Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

P. L. (No. 5)
v.
ICC

141st Session **Judgment No. 5102**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr E. P. L. against the International Criminal Court (ICC) on 29 June 2022, the ICC's reply of 24 November 2022, the complainant's rejoinder of 13 April 2023 and the ICC's surrejoinder of 18 July 2023;

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 summarily dismiss him with immediate effect for serious misconduct.

The complainant joined the ICC in 2003. At the time of the events giving rise to the present complaint, he was the Chief of the Counsel Support Section (CSS), at grade P-5, in the Registry of the Court.

On 11 June 2020, Mr L., external counsel, was appointed as Duty Counsel to represent a defendant in his initial appearance before the ICC and, on 17 June 2020, he was appointed as Defence Counsel to represent the same defendant in the proceedings before the ICC.

By an email of 30 June 2020, the complainant informed Mr V., Head of the Legal Aid Unit in CSS, that he had a “professional relationship” with Mr L., he had appointed him as counsel to negotiate all his pending employment matters with the ICC Registry, and asked if he (Mr V.) would take over the CSS representation in the case for which Mr L. had been appointed as Defence Counsel. This email prompted an exchange of emails between the Office of the Registrar and Mr V. to obtain information regarding the complainant’s role in the matter. On 28 August 2020, the Registrar sent a memorandum to Mr D., the complainant’s supervisor and Director of the Division of Judicial Services (DJS), in which he acknowledged the complainant’s disclosure of conflict of interest and requested that Mr D. implement all necessary and adequate measures to guarantee the complainant’s non-involvement in any matter related to the case for which Mr L. had been appointed as Duty Counsel and Defence Counsel.

In a memorandum of 22 September 2020 to the Head of the Internal Oversight Mechanism (IOM), the Registrar noted that, as the disclosure of the complainant’s conflict of interest had occurred only after Mr L.’s appointment as Counsel, whereas disclosure of any potential conflict of interest was to be made in advance pursuant to section 4.4 of Administrative Instruction ICC/AI/2011/002 of 4 April 2011, entitled “Code of Conduct for Staff Members”, he considered that an investigation by the IOM was warranted in order to determine: (i) whether the complainant had complied with the aforementioned legal requirement under section 4.4 of Administrative Instruction ICC/AI/2011/002; and (ii) whether there had been any direct or indirect influence by the complainant in Mr L.’s appointment as Duty Counsel and Defence Counsel.

Following a preliminary assessment, the IOM found that the allegations were credible, material and verifiable enough to warrant a full investigation into the complainant’s alleged untimely disclosure of conflict of interest with Mr L. and whether the complainant might have directly or indirectly influenced the appointment of Mr L. as Duty Counsel and Defence Counsel. By a memorandum of 2 February 2021, the Head of the IOM notified the complainant that the IOM was

conducting an investigation into allegations of misconduct or unsatisfactory conduct against him and of the nature of these allegations. In the course of the investigation, the IOM identified information indicating that the complainant might have engaged in further misconduct by favouring Mr L.'s appointment as Legal Adviser pursuant to Rule 74(10) of the Rules of Procedure and Evidence (Rule 74 Counsel) in 2016 and 2017 and by disclosing confidential information to him. The IOM expanded the scope of its investigation to include these allegations and relevantly informed the complainant by a memorandum of 22 July 2021.

In its investigation report, issued on 29 September 2021, the IOM found there was sufficient evidence to conclude that the complainant had a conflict of interest, which he had failed to disclose in a timely manner, both at the time of Mr L.'s Rule 74 appointment (May 2016-January 2017) and during his appointment as Duty Counsel and Defence Counsel in June 2020. The failure to disclose this conflict of interest was exacerbated by the fact that the relationship seemed to have been concealed in July 2016, precisely in order for the complainant to be able to appoint Mr L. without any such conflict coming to light. The IOM also found that there was sufficient evidence to conclude that the complainant had assisted Mr L. in his dealings with the ICC, and had used his knowledge and position as Chief of CSS to assist Mr L. in being appointed on two occasions as Rule 74 Legal Adviser. The complainant's actions also amounted, at a minimum, to a perceived preferential treatment in that they had facilitated Mr L.'s appointment as Duty Counsel, by placing him on the shortlist, which would not have happened absent the complainant's actions. Lastly, by providing Mr L. with information the complainant was privy to by virtue of his position, the complainant had assisted Mr L. in his appointment as Permanent Counsel. The IOM further found that the complainant had disclosed confidential ICC documents to an external party for his own personal purposes. The IOM concluded that the complainant's actions violated Staff Regulations 1.2(b), (e), (g), (i), and (j); Staff Rules 101.3(a), 101.4(a), 101.6(a), and 101.9(a); the Code of Conduct, paragraphs 2.1, 4.1-4.5; the Standards of Conduct for the International Civil Service, paragraphs 23-25; and the ICC Information Protection Policy,

paragraphs 16.2 and 28.3, and recommended that appropriate disciplinary action be taken against the complainant.

In a memorandum of 12 October 2021, the Registrar conveyed to the complainant the IOM findings and conclusions and informed him of his decision to pursue the matter further pursuant to sections 2.5 and 2.6 of Administrative Instruction ICC/AI/2008/001 on Disciplinary Procedures. The Registrar informed the complainant that a copy of the IOM report together with all exhibits would be provided to him and invited him to respond to the allegations and to produce countervailing evidence, which the complainant did on 30 November 2021. Also on 12 October 2021, the Registrar notified the complainant of his decision to suspend him from duty with full pay for an initial period of three months, i.e. until 12 January 2022.

On 14 December 2021, the matter was referred to the Disciplinary Advisory Board for advice, in accordance with section 2.9(b) of Administrative Instruction ICC/AI/2008/001, and the Registrar informed the complainant of his decision to extend his suspension from duty with full pay for a further period of two months, i.e. until 12 March 2022, pending completion of the disciplinary proceedings.

In its report, submitted on 1 March 2022, the Disciplinary Advisory Board concluded that (i) the complainant had failed to disclose his conflict of interest in a timely manner, at the time of Mr L.'s Rule 74 appointment in May 2016-January 2017, and during the process of appointment as Duty and Permanent Counsel in June 2020; (ii) he had granted preferential treatment to Mr L. by placing him on the shortlist for Duty Counsel, as well as by assisting him in his appointment as Permanent Counsel; and (iii) he had breached the confidentiality of ICC internal documents by distributing the Report on the Assessment of the ICC's Legal Aid System and the Audit Report to Mr L. for his own private matters. Considering the gravity of the case compounded with multiple violations of internal rules and potential implications to the reputation of the ICC, two Panel members recommended that the complainant be demoted so as to no longer be involved in the selection of the duty counsel and/or permanent counsel in CSS, and that he be deprived of incremental steps to offset any potential financial gains

Mr L. might have had because of his friendship with the complainant. One Panel member recommended that the measure of termination of appointment with prior notice be imposed on the complainant. The Disciplinary Advisory Board also made some recommendations of a general character.

The next day, on 2 March 2022, the Registrar decided to extend the complainant's suspension from duty with full pay for a further period of 20 days, i.e. until 1 April 2022, pending completion of the disciplinary proceedings.

In a letter of 1 April 2022, the Registrar informed the complainant that he was satisfied beyond reasonable doubt that: (i) he had failed to disclose, and deliberately concealed, a conflict of interest in the context of Mr L.'s appointments as Rule 74 Legal Adviser between May 2016 and January 2017; (ii) he had failed to disclose a conflict of interest in a timely manner in the context of Mr L.'s appointments as Duty Counsel and Permanent Counsel in a case before the ICC; (iii) his actions in connection with Mr L.'s appointments as Rule 74 Legal Adviser, Duty Counsel, and Permanent Counsel amounted, at the very least, to perceived preferential treatment; and (iv) his disclosures to Mr L. of the draft versions of confidential reports amounted to breaches of confidentiality. Concluding that the relationship of mutual trust and confidence necessary for the continuing performance of the complainant's functions has irretrievably and permanently broken down, the Registrar informed the complainant that the seriousness of his unsatisfactory conduct warranted his immediate separation from service and he had, therefore, decided to summarily dismiss him with immediate effect, in accordance with Staff Regulation 10.2(b) and Staff Rules 110.6(a)(viii) and 110.7(a). This is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to order his reinstatement with retroactive effect from the date of that decision and the removal from his administrative file of any reference to it and the disciplinary action taken against him, "as well as all procedural documents". He seeks payment of his salary, benefits, allowances, including a new assignment grant pursuant to Rule 107.14, and pension contributions, retroactively from the date of notification of

the impugned decision to the date of effective reinstatement, plus interest on all amounts awarded.

Alternatively, in the event reinstatement is not possible, he asks the Tribunal to quash the impugned decision and to order the removal from his administrative file of any reference to that decision and the disciplinary action taken against him, as well as all procedural documents, though unspecified. He seeks payment of an amount equivalent to the salaries, benefits, allowances and pension contributions that he would have received had he remained employed by the defendant until his retirement on 4 April 2026, in compensation for the loss of opportunity to remain employed with the ICC due to the unlawfulness of the contested decision. He also seeks payment of a severance pay equivalent to twelve months' salary pursuant to Staff Rule 109.2(g), as well as payment of a repatriation grant equivalent to 28 weeks' salary pursuant to Staff Rule 109.6(f), both of which amounts he would have received had he not been summarily dismissed without notice. He claims moral damages of not less than 30,000 United States dollars for the violation of his fundamental rights and the ICC's failure to exercise due care and a minimum of 7,000 euros in costs for filing the present complaint.

The ICC asks the Tribunal to dismiss the complaint in its entirety as unmeritorious. In the event the Tribunal considers that the complainant's summary dismissal was unlawful, the ICC submits that an order of reinstatement would not be appropriate in the present case because the complainant's conduct has seriously undermined the necessary relationship of mutual trust and confidence between him and the Court and, also, because of the passage of time from his summary dismissal. The ICC notes, in that respect, that the complainant's contract, but for his summary dismissal, was due to expire on 16 May 2024, and he was close to retirement (due in 2026) at the time of the impugned decision.

CONSIDERATIONS

1. The complainant is a former staff member of the ICC. He was summarily dismissed for serious misconduct, by a decision of 1 April 2022. He impugns that decision in the present complaint (his fifth to this Tribunal) dated 29 June 2022. Sufficient of the background has already been discussed.

2. The complainant raises a myriad of arguments concerning the lawfulness of the summary dismissal decision. It is only necessary to deal with one contention which is decisive. In the impugned decision, the Registrar did not adopt the recommendation of the majority comprising two members of the Disciplinary Advisory Board or, indeed, the recommendation of the minority comprising one member. They both concerned the appropriate sanction.

3. In his complaint brief, under the heading "[IV.] C. The impugned decision is not sufficiently motivated", the complainant advances two lines of related arguments in his brief. One is general and to the effect that the ICC "failed to provide any reason at all for disregarding the recommendations of the Panel members [notwithstanding that it] attach[ed] the Disciplinary Advisory Board report to its final decision and reproduce[ed] the recommendations of its Panel members in the final decision itself". The second line of argument is more narrowly focused and concerns the adequacy of the ICC's consideration of, principally, "exculpatory evidence" and mitigating factors. The complainant argues that on this ground alone concerning motivation the impugned decision of 1 April 2022 is unlawful and must be set aside.

4. It is true that the Registrar attached the Disciplinary Advisory Board report to the impugned decision and reproduced the recommendations of the Panel members in the impugned decision itself. Those recommendations were, as to the majority:

"• [The complainant] be no longer involved in the selection of the duty counsel and/or permanent counsel in CSS, by **demotion** of his current job grade and responsibilities; and

> • Given potential financial gains by Mr [L.] through his friendship with [the complainant], the appropriate incremental **steps removals** from [the complainant]'s salary." (Original emphasis.)

The recommendation of the minority was:

> "• [The complainant] be imposed the measure of **termination of appointment with prior notice**." (Original emphasis.)

5. The impugned decision took the form of a one-page letter setting out four findings of fact of misconduct of the complainant. They were described as matters in respect of which the Registrar was satisfied beyond reasonable doubt. Also set out was the sanction. Attached to this letter was a document of 50 pages entitled "Final Decision". As just noted, also attached to the letter was the Disciplinary Advisory Board report of 24 pages.

6. In the "Final Decision" document the Registrar analyzed, and made findings about, the evidence directed to the conduct of the complainant. This was, in part, in furtherance of answering the question of whether the alleged misconduct was proved beyond reasonable doubt. It is not easy to gainsay the Registrar's conclusion that the alleged misconduct was proved beyond reasonable doubt.

7. However, the relevant question in relation to the issue referred to in consideration 3 above, is whether the Registrar motivated his decision to reject the recommendations of the Disciplinary Advisory Board as to what the appropriate disciplinary sanction was. While he referred to those recommendations, he did not explain why he rejected them. The case law is clear. For example, in Judgment 3862, consideration 20, the Tribunal said:

> "The executive head of an international organisation is not bound to follow a recommendation of any internal appeal body nor bound to adopt the reasoning of that body. However an executive head who departs from a recommendation of such a body must state the reasons for disregarding it and must motivate the decision actually reached."

And, in Judgment 3969, consideration 10, the Tribunal reiterated the above statement noting that:

> "These observations, as they relate to reports and conclusions of internal appeal bodies, are equally applicable to reports and opinions of a Disciplinary Committee."

8. In the present case, the Disciplinary Advisory Board recommended two sanctions which were, at least arguably, within the range of available sanctions for the misconduct of the complainant. So too was the sanction actually adopted. The ICC's answer to this argument appears to be that it was clear the executive head, namely the Registrar, adopted a more severe sanction which impliedly explained the rejection of the recommended sanctions of the Disciplinary Advisory Board. But that is not enough. Internal appeal and disciplinary bodies play an important role in the internal system of justice for international civil servants. It has long been settled that recommendations they make can be rejected. But the role of such bodies is fortified by the obligation of the decision maker to explain her or his rejection of those recommendations (see, for example, Judgments 4832, considerations 31 and 32, and 4697, consideration 5). The Registrar failed to do this in the present case. In the result his decision is, in this respect, unlawful and will be set aside.

9. In terms of the relief which should be granted, the observations of the Tribunal in Judgment 4934, consideration 10, are apt to apply in the present case:

> "The impugned decision should be set aside. However, having regard to the way the case has been argued and decided, no steps should be taken in these proceedings to disturb the original decision to dismiss the complainant. The charges against him are serious and the ultimate decision may prove to be, though may not, to dismiss his appeal effectively preserving the decision to dismiss him. It would be inappropriate to entertain in these proceedings the complainant's request for an order of reinstatement and related orders concerning loss of income."

10. The impugned decision will be set aside and the matter will be remitted to the ICC in order for it to decide whether to reject or accept the recommendations of the Disciplinary Advisory Board and to explain why. The complainant's claim for moral damages is rejected.

Given his partial success, he is entitled to some of his costs which are assessed in the sum of 5,000 euros.

DECISION

For the above reasons,

1. The impugned decision of 1 April 2022 is set aside.
2. The matter is remitted to the ICC in order for it to decide whether to accept or reject the recommendations of the Disciplinary Advisory Board and to explain why.
3. The ICC shall pay the complainant 5,000 euros in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 3 November 2025, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, René M. Vargas M., Registrar.

Delivered on 10 February 2026 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

RENÉ M. VARGAS M.