111th Session **Judgment No. 3010**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss A. P. against the World Trade Organization (WTO) on 8 May 2009 and corrected on 20 August, the Organization's reply of 18 November 2009, the complainant's rejoinder of 22 February 2010, the WTO's surrejoinder of 14 May 2010 supplemented by an addendum of 8 February 2011, the complainant's further submissions of 25 March, corrected on 28 March, and the WTO's final comments of 6 April 2011;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant is a French national born in 1953. She joined the Joint Medical Service, administered by the World Health Organization (WHO) on behalf of the United Nations system in Geneva, in May 1992 as a nurse. In May 1995, as part of her functions with the Joint Medical Service, she was appointed Head Nurse of the WTO Medical

Service. At that time, she was still employed under a five-year contract with WHO which was due to expire on 31 May 2006. In January 2005 the WTO formed its own Medical Service, and with effect from 1 March 2006 the complainant was employed by the WTO under a two-year fixed-term contract as Head Nurse of that Service. Around the same time, Dr M., who had previously provided services to the WTO and worked with the complainant, was recruited under a fixed-term contract as Head of the Medical Service. As a consequence, she became the complainant's first-level supervisor.

Shortly after the establishment of the Medical Service, differences arose between the complainant and Dr M. In the summer of 2006 a mediation process was initiated, but in December of that year the complainant requested that it be suspended.

The complainant's performance evaluation reports for 2006 and 2007 were completed by Dr M. in February and December 2007, respectively. In both reports, her performance was assessed as unsatisfactory. By a memorandum of 29 February 2008 the Director of the Human Resources Division informed the complainant that her contract would be renewed for only one year and that, in view of her unsatisfactory assessments, her performance would be further evaluated in June and, again, in November 2008.

Meanwhile, in early July 2007, at the request of the Director-General, the Joint Advisory Committee reviewed the functioning of the Medical Service in order to determine what type of medical service was best suited to the needs of the WTO and its Secretariat. In its report of 24 July the Committee recommended that the Service should focus primarily on mission-related medical needs and on providing immediate first aid. In its view, other medical services could be outsourced and there was only a need for one full-time, medically qualified person to perform those functions on the premises, with some administrative support.

Subsequently, in August 2007 the WTO engaged an external expert to perform an audit of the Medical Service. In his report of 3 March 2008 the expert provided inter alia his conclusions regarding

the competencies of the complainant and her first-level supervisor, Dr M. He noted the interpersonal conflict between them and its potentially harmful impact on the reputation of the Organization. He suggested that many of the functions of the Service should be outsourced and that it should focus on occupational health. To that end, the Service would require one health-care professional with administrative support.

By a letter of 15 April 2008 to the Director-General the complainant requested a review of the decision to renew her contract for only one year. She also requested mediation pursuant to Staff Rule 114.1. On 23 May the Administration provided her with the external expert's preliminary report and asked for her comments. The Director-General informed the complainant on 26 May that he was maintaining the decision regarding the renewal of her contract, and that once he had received her comments on the expert's report he would consider whether it would be useful to pursue mediation. She provided those comments in a memorandum of 13 June.

On 26 June 2008 the complainant filed an appeal with the Joint Appeals Board challenging the renewal of her contract for one year only. She subsequently requested that the appeal procedure be suspended pending mediation. By a memorandum of 29 August she asked the Board to resume the proceedings as the Director-General had not replied to her request for mediation.

The complainant was informed on 26 November 2008 that the Director-General had decided to restructure the Medical Service and that, consequently, her contract would not be renewed beyond its expiry on 28 February 2009. The decision to restructure was announced to the Secretariat in an e-mail of 2 December 2008.

The Joint Appeals Board issued its report on 23 January 2009. It concluded that the complainant's performance evaluation reports for 2006 and 2007 were vitiated by procedural errors, and it recommended that the Director-General reconsider the decision to renew her contract for only one year. On 18 February 2009 the complainant was informed that the Director-General had accepted

the findings of the Board and had decided that the previous extension of her contract should have been for two years instead of one; consequently, her present contract was due to expire on 28 February 2010. The evaluation reports would not be used to her detriment and a note to that effect would be placed in her personnel file, along with the Board's report. She was further informed that as a result of the restructuring of the Medical Service her post would be abolished with effect from 28 February 2009. As it was not possible to transfer her to another post within the Secretariat, her contract would be terminated and she would receive payment of three months' salary and allowances and a termination indemnity calculated in accordance with the Staff Rules.

Meanwhile, in a memorandum of 29 January 2009 to the Director-General, the complainant had requested a review of the decision to restructure the Medical Service and to terminate her contract on 28 February 2009. She was informed on 23 February that the Director-General was maintaining the decision to restructure and that, in light of the circumstances surrounding her contract which had been communicated to her on 18 February, she could appeal directly to the Tribunal. The complainant impugns the decisions of 18 and 23 February 2009.

B. The complainant contends that she was subjected to harassment by Dr M. which began shortly after the establishment of the new Medical Service. Although she has initiated a separate administrative procedure regarding the harassment, in her view it is necessary to refer to it in her complaint because she considers that her negative performance appraisal reports for 2006 and 2007 are examples of Dr M.'s treatment of her.

She submits that the WTO breached Staff Regulation 10.8 by failing to submit the issue of the termination of her contract to the Joint Advisory Committee for consideration, and that on this basis alone the termination decision is invalid. Furthermore, the Organization did not treat her with respect because it failed to fulfil its

duty to inform or consult her prior to its decision to abolish her post. She also argues that it breached its duty to provide the reasons for the decision to terminate her contract before its expiry date.

The complainant asserts that the decision to abolish her post is based on errors of fact. First, the outsourcing of her functions was not recommended by either the Joint Advisory Committee or the external expert. Second, in her view, the restructuring of the Medical Service did not lead to substantive changes in the services offered to staff members within the new WTO Occupational Health Service and, irrespective of any such changes, she was more than qualified to discharge those services. Third, although the Director-General cited "budgetary efficiency" as one of the reasons for the restructuring, the WTO budget had provided for funding of the former Medical Service until the end of 2009. Therefore, the Administration was under no financial obligation or pressure to restructure the Service at the end of February 2009. Fourth, neither the abolition of her post nor the termination of her contract was in the interest of the Organization. She submits that the decision was not motivated by relevant and objective considerations. Rather, its aim was to remove an "undesirable" staff member who had complained to the Administration.

She contends that the WTO violated her right to equal treatment. In a previous restructuring exercise it had offered early retirement packages to staff members over 55 years of age, and intensive administrative support to younger staff members seeking employment, but in her case it failed to take the necessary steps to assist her to find other employment within the Organization. She also states that the medical secretary was not affected by the changes and that another nurse is employed in the Secretariat who performs non-medical functions.

Lastly, she submits that a staff member has the right to a proper performance evaluation and that, despite the Administration's acknowledgement that her 2006 and 2007 reports are invalid, it has simply declared that they shall not be used to her detriment, instead of ordering that they be destroyed and that new ones be issued.

The complainant asks the Tribunal to quash the decision of 18 February 2009 to terminate her contract and to declare the decision to abolish her post null and void. She requests that the WTO be ordered to remove the 2006 and 2007 performance evaluation reports from her personnel file and have them destroyed, and to issue new reports for that period. She seeks reinstatement in her former post and restoration of all rights and benefits with effect from 1 March 2009, and the payment of all salary and benefits that she would have received from 1 March 2009 to date or, alternatively, a termination grant equivalent to 11.5 months of salary and a separation grant equivalent to one month's salary. She claims moral damages and compensation for physical and mental suffering and the tarnishing of her reputation in an amount no less than 200,000 Swiss francs, and costs in an amount no less than 15,000 francs.

C. In its reply the WTO submits that the termination of the complainant's contract resulted from a carefully prepared decision taken by the Director-General to refocus the Organization's provision of medical services and outsource its medical personnel. This decision was based on objective analyses of the functions of the Medical Service undertaken by both internal bodies and external experts. Neither the decision to restructure nor the timing of that decision was related to the alleged harassment of the complainant by Dr M.

The Organization contends that, contrary to the complainant's assertions, it complied with the relevant Staff Rules and Staff Regulations, because on 6 February 2009 the Director-General properly referred the proposed termination of the complainant's contract to the Appointment and Promotion Board for its consideration and recommendations. The Board issued its report on 16 February. In addition, the WTO states that it fulfilled its duty to keep her informed by soliciting her comments on the external expert's report. Furthermore, although she was not given prior notice of the proposed restructuring of the Medical Service, she did receive the maximum notice of the non-renewal of her fixed-term contract provided for by the Staff Rules. The complainant was also informed of the reasons

for the restructuring at a meeting on 26 November 2008 and in a memorandum of the same date.

The defendant acknowledges that the Joint Advisory Committee did not expressly recommend the outsourcing of the complainant's functions, but it states that the Committee also did not recommend that those functions remain unchanged. In its view, the new Occupational Health Service provides different services to staff members, but even if this were not the case and the complainant could provide those services, outsourcing the medical staff has resulted in savings for the Organization.

The WTO submits that there was no breach of equal treatment and that the complainant was not in the same situation in fact and law as the staff members she has referred to. It denies that it has failed to assist her to find other employment and asserts that, according to the Tribunal's case law, it has an obligation to propose employment that is commensurate with her qualifications. However there is no other post for a nurse in the Organization.

With respect to the performance appraisal reports for 2006 and 2007, it acknowledges that procedural errors such as those identified by the Joint Appeals Board would normally render the reports invalid. However, in this case, it is not possible to correct the errors with retroactive effect. It therefore argues that its decision to ensure that the reports cannot be used to her detriment is more respectful of the interests of the complainant than simply "cancelling" the reports.

D. In her rejoinder the complainant presses her pleas. In her view, the reasons provided by the WTO for outsourcing its Medical Service are "mere pretexts" used to justify her undue termination. She alleges that she was treated in an irregular manner by the Organization throughout the restructuring and that this is evidence of abuse of authority. Furthermore, the defendant's failure to undertake a proper mediation is evidence of bad faith. She also accuses the WTO of handling her harassment complaint in bad faith, in particular by failing to investigate her allegations in a timely manner. She seeks costs in an amount no less than 20,000 Swiss francs.

E. In its surrejoinder the Organization maintains its position. It reiterates that the outsourcing of the Medical Service and the complainant's functions was in its best interest and it denies her allegations of bad faith. In an addendum to its surrejoinder it appends a copy of the 28 November 2010 report of the external expert commissioned to investigate the complainant's claims of harassment.

F. In her further submissions the complainant asserts that the expert's harassment report is based on investigations which were conducted in violation of the principle of due process. Therefore, it cannot be used to refute her allegations of harassment on the part of Dr M. and the WTO management.

G. In its final comments the Organization submits that the report itself is evidence that the expert carried out the investigation professionally, independently and in full respect of the complainant's due process rights.

CONSIDERATIONS

1. From May 1995 until 2005 the complainant provided nursing services to the WTO as an employee in the Joint Medical Service administered by WHO. In 2005 the WTO established its own Medical Service. The complainant and Dr M., who had provided part-time medical services to the WTO, also as part of the Joint Medical Service, were offered and accepted positions within the new WTO Medical Service. The complainant's contract continued with WHO until she entered into a two-year fixed-term contract with the WTO on 1 March 2006. With the introduction of the new Medical Service, Dr M.'s working time increased from 20 per cent to 50 per cent and, eventually to 80 per cent. The complainant continued to work on a full-time basis.

2. Although the complainant had previously worked with Dr M., their relationship began to deteriorate soon after the establishment of the WTO Medical Service. The complainant contends

that Dr M. was "inapt" and that she, the nurse, was the victim of harassment by her. The complainant's claim of harassment was the subject of an inquiry and is now the subject of another complaint to the Tribunal. In these circumstances, nothing further will be said of the harassment claim.

3. In mid-2006 Dr M., who was the complainant's first-level supervisor, suggested that she and the complainant participate in mediation in an attempt to resolve their differences. However, in December of that year, the complainant asked that the process be suspended. Dr M. completed the complainant's performance evaluation reports for 2006 and 2007 in February and December 2007, respectively. She rated the complainant's performance as unsatisfactory in both reports. On 29 February 2008 the Director of the Human Resources Division informed the complainant that her contract would be renewed for only one year and that her performance would be further evaluated in June and, again, in November 2008, i.e. three months before the expiry of her contract.

4. In the meantime, the Director-General had asked the Joint Advisory Committee to make recommendations as to the kind of medical service best suited to the needs of the WTO. The Committee reported on 24 July 2007, indicating that the service should "focus[…] on catering for the staff's mission-related medical needs [...] and on providing immediate first-aid in emergencies [...] pending the arrival […] of full medical assistance from Cantonal medical services". It stated that it believed that other medical services could be outsourced. It expressed the view that, on this basis, there would be a "need for one full-time, medically-qualified person situated on the premises to perform these tasks along with some secretarial support". Later, in August 2007, an expert from *Hôpitaux Universitaires de Genève* was asked to conduct an audit of the WTO Medical Service. He was asked to:

> "determine the appropriate role, functions and structure of the Medical service taking into account the mandate of the Organization and the work of its staff members."

He was informed that "[t]he audit should also be the opportunity to address the [Medical] Service's overall performance as well as that of its staff".

5. In a report dated 3 March 2008 the expert noted that the Medical Service provided four different types of service, namely occupational health, international medicine (mission-related services), first-line medicine (general medicine and minor emergencies), and insurance medicine. He reported that Dr M. had a sound knowledge of general and internal medicine but that her knowledge of international medicine and occupational health was recent and relatively limited. He also stated that insurance medicine was not her strong point. He observed that the complainant was well experienced and highly competent in international medicine but that she wished to cover the whole field of occupational medicine, a task that was beyond her and would require significant additional resources. He also referred to the conflict between the complainant and her first-level supervisor, Dr M., saying that it had reached a critical point and threatened the efficiency of the Organization. He suggested some measures for dealing with the situation and concluded by recommending that the Medical Service concentrate on occupational health and that the other services be outsourced. He considered that this would require a single health professional together with limited administrative support. That report was apparently provided to the complainant on 23 May 2008 as a preliminary report, along with a request for her comments.

6. On 15 April 2008 the complainant asked the Director-General to review the decision to extend her contract for only one year and, at the same time, requested mediation in accordance with Staff Rule 114.1. On 26 May 2008 the Director-General affirmed the decision to extend her contract for a year and informed the complainant that that decision was based on her performance evaluation reports of 2006 and 2007. He also informed her that he would further consider her request for mediation when he had received her comments on the expert's preliminary audit report. Those comments were provided on 13 June 2008. The complainant filed an

internal appeal with the Joint Appeals Board on 26 June 2008. At the same time, she asked for the appeal process to be suspended to enable mediation to take place. On 29 August 2008 the complainant asked the Board to reactivate the appeal process, there having been no mediation in the meantime.

7. On 26 November 2008, while the complainant's internal appeal was still pending, the Director of the Human Resources Division informed her that the Director-General had decided to restructure the Medical Service with effect from 1 March 2009, and that her contract would not continue beyond 28 February 2009. Apparently, Dr M. was also then informed that her contract would not be extended beyond the end of February 2009. The restructuring was announced publicly on 2 December 2008. The reasons then given for that course were the interests of the Organization, budgetary efficiency and the realignment of the functions of the Service with the essential activities of the WTO and the resources available in Geneva. It was also then announced that medical services would be provided on a daily basis by a nurse hired through a Geneva clinic and, as required, by a doctor practising in occupational health. A later announcement, dated 25 February 2009, indicated that the new health service would be independent of the WTO, that its "priority focus [would] be occupational risk prevention" and that, although the service would continue to provide emergency health care, follow-up treatment would be the responsibility of the attending physician. It was also stated in that announcement that insurance and pension-related work would be outsourced.

8. The Joint Appeals Board presented its report on the complainant's internal appeal on 23 January 2009. It concluded that the complainant's performance evaluation reports involved procedural errors, including that objectives were not set for the year 2006, there was no mid-year review in either 2006 or 2007 and there were no examples of conduct justifying the formal evaluations in the reports. Accordingly, it recommended that the Director-General reconsider the decision to renew the complainant's contract for only one year.

9. The Director-General informed the complainant on 18 February 2009 that he accepted the conclusions of the Joint Appeals Board with respect to her 2006 and 2007 performance evaluation reports. Consequently, as her contract should have been for two years instead of one from 1 March 2008 he had decided that her contract was due to expire on 28 February 2010. He also decided that her 2006 and 2007 performance evaluation reports would not be used against her. However, he also informed her that her post would be abolished with effect from 28 February 2009 and, as it was not possible to transfer her to another post, her contract would then be terminated with payment of three months' salary and other benefits in lieu of notice, together with a termination indemnity. The complainant now challenges that decision, having been informed by the Director-General that she could proceed directly to the Tribunal.

10. WTO Staff Regulation 10.3(a) allows for the termination of a contract on the grounds of "reduction of the staff, or if the necessities of the service require abolition of the post occupied by the staff member concerned and redeployment is not possible". Staff Regulation 10.8 relevantly provides that "no termination under Staff Regulation 10.3(a) [...] shall take place until the matter has been considered and reported on by a joint advisory body". Staff Rule 108.1 provides for the establishment of an Appointment and Promotion Board. By Staff Rule 108.3(iii), that Board is to make recommendations to the Director-General in respect of "the review of proposals for the termination of regular contracts under Staff Regulation 10.8". The Staff Regulations and the Staff Rules both distinguish between regular and fixed-term contracts (see Staff Regulations 4.4 and 4.5 and Staff Rule 104.2). However, no such distinction is made in either Staff Regulations 10.3 or 10.8. This notwithstanding, the Staff Rules make no provision for the establishment of a joint advisory board to consider and report on the termination of fixed-term contracts. The WTO contends that Staff Regulation 10.8 was satisfied by the Director-General's referral of the complainant's case to the Appointment and Promotion Board on 6 February 2009 and the Board's report of 16 February 2009.

11. The Director-General stated in a memorandum of 6 February 2009 to the Appointment and Promotion Board that he had announced the restructuring of the Medical Service and that a new Medical Service would be operational on 1 March 2009. In that context, he stated that he was "considering" terminating the complainant's fixed-term contract and asked the Board to "consider and report on this termination", taking into account, amongst other things, that she could not be redeployed at a post commensurate with her professional qualifications and that she would be eligible for three months' pay and benefits in lieu of notice and a termination indemnity amounting to nine weeks' net salary. The Board reported as follows:

> "(a) On the basis of the information provided, the Board is not in a position to give any advice as to the redeployment of the staff member within the Secretariat to another post commensurate with her professional qualification.
>
> (b) The Board notes that [the complainant] has been a staff member of the WTO since 1 March 2006 and is on special leave without pay from the WHO.
>
> (c) The Board notes that [the complainant] has been the holder of a fixed-term contract since 1 March 2006.
>
> (d) The Board confirms that the proposed actions on the payment of termination indemnity and pay in lieu of notice are consistent with the WTO Staff Rules and Regulations.
>
> (e) The Board felt that, while not required, the career transition coaching programme is considered best practice and supports this initiative."

12. It may be that Staff Regulation 10.8 was technically satisfied in the sense and to the extent that no termination actually took place before the Appointment and Promotion Board issued its report. Although the Board reported with respect to the payment to be made on termination, it neither considered nor reported on the termination of the complainant's contract, that being "the matter" for which a joint advisory board was required by Staff Regulation 10.8 to consider and report on. And consistent with Staff Regulation 10.3 that consideration would have required the Board to have regard to the questions whether "the necessities of the service require[d] abolition of the [complainant's] post", not simply whether "redeployment [was] not

possible". In this regard, it is to be noted that the purpose of a provision requiring referral of the proposed termination of a contract to an advisory body is, as stated in Judgment 2352, "to allow that body to ensure that all the conditions for taking such a step are met, with a view to submitting a recommendation to the executive head". In the present case, the report of the Appointment and Promotion Board contained neither a consideration of whether those conditions were met nor a recommendation with respect to the termination of the complainant's contract. Accordingly, Staff Regulation 10.8 was not satisfied and the decision to terminate the complainant's contract prior to its expiry must be set aside.

13. The complainant makes a number of other arguments designed to establish that the decision to terminate her contract was taken for improper purposes and/or was motivated by bad faith. She also claims that the WTO failed to treat her with respect, violated her right to equal treatment and failed to take the necessary steps to help her find a new position. At the forefront of these arguments is the proposition that there were no objective grounds for the abolition of her post. Rather, she contends that it was decided to abolish her post – and, perhaps, to restructure the Medical Service – because she was seen as a troublesome person or, alternatively, to avoid dealing with the difficulties that existed between her and Dr M. It is curious that it was decided to restructure and outsource the Medical Service within such a short time of its creation. And it is a fact that the steps taken with respect to restructuring coincided with the increasing difficulties between the complainant and Dr M. To some extent, those difficulties were related to the steps that were taken. In this last regard, they were one of the reasons that prompted the Director-General to seek an audit from an external expert and the audit report made considerable reference to them. Moreover, it is not possible to read the report and recommendation as uninfluenced by the conflict between the complainant and Dr M. Further, it is correct, as the complainant contends, that neither the external expert nor the Joint Advisory

Committee recommended the outsourcing of her functions. On the other hand, the restructured service is independent of the WTO, has a new and different focus and has resulted in a significant reduction in cost, all of which make it impossible to accept the complainant's argument that the restructuring was not in the Organization's interest and did not result in budget efficiency. In these circumstances, it is to be concluded that the restructuring was genuine and not simply "a pretext for dislodging undesirable staff" (see Judgment 1231, under 26). Accordingly, the argument that the decisions to abolish the complainant's post and to terminate her contract were taken for an improper purpose or were motivated by bad faith must be rejected.

14. The complainant's argument that the WTO violated her right to equal treatment must also be rejected. She makes this argument by reference to the fact that the WTO retained the medical secretary to the Medical Service and, also, that there is another nurse who is employed by the WTO in another capacity. However, the complainant has not established that she was in the same position in fact and in law as these other persons. Nor has she established that she was in the same position in fact and in law as persons who at other times were offered early retirement packages.

15. The complainant also claims that she was not treated with respect. Despite the claim of the WTO, the complainant was not consulted on the restructuring of the Medical Service. The Organization contends that she was sufficiently consulted when she was asked to comment on the audit report. Although the external expert who prepared that report proposed the outsourcing of all services except occupational health, he stated that there would be a continuing need for a single health professional. Moreover, he did not recommend the model that was ultimately adopted. In particular, he did not recommend that the work done by the complainant be outsourced. Indeed, the complainant may well have thought that, if that report were adopted, her post would not be affected. Further, the proposal involving the abolition of the complainant's post was not finalised until late October 2008. The complainant was not then

consulted. Rather, she was simply informed in a meeting with the Director of the Human Resources Division that the Service was to be restructured and that her contract would not be renewed beyond 28 February 2009. There is no evidence that the complainant was then informed why her post was to be abolished. And the Director-General's decision of 18 February 2009 provided no information in that regard. At that stage, the complainant asked whether she could be employed in the new structure but she received no response, presumably because it had then been decided, as announced on 2 December 2008, that a nurse would be obtained through a Geneva clinic. It was only after the complainant had written to the Director-General on 16 January 2009 requesting the opportunity to apply for the post of nurse in the restructured service that she was told how she might apply for the post. She did apply, albeit unsuccessfully, and was interviewed by the doctor who had been involved in the final stages of the restructuring process and, who, ultimately, was engaged as the head of the new service. Apart from providing information, belatedly, as to how the complainant could apply for the post of nurse within the new Medical Service and arranging for some counselling, there is nothing to suggest that any other steps were taken to assist her in obtaining future employment or that any real consideration was given to whether there were other suitable posts within the WTO. These matters warrant the award of moral damages.

16. Moral damages should also be awarded for the failure to respond to the complainant's request for mediation with respect to the issues involved in her internal appeal. The WTO claims that it would have been futile to respond to her request while restructuring was under consideration. It may have been inconvenient, but it would have been a matter of simple courtesy to inform the complainant that a decision was being deferred pending consideration of a possible restructuring, rather than saying her request would be considered after she provided her comments on the audit report. As it happened, the failure to inform the complainant of the situation resulted in a delay of approximately two months in the internal appeal process.

17. The complainant also seeks moral damages on the basis that her reputation has been tarnished. The evidence does not establish that her reputation was tarnished either by the decision to abolish her post or to terminate her contract. To the extent that that claim is related to the complainant's claim of harassment, it will be considered in other proceedings.

18. The complainant seeks orders annulling the abolition of her post and reinstatement. These orders must be refused. Although the decision to terminate the complainant's contract must be set aside, there is no reason to set aside the decision to abolish her post and, that being so, reinstatement is not possible. However, the complainant is entitled to the salary and other benefits that she would have received on the basis that her contract was renewed until 28 February 2010, that being the date on which it would otherwise have expired, together with interest from due dates until the date of payment, less the amount of the payments made in lieu of notice and by way of termination indemnity. The complainant must give credit for any net earnings between 1 March 2009 and 28 February 2010. She is also entitled to moral damages in the amount of 15,000 Swiss francs and costs in the amount of 6,000 francs. The complainant also seeks orders that her 2006 and 2007 performance evaluation reports be removed from her personnel file and destroyed. As it is not possible for new reports to be prepared and it has been accepted by the Director-General that they involved procedural irregularities, an order will be made accordingly.

DECISION

For the above reasons,

1. The Director-General's decision of 18 February 2009 to terminate the complainant's contract is set aside.

2. The WTO shall pay the complainant the salary and other benefits payable for the period 1 March 2009 to 28 February 2010, together with interest at the rate of 5 per cent per annum from

due dates until the date of payment less the amounts already paid in lieu of notice and by way of termination indemnity. The complainant must give credit for her net earnings during that period.

3. The Organization shall pay the complainant moral damages in the amount of 15,000 Swiss francs.

4. It shall also pay her costs in the amount of 6,000 francs.

5. The complainant's 2006 and 2007 performance evaluation reports shall be removed from her personnel file and destroyed.

6. All other claims are dismissed.

In witness of this judgment, adopted on 20 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet