



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Second Chamber)
19 July 2016

Case F-149/15

HG
v
European Commission

(Civil service — Officials — Officials posted to a non-Member State — Lodging provided by the administration — Obligation to reside there — Disciplinary proceedings — Disciplinary penalty — Article 9(1)(c) of Annex IX to the Staff Regulations — Deferment of advancement to a higher step — Compensation for the harm suffered — Article 22 of the Staff Regulations)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, by which HG seeks annulment of the decision of the European Commission imposing the disciplinary penalty of deferment of advancement to a higher step for a period of 18 months and requiring him to pay compensation for damage sustained by the Commission in the amount of EUR 108596.35.

Held: The action is dismissed. HG shall bear his own costs and is ordered to bear the costs incurred by the European Commission.

Summary

*1. Officials — Disciplinary measures — Penalty — Discretion of the appointing authority — Assessment of whether the facts complained of in disciplinary proceedings are established — Opinion of the Disciplinary Board — Scope — Limits
(Staff Regulations, Annex IX, Arts 18 and 22)*

*2. Officials — Disciplinary measures — Disciplinary proceedings — Infringement of an obligation — Infringement of the same obligation by another official — No effect
(Staff Regulations, Annex IX, Art. 22)*

*3. Officials — Rights and obligations — Duty of loyalty — Scope — Finding of misconduct — Criteria for assessment
(Staff Regulations, Art. 11)*

1. Under Article 18 of Annex IX to the Staff Regulations, the Disciplinary Board, acting by a majority, delivers a reasoned opinion as to whether the facts complained of are established and as to any penalty to which those facts should give rise. That opinion is not binding on the appointing authority in respect of whether the facts complained of are established.

Accordingly, an official cannot legitimately criticise the Disciplinary Board for not considering procedural issues which he had raised throughout the disciplinary proceedings, as such questions are not necessarily required to be dealt with in the reasoned opinion adopted under Article 18 of Annex IX to the Staff Regulations.

Furthermore, since the appointing authority is not bound by the opinion of the Disciplinary Board as to whether the facts complained of are established, the objections concerning the examination of the facts carried out by the Disciplinary Board must be dismissed as inoperative. Such objections are to be raised, if at all, by way of challenge to the final decision taken by the appointing authority pursuant to Article 22 of Annex IX.

(see paras 78-80)

See:

Judgment of 3 June 2015 in *Bedin v Commission*, F-128/14, EU:F:2015:51, paras 23 to 25

2. In disciplinary proceedings, the official concerned cannot rely on the appointing authority having tolerated infringing conduct on the part of another official as an excuse for engaging in the same infringing conduct himself.

(see para. 122)

3. The duty of loyalty requires an official not just to refrain from conduct likely to prejudice the dignity and respect due to the institution and its authorities, but also to conduct himself, particularly if he is of senior grade, in a manner that is beyond suspicion in order that the relationship of trust between that institution and himself may at all times be maintained. In addition, the duty of loyalty requires officials to facilitate the task of the administration in determining the scope of their entitlements by providing clear and unambiguous information.

Finally, since the duty of loyalty is imposed in a general and objective manner it was not necessary for the tripartite appointing authority, in order to make a finding of misconduct on the part of an official, to establish or take account of the reasons why the official in question infringed his duty of loyalty, even supposing such reasons to have been proved.

(see paras 147, 151)

See:

Judgments of 8 November 2007 in *Andreasen v Commission*, F-40/05, EU:F:2007:189, para. 233; 23 October 2013 in *Gomes Moreira v ECDC*, F-80/11, EU:F:2013:159, para. 66, and 19 November 2014 in *EH v Commission*, F-42/14, EU:F:2014:250, para. 112