

# Tribunal ILO reverses dismissals and downgrading of SUEPO leaders

Kluwer Patent Blog

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In the last week of his term as president of the European Patent Office and a day before the official opening of the new EPO building in The Netherlands, president Benoit Battistelli lost three high-profile cases at the Administrative Tribunal of the International Labour Organisation (ILOAT). The tribunal said Battistelli's decisions to dismiss SUEPO leaders Elizabeth Hardon and Ion Brumme and to downgrade their colleague Malika Weaver were wrong and must be set aside.

The ILOAT ordered the reinstatement of Brumme 'to the position he held immediately before his dismissal' and the restoration of Weaver 'with retroactive effect to the grade and step she would have held but for the imposition of the disciplinary sanction', payment of interest on the resulting remuneration arrears 'at the rate of 5 per cent per annum from due dates until the date of payment', payment of moral damages in the sum of 30.000 (Brumme) and 25.000 (Weaver) euros and the payment of costs in the sum of 8.000 euros (cases 4042 and 4043, published on 26 June 2018).

Both SUEPO leaders had been charged with breaching their duties under the Service Regulations - in the case of Ion Brumme inciting Malika Weaver to do so - by unduly pressuring an EPO employee to continue litigation against the EPO and by disclosing confidential information. But the ILOAT concluded they did nothing wrong.

## Elizabeth Hardon

Elizabeth Hardon (judgment 4047) was fired on 15 January 2016 with a 20 percent reduction of her pension. She had been charged with three sets of allegations. 'The first set involved allegations of unauthorised disclosure of EPO internal, confidential and personal material. The second set involved allegations that the complainant had threatened or harassed EPO staff. The third set involved allegations that the complainant had engaged in inappropriate behaviour in the course of the investigation and disciplinary procedures.'

The ILOAT however pointed out that '[A]ccording to the well-settled case law of the Tribunal, the burden of proof rests on an organisation to prove allegations of misconduct beyond a reasonable doubt before a disciplinary sanction can be imposed', and concluded that 'the impugned decision to dismiss the complainant should be set aside because in assessing the complainant's guilt it is not demonstrated that the appropriate standard of proof was applied, namely proof beyond reasonable doubt.'

Hardon's case has been remitted by the ILOAT to the EPO 'to enable a Disciplinary Committee, differently constituted, to consider the matter under Article 102 of the Service Regulations and for the President to make a fresh decision. (...) Indeed, and in any event, the complainant's legal representative has advised the Tribunal, since her pleas were finalized, that her request for reinstatement is moot because she has sought to be paid a retirement pension from 1 July 2018 and EPO has agreed. The complainant is entitled to moral damages which the Tribunal assesses in the sum of 20.000 euros. She is also entitled to costs which the Tribunal assesses in the sum of 7.000 euros.'

## And now?

In all three cases, president Battistelli had personally chosen to impose heavier sanctions than proposed by the EPO's Disciplinary Committee. The fact that this is now reversed - unfortunately after more than two years - is a further stain on his [tarnished reputation](#).

Some other cases were decided as well. As EPO-Flier reported: 'the EPO also lost two more cases after disciplinary procedures - see judgments 4051 and 4052. One case in this session concerning a colleague representing staff was lost. Michael's relegation in step will not be reversed. Michael's case is similar to Aurélien's. Both worked for the IAC and found themselves in a situation with a too heavy workload so that they could no longer attend oral sessions and write dissenting opinions, while both activities form part of the duties of an IAC member.'

In the meantime, it remains to be seen in what way Battistelli and/or the EPO will react to the ILOAT's decisions. While Battistelli will have his last moment of glory as president during the official opening of the new - semi-finished - building of the European Patent Office in Rijswijk in presence of Dutch king Willem-Alexander, it is not certain at all that Brumme and Weaver will receive a warm welcome, apologies or anything similar when they show up at work again, as has been shown by the appalling treatment of Irish judge Patrick Corcoran (see [this blogpost](#), among others).

It can only be hoped that Antonio Campinos, who will succeed Battistelli on 1 July 2018 and who was chosen for his 'thorough knowledge and proven practical application of modern management methods, including an outstanding ability to establish and foster social dialogue' ([blogpost](#)) will urgently look at their cases and those of other SUEPO leaders, such as Laurent Prunier, who was fired on questionable charges as well and is still waiting for an ILOAT decision.

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