Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

117th Session **Judgment No. 3314**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms R. S. against the World Health Organization (WHO) on 18 January 2012 and corrected on 13 March, WHO's reply of 22 June, the complainant's rejoinder of 18 September and WHO's surrejoinder of 20 December 2012;

Considering Articles II, paragraph 5, VII and VIII of the Statute of the Tribunal;

Having examined the written submissions;

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

A. Between September 2003 and January 2009 the complainant was employed periodically by WHO at its South-East Asian Regional Office (SEARO) in New Delhi, first under Special Service Agreements and subsequently as a Temporary International Professional working on various assignments.

During the period from July 2006 to March 2007, the complainant worked in the same department as Dr L. In December 2007 the complainant lodged a verbal complaint of harassment against Dr L. with the Regional Personnel Officer (RPO), who referred her to the Field

Security Officer (FSO). She alleged acts of threats, intimidation, physical assaults and psychological and sexual harassment at her workplace by Dr L. The FSO informed the complainant that there was no formal grievance procedure or panel in place at SEARO to handle such complaints and asked her to put her allegations in writing using a Voluntary Statement Form. She decided not to do so at that stage. The complainant's temporary assignment expired at the end of December 2007.

Dr L. was transferred to the country office in Bangkok in January 2008. In February 2008 the complainant, who was no longer under contract with WHO, informed the FSO that Dr L. was continuing to threaten her from Bangkok and requested him to take action. In March and April she corresponded and/or met with various SEARO officials, including the Director, Administration and Finance (DAF), the RPO, the FSO and the Deputy Regional Director to discuss matters relating to her harassment complaint. On 15 April 2008 she wrote a letter to the Regional Director explaining that she was being harassed by Dr L. and that he was threatening to ruin her career, using his political connections. She asked for a meeting and for guidance on the matter.

On 19 May 2008 the complainant returned to SEARO under a three-month contract. That same day she filed a written complaint in the form of a Voluntary Statement Form alleging harassment by Dr L., asking the Organization to take urgent action "as per the 'WHO Policy on Harassment'". On 21 May the FSO requested that she submit material evidence to support her allegations. On 23 May the complainant lodged a complaint with the local police against Dr L., alleging that he had threatened her with physical harm. She then wrote, on 6 June, to the Director, Human Resources Department (HRD) and to the Director, Office of Internal Oversight Services (IOS) at Headquarters to report her formal complaint of harassment against Dr L., as lodged with the SEARO Administration, and to seek their assistance in securing her protection as Dr L. was due to return to New Delhi on 9 June 2008. On 10 June she provided the FSO with the requested material evidence.

Dr L.'s assignment period, initially meant to last two months, was extended until the end of his contract on 31 July 2008. On 12 June SEARO's DAF travelled to Bangkok to inform Dr L. of the harassment allegations against him and to request that he refrain from any contact with the complainant or any witness. On 21 June the FSO interviewed Dr L. in Bangkok.

The FSO sent his report on 25 June 2008 to WHO Headquarters. By memorandum of 28 July Dr L. was notified of the allegations against him and of the disciplinary measures he might face. His assignment with SEARO ended on 31 July 2008, but he replied to the allegations in August.

In July the complainant wrote on several occasions to the senior management in SEARO and at Headquarters requesting prompt action to be taken on her harassment complaint. She also alleged that she was being sidelined from her work by her supervisors. She asked that her repeated requests for action at least be acknowledged. The complainant also informed senior management that she had been approached by third parties offering compensation in exchange for a withdrawal of her complaint against Dr L. She was advised to avoid any interaction with anyone purporting to contact her concerning these allegations, as the matter was confidential and still under investigation. The DAF wrote to the complainant on 1 August informing her that Dr L. no longer had access to SEARO premises.

By a letter of 6 September 2008 SEARO informed Dr L. of its decision to confirm the finding of serious and entirely unacceptable conduct and indicated that there would have been sufficient grounds to terminate his fellowship. Since Dr L.'s contract had already expired, he was advised that WHO would not offer him employment in the future and that a copy of the letter would be placed in his file.

Meanwhile, on 5 August 2008 the complainant filed a notice of intention to appeal to the Regional Board of Appeal (RBA) against the inaction of the Regional Director regarding her letter of 15 April 2008 and her complaint of 19 May 2008. In the absence of a grievance panel in SEARO, on 13 August 2008, the complainant submitted a harassment complaint against Dr L. to the Headquarters Grievance

Panel (HGP). In its report of 30 June 2009 the RBA found the appeal partially receivable, but felt unable to recommend an award of damages, as it was not competent to rule on the harassment allegations, but only on the inaction of the Administration. It found that the complainant was partly responsible for the delay in handling her complaint and recommended granting her legal costs upon proof of payment. It noted that the harassment complaint should have been handled by a grievance panel and that in the absence of a clear regional policy, the WHO Policy on Harassment of 23 March 2001 contained in Cluster Note 2001/9 should have been applied. By a letter of 1 September 2009 the Regional Director decided to dismiss her appeal in its entirety and not to award her any costs, rejecting the RBA's finding that the Administration was partly responsible for the delay. The complainant appealed against that decision before the Headquarters Board of Appeal (HBA) on 7 September 2009. In its undated report the HBA recommended the rejection of the appeal in its entirety, which the Director-General did, by a decision of 21 October 2011. That is the impugned decision.

B. The complainant contends that the impugned decision is tainted with personal prejudice. She submits that the Administration's bias in favour of Dr L. is evidenced in particular by the fact that he was not even interviewed when she first lodged her complaint of harassment in December 2007. He was simply reassigned to Bangkok. According to the complainant, Dr L. admitted to all the allegations made against him, yet no action was taken against him until three days prior to the expiration of his contract. The FSO's refusal to interview any of the key witnesses mentioned by the complainant, his refusal to acknowledge her formal complaint or to share a copy of the investigation report, together with his insensitive comments demonstrate, in her view, the Regional Administration's prejudice towards her. Every effort was made to ensure that Dr L. would leave WHO unscathed, due to his father's high profile connections.

She submits that retaliatory measures were taken by some of her supervisors, which further aggravated her harassment, and that the renewal of her contract was delayed by five months in retribution for

lodging her harassment complaint in December 2007. Similarly, the assessment of her work in performance appraisal reports suddenly changed after she had lodged her complaint. This hostile behaviour culminated in the Regional Administration's decision of October 2008 to accuse her of misconduct on the basis of baseless accusations made by Dr L.

The complainant further argues that the impugned decision violates the terms of the WHO Policy on Harassment as well as the provisions of the Staff Regulations and Staff Rules concerning Grievance Procedures, as no informal conflict-resolution measures were initiated and no grievance panel, not even an ad hoc one, was set up. She alleges that the Regional Administration concealed vital information from her when she asked the RPO for information on procedures regarding sexual harassment complaints, and she submits that the RPO should not have referred her to the FSO, a single male officer who failed to show any gender-sensitivity or experience in dealing with a sexual harassment complaint. In so doing, WHO failed to take immediate action to protect her from further harassment and failed in its duty to provide a congenial harassment-free workplace. Moreover, the Regional Administration failed to timely inform her of any final action on her complaint.

The complainant objects to the RBA's finding that she was partly responsible for the delay, having waited until May 2008 to submit her Voluntary Statement Form. She explains that there were cogent reasons for not putting her complaint in writing in December 2007. She considers that the RBA's recommendations are tainted with errors of law. In particular, the RBA failed to refer her allegations of harassment to the HGP and it erred when it ruled that it was not competent to grant the relief requested. In addition, there were procedural irregularities in the proceedings before the RBA. The Administration's representative was assisted by a lawyer in the hearings before the Board, in breach of the RBA Rules of Procedure and of the confidentiality of such proceedings. The RBA also breached its Rules of Procedure by sending an interim report on the issue of receivability to SEARO, which further delayed the process by

four months. She argues that there were excessive, inordinate and unexplained delays in the internal appeal proceedings before both the RBA and the HBA, and points out that she made three unsuccessful requests for a waiver in order to proceed directly before the Tribunal. In her view the HBA report contained a tendentious and distorted chronology of facts, including matters irrelevant for the appeal but which seek to paint the complainant in a bad light, while glossing over events of significant importance such as Dr L.'s admission of all her allegations. As a result, the impugned decision and the recommendations and findings of the HBA are vitiated by errors of fact and law.

The complainant asks the Tribunal to award her material and moral damages in the amount of 450,000 United States dollars and costs in the amount of 35,000 dollars.

C. In its reply WHO argues that the complaint is irreceivable on two grounds. First, it considers that there is no cause of action or injury directly or indirectly arising from the impugned decision. Insofar as the complainant challenges an implied decision not to take action, it notes that at the time the complainant submitted her appeal, she had received responses from the Administration both at SEARO and Headquarters. She thus knew that it had taken action on her formal complaint of harassment and that measures would be taken against Dr L. Second, it submits that the complaint contains allegations which are not properly before the Tribunal. The complainant's internal appeal was not directed at any decision taken on the issue of whether or not harassment occurred, and her allegations in this regard are now time-barred.

On the merits, WHO denies her allegations of personal prejudice and argues that they are not supported by the evidence. It strongly rejects the complainant's claims that it failed to act on her harassment complaint and, in particular, the suggestion that the review of the matter was intentionally delayed in order to favour Dr L. It submits that her own correspondence with senior officials undermines her claims in this regard. WHO reiterates that between December 2007 and May 2008 the complainant received support and guidance, but failed to submit a formal complaint of harassment, despite the fact that

she was repeatedly urged to do so. She waited five months before doing so, leaving the Regional Administration with approximately two months to conduct a review of the complaint and to initiate and conduct any consequent disciplinary proceedings against Dr L. prior to his scheduled departure from WHO. It points out that the investigation was promptly carried out by the FSO and that charges were issued against Dr L., although no sanction was imposed before his separation. The matter was handled with due diligence and the circumstances do not indicate any delay.

WHO denies any breach of applicable procedures. It points out that the WHO Policy on Harassment does not require SEARO to put in place mechanisms for informal resolution of harassment complaints. Moreover, Cluster Note 2001/9 of 23 March 2001 only required the regional offices to establish "similar processes" for the review of formal complaints. SEARO was not required to establish a Grievance Panel to deal with formal complaints of harassment. WHO considers that the SEARO Procedure and Policy for Conducting Complaint Investigation/Fact Finding put an appropriate and effective procedure in place, which is tailored to the needs of the Regional Office. SEARO's actions in requiring a formal complaint of harassment together with corroborating evidence from the complainant were appropriate and consistent with its duty of care under the Policy, and it initiated and completed the investigation in a timely manner.

SEARO also took steps to keep Dr L. in Bangkok until the matter was resolved, and it advised the complainant to seek the help of the local police to ensure her personal safety when she was not on SEARO grounds. The complainant was not, however, entitled to be informed of the action taken against Dr L. as a consequence of the investigation.

Lastly, WHO asserts that the internal appeal proceedings were properly conducted. The RBA rightly declined to review the substance of her allegations of harassment, as her internal appeal concerned the alleged inaction on her formal complaint of harassment, not the Regional Director's final decision following the FSO's investigation of her allegations of harassment. The chronology produced by the HBA accurately reflects the events that took place during the complainant's

period of employment. Her principal objection to it derives from her choice not to reveal certain important information to the HBA and not from its lack of accuracy. WHO considers that there is no basis for the redress requested and asks the Tribunal to reject it in its entirety.

D. In her rejoinder the complainant presses her pleas. She strongly denies the contention that she did not disclose all the facts when she submitted her verbal complaint in December 2007. As regards receivability, she draws attention to the fact that at the time of writing her rejoinder, she still had not been informed in writing of the definitive action taken on her harassment complaint. She asserts that she does not request the Tribunal to examine the merits of her allegations of harassment against Dr L., nor does she ask for any relief that was not claimed in her appeals before the RBA and the HBA.

E. In its surrejoinder WHO maintains its position in full. It adds that the WHO Policy on Harassment does not require that bodies reviewing harassment complaints include women, nor does it require the investigator to be of any particular gender.

CONSIDERATIONS

1. The central issue that this complaint raises is whether there was inaction and delay by officers and the organs of the Organization in pursuing the complainant's harassment complaint, which entitle her to compensation. She alleges that she complained in December 2007 of acts of threats, intimidation and harassment by a colleague at her office, but the Organization failed to properly protect her in a timely manner in breach of its own Staff Regulations and Staff Rules ("Staff Rules"), its Policy on Harassment and the terms of her contract. She insists that SEARO failed to provide her with a congenial and peaceful work environment and failed to set up a Grievance Panel to investigate her complaint. She states that because of these failures, she sustained continued harassment and intimidation in the workplace, which caused her loss of respect, dignity, image and reputation.

2. At the outset, the Tribunal dismisses the complainant's claim for compensation for the Administration's alleged denial of contract for a period of five months when her temporary assignment ended in December 2007 because this was the subject of other proceedings.

3. By the time the appeal was lodged in the HBA, it further alleged that the RBA added to the administrative inaction and delays by the way in which it dealt with her appeal. By the time her complaint was filed before the Tribunal, it further alleged that the HBA added to the inaction and delay by the way in which it dealt with her appeal. The complainant claims 450,000 United States dollars material and moral damages and 35,000 dollars "legal and incidental costs" from the Organization.

4. Receivability is a threshold issue. In the impugned decision in the letter dated 21 October 2011, the Director-General accepted the recommendations of the HBA to dismiss the appeal on its merits. She however noted that the HBA expressed doubt on the receivability of the appeal. She noted the statements by the RBA and the HBA that there were circumstances which could have led the complainant to conclude that there was an apparent delay and/or an implicit rejection of the appeal, but expressed regret that the HBA did not fully review the receivability issue. These statements were made in passing by the Director-General, who then made her impugned decision on the merits of the case. However, the Organization raised receivability as an issue in the Tribunal proceedings on two grounds.

5. The first ground is that the complainant failed to show a cause of action or that she suffered injury arising directly or indirectly from some aspect of the impugned decision. These are requirements of Article II, paragraph 5, of the Statute of the Tribunal. This ground is unsustainable. The complainant's case is that, in breach of its own Regulations and stated Policy on harassment in the workplace and/or in breach of her contract, inaction and delay by the officers and the organs of the Organization in her harassment complaint process caused

her to suffer continued harassment in the workplace, with attendant injury which entitles her to compensation. This is a cause of action.

6. The second ground of irreceivability which the Organization raised is that the appeal contains allegations that are not properly before the Tribunal. This, according to the Organization, is because the complaint contains allegations that are directly concerned with whether harassment and intimidation occurred, which are not part of the impugned decision. The Tribunal observes that there are aspects of the complaint and the arguments in support of it, which raise these allegations. Essentially, however, the complaint is concerned with the allegations of inaction and delay by the organs of the Organization in protecting the complainant after she complained of harassment in the workplace. The complainant's case is that this was contrary to Staff Rules 1230.1.1, 1230.1.2, 1230.1.3, WHO's Policy on Harassment contained in Cluster Note 2001/9, the terms of her contract, and, in particular, the duty of the Organization to protect her from continued harassment and to provide her with an efficient means of internal redress.

7. Staff Rule 1230.1.1 permits a staff member to appeal against any administrative action or decision that affects his or her appointment status where the impugned decision resulted from personal prejudice on the part of a supervisor or any other responsible official.

8. The complainant contends that after she complained to responsible officials of the Administration about the harassment, she suffered personal prejudice in favour of her colleague because of his high profile connections. She further alleges that the Administration was predisposed to assist the offender when, instead of questioning him after she made her first complaint in December 2007, he was assigned to SEARO's Bangkok office. She also alleges that prejudice explains why she received positive performance appraisals prior to her first complaint, but negative ones after the complaint. The Tribunal will not comment on this latter allegation inasmuch as it became the subject of other proceedings.

9. The complainant raised other allegations of personal prejudice. However, when they are considered, they are unsupported allegations, surmises and suspicions. The evidence provided to support them is of insufficient quality and weight from which the Tribunal could infer prejudice. (See, for example, Judgment 1775, under 7.) The complaint cannot therefore be sustained on the ground of personal prejudice.

10. Staff Rule 1230.1.2 permits a staff member to appeal against any administrative action or decision that affects her or his appointment status where the impugned decision resulted from an incomplete consideration of the facts on the part of a responsible official. The complainant contends that the Organization violated this Rule because its officials gave incomplete and untimely consideration to her complaints of harassment in circumstances which required immediate and expeditious action. Staff Rule 1230.1.3 permits a staff member to appeal against any administrative action or decision that affects his or her appointment status where the impugned decision resulted from a failure to observe or apply correctly the provisions of the Staff Rules, or the terms of the staff member's contract. The complainant contends that, in breach of its regulations, stated policy and its duty to her, the Administration did not protect her from continued harassment by her colleague in the face of her pleas for protection. She states that this is evidence, for example, that the Administration conducted a flawed investigation, in violation of due process.

11. The Organization's reply is that, given the complexity of the case, the sensitivity of the issues, the rights both of the complainant and her colleague, and the Organization's reach and authority, it responded reasonably promptly and considerately to the complainant's many requests for assistance. Thus, it states, it kept the colleague in Bangkok after his two-month assignment there expired in early March 2008 until his contract expired in July 2008. Officials had also advised the complainant to lodge a complaint with the local police, which she did. They also offered home security advice. The Organization states that it was not possible to take more decisive action until the complainant filed her written complaint in May 2008, although she

was advised to do so in December 2007. According to the Organization, a written complaint was necessary to facilitate the pursuit of a vigorous investigation because a verbal complaint could be retracted at any time leaving the Organization to bear the consequences. The FSO commenced the investigation promptly once the written complaint and the supporting evidentiary statements were returned. In effect, therefore, the complainant caused delay in the investigations when she did not return the forms for some five months.

12. The Administration commenced and pursued the official investigation promptly once the complainant filed her written complaint on 19 May 2008. The complaint was discussed with the complainant. She was requested to complete and submit the supporting documents. The FSO commenced the investigation just after the complainant provided the relevant material evidence on 10 June 2008. The DAF visited the colleague in Bangkok on 12 June 2008, informed him of the complaint against him and instructed him not to have any future contact with the complainant or any witness. The FSO interviewed him in Bangkok on 21 June 2008 and immediately shared his findings by telephone with the DAF, the IOS and SEARO's Regional Director. He presented his findings in the form of a report, which was submitted to Headquarters for review on 25 June 2008. A charge-sheet was sent to the colleague on 10 July 2008. On 28 July 2008, the Administration notified the colleague that he would not be permitted to return to SEARO pending the completion of the investigation. His assignment with WHO was not renewed when it expired in Bangkok on 31 July 2008. The Administration sent him a formal letter, dated 6 September 2008, informing him that the investigation report concluded that his conduct was serious and unacceptable and WHO will not offer him further employment in the future. The complainant had filed her inaction appeal in the RBA on 5 August 2008.

13. These steps must however be reviewed in light of applicable rules and procedure as illuminated by the Tribunal's case law.

14. The Tribunal's case law requires an international organization to investigate allegations of harassment linked to the workplace thoroughly, in accordance with due process and the protection of the person accused. The investigation should be prompt and thorough; the facts determined objectively and in their overall context; the law is to be applied correctly and the person claiming, in good faith, to have been harassed, should not be stigmatised or victimized on that account. (See, for example, Judgment 2973, under 16.) An international organization is also required to ensure that its investigative and internal appeal bodies for this purpose are functioning properly. (See, for example, Judgment 3069, under 12.)

15. The complainant contends that there was inaction and delay because the Administration was derelict in its duty to implement WHO's Policy on Harassment contained in Cluster Note 2001/9 of 23 March 2001. The Cluster Note asks Regional Offices to put in place a similar process to those for which the note provides. SEARO had not done so at the time that the complainant appealed.

16. The Administration refers to its Procedure and Policy for Conducting Complaint Investigation/Fact Finding. This document refers to harassment but it is really a general investigative guide, which does not provide the benefit of the procedures specifically for investigating harassment which WHO's stated Policy contained in the Cluster Note was intended to provide. In any event, the Procedure and Policy for Conducting Complaint Investigation/Fact Finding was a confidential document. It was never circulated to staff members as it was meant to guide investigators. No guidance document on it was available to staff members. The document does not fulfil WHO's request to the Regional Administration, contained in the Cluster Note, to give effect to WHO's stated investigative policy for harassment.

17. The Cluster Note provides informal and formal procedures for dealing with harassment in the workplace. The informal process requires the intervention of the complainant's supervisor and/or the Ombudsman to investigate the allegations to facilitate conflict resolution

when a complaint is made. The informal process provides the Ombudsman with the authority to recommend appropriate action to the Regional Director or to the Director-General. In breach of these provisions no informal process was activated on the complainant's verbal complaint in December 2007.

18. The Cluster Note, read with Information Circular No. IC/96/28, contemplates the creation of formal process in the region, i.e., a grievance panel at each Regional Office. The Panel is to be broad based. It is to be broad based constituted so as to ensure a gender neutral and impartial process. The underlying philosophy of the Cluster Note was for the HBA and the RBA to refer any aspect of an allegation of harassment that comes to them in an appeal to the relevant Grievance Panel and recommence the hearing of the appeal guided by the Panel's recommendations. In breach of these provisions, the Regional Administration did not establish a Grievance Panel, which precluded the RBA from referring the relevant aspects of the harassment appeal to such a Panel.

19. It is against this background that the Tribunal finds that the Administration was derelict in its duty to implement WHO's Policy on Harassment contained in Cluster Note 2001/9. It is this dereliction that frustrated the complainant's bid to seek prompt and effective redress in her harassment complaint. Additionally, it is apparent that she received no official responses to her three July 2008 communications to the Organization requesting timely action on her complaints. In the absence of an investigative procedure similar to that contained in the Cluster Note, no one, including the Ombudsman, seemed certain what steps were to be taken or what advice to proffer to the complainant. In the absence at SEARO of a body that was similar to the Grievance Panel, the complainant filed a harassment complaint with the HGP on 13 August 2008. It was not acknowledged. She then filed an intention to appeal and statement of appeal dated 5 August and 9 September 2008, respectively, with the RBA.

20. The Organization does not deny that the complainant sustained harassment. It in fact took action against the colleague who was accused of that conduct. In the Tribunal's view, SEARO's failure to follow WHO's guidance to provide appropriate procedures for the investigation of harassment complaints denied the complainant the due process to which she was entitled in order to curtail the harassment in a timely manner. It was a failure that prolonged her agony because of the delay in investigating her complaint, which the appropriate procedure could have avoided. It is a failure that affected her appointment status, the terms of her contract and the Organization's duty to provide her with a congenial work environment. In effect, she was thereby denied the due process to which she was entitled in the investigation of her harassment complaint, which gives rise to compensatory damages.

21. On the other hand, the RBA did not violate the procedural requirement when it did not refer her inaction and delay appeal to a panel as there were no aspects of harassment to be so referred on that appeal. It contained no harassment complaint. Neither did the RBA violate the letter and spirit of Staff Rule 1230.7 when it permitted Counsel to represent the Administration. The Tribunal finds no merit in the complainant's contention that Staff Rule 1230.7, which provides that an appellant may be heard through a representative of his or her choice, and Rule 12.2.1 of the RBA Rules of Procedure, preclude the presence of a representative of the Administration from a hearing. It lies within the purview of the RBA to permit the Administration to be represented by Counsel where the appellant is so represented as it could assist the RBA. What the RBA cannot do is to curtail an appellant's right to be represented by someone of his or her choice. The presence of an outsider as Counsel for the Administration does not violate the confidentiality of the proceedings, for which Rule 1.3 of the Rules of Procedure of the RBA provides.

22. However, there were inordinate delays in the proceedings in the complainant's inaction and delay appeal in the RBA as well as in the HBA.

23. The complainant contends that the RBA did not observe its own rules and proper procedure in breach of Rule 38 of the HBA's Rules of Procedure. Rule 38 states, in part, that where the Board thinks that an appeal is receivable, it is to proceed in accordance with applicable rules that followed. Staff Rule 1230.3.3 requires the RBA to submit its report to the Regional Director within 90 calendar days of the date on which it receives an appellant's full statement of case. The Regional Director is then to inform the appellant of his or her decision within 60 days of the date on which the RBA's report is received. The complainant submits that the rules of procedure intend the RBA to determine receivability and merits at the same time and send one composite report to the Regional Director. She insists that by having two hearings, the RBA wrongly gave the Regional Director two periods of 60 days to inform the appellant of the decision.

24. There is no rule of procedure that required the RBA to bifurcate the hearing, as it did. That action led to an unnecessary delay of some four months in the appeal process, which was exacerbated by inordinate delay in the HBA proceedings. The complainant's appeal was filed with the HBA on 7 September 2009. Her statement of appeal is dated 14 January 2010. The HBA heard the appeal on 6 September 2010 and 27 January 2011, but presented an undated report to the Director-General in October 2011 when Staff Rule 1230.3.3 required the HBA to submit its report within 90 calendar days of the date on which it receives an appellant's full statement of case. These breaches of their own Rules of Procedure by the HBA and the RBA amounted to a breach of the due process in the internal appeal proceedings to which the complainant was entitled. Ultimately, the Organization breached its duty to provide the complainant with the efficient internal means of redress to which she was entitled.

25. In summary, the Organization breached Staff Rule 1230.3.3, the complainant's contract and its duty to provide her with a congenial working environment. In effect, the Organization denied the complainant the due process to which she was entitled in the investigation of her harassment complaint. The result was a delay which exposed the

complainant to continued harassment. The Organization also breached its duty to provide an efficient internal redress process as a result of inordinate delay in the proceedings before the RBA and the HBA. The complaint is therefore well founded on these grounds and the complainant is entitled to damages.

26. The complainant claims material damages. The Tribunal has stated that a complainant must provide evidence of actual injury as a result of an unlawful act in order to succeed in such a claim. The complainant has not adduced such evidence. Accordingly, the Tribunal does not award material damages. However, the complainant is entitled to moral damages for the breaches that the Tribunal found, for which the sum of 25,000 United States dollars is awarded. The complainant is also to have the 4,000 dollars costs, which the RBA recommended for the proceedings before it. This is because the Regional Director gave no reason for not accepting that recommendation, which appears reasonable and appropriate, and the Director-General did not reverse the Regional Director's decision. The complainant is also awarded 2,000 dollars costs for the proceedings before the Tribunal.

DECISION

For the above reasons,

1. The decision contained in the letter of the Director-General dated 21 October 2011, so far as it relates to HBA Appeal No. 736, is set aside.

2. The Organization shall pay the complainant compensation for moral damage in the amount of 25,000 United States dollars.

3. The Organization shall pay the complainant 2,000 dollars in costs.

4. The Organization shall also pay the complainant the 4,000 dollars in costs, which the RBA recommended for the proceedings before it.

5. The complaint is otherwise dismissed.

In witness of this judgment, adopted on 20 February 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 28 April 2014.

GIUSEPPE BARBAGALLO
MICHAEL F. MOORE
HUGH A. RAWLINS

DRAŽEN PETROVIĆ