

Case T-146/89
(Extracts only)

Calvin Williams
v
Court of Auditors

(Officials — Obligations of officials — Action
liable to reflect on their position — Duty of loyalty —
Disciplinary rules — Penalties)

Judgment of the Court of First Instance (Fourth Chamber), 26 November
1991 II - 1296

Summary of the Judgment

1. *Officials — Disciplinary rules — Disciplinary Board — Same composition throughout the procedure*
(*Staff Regulations, Annex IX, Art. 7*)

2. *Officials — Disciplinary rules — Procedure before the Disciplinary Board — Time-limits laid down in Article 7 of Annex IX — Not mandatory*
(*Staff Regulations, Annex IX, Art. 7*)

3. *Officials — Rights and obligations — Duty of loyalty — Concept — Scope*
(*Staff Regulations, Art. 21*)

4. *Officials — Rights and obligations — Acts liable to reflect on their position — Documents addressed to superiors*
(*Staff Regulations, Art. 12*)
5. *Officials — Disciplinary rules — Penalties — Discretion of appointing authority — Review by the Court — Scope — Limits*
(*Staff Regulations, Arts 86 to 89*)
6. *Officials — Actions — Pleas in law — Misuse of powers — Concept*

1. The fact that the Disciplinary Board continues to be chaired, until it delivers the opinion provided for in Article 7 of Annex IX to the Staff Regulations, by the chairman appointed for the year during which the disciplinary proceedings were commenced, notwithstanding the appointment of another chairman shortly before the adoption of the opinion in question, does not constitute a procedural defect such as to render the composition of the board improper but, on the contrary, constitutes a correct application of the principle of sound administration. Such a course of action safeguards the rights of the official who is subject to disciplinary proceedings since it makes it possible for the people who examined the documents, heard the witnesses and, in general, took all the measures involved in the investigation, which is intended to establish the facts and any liability on the part of the official concerned, to be the same as those who issued the opinion in question.

The Disciplinary Board may, *inter alia*, need a longer period than that laid down in Article 7 in order to undertake an inquiry which is sufficiently complete and which affords the person concerned all the guarantees intended by the Staff Regulations.

3. Observance of the fundamental duty of loyalty and cooperation which all officials owe to the institution to which they belong and to their superiors, of which Article 21 of the Staff Regulations is a particular manifestation, is required not only in the performance of specific tasks entrusted to an official but extends to the whole relationship between the official and the institution. By virtue of that duty, the official must, in general, refrain from conduct detrimental to the dignity and respect due to the institution and its authorities.
 4. The sending by an official to his superiors of memoranda which, by their nature, reflect on his position in itself constitutes a breach of the obligation laid down in the first paragraph of Article 12 of the Staff Regulations, regardless of the extent, if any, to which those memoranda were made public, the fact that the memoranda in question
2. The time-limits laid down in Article 7 of Annex IX to the Staff Regulations for conduct of the proceedings of Disciplinary Boards are not mandatory time-limits such that measures adopted after their expiry are void but, on the contrary, reflect rules of sound administration.

contained administrative appeals being immaterial.

appraisal for that of the disciplinary authority save in cases of manifest error or misuse of powers.

5. Once the truth of the allegations against an official has been established, it is for the appointing authority to choose the appropriate penalty. Since Articles 86 to 89 of the Staff Regulations do not specify any fixed relationship between the measures provided for and the various sorts of failure by officials to comply with their obligations, determination of the penalty to be imposed must be based on an appraisal by the appointing authority of all the particular facts and circumstances peculiar to each individual case. The Court of First Instance cannot substitute its own

6. The concept of misuse of powers refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it.

A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated.