. A majority of the Disciplinary Committee members found that he had not breached Article 24(1) of the Service Regulations. A minority of the members found the complainant had breached Article 24(1) of the Service Regulations by not following instructions he had received, thereby failing to discharge the duties entrusted to him. The Disciplinary Committee unanimously recommended the disciplinary sanction of relegation in step by one step.

3. Article 2(3) of the January 2013 Rules of Procedure of the IAC provides as follows:

“Article 2

Deputising for the chairman and members

[...]

- (3) Reasons for requiring a deputy include partiality, illness and other commitments.”

Article 5(1) of the Service Regulations provides:

“Article 5

General recruitment criteria

- (1) Recruitment shall be directed to securing for the Office the services of permanent employees of the highest standard of ability, efficiency and

integrity, recruited on the broadest possible geographical basis from among nationals of the Contracting States.”

Article 14(1) of the Service Regulations provides:

**“Article 14
General obligations**

- (1) A permanent employee shall carry out his duties and conduct himself solely with the interests of the European Patent Organisation (hereinafter referred to as ‘the Organisation’) in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside the Organisation.”

Article 24(1) of the Service Regulations provides:

**“Article 24
Responsibility for the discharge of duties**

- (1) A permanent employee shall be responsible for the discharge of the duties entrusted to him. The responsibilities of his subordinates shall in no way diminish the responsibilities devolving on him.”

4. In his 15 January 2015 decision the President noted that the complainant was accused of having intentionally disrupted and ultimately blocked the work of the IAC by his attitude and actions while he was a full IAC member. He was accused of thereby seriously damaging the interests of the service, as clearly evidenced by his refusal to participate in the hearings held by the IAC during its July session. He was further accused of having committed, in the framework of the disciplinary proceedings, an additional breach by disclosing confidential and personal appeal-related information to unauthorised third parties. The President clarified that “contrary to what ha[d] been considered by the [Disciplinary Committee], the facts related to [the complainant’s] final withdrawal from the work of the IAC in October 2014 [had] not been put forward by the Office as separate misconduct”.

5. With regard to the merits, the President highlighted that the Disciplinary Committee was invited to evaluate the complainant’s conduct “globally” with regard to the universal obligations and responsibilities of international civil servants as well as in consideration

of the specific obligations of IAC members. He noted that the Disciplinary Committee had not applied such a global view and, in considering the non-participation in the hearings of the IAC as separate misconduct, had disregarded that the relevant misconduct was the systematic refusal to participate and obstruction of the functioning of the IAC. To justify his decision not to follow the Disciplinary Committee's recommendations, the President noted, inter alia, that the responsibility for discharge of duties under Article 24 of the Service Regulations was fundamental for an IAC member with full-time release from his normal duties, and that the Disciplinary Committee's finding that the allegation of categorical refusal to perform the main duties was unsubstantiated could not be accepted. He did not endorse the majority opinion that Article 24(1) of the Service Regulations applies solely to the duties for which an employee has been recruited but not to any additional special tasks like participation in the IAC.

6. The President endorsed the opinion of the minority of the Disciplinary Committee members that the complainant had ignored the Chairperson's instructions to participate in the July session (according to the minority "instructions do not have to be explicit to be instructions"). The President stated that "the [Disciplinary Committee] ha[d] correctly found that the members of the IAC are not independent and have no discretion in deciding whether the IAC should meet. The Chairperson of any statutory or collegiate body must be able to rely on the generally cooperative behaviour [and] attitude that must prevail among its members". The President also noted that there was no ambiguity about the complainant's responsibilities and the applicable rules, which were clarified on several occasions by the IAC Chairperson, and that, the Disciplinary Committee's finding that the complainant's interpretation of Circular No. 356 was "based on good faith" and was at least reasonable, was irrelevant and appeared mistaken. The President endorsed the minority opinion that the complainant "showed a considerable uncooperativeness and lack of initiative to resolve the matter and thereby bluntly ignored the importance of the issue by putting the entire IAC session at risk".

7. The President did not agree with the Disciplinary Committee's assessment that the complainant's disclosure of confidential information did not reveal any information on individual cases. The Disciplinary Committee failed to consider that the alleged breach concerned the leave requests of specific IAC members and that the complainant disclosed the name of an appellant in one of his annexes submitted to the Disciplinary Committee. The President considered this an aggravating circumstance as the complainant's position as a member of the IAC required a respect for confidentiality. The President concluded that the Disciplinary Committee's view regarding the mitigating circumstances could not be followed. He stated that the complainant's assertion that he could not attend the July session because he did not receive the files in time, was incorrect as the complainant "informed the IAC secretariat about [his] leave and travel plans as of 12 [June] 2014 only in the evening of 10 [June] 2014" and thus, the fact that the files were not received in time was entirely attributable to the complainant himself.

8. The President concluded that the facts on which the charges were based qualified as misconduct which did not comply with the general standards of conduct required under Articles 5(1), 14(1), 20(1), and 24(1) of the Service Regulations, nor with the specific provisions governing the work of the IAC. The President therefore decided that he could not follow the recommendation of the Disciplinary Committee and instead decided to impose the disciplinary sanction of relegation in step by three steps. The complainant's request for review of that decision was rejected in the President's final decision of 16 March 2015, which reaffirmed his previous decision.

Article 20(1) of the Service Regulations provides:

**"Article 20
Unauthorised disclosure**

- (1) A permanent employee shall exercise the greatest discretion with regard to all facts and information coming to his knowledge in the course of or in connection with the performance of his duties; he shall not in any manner whatsoever use or disclose to any unauthorised person any document or information not already made public."

9. The President, in his 16 March 2015 decision, affirmed his 15 January 2015 decision and further noted, *inter alia*, that: the disciplinary procedure was in full compliance with the relevant provisions of the Service Regulations; there was a proper delegation of authority for the initiation of the disciplinary proceedings; the Disciplinary Committee Chairperson was lawfully appointed; the complainant was given ample opportunities to be heard; the deadlines were properly respected; the Principal Director of Human Resources was duly acting on behalf of the Administration throughout the proceedings; no public announcement regarding the complainant's misconduct was contained in the Communiqué on the functioning of the settlement of disputes system; and the sanction could not be considered disproportionate.

10. The complainant impugns that decision on the following grounds:

- (a) illegality of the Article 100 report initiating the disciplinary proceedings;
- (b) flawed constitution of the Disciplinary Committee;
- (c) breach of due process;
- (d) errors of fact and law;
- (e) erroneous consideration of mitigating and aggravating factors;
- (f) disproportionality of the sanction imposed; and
- (g) unjustified final decision not to endorse the Disciplinary Committee's findings and recommendation.

11. As the written submissions are sufficient for the Tribunal to reach a reasoned decision, the request for oral proceedings is rejected.

12. The complaint is unfounded. First, the claim regarding the violation of Article 93(4) of the Service Regulations is rejected. Article 93(4) provides that disciplinary proceedings shall be initiated by the appointing authority where necessary on a report made by the immediate superior of the employee concerned. In the present case, the President, who is the appointing authority for the complainant, lawfully

delegated the power to initiate disciplinary proceedings against a staff member by an act of delegation of November 2008 in accordance with the relevant provisions of the European Patent Convention. Contrary to the complainant's arguments in this respect, Article 10(2)(h) of the European Patent Convention provides that "[the President] shall exercise disciplinary authority over the employees other than those referred to in Article 11 [...]" and Article 10(2)(i) states that "[the President] may delegate his functions and powers". Article 11(3) of the Convention provides that "[t]he members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by the Administrative Council [...]". Article 11 does not apply to the complainant as he was appointed by the President and was not a member of the Boards listed under that Article.

13. The complainant's claim that the Disciplinary Committee was improperly composed as the Chairperson had to have been chosen from among the members of the Boards of Appeal, is unfounded. The Disciplinary Committee, which is an advisory body, was lawfully constituted and the Chairperson was appointed in accordance with Article 98 of the Service Regulations. Article 98 does not require that the Chairperson be chosen from among the members of the Boards of Appeal, and does not prevent the President from choosing an employee for whom the President is the appointing authority.

14. The claims of breach of due process are unfounded.

- (a) The complainant contests the non-extension of several deadlines and the refusals to postpone dates of hearings during the disciplinary proceedings. There was no requirement to allow for extensions with regard to any of his requests and the Tribunal notes that the complainant's submissions do not provide exceptional reasons for his extension requests which would lead the Tribunal to decide that the decisions not to change the dates of the hearings or extend the contested deadlines were unreasonable.

- (b) The complainant claims that he should have had 15 days to respond to the new allegation of misconduct regarding the charge of breach of confidentiality, as it was not included in the Article 100 report. In a similar situation the Tribunal concluded as follows: “The Tribunal notes that the Disciplinary Committee addressed this issue explicitly in the proceedings and in its final report. The Disciplinary Committee has the prerogative to immediately address something which occurs during the proceedings, in the interest of procedural efficiency. As the complainant was given the opportunity to comment on the alleged breach of confidentiality, the principle of due process was respected. The complainant had adequate time to prepare his defence.” (See Judgment 3971, under 15.) These conclusions are applicable to the present case.
- (c) The complainant claims that the involvement of the Principal Director of Human Resources was improper and affected the impartiality of the proceedings as she was appointed by the President, had authored the Article 100 report, and represented the Administration throughout the proceedings. This claim is unfounded. The Principal Director of Human Resources was acting in her proper role on behalf of the Administration as required by her functions. There was no conflict of interest.
- (d) The complainant claims that the Communiqué of 30 September 2014 and a Communiqué of 13 October 2014 negatively affected the impartiality of the disciplinary proceedings. This claim is unfounded. The Communiqués contain a general presentation of facts regarding the functioning of the internal appeals process and the delays in the settlement of disputes system and did not name the complainant nor mention any specific allegations of misconduct.

15. The complainant’s claims of errors of fact and law are unfounded. The complainant submits that the President did not properly justify his departure from the Disciplinary Committee’s recommendation, and that he misinterpreted the reasoning provided. The Tribunal finds that the President’s decisions of 15 January and 16 March 2015 are properly motivated. The Tribunal observes that in both decisions the

President followed the Disciplinary Committee's recommendation in part, and adopted the nature of the sanction recommended (relegation in step) while motivating the decision to increase the gravity of the sanction from the recommended relegation by one step, to relegation by three steps. The President based his decision on the fact that the complainant, in insisting on his erroneous interpretation of the rules, violated the Service Regulations and subverted the Chairperson's authority to take organizational decisions. The complainant alleges that the President erred in not following the Disciplinary Committee's majority opinion according to which the complainant's discharge of duties as an IAC member did not form part of his normal duties, the Chairperson of the IAC did not share a supervisory relationship over the IAC members, and her emails to the complainant could not be considered as instructions. This allegation, based on the complainant's interpretation of Articles 112(1), 34(2) and 24 of the Service Regulations and Article 1(2) of the Rules of Procedure of the IAC, is not convincing. These Articles do not sustain the complainant's interpretation. The question has already been partly addressed in Judgment 3971, in which the Tribunal decided a similar case.

16. Articles 112(1), 34(2) and 24(1) of the Service Regulations provide as follows:

“Article 112

Independence and impartiality of the Appeals Committee

- (1) The chairman and members of the Appeals Committee and their alternates shall be completely independent in the execution of their task. They shall neither seek nor accept any instructions.”

“Article 34

Functions of the Staff Committee

[...]

- (2) The duties undertaken by members of the Staff Committee and by their nominees to the bodies set up under these Service Regulations or by the Office shall be deemed to be part of their normal service. The fact of performing such duties shall in no way be prejudicial to the person concerned.”

**“Article 24
Responsibility for the discharge of duties**

- (1) A permanent employee shall be responsible for the discharge of the duties entrusted to him. The responsibilities of his subordinates shall in no way diminish the responsibilities devolving on him.”

Article 1(2) of the January 2013 version of the Rules of Procedure of the IAC provides as follows:

“Unless otherwise provided, procedural decisions are taken and justified by the chairman. The members are given access to the relevant information. At a member’s request, the committee votes on such decisions.”

17. Properly construed, the above provisions establish that although each member of the IAC is completely independent in her or his contributions to the reasoning and the recommendations of the IAC, the Chairperson (*primus inter pares*) has an organizational power to which the other members are subjected for the overarching purpose of ensuring the proper functioning of the system of internal appeals. In Judgment 3971, under consideration 14, the Tribunal stated as follows:

“The claim that Article 112 of the Service Regulations on the ‘[i]ndependence and impartiality of the Appeals Committee’ must be interpreted as excluding the authority of the Chairperson is unfounded. Article 112(1) provides that ‘[t]he chairman and members of the Appeals Committee and their alternates shall be completely independent in the execution of their task. They shall neither seek nor accept any instructions.’ The ‘execution of their task’ refers exclusively to the exercise of the function of the IAC Chairperson and its members, which is to render an opinion. It does not refer to the reasonable administration of the work of the IAC, which includes, inter alia, the prioritization of the workload for each session.”

Article 14(3) of Circular No. 356 provides as follows:

**“Article 14
Entry into force and transitional provisions**

[...]

- (3) For employees who have not been elected, but who are involved in staff representation activities up to 30 June 2014, the following transitional measures shall apply:

- (a) Time spent on staff representation activities which have been commenced but not completed by 30 June 2014 may be deducted in accordance with Communiqué No. 45 until 31 July 2014;
- (b) Notwithstanding paragraph (a), members of the Appeals Committee, Selection Boards and Disciplinary Committees and conciliation experts under Circular No. 246 may continue to deduct their time in accordance with Communiqué No. 45 until any work in progress is completed, up to but not beyond 31 December 2014.”

Article 17 of CA/D 2/14 provides as follows:

- “(1) The appointment of new members to the bodies referred to in Article 2(1)(c), (e) and (h) of the Service Regulations and all other bodies shall be made by 1 October 2014 in accordance with the Service Regulations as amended by this decision, in particular Article 36(2)(a) thereof.
- (2) These bodies shall continue to function in their current composition pursuant to the provisions applicable prior to the entry into force of this decision until they are newly composed in accordance with paragraph 1 above.”

18. Regarding the complainant’s interpretation of Article 14(3)(b) of Circular No. 356 and, specifically, of the expression “work in progress”, the Tribunal finds that the complainant’s interpretation according to which the cited expression refers to appeals already examined and that non-elected staff representatives should not start the examination of any new case after 30 June 2014, was incorrect. In an email of 17 April 2014 to the complainant, the Chairperson of the IAC identified the purpose and effect of Article 14(3)(b) of Circular No. 356 and Article 17(2) of CA/D 2/14 arising from the proper interpretation of those provisions. This interpretation is logical considering the different expressions contained in Articles 14(3)(a) (“activities which have been commenced but not completed by 30 June 2014”) and 14(3)(b) of Circular No. 356 (“until any work in progress is completed, up to but not beyond 31 December 2014”) and is confirmed by Article 17(2) of CA/D 2/14. This is also consistent with the rationale of the provisions which was to ensure a smooth transition during the new staffing of the IAC.

19. In the aforementioned email of 17 April 2014, the Chairperson stated that she did not agree with the complainant's announcement that he did not intend to participate in the July session and she asked him to fulfil his duty. She stated, in relevant part as follows:

“- The sessions have been planned and agreed with all IAC members in advance and it can be only for compelling reasons that members cancel their participation in a session (see Article 2(3) [of the Rules of Procedure of the] IAC).

- Further, Circular [No.] 356 is no such compelling reason. According to Article 17(2) of CA/D 2/14, the IAC ‘shall continue to function in [its] current composition ... until [it] is newly composed in accordance with paragraph 1 above.’ The transitional measures foreseen in Circular [No.] 356 provide sufficient means to the IAC members appointed by the Staff Committee until any work in progress is completed up to 31 December 2014, so that work related to cases for the July and September sessions are appropriately covered.

I would like to call on you as an IAC member appointed by the Staff Committee to fulfil your duty and to sit in the July session as planned and agreed upon. [...]”

The Chairperson's interpretation, as set out in her emails sent to the complainant, and specifically in an email of 30 April 2014 whereby she stated: “[i]n this context ‘work in progress’ means any cases which are allocated to the current members of the IAC until the new composition of the IAC is announced”, is correct.

20. The Disciplinary Committee shared the Chairperson's interpretation, but justified the complainant's absence in the July days of the session as having been based on his “good faith interpretation” of Circular No. 356. It stated that it “unanimously consider[ed] that the [complainant] genuinely believed that Article 14(3)(b) [of] Circular [No.] 356 expressed a wish of the President [...] for the IAC not to open any new cases from 1 July 2014 until the new [IAC] members were nominated on 1 October 2014. This is the same as saying that his participation [in] the IAC from 1 July onwards would have been, in his opinion, illegal, if he were not elected and nominated”. The reasoning of Disciplinary Committee is not convincing. The complainant's behaviour was intentional; he insisted on his erroneous interpretation of the provisions notwithstanding the repeated clarifications given to him by

the Chairperson, and he ignored the negative consequences of his actions on the functioning of the IAC.

21. The complainant also claims that his absence from the July session was due to the Chairperson's refusal to change the schedule for that session and the fact that he did not receive the cases at least two weeks prior to the session as provided for in Article 19(4) of the January 2013 version of the Rules of Procedure of the IAC. The Tribunal finds that the complainant could not require the Chairperson to change the dates of the scheduled hearings just to suit his convenience. While it is unfortunate that an alternate member was not available to take the complainant's place at the July session, the main responsibility lay with the complainant to attend the session in accordance with the provisions of Articles 24(1) and 34(2) of the Service Regulations as he had no compelling reason not to attend. The case files were apparently delivered to the complainant's office on 16 June 2014, two weeks prior to the July session. The Chairperson was not required to deliver the files to alternate destinations outside of the Organisation. Additionally, even if the Chairperson had been able to organize the delivery to him to another destination, the complainant only provided notice of his 12 June travel plans on the evening of 10 June 2014, which in any case would not have allowed enough time for an alternate delivery of the cases within the timeframe required by Article 19(4).

22. The complainant claims that his actions did not cause any identifiable prejudice. The Tribunal observes that the complainant obstructed the proper functioning of the system of internal remedies by his unjustified absence from the July session, his undermining of the Chairperson's authority to take organizational decisions and his refusal to finalize the cases assigned to him which had been pending prior to the July session before leaving the IAC. The complainant does not acknowledge the negative impact of his uncooperative behaviour on the functioning of the IAC, which consequently adversely affected the interests of the other members of the IAC.

23. The complainant claims that the President did not properly consider the mitigating factors and that the sanction was disproportionate. More specifically he alleges that the President did not consider his requests to move the July session to earlier in June; his request for the President to set aside the disputed provisions of Circular No. 356 to allow him to attend the July session; his willingness to attend the September session; and his good faith. He also claims that the President did not properly take into account the mitigating factors identified by the Disciplinary Committee. The Tribunal finds that in the decisions of 15 January and 16 March 2015 the President properly motivated his reasoning for deviating from the Disciplinary Committee's recommendation of the sanction of relegation in step by one step. Furthermore, the above-listed mitigating factors identified by the complainant are unconvincing. As noted above, the provisions were lawful, his absence was unjustified, his behaviour was intentional, and furthermore, his willingness to attend the September session was conditional. Taken as a whole, the complainant's behaviour constituted misconduct, which was aggravated by the fact that he was an IAC member who would be expected to have a high level of respect for the rules, for confidentiality, and for the proper functioning of the appeal system. As noted above, the President maintained the sanction proposed by the Disciplinary Committee (relegation in step), but after considering the severity of the misconduct, he concluded that relegation by three steps was justified. The Tribunal considers the contested sanction not to be disproportionate in light of the above considerations.

24. Given the above conclusions, a consideration of the complainant's request for disclosure is unnecessary.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 8 May 2018, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 26 June 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ