C.

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

125th Session **Judgment No. 3922**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms R. C. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter "the Global Fund") on 1 June 2015 and corrected on 3 August, the Global Fund's reply of 16 November 2015, the complainant's rejoinder of 21 March 2016, corrected on 31 March, and the Global Fund's surrejoinder of 19 July 2016;

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

Having examined the written submissions;

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

The complainant challenges the decision to offer her a three-month renewal of her contract and to reject the claims she made with respect to her performance evaluation for 2012, the reclassification of her post, the length of her last contract and her allegations of harassment, retaliation and intimidation.

The complainant worked a few months for the Global Fund in 2010, left the organisation and joined it again in February 2011. In September 2011 she was granted and accepted a two-year contract of defined duration as a Junior Investigations Analyst in the Office of the Inspector General (OIG). On 27 February 2013 the complainant was informed that the Management Executive Committee had approved her performance rating for 2012 as "Performing well". On 15 March, after

having obtained some details on the content of the performance evaluation, she wrote to her new line manager, Ms R., who replaced Mr A. as from early 2013, expressing her dissatisfaction with her rating. She requested that her performance be re-evaluated by another person. She asked that Mr A., her line manager in 2012, conduct the evaluation as he knew more about the objectives that were discussed and her work.

In July 2013 the complainant was offered an extension of her contract which was due to expire in September. Her contract was extended until 31 December 2013 in order to allow the Administration to assess the possibility of renewing her two-year contract. She was also informed that a decision about the renewal of her contract would be communicated to her before the end of September 2013. On 23 July 2013 she filed a Request for Resolution alleging intimidation and retaliation. She requested to have an objective and fair performance evaluation for 2012, that her contract of defined duration be renewed for two years as from its expiry date on 16 September and that her job be re-evaluated in a fair, transparent and objective manner. She also requested mediation to be conducted by the Ombudsman or another qualified mediator in an attempt to arrive to a mutually satisfactory resolution of all outstanding issues. On 27 September 2013 the Head of the Human Resources Department (HRD) informed the complainant of her final decision concerning her request for resolution. With respect to her 2012 performance evaluation, she asked the complainant to indicate what specific disagreements she had with the language used. She also encouraged her to discuss the issue of intimidation and retaliation with the Ombudsman once she felt better. In that respect she noted that the Ombudsman had tried to contact her but that she had told him she was not available as she was on sick leave. On 5 November the Ombudsman informed the Head of HRD and the complainant that he considered his intervention to be secondary in light of the communications the complainant and the Administration had exchanged concerning the extension of her contract. He therefore decided to close his intervention. A few days later, the Head of HRD launched a formal investigation to be led by an independent external investigator.

In the meantime, on 19 September 2013, the complainant was offered a further contract of three months from 1 January 2014 to 31 March 2014. On 21 October she declined the offer, explaining that it was made under the condition that she would participate in an Individual Development Plan in order to improve her "reputation" and that she could not accept it "in lieu of a normal renewal of [her] 2-year contract". Three days later, on 24 October, she was informed that her refusal to sign the offer amounted to resignation and that consequently her last day of employment would be 31 December 2013. From mid-November 2013 until the end of the year, the complainant was on sick leave.

On 31 December 2013 the complainant submitted a second Request for Resolution. She challenged the decision of 24 October to consider that her refusal to accept the three-month extension amounted to resignation and that consequently her last day of employment was 31 December 2013. On 28 February 2014 she was informed that her Request for Resolution was rejected.

On 15 February 2014 she filed a third Request for Resolution challenging the decision that was taken on 19 December 2013 to close the investigation into her allegations of harassment on the grounds that she had not substantiated her allegations and was unwilling to cooperate fully with respect to the investigation. On 15 April 2014 she was informed that her Request was rejected.

On 25 November 2013 the complainant filed her first appeal before the Appeal Board challenging the decision to extend her contract until the end of December 2013 instead of offering her a two-year extension. She also contested her 2012 performance evaluation, the decision not to re-evaluate and reclassify her job, and contended that her refusal of the three-month extension from 1 January 2014 to 31 March 2014 was misinterpreted as a resignation. She subsequently filed a second appeal on 17 February 2014 against the decision to close the investigation into her allegations of retaliation, intimidation and mobbing. She filed two further appeals on 29 April 2014 and 13 June 2014 challenging respectively the decision of 28 February 2014 and the decision of 15 April 2014.

The Appeal Board decided to join her appeals and issued a single report on 16 February 2015. It recommended rejecting the appeal filed on 17 February 2014 against the decision to close the investigation into her allegations of harassment as she had filed a Request for Resolution two days later and had not yet received a reply. However, it found that the appeal she had filed on 13 June 2014 against the decision of 15 April 2014 concerning the decision to close the investigation into her allegations of harassment was receivable, as was the appeal filed on 25 November 2013. It recommended awarding her financial compensation for the Administration's poor handling of her case and the bad faith it had shown in offering her a three-month renewal instead of a two-year renewal. The Appeal Board nevertheless considered that the applicable rules did not prevent the Administration from renewing her contract for three months, hence it recommended awarding her financial compensation and not reinstatement or renewal of her contract for two years. A majority of the members of the Appeal Board recommended awarding her an amount equivalent to six months' salary, and one member recommended awarding her an amount equivalent to 12 months' salary.

By a decision of 3 March 2015, the Executive Director noted that the complainant had voluntarily decided to leave the organisation by refusing the offer of a three-month renewal, but he considered that there had been miscommunication between the Administration and the complainant, and therefore decided to award her *ex aequo et bono* an amount equivalent to three months' salary. He dismissed all other claims. That is the impugned decision.

The complainant asks the Tribunal to award her material and moral damages for each of the different disputed employment matters. She also seeks an award of exemplary material and exemplary moral damages on various grounds, and costs. She asks to be reinstated (under "a long term contract of continuing duration" of at least two years) and to be paid all amounts due to her with interest, or to be awarded material damages. She also seeks an award of consequential damages for the long lasting negative impact on her career prospects, the loss of "professional experience" and loss of earnings. With respect to her 2012 performance evaluation, she seeks the removal of all adverse, subjective, defamatory

and unfounded statements from her personal file, and asks that the Tribunal's judgment be placed in her personal file. She also asks that her 2012 performance evaluation be revised and that she be provided with a fair, transparent and objective evaluation of her 2013 performance. She further asks to be provided with a work certificate that indicates her role and responsibilities and contains a fair and positive appreciation of her performance. With respect to her job evaluation, she seeks a retroactive promotion based on a re-evaluation of her grade to a higher grade, and payment of the resulting difference in salary, benefits and emoluments, with interest. Concerning her harassment claim, she asks that a proper investigation be conducted by an independent and neutral investigatory body, and that its findings be included in her personal file. She seeks an order requiring the Global Fund to acknowledge that she was harassed and unfairly treated, and to issue apologies. She asks that proper corrective action be taken and sanctions applied against all those who were directly or indirectly responsible for harassing her. She also claims "[b]enefits and entitlements related to [her] poor medical condition and emotional setbacks which were service-incurred". In her rejoinder she asks the Tribunal to order the Global Fund to reimburse any amount that she may have to pay in tax on the amounts awarded to her.

The Global Fund asks the Tribunal to dismiss the complaint in its entirety, without granting costs. It objects to reinstatement.

CONSIDERATIONS

1. The Executive Director issued the impugned decision on 3 March 2015 after receiving the report of the Appeal Board dated 16 February 2015. The Board had considered the merits of three internal appeals which the complainant had filed pursuant to paragraph 4 of section 18 of the Global Fund Employee Handbook (the Handbook). Those appeals, in which the complainant challenged various administrative decisions (or "disputed employment matters"), were filed, respectively, on 25 November 2013, 29 April 2014 and 13 June 2014. The complainant repeats these matters as claims in the present complaint. In her Request for Appeal of 25 November 2013, the complainant had challenged the decision not to renew her two-year contract which expired on

30 September 2013, but which was extended, first, to 31 December 2013 with a second offer of further extension to 31 March 2014. She insisted that she had a legitimate expectation of obtaining a contract renewal for a further two years as her performance throughout the subsistence of her two-year contract was rated as "Performing well" and there was no other valid reason why she was not given a two-year extension. In the same Request for Appeal she had also challenged two further decisions. One was her 2012 performance evaluation. She alleged that that evaluation and its review process were not objective, transparent or fair. The second was the decision to reject her request for the re-evaluation of her grade 02 post to re-classify it at grade 03. The complainant alleged that the request for the re-evaluation and re-classification was not submitted for a fair and transparent review and decision.

2. In her Request for Appeal dated 29 April 2014, the complainant challenged the decision to terminate her employment because she did not accept a second three-month extension of her two-year contract of employment as a Junior Investigations Analyst in grade 02. That two-year contract stated that it would "automatically come to an end on 16 September 2013". When the complainant received the offer of the further extension to 31 March 2014, in a letter of 21 October 2013, she refused to accept it on the ground that she had an expectation and was entitled to have her contract renewed for another full two-year period. Thereupon, the Head of HRD, by letter of 24 October 2013, informed the complainant that her contract would expire on its expiry date on 31 December 2013. The complainant stated, in the Request for Appeal, that this decision as well as the two decisions to offer her the short-term extensions were tainted with abuse of authority, bad faith and malice, ill will and bias and discriminatory treatment. She contended that the required notice period was not respected and that her separation was not conducted in accordance with the rules.

The complainant's further claim, which she maintains in the present complaint, that she was not paid "[b]enefits and entitlements" for service-incurred sick leave, is unfounded. She presents no evidence which proves that any such illness was service-incurred.

3. In her Request for Appeal dated 13 June 2014, the complainant challenged the decision of the Head of HRD, which was conveyed to her by email dated 19 December 2013 and confirmed by a communication of 15 April 2014, to close the investigation into her allegations of harassment by way of bullying, intimidation and retaliation. By communication dated 15 February 2014 she had filed a Request for Resolution asking the Head of HRD to re-open the investigation with a view to resolving that harassment complaint, but that Request for Resolution was rejected by return communication dated 15 April 2014.

4. The Global Fund states that the claim before the Tribunal about the re-evaluation and reclassification of her post should be dismissed among other things because the respective requests were not made by the complainant's supervisor as the Funds' rules require. This is correct. Accordingly, this claim is unfounded.

5. With respect to the complainant's challenge to her 2012 performance evaluation, the basic principles which guide the Tribunal where there is such a challenge were stated as follows, for example, in Judgment 3692, consideration 8:

> "As the Tribunal has consistently held, assessment of an employee's merit during a specified period involves a value judgement; for this reason, the Tribunal must recognise the discretionary authority of the bodies responsible for conducting such an assessment. Of course, it must ascertain whether the ratings given to the employee have been determined in full conformity with the rules, but it cannot substitute its own opinion for assessment made by these bodies of the qualities, performance and conduct of the person concerned. The Tribunal will therefore intervene in this area only if the decision was taken without authority, if it was based on an error of law or fact, a material fact was overlooked, or a plainly wrong conclusion was drawn from the facts, or if it was taken in breach of a rule of form or procedure, or if there was abuse of authority (see, for example, Judgment 3006, under 7). This limitation on the Tribunal's power of review naturally applies to both the rating given in a staff report and the comments accompanying that rating."

6. The complainant contends that her 2012 performance evaluation and its subsequent review were tainted by procedural irregularities as the Fund's own applicable performance management procedures were not acknowledged and deliberately not followed. She recalls that the Tribunal stated, in Judgment 1896, that an international organization is bound by the rules which it has itself laid down, and in Judgment 2170 that an organization must conduct its affairs in a manner that allows its employees to rely on the fact that its rules will be followed. She complains that while the Global Fund and the Appeal Board referred to the procedures contained in the Handbook, they overlooked other documents containing specific provisions for the 2012 performance evaluation. She provides documents circulated by HRD which, in the main, gave answers to frequently asked questions.

One of these documents is headed "Performance Management FAQs". It is important and some of the statements contained therein cannot be ignored as they specifically highlighted changes that were made to the performance evaluation process for 2012 which were not detailed in rules during the period when the complainant's evaluation and subsequent review were conducted. The complainant also provides another document, headed "2012 Performance Review Cycle FAQs", which, in the Tribunal's view, is of less importance as it was issued after the 2012 evaluations were conducted and in response to questions which employees had asked concerning how they were handled. She also provides two emails dated 11 February 2013 and 14 May 2013, respectively, circulated by HRD, in which it shared information with specific reference to the 2012 performance management cycle. While the documents and emails in themselves do not have the force of the provisions contained in Annex VII of the Handbook (August 2012 version) for the Fund's performance evaluation management process for 2012, they will be taken into consideration to the extent that they provided specific guidelines for the 2012 cycle which supplemented the provisions of the Handbook.

7. The general guidelines provided in Annex VII of the Handbook state that the ultimate goal of performance management is to motivate, develop and reward employees through clear and fair differentiation of

performance, and that managers are expected to exercise fair and evidence-based judgement and be held accountable for their decisions. While the Handbook provides for the conduct of evaluation for an annual cycle, the document headed "Performance Management FAQs" stated that the 2012 cycle was to be conducted only for the six-month period from 1 July to 31 December 2012 "to ensure maximum fairness to almost half of our staff who have assumed new roles after the reorganization". The complainant's 2012 performance evaluation was conducted for that six-month period. The said document also provided a five-point rating scale for the 2012 cycle: serious concerns, some issues, performing well, great performance and exceptional performance. It requested each employee to set her or his objectives by 15 July 2013. These were to be aligned with their manager during a face to face objective setting conversation in early July. The document also contained the five-point rating scale for the evaluation of competencies/behaviour, personal effectiveness, working with others, core expertise, people leadership and Global Fund's mindset. The latter measured how passionate an employee was about the Fund's mission.

As to the manner in which ratings were to be decided, the document headed "Performance Management FAQs" was basically in accord with the Handbook when it stated that performance evaluations were to be collectively reviewed with the ratings decided by a panel of managers within each department – the departmental performance review committee. The committee was required to review the overall performance distribution and to check that it was rational and justifiable. The committee was also required to ensure that employees within the same performance rating category were at comparable performance levels and to make adjustments where necessary. It also stated that an employee who received a "serious concerns" overall rating was to be given six months to improve her or his performance or be asked to leave. An employee who received a "some issues" overall rating was to be placed on a personal development plan to resolve those issues.

8. The complainant states that while she was satisfied with the "Performed well" rating which she received for both her work objectives and competencies and the positive comments which reflected

her competencies, she had genuine concerns about due process and about some of the comments in the evaluation, which, in her view, did not properly reflect her work. She was also concerned about inconsistent performance ratings. She states that, based on the feedback which she received from the colleagues with whom she worked during 2012 and from her line manager during that year, she expected a better rating, especially as she performed tasks which were above her grade 02 level. She insists that several substantive deliverables for the 2012 cycle were either not mentioned or inaccurate, and that Ms R. acknowledged that she had little first-hand information of her work during the 2012 cycle and appeared unfamiliar with the evaluation process. As an example, she noted that Ms R. did not complete the "People leadership" competency on the ground that it did not apply to her. She questioned the performance ratings which Ms R. awarded for the "Personal effectiveness" and "core expertise" competencies. The Tribunal notes that it was decided that the "People Leadership" competency be completed as the main aspect of the revision of the review of the complainant's performance evaluation, which Ms R. had eventually advised the complainant to pursue.

9. The Tribunal determines that the complainant's challenge to the substantial aspects of her 2012 performance evaluation and the revised version of it is unfounded in light of the general principles reproduced in consideration 5, above. This is because the complainant provides insufficient evidence to prove that the substance of the comments and the ratings given were motivated by bias, ill-will, abuse of authority, prejudice and retaliation or lack of objectivity, as she contends.

10. The complainant submits that the performance evaluation process was tainted with procedural irregularity because, contrary to the Fund's rules, her line manager, Mr A., did not conduct her performance review and was not consulted to provide any feedback.

11. It is noted that Ms R., who was the complainant's new line manager from early 2013, conducted both her initial evaluation and the subsequent review. Paragraph 3 under the heading "Performance Dialogue" in Annex VII of the Handbook relevantly states as follows:

> "Where a new line manager is not sufficiently familiar with the performance of an employee during a specific performance cycle, [...] the new line manager must request feedback from the previous line manager as part of the annual evaluation of the employee's performance. The new line manager is responsible for the performance evaluation process, unless otherwise agreed with the previous line manager and HR[D]."

Based on this provision, Ms R. lawfully conducted the complainant's 2012 performance evaluation as there was no agreement otherwise between Mr A. and HRD. In fact, Mr A. has stated that at the end of 2012 and in early January 2013 the Administration asked him to conduct the evaluations for the employees whom he directly managed during the 2012 cycle, but he indicated that illness would have prevented him from doing so. He stated that he was on sick leave during the time when the evaluation was conducted. It is noted that the complainant was notified by letter dated 27 February 2013 that the evaluation had been completed. Mr A. returned to work on 1 March 2013. There is no rule which mandated that Mr A. should have replaced Ms R. for the conduct of the review of the evaluation which followed.

However, no proper reason has been proffered for the failure to request Mr A. to provide feedback for the review process, in particular, as he had returned to work during its conduct while feedback was requested from other persons. The Tribunal finds that this failure tainted the conduct of the review with procedural irregularity.

12. It is further found that the review process was tainted with procedural irregularity because, as the complainant contends, she was denied the full list of persons who were requested to give feedback for that exercise. That process was also tainted with procedural irregularity because the complainant was denied access to their synthesized feedback.

Paragraph 4 under the heading "Performance Feedback" in Annex VII of the Handbook relevantly states as follows:

> "Anonymous feedback is not acceptable. However, in order to encourage feedback givers to provide objective assessments confidentially, feedback shall not be attributed. The complete feedback shall be reviewed by the employee and his/her line manager [...] as part of the performance evaluation process at the end of the performance year [...]."

By way of elaboration, the document headed "Performance Management FAQs" states as follows:

> "[F]eedback shared with a manager on an employee's performance will not be attributed to individual sources. The employee will only see the total list of people the manager spoke with and their synthesized feedback, not individual comments."

13. The Global Fund admits that the names of two of the additional seven feedback givers for the review process were withheld from the complainant because they did not consent to their names being disclosed. The Fund has not denied that the complainant was not given access to the synthesized feedback. These omissions breached the guidelines derived from the Handbook and the "Performance Management FAQs" which held out to the complainant that she was entitled to see the full list of feedback givers as well as their synthesized feedback. It is also apparent that the list of feedback givers was not drawn up in accordance with the guidelines. Paragraph 3 under the heading "Performance Feedback" in Annex VII of the Handbook relevantly states as follows:

> "Feedback is collected over the performance cycle [...] from multiple sources, such as colleagues on the team, peers from outside the employee's division/department who have worked with the employee on specific tasks or projects, managers, subordinates and external stakeholders, as applicable. The selection of additional feedback givers is coordinated with the employee. The line manager selects, with the employee's input, the group of feedback givers in order to obtain a balanced view about the performance of the employee being evaluated. Where there is no agreement on the list of feedback givers, the HR Business Partner shall facilitate resolution."

This provision is intended to ensure that feedback in the performance evaluation process is objective, transparent, and well informed. It does not contemplate that feedback will be sought from a person who is not familiar with the work of a subject employee. The *ejusdem generis* rule operates in its interpretation to ensure that "managers, subordinates and external stakeholders", as well as "additional feedback givers", are persons who are familiar with the subject employee's work during the relevant performance evaluation cycle.

14. The complainant states that she never worked with Ms O'K., a consultant who did not work with the Fund in 2012 but who was asked to give feedback for her original evaluation. The Tribunal accepts the Fund's reply that it had discarded Ms O'K.'s feedback. However, the Tribunal accepts the complainant's assertions, which the Fund has not denied, that two other persons with whom she did not work during 2012 gave feedback for the review process and that she had no input into their selection as feedback givers.

15. The foregoing matters further tainted the performance review process with procedural irregularity. As a result of all procedural irregularities found in the complainant's 2012 performance evaluation and the revised version, the evaluation and review thereof will be set aside. The Global Fund will be ordered to remove them from the complainant's personal file.

16. The complainant contends that the decision of 19 December 2012 to close her harassment complaint was unlawful. She first raised her allegation of harassment with the Head of HRD, in her capacity as HR Business Partner, when they met on 29 May 2013 and again when the Head of HRD offered her the first extension of her contract to 31 December 2013 at their meeting on 11 July 2013. The complainant states that she tried unsuccessfully to reach out to the Head of HRD and to the OIG management to resolve the matter informally. She then raised the matter formally, pursuant to Staff Rule 1550.7, in her Request for Resolution dated 23 July 2013, thereby requesting resolution by the Ombudsman or by another qualified mediator.

17. The complainant liaised with the Ombudsman after she returned from sick leave. On 5 November 2013 he closed his intervention, which did not resolve the matter. The complainant requested a formal resolution. On 12 November 2013 the Head of HRD notified the complainant that she had decided to launch the formal investigation. She informed the complainant on 19 November 2013 that Mr L. was appointed as the investigator. On 20 November 2013 Mr L. requested information from the complainant on her harassment complaint.

She was on sick leave then and to 31 December 2013. In the meantime, on 22 November 2013, a representative of the Staff Council had written to the Head of HRD on behalf of the complainant expressing concern that Mr L. may not have been able to conduct an independent investigation, given his association with the OIG. Mr L. was a consultant who reviewed the OIG earlier in 2013 and he was also appointed to act as Inspector General. It was when the complainant followed up on that concern, in an email to the Head of HRD dated 18 December 2013, that she received the reply, dated 19 December 2013, which relevantly informed her:

> "[i]n response to your queries below here are my responses:
>
> 1) I am comfortable and confident with the choice of Investigators.
> 2) I have stopped the Investigation, as the requirement to start this process was to have a response to [the Investigator's] request to provide specifics regarding the allegations."

18. The Tribunal finds that the manner in which the complainant's harassment investigation was closed was abrupt, arbitrary, unreasonable and without legal basis. The Head of HRD could have at least explained to the complainant why in her view Mr L. was an independent and suitable investigator or in some way resolve that issue, without closing the investigation at that stage.

19. In the foregoing premises, and since, in the Tribunal's view, it is necessary that this harassment complaint be investigated pursuant to the Global Fund's rules, that matter will be returned to the Global Fund which shall take the steps which are necessary for that investigation to be properly conducted.

20. Regarding the complainant's challenge to the decisions to offer her the two short-term extensions to her two-year contract of defined duration and to terminate her contract when she refused to accept the second extension offer, the complainant presents insufficient evidence to support her allegations that these decisions were unlawfully tainted with ill-will, bad faith or abuse of authority. They are therefore unfounded.

21. As a precursor to determining whether those decisions were otherwise unlawful, the Tribunal recalls that it has consistently stated that the non-renewal of a fixed-term contract is discretionary and is subject to only limited review to respect the freedom of an international organization to determine its own staffing requirements and the career prospects of staff members. A person who is employed under such a contract does not, in principle, have a right to a contract extension. However, notwithstanding the discretionary nature of such a decision, it must be taken within the rules and guidelines of the organization and the Tribunal's case law. Failing this, the decision would be set aside for legal or procedural irregularity (see, for example, Judgment 3257, under 7). The Tribunal has further stated that a valid reason and reasonable notice must be given for a decision not to renew a fixed-term contract (see Judgment 3838, under 6).

22. The Fund's reliance upon sections 3 and 19 of the Handbook to support the subject decisions is misplaced. These provisions respectively state that contracts of defined duration "expire automatically at the end of their duration [...] of up to 24 months" and do not give a holder any promise or expectation of renewal and "may be renewed only through an express written decision of the Head, HR department". They further state that an employee may separate from the organization upon the completion of the term stated in such a contract "unless extended in writing by the Head, HR department prior to the expiration of the contract". The Tribunal has stated that valid reasons must be given for the non-renewal of any contract, including fixed-term appointments which, under the staff regulations or by agreement between the parties, end automatically upon their expiry (see Judgment 3838, under 6). The Handbook provides, as valid reasons for non-extension, "financial reasons, or if the job is no longer needed by the Organization", and unsatisfactory performance.

23. The notice terminating the complainant's contract was issued by a letter dated 24 October 2013. It informed her that her last day of employment was 31 December 2013. This did not comply with the requirement of section 19 of the Handbook for a three-month notice

period for the termination of her contract of defined duration. The Tribunal further finds that the reason proffered for extending the complainant's contract for the short-term periods only, that is to put her on an Individual Development Plan to resolve issues related to her alleged negative attitudes in the workplace, was an invalid reason. There was no rule or principle which authorized that action. She did not receive a "Serious concerns" or "Some issues" rating which permitted that action under the "Performance Management FAQs". Moreover, the decision was premised upon the negative comment which was entered under her "People leadership" competency when her performance evaluation was reviewed. The Tribunal has found that this was entered on a feedback process that was procedurally irregular and on an evaluation process which will be set aside for procedural irregularity. Accordingly, the complainant had correctly accepted the first extension to 31 December 2013 under protest and refused to accept the second extension to 31 March 2013. By extension, the termination of her employment with effect from 31 December 2013 on the ground that her refusal amounted to a resignation and was the natural consequence of that refusal, was unlawful. Therefore, the complainant's claim that the decisions to extend her employment by the two contracts of three months and to terminate it when she refused to accept the proposed second extension were unlawful, is well founded. Accordingly, the impugned decision and, consequentially, the initial decisions will be set aside.

24. The complainant claims that, contrary to its rules, the Global Fund failed to issue the proper certificate of service after her separation. Section 19 of the Handbook states that, upon request, an employee leaving the Global Fund shall be given such a certificate stating her or his length of service and the duties performed. The certificate which the Fund issued to the complainant on 4 April 2014 contains her length of service and the positions which she held, but, in breach of this provision, did not state the duties which she performed. This claim is therefore well founded and the complainant is entitled to be issued a certificate of service which accords to this provision. This breach also entitles the complainant to moral damages.

25. The Tribunal finds that the complainant's claims that there was unreasonable delay in her performance evaluation, in the informal investigation of her harassment complaint and in the Appeal Board's proceedings are unfounded.

26. The Tribunal has no power to order the Global Fund, as the complainant requests, to renew her employment on a "long-term contract of continuing duration" to a post which fits her qualifications, background and experience. Neither does the Tribunal have power to award her material damages equivalent to the amount which she would have received in a higher position (see Judgment 3835, under 6). Regarding the complainant's request for reinstatement, it was stated, in Judgment 3353, consideration 35, for example, that this will be ordered only in exceptional cases. Inasmuch as the complainant's post no longer exists, that request is not practicable. However, she will be awarded, by way of material damages, the amount of 40,000 Swiss francs, additional to the amount which the Fund awarded her *ex aequo et bono*, for the loss of the valuable opportunity to have had her contract renewed. The complainant will also be awarded moral damages in the amount of 30,000 Swiss francs for the Global Fund's breaches as determined in this judgment. These sums are in consideration of the serious nature and the number of flaws which the Tribunal has found.

27. Given the Tribunal's findings, which were made on detailed and ample pleadings, documents and submissions, it is unnecessary to order the hearing or the disclosure of documents for which the complainant applies.

DECISION

For the above reasons,

1. The impugned decision dated 3 March 2015, as well as the prior decisions dated 10 July 2013 and 11 September 2013, which offered the complainant the three-month contract extensions; the decision dated 24 October 2013 terminating her contract; the decision dated 19 December 2013, which closed her harassment complaint and the complainant's 2012 performance evaluation and its review, are set aside.

2. The Global Fund shall take the steps which are necessary for an investigation to be conducted with respect to the harassment complaint as indicated in consideration 19, above.

3. The Global Fund shall remove the complainant's 2012 performance evaluation from her personal file and the complainant is entitled to be issued a certificate of service which complies with the Global Fund's rules.

4. The Global Fund shall pay the complainant material damages in the amount of 40,000 Swiss francs.

5. The Global Fund shall pay the complainant moral damages in the amount of 30,000 Swiss francs.

6. The Global Fund shall also pay her costs in the amount of 1,500 Swiss francs.

7. All other claims are dismissed.

In witness of this judgment, adopted on 3 November 2017, 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 24 January 2018.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ