Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

A. (No. 5)

v.

International Federation of Red Cross and Red Crescent Societies

138th Session **Judgment No. 4837**

THE ADMINISTRATIVE TRIBUNAL,

Considering the fifth complaint filed by Mr K. M. A. against the International Federation of Red Cross and Red Crescent Societies ("the Federation") on 10 October 2022, corrected on 20 January 2023, the Federation's reply of 1 May 2023, the complainant's rejoinder of 7 August 2023 and the Federation's surrejoinder of 8 November 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, who separated from service, contests the placement in his personnel file of a letter stating that he was found to have committed sexual harassment during his employment and that, had he not separated from service, he would have been imposed the disciplinary measure of a final letter of warning.

Facts relevant to this case may be found in Judgments 4833, 4834, 4835 and 4836, also delivered in public this day, concerning the complainant's first four complaints. Suffice it to recall that, by letter of 3 April 2020, the Director, Human Resources Department (HRD), notified the complainant of the non-extension of his contract beyond

30 September 2020, “due to lack of funding”. On 1 May 2020, while he was still employed by the Federation, the complainant was served, following investigation and disciplinary process, with a final letter of warning for breaches of the Code of Conduct and Anti-Harassment Guidelines, involving his conduct towards a female staff member, Ms N.M., which, according to the letter, met the definition of sexual harassment. The final letter of warning constituted a disciplinary measure and was placed in the complainant’s personnel file. The complainant left the service of the Federation on 30 September 2020. Following an appeal filed by the complainant, the Appeals Commission recommended on 21 December 2020 to quash the 1 May 2020 final letter of warning and to remove it from the complainant’s personnel file, having concluded that the Federation had not provided him with “the evidentiary materials underlying the investigative findings” and that “the failure to provide [him] with material evidence during the disciplinary process was a procedural flaw that breached the Federation’s duty to provide due process and to act in good faith”. The Commission noted that “given [...] that a procedural flaw vitiated the Final Warning Letter, it reache[d] no conclusion on the substantive issue whether sexual harassment was duly established, as this issue is moot”, however the Commission observed that its findings “should not be construed as a vindication of the [complainant] or a conclusion that he did not commit misconduct, given the evidentiary record reviewed by the Panel”. By letter of 15 February 2021, the Secretary General informed the complainant that, “[i]n order to rectify this procedural flaw”, he had decided to provide him with all the evidence gathered as part of the investigation – which had been conducted by an external investigator – and to afford him an opportunity to respond to these materials in a second interview. The Secretary General also advised the complainant that, should the allegations of sexual harassment be substantiated following these additional investigative steps, a new disciplinary process would be launched, the outcome of which would supersede the previous one. He further stated that pending the conclusion of the new process, the 1 May 2020 final letter of warning would be immediately removed from the complainant’s personnel file and replaced with the 15 February 2021 letter.

On 23 February 2021, the complainant was provided with the evidence referred to in the Secretary General's 15 February 2021 letter. The complainant was then offered the possibility to be reinterviewed as part of the investigation, which he declined. On 19 April 2021, the complainant's counsel sent on his behalf a letter objecting to the reopening of the investigation.

On 15 June 2021, a revised investigation report was issued by the same external investigator, which concluded that the allegations of sexual harassment were substantiated. On 22 June 2021, a new charges letter was sent to the complainant, who was given 15 days to respond. On 9 July 2021, the complainant provided his comments on the charges letter.

By letter of 30 July 2021, the Director, HRD, notified the complainant that, following completion of the new disciplinary process, the Federation had found that he had committed sexual harassment in violation of the Federation's Code of Conduct and Anti-Harassment Guidelines and that the Secretary General would have issued a final letter of warning as the appropriate disciplinary measure if he had remained employed by the Federation. The complainant was further advised that the letter of 30 July 2021 would be placed in his personnel file and that relevant information would be shared in line with the Federation's commitment to the Inter-Agency Misconduct Disclosure Scheme. The Director, HRD, concluded his letter stating that the complainant could "appeal this disciplinary measure in accordance with the procedures established in Staff Regulation 12.4.0 *et seq*.".

On 27 October 2021, the complainant lodged an appeal to the Federation's Appeals Commission, directed against the 30 July 2021 letter.

On 20 May 2022, the Appeals Commission submitted its report and recommendations to the Secretary General. The Appeals Commission determined that the procedural flaw that it had identified on 21 December 2020 had been adequately addressed, that the complainant had been afforded due process, that the reopened investigation was not flawed and that there was no evidence that the external investigator who conducted the initial and reopened investigation was biased, had a

conflict of interest or lacked impartiality. The Commission also found that "there was a sufficient basis for the conclusion that the [complainant]'s misconduct had been established [...] beyond a reasonable doubt". However, the Commission recommended that the Federation refrain from disclosing the complainant's disciplinary record to other organizations participating in the Inter-Agency Misconduct Disclosure Scheme. The Commission further recommended that the Federation award the complainant 4,000 Swiss francs in legal costs and that it reimburse "the medical expenses incurred by the [complainant] in relation to this matter, upon the submission of appropriate documentation to substantiate the expenses". The Commission ultimately recommended to deny the complainant's "other claims for relief", including his requests for moral damages, for the quashing of the 30 July 2021 letter and for the removal of such letter from his personnel file.

By letter of 14 July 2022, the Secretary General notified the complainant that he had decided to follow the Appeals Commission's recommendations. In his letter, the Secretary General confirmed that the Federation had not disclosed the complainant's disciplinary record to other organizations seeking a conduct reference and would not do so in the future. Taking note of the Appeals Commission's recommendation to reimburse medical expenses, the Secretary General invited the complainant to submit records of any relevant expenses with supporting documentation for the Human Resources (HR) Management Department's review. Finally, the Secretary General informed the complainant that he had decided to award him legal costs in the amount of 4,000 Swiss francs and to reject his other claims for relief. That is the impugned decision in the complainant's fifth complaint.

The complainant asks the Tribunal to set aside the impugned decision – except for the aspects involving the Federation's decisions not to disclose his disciplinary record, to reimburse his medical expenses and to award him legal costs – as well as the 30 July 2021 letter and to order the removal of the 30 July 2021 letter from his personnel file. He claims moral damages in the amount of 50,000 Swiss francs, as well as legal costs in the sum of 11,000 Swiss francs. He

further seeks the payment of interest, as well as "[s]uch other redress that the Tribunal deems necessary, just and fair".

The Federation asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS

1. Following the Appeals Commission's recommendation, in its report dated 21 December 2020, to quash the 1 May 2020 final letter of warning and to remove it from the complainant's personnel file, the Federation reopened the investigation into the same allegation of sexual harassment lodged by Ms N.M. against the complainant. In his initial investigation report, dated 16 January 2020, the external investigator had concluded that the allegation had been substantiated beyond reasonable doubt. The complainant was charged with misconduct for breaches of the Federation's Code of Conduct and Anti-Harassment Guidelines and issued a final letter of warning under Staff Regulation 9.7.3, which was placed on his personnel file. However, on his internal appeal against that decision, the Appeals Commission recommended setting aside the disciplinary decision on the basis that the disciplinary procedure was vitiated by a procedural flaw. It also recommended that the final letter of warning be removed from the complainant's personnel file, which was done.

2. The Federation reopened the investigation into the harassment complaint. In his revised investigative report, issued on 15 June 2021, the investigator stated that "[t]he conclusion I reached in the initial investigation, is confirmed through the reopening of the investigation". On the basis of that report, the complainant was charged with misconduct pursuant to Rules 1, 4 and 6 of the Code of Conduct and Article 2.4.2.1 of the Anti-Harassment Guidelines and was again found culpable. He was eventually issued with the 30 July 2021 letter, which informed him, among other things, that he had been found to have committed sexual harassment, as charged, and that a copy of the 30 July 2021 letter would be placed on his personnel file. This complaint is the culmination of the

reopened investigation and disciplinary processes and the complainant's challenge to that decision by way of an internal appeal and the Appeals Commission's recommendations thereon, which the Secretary General accepted in the impugned decision of 14 July 2022.

3. Rule 1 of the Code of Conduct states that all staff shall "[c]omply with the Staff Rules, Staff Regulations, and all mandatory rules, policies, and procedures, and with the terms of their employment contracts and conditions of service". Rule 4 states that all staff shall "[t]ake into account the sensitivities of peoples' customs, habits, and religious beliefs and avoid any behaviour that is not appropriate in a particular cultural context". Rule 6 states that all staff shall "[a]bstain from all acts which could be considered harassment, abuse, discrimination or exploitation" (under the Anti-Harassment Guidelines). In Article 2.4.2.1 of the Anti-Harassment Guidelines, "'Sexual Harassment' is understood as any unwelcome sexual advance, request for sexual favour, verbal or physical conduct or gesture of a sexual nature, or any other behaviour of a sexual nature [...] that has or that might reasonably be expected or perceived to cause offence or humiliation to another". Article 2.4.2.2 relevantly states that "[i]t must be remembered that what is offensive to one person may be acceptable to another, and it does not matter whether the harasser intended to harass or not it is the impact on the recipient and the recipient's feelings which are the determining factors".

4. Regarding an organization's duties where harassment complaints are made, the Tribunal has stated, for example, in consideration 3 of Judgment 4344, that an international organization has a duty to provide a safe and adequate working environment for its staff members and that given the serious nature of a claim of harassment, an organization has an obligation to initiate the investigation itself. It further stated that the investigation must be initiated promptly, conducted thoroughly and the facts must be determined objectively and in their overall context and that upon the conclusion of the investigation, the complainant is entitled to a response from the Administration regarding the claim of harassment. Moreover, a person who makes a harassment complaint has a duty to substantiate it. The Tribunal's case law also

states that the question as to whether harassment has occurred must be determined in the light of a thorough examination of all the objective circumstances surrounding the events complained of and that an allegation of harassment must be borne out by specific facts, the burden of proof being on the person who pleads it, but there is no need to prove that the accused person acted with intent.

5. Inasmuch as this complaint is primarily directed against the findings of an investigative body, it is notable the case law states that it is not the Tribunal's role to reweigh the evidence collected by an investigative body the members of which, having directly met and heard the persons concerned or implicated, were able immediately to assess the reliability of their testimony, and, for that reason, reserve must be exercised before calling into question the findings of such a body and reviewing its assessment of the evidence (see, for example, Judgment 4764, consideration 7). Additionally, the Tribunal will not interfere with the findings of an investigative body in disciplinary proceedings unless there is manifest error (see, for example, Judgment 4444, consideration 5).

6. The Tribunal sets out as follows, the grounds the complainant advances to challenge the impugned decision:

(1) The Federation breached its own rules which did not provide any basis to launch a second investigation and disciplinary process.

(2) The Federation violated his right to a hearing.

(3) The impugned decision is tainted by breaches of due process, because, among other things, he was deprived of his right to test the evidence.

(4) The Federation violated his presumption of innocence, because, among other things, reliance was placed on allegations that were never investigated and do not constitute harassment.

(5) The Federation violated its duty of good faith and duty of care to him and the Appeals Commission erred when it concluded otherwise.

7. To support his contention in the first ground, the complainant refers to the Appeals Commission's conclusions that the Federation reopened the disciplinary process against him to rectify the procedural flaw and that the Federation had a legitimate interest to correct the flaw and the reopening of the process was not retaliatory, as he (the complainant) had submitted. The complainant submits that these conclusions were erroneous, in effect, because the Federation's rules did not provide any basis to launch a second investigation and disciplinary process and as the Appeals Commission found no flaw in the initial investigation, the measures should be considered as an abuse of authority and retaliation because he had launched an appeal against the Federation. The complainant cites the well settled principle therein that an international organization must follow the rules which it has itself defined.

8. The foregoing submissions are unfounded. In the first place, the Federation could not have breached its own rules when none of them precluded the reopening of an investigative and disciplinary procedure in a case such as this. In the second place, as the Appeals Commission in effect correctly concluded, having reviewed the applicable rules, the practice of the United Nations and the Tribunal's case law, particularly stated in consideration 6 of Judgment 4313, the Federation had a legitimate interest to correct the initial flawed process (the non-disclosure of the documents to the complainant) and to conclude the process on a proper legal basis and document the outcome on the complainant's personnel file for its future employment decisions. In the third place, other than his mere assertion that the matter was reopened because of retaliation, the complainant provides no proof that it was retaliatory or that the reopening was other than to conduct and complete a proper investigation into the allegation of harassment, which, must be taken seriously in the Federation's own interest to preserve the integrity of the investigation and in the interest of Ms N.M. and the complainant. Moreover, the complainant's submissions, in effect, that the 22 June 2021 charges letter unlawfully charged him with misconduct in line with Staff Regulation 9.6.3, even though he was no longer an employee, and that Staff Rule 9.2, Staff Regulations 9.6.4, 9.7.1 and 9.7.3 do not apply to former employees and therefore he was not properly informed

about his rights and the procedures that would apply in the new disciplinary process, are irrelevant considerations in the context of a reopened and ongoing investigative and disciplinary procedure. It is apparent that the flawed premise underlying all but one of the submissions the complainant advances in the first ground is his assumption that reopening the process was a new procedure that the Federation sought to initiate after he left the organization, when, in fact, it was merely the continuation of an ongoing process initiated while he was still a Federation staff member which the Federation decided to complete.

9. As the Federation further correctly submits, Staff Regulation 9.5.1, under which it has a duty to investigate alleged misconduct, also includes the duty to bring the investigation to a completion and the possibility to reopen it when justified by the circumstances. In addition, Staff Regulation 9.7.1 provides that any breach of the Federation's internal rules should be subject to disciplinary measures. Neither of these provisions foresees the termination of the investigative or disciplinary process for the sole reason that an employee has left the Federation. Further, in the said context, foregoing, the complainant's submission that the fact that the second disciplinary process superseded the first one was to provide legal justification for the decision to rescind an offer of appointment to a position in the Middle East and North Africa (MENA) Region that the Federation made to him (which he has challenged in his third complaint) is also speculative and unfounded. It also follows from the complainant's submissions that none of the circumstances the Appeals Commission cited as meriting to reopen the investigation existed and that it was necessary to reinstate him as a Federation staff member prior to reopening and proceeding with the investigative and disciplinary procedure, are also unfounded. So also, is his further submission (relying on consideration 15 of Judgment 2786) to the effect that it was not open to the Federation to justify a decision by conducting further enquiries after the internal appeal proceedings have been concluded since it breached the right to be heard and renders the appeal proceedings futile. As the Federation correctly points out, the Tribunal's statement in consideration 15 of Judgment 2786 is not

applicable to the case at hand since, contrary to the facts underlying Judgment 2786, the scope of the investigation of the present case did not change.

The complainant's submission to the effect that the 30 July 2021 letter is contradictory in that it indicates it is both a disciplinary measure – which, according to him, would be unlawful since he was no longer a Federation staff member – and not a disciplinary measure at the same time, is also unfounded. That letter merely informed the complainant that it was determined from the reopened process that he had sexually harassed Ms N.M. and he would have been sanctioned under the applicable rule had he still been a staff member. In the foregoing premises, the first ground is unfounded.

10. In the second ground, the complainant contends, in effect, that the Secretary General erred by accepting the Appeals Commission's conclusion that the reopened investigative process was not vitiated by bias and conflict of interest on the part of the investigator and breach of impartiality because the same investigator had already concluded in his initial investigative report that he (the complainant) was culpable for sexual harassment. He submits, as well, that the Appeals Commission that heard his internal appeal against the reopened investigative and disciplinary process was not properly constituted. The complainant further submits that the Appeals Commission violated his right to be heard.

11. To support the foregoing submissions, the complainant refers to the statement in the revised investigative report that the investigation was conducted in accordance with the Uniform Principles and Guidelines for Investigations ("the Uniform Principles"), in force at the relevant time, which states, in paragraph 3, that the Investigation Office "shall maintain objectivity, impartiality and fairness throughout the investigation process and conduct its activities competently and with the highest levels of integrity. In particular, the Investigative Office shall perform its duties independently from those responsible for or involved in operational activities [...] and shall also be free from improper influence". He also refers to the case law, stated in consideration 5 of

Judgment 2700 that "irrespective of the circumstances, an official is always entitled to have his case judged in proper, transparent and fair proceedings which comply with the general principles of law". As well, he refers to the case law in consideration 10 of Judgment 4240, that "it is a general rule of law that an official who is called upon to take a decision affecting the rights or duties of other persons subject to her or his jurisdiction must withdraw in cases in which her or his impartiality may be open to question on reasonable grounds". The complainant further refers to consideration 11 of Judgment 3958, which additionally states that it is immaterial that, subjectively, a person may consider herself or himself able to take an unprejudiced decision; nor is it enough for the persons affected by the decision to suspect its author of prejudice and that persons taking part in an advisory capacity in the proceedings of decision-making bodies are equally subject to the abovementioned rule, which also applies to members of bodies required to make recommendations to decision-making bodies who may sometimes exert a crucial influence on the decision to be taken. The Tribunal also therein stated that a conflict of interest occurs in situations where a reasonable person would not exclude partiality, that is, a situation that gives rise to an objective partiality and that even the mere appearance of partiality, based on facts or situations, gives rise to a conflict of interest. In consideration 3 of Judgment 4679, the Tribunal also recalled its case law that an allegation of conflict of interest or lack of impartiality has to be substantiated and based on specific facts, not on mere suspicions or hypotheses and that the complainant bears the burden to prove a conflict of interest.

12. The complainant further submits that the decision to reopen the investigation was tainted by institutional bias because at the material time he (the complainant) was involved in protracted litigation in a number of cases involving the Federation. He also submits that the Secretary General's statement in his 15 February 2021 letter that the reopened process would supersede the first one showed that the purpose of the reopened process was to confirm the first one and to provide retroactive legal effect to it to support the Federation's ongoing litigation against him. However, in addition to the fact that a similar

proposition has been partly discounted as unfounded in consideration 9 of this judgment, these submissions are unfounded as speculative and hypothetical. Additionally, as the Federation submits, it cannot be presumed that because there are multiple cases pending between an organization and a staff member, the organization cannot make impartial decisions concerning the staff member.

13. Regarding the complainant's allegation of bias, conflict of interest and breach of impartiality on the part of the investigator, as the Appeals Commission in effect found, the allegation could not be proved on the mere basis that the same investigator had already concluded in his initial investigative report that he (the complainant) was culpable for sexual harassment. As the case law states, such allegation must be substantiated and based on specific facts (see, for example, Judgment 4711, consideration 5). The complainant submits that the reopened investigation only served the purpose of confirming the investigator's original findings, particularly as no new evidence came to light in the reopened investigation and the investigator had already incorrectly determined that he (the complainant) was not a credible witness and had "fully sided" with Ms N.M.'s version of the events. The submission is speculative and is not accepted. It must be recalled that the investigation was reopened to allow the complainant to test the documentary evidence he had not been provided with. The evidence was made available to him in the reopened process and he was given the opportunity to be reinterviewed, which he declined. It seems that any new evidence could possibly have come to light had he accepted to be interviewed again about the documents that were disclosed to him. This would also have provided him with another opportunity to be heard. Additionally, apart from his mere assertion that the investigator was biased because he had refused to incorporate changes he (the complainant) had made in his prior witness statement, the complainant, who, according to the case law stated, for example, in consideration 10 of Judgment 4261, bears the burden of proof, does not explain how bias is proven on that basis.

14. The complainant further argues that bias and conflict of interest in the investigator are evidenced in public statements he made that criticized the Federation's handling of Ms N.M.'s harassment complaint against him and the burden of proof applied in disciplinary procedures, which were published in an article. In the letter from the complainant's counsel, dated 12 March 2021, the complainant had objected to the reopening of the investigation and to it being conducted by that investigator particularly on the basis of statements attributed to the investigator in the published article. The Appeals Commission stated in its report that the investigator explained to it that his contribution in the article in no way referred to the case in question and was based on his experience of reviews of previous investigations and training and that at the time he gave the interview he was not aware of the journalist's involvement with the present case or the outcome of the underlying disciplinary procedure. He also explained that he gave the interview on condition that no particular incident or investigation would have been discussed and that he would have provided observations based on his general experiences in conducting harassment investigations and he was not aware at the time that the journalist had interviewed Ms N.M. as well. Having examined the published article, the Commission observed that the investigator's remarks did not refer to the instant case and appeared to have been based on his general experiences. The Commission concluded that the remarks attributed to the investigator in the article did not establish bias that vitiated the investigation. Having read the article, the Tribunal is satisfied that the Commission's analysis and this conclusion were accurate and open to the Appeals Commission. Indeed, the statements therein attributed to the investigator are of a general nature concerning his observations regarding harassment investigations and his remarks concerning the requirement of proof beyond a reasonable doubt was directed towards disciplinary procedures in general in which he was not involved. The plea is therefore unfounded.

15. The complainant also submits that the reopened investigation is vitiated by bias and conflict of interest on the part of the investigator because the revised investigative report indicates that the Appeals

Commission's report underlying the initial investigation, which contained objections he had made to the Commission against the investigator on grounds of impartiality and conflict of interest, was made available to the investigator in the reopened process. He insists that in light of this, the investigator's impartiality was open to question on reasonable grounds and he cannot be seen as independent. The submission is unfounded. As the Federation explains, contrary to the complainant's assertion, the Federation did not share the full Appeals Commission's report with the investigator. Rather, as indicated to the complainant in the letter of 30 July 2021, which informed him of the outcome of the second disciplinary process, the Federation only shared paragraphs 65 to 73 of the subject report – which contain the findings of the Appeals Commission about the procedural flaw described in the facts – with the investigator to identify the procedural flaws that required his attention in the reopened investigation. This was a course of action the Federation could have lawfully undertaken to ensure that the investigator would have avoided the same procedural error.

16. As the Appeals Commission that considered the complainant's internal appeal underlying the initial as well as the reopened investigation was constituted by the same members, he submits that the Commission was improperly constituted and that its members had a conflict of interest so that they were biased and not impartial. This, he states, is because the members of the panel had already expressed a concluded view in their initial report that he was culpable of the allegation of harassment Ms N.M. made against him. He cites the Tribunal's statement in consideration 12 of Judgment 2671, that "a reasonable person knowing that a member of [an internal Appeal's body] had already expressed a concluded view as to the merits of the appeal being considered, would not think that that member would bring an impartial and objective mind to the issues involved [and that] failing any explicit provision in the regulations and rules, the [members] concerned are bound to withdraw if they have already expressed their views on the issue in such a way as to cast doubt on their impartiality". The complainant argues that, pursuant to this case law, the three members of the Commission should have withdrawn from considering

his second internal appeal in the reopened process, particularly as they stated in their second report of 20 May 2022 that they found no objective reason to alter their previous views about his culpability and noted that they had already rejected his allegations of bias against the investigator in their report underlying the initial investigative and disciplinary process.

17. The Tribunal notes that in its first report of 21 December 2020 (in which it recommended quashing the 1 May 2020 final letter of warning and removing it from the complainant's personnel file), the Appeals Commission made the following conclusionary statement concerning whether the complainant had, in effect, sexually harassed Ms N.M.:

> "In light of the [Federation]'s definition and standards for determining whether sexual harassment has occurred, the Panel is not in a position to endorse the [complainant]'s assertion that he did not pursue a personal relationship or commit sexual harassment. However, given the Panel's conclusion [...] that a procedural flaw vitiated the Final Warning Letter, it reaches no conclusion on the substantive issue whether sexual harassment was duly established, as this issue is moot."

By this statement, the members of the Commission did not express a prior view on the issue whether the complainant had sexually harassed Ms N.M. to lead to a conclusion that they did not embark upon considering the internal appeal in the reopened investigation with open minds thereby casting doubt on their impartiality and precluding them from considering the latter internal appeal. This is notwithstanding that, in its initial 21 December 2020 report, the Commission had stated in its finding of the vitiating procedural flaw should not be construed as a vindication of the complainant or a conclusion that he did not commit misconduct, given the evidentiary record the panel reviewed. Accordingly, the complainant's plea that the Appeals Commission was improperly constituted and that its members had a conflict of interest and were biased and not impartial is unfounded.

18. As part of the second and third grounds, the complainant submits, in substance, that the Appeals Commission prevented him from attending the hearing of the witnesses it called to permit him to test the evidence, and, in any event, that he was not even provided with the statements of such witnesses. This, it did, on the basis that doing so is not foreseen by the Staff Rules and Regulations and had not been its practice.

19. The Federation relies on Judgment 4408, where the Tribunal concluded, in consideration 4, that an interview conducted as an "investigative measure" to enable an appeal body to obtain general information not relating specifically to the situation of the complainant was not a hearing where the complainant was required to be present or where the content of the discussion had to be disclosed to him or her. The Federation argues that the complainant's submissions are based upon what it refers to as his mischaracterization of the process the Appeals Commission conducted. In effect, the Federation's central submission on this issue is that the interviews the Appeals Commission conducted constituted "investigative measures", as this expression is used in Judgment 4408.

20. The Tribunal notes that there are no records of the interviews in the file and that there is no evidence that the complainant was given access to the statements of the persons who were interviewed by the Appeals Commission. The Commission stated that it did not interview any of the three persons whom the complainant proposed. It is notable that the Commission has not explained why it did not interview any of these persons. It however interviewed, in addition to the complainant, two of the three persons the Federation proposed: the investigator and the Senior Adviser, Human Resources Operations "in order to clarify some aspects of the written record". It is obvious from the content of the Appeals Commission report that the information sought by the Commission was not of a general nature and that it was relating specifically to the investigation and disciplinary procedure at issue. In these circumstances, the Tribunal considers that the complainant had a right, at least to have been apprised of the content of the interviews and to provide his comments if he so wished. Since this was not done, the

complainant's right to be heard was violated, which alone requires setting aside the impugned decision, without there being any need to examine the complainant's other pleas.

21. Based on the foregoing conclusion, the Tribunal will set aside the impugned decision of 14 July 2022, without it being necessary to consider the complainant's further pleas. He is however entitled to an award of moral damages for the procedural flaw in the internal appeal procedure. For this, which is an infringement of due process, he will be awarded 15,000 Swiss francs. As the complainant has not articulated the injury that he has suffered as a result of the order which will be set aside, no further moral damages will be awarded. As a result of the procedural flaw in the Appeals Commission's process, the Tribunal will remit the matter to the Federation for a new consideration of the complainant's internal appeal by a newly composed Appeals Commission. As the complainant prevails in this complaint, he will also be awarded 10,000 Swiss francs in costs.

22. The complainant's claim to be awarded such other redress that the Tribunal deems necessary, just and fair, should be rejected as it is too vague to be receivable (see, for example, Judgment 4602, consideration 8).

DECISION

For the above reasons,

1. The impugned decision of 14 July 2022 is set aside, to the extent requested by the complainant.
2. The case is remitted to the Federation in accordance with consideration 21 of this judgment.
3. The Federation shall pay the complainant 15,000 Swiss francs in moral damages for the procedural flaw in the internal appeal procedure.
4. It shall also pay him 10,000 Swiss francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 9 May 2024, Mr Michael F. Moore, Vice-President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Mirka Dreger, Registrar.

Delivered on 8 July 2024 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

MIRKA DREGER