Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

*Registry's translation,
the French text alone
being authoritative.*

A.-N. (No. 2), B. A. (No. 2), B. B. (No. 2), I. (No. 2) and M. (No. 2)

v.

Global Fund to Fight AIDS, Tuberculosis and Malaria

127th Session **Judgment No. 4071**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaints filed by Ms A. A.-N., Mr M. B. A., Ms K. B. B., Mr M. I. and Mr S. J. M. against the Global Fund to Fight AIDS, Tuberculosis and Malaria (hereinafter "the Global Fund") on 12 January 2016 and corrected on 10 March, the Global Fund's single reply of 30 June, the complainants' rejoinder of 6 October 2016 and the Global Fund's surrejoinder of 16 January 2017;

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

Having examined the written submissions and decided not to hold oral proceedings, for which none of the parties has applied;

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

The complainants challenge the lawfulness of the mutually agreed separation agreement which they signed.

Facts relevant to this case are to be found in Judgment 3423, delivered in public on 11 February 2015, concerning the first complaints filed by the complainants. Suffice it to recall that between 21 and 23 March 2012, as part of the implementation of the "consolidated transformation plan" aimed at improving the organization's performance, the complainants, who were employed under permanent contracts in the Grant Management Division, were called to individual meetings during

which they were invited to sign a Mutually Agreed Separation (MAS) agreement (hereinafter "separation agreement"), whereby they would be placed on special leave with pay until 30 April 2012, the date on which their contracts would end, would receive a termination indemnity and six months' basic salary in lieu of notice and in lieu of reassignment and would forgo any right of appeal. Each complainant signed the separation agreement on the day of the individual meeting.

In Judgment 3423, the Tribunal set aside the implied decision rejecting the appeal filed by the complainants against the organization's refusal to reopen negotiations and remitted the complainants' cases to the Global Fund so that the internal appeal proceedings could be resumed directly before the Appeal Board since, following the abolition of the post of Director of Corporate Services, it had become impossible to pursue the internal appeal procedure in the normal way. The Tribunal stated that during the internal appeal procedure it would be important to determine and verify a number of elements. In particular, it would be important to determine whether, as the complainants submitted, they had been "threatened", during the individual meetings, with being subjected to a performance improvement plan setting unattainable objectives, and with then being dismissed without compensation for unsatisfactory performance. It added that it was also necessary to verify the truth of the complainants' assertion that their consent to the disputed agreements was obtained by misrepresenting the content of their last performance evaluation and to establish the factual circumstances in which the meetings in question took place, especially with regard to the possibility of being assisted by a third party or having time for reflection.

The complainants filed an appeal with the Appeal Board on 12 April 2015. In their appeal they complained about the conditions in which they had been led to sign the separation agreement, since they considered that they had been misled. They alleged that during the individual meetings they had wrongly been told that they could not be retained in the new structure since the calibration (weighting) process – consisting of peer review of the manager's initial rating – had shown that their performance was unsatisfactory. Since the only alternative to signing the proposed agreement was to undergo a performance

improvement plan, which had been presented to them as being doomed to failure and likely to result in dismissal without compensation for unsatisfactory performance, they said that they had been subjected to an "illegitimate threat". They also asserted that they had been subjected to "illegitimate pressure" in that they had been given no time for reflection, or a very short time but without having a copy of the agreement, and that one of them had been denied permission to be accompanied by a staff representative. They argued that their consent had therefore been invalidated. In the reply that he submitted on behalf of the organization, the Head of the Grant Management Division indicated that the High-Level Independent Review Panel had made a number of recommendations concerning the restructuring of the aforementioned division. He explained that in order to implement these recommendations he had been obliged, with the support of the Human Resources Department (HRD), to conduct a review to evaluate whether the incumbent staff concerned had the competencies to be appointed immediately to redesigned and more demanding roles within the new structure. Since the review had indicated that the complainants lacked the skills and competencies to meet the new requirements, they had been given the option of participating in a performance improvement plan or signing a separation agreement. They had chosen the latter option without any coercion.

The Appeal Board delivered its report to the Executive Director on 29 September 2015, after hearing the parties. In its view, since the complainants' posts had been mapped into the new structure, the organization should not have proposed a separation agreement or a performance improvement plan. It considered that the complainants had also been misled, since the Global Fund's proposal that they participate in a performance improvement plan, as an alternative to signing a separation agreement, was not consistent with the applicable rules, and that the hints that this plan was doomed to failure could be interpreted as threats to make them sign the agreement in question. Moreover, the Board considered that the complainants had been unfairly treated and it noted the lack of communication and transparency on the part of the organization. The Board also considered that the individual meetings held on 21, 22 and 23 March 2012 had been prepared in haste, and it

emphasized that it saw no justification for the fact that the complainants had been denied the right to be accompanied, or the fact that they had not been given adequate time for reflection. In conclusion, it stated that the complainants had been pressured by the Global Fund, but that they had nevertheless had the option not to sign the separation agreement, as others had done in similar circumstances. The Board recommended that they be granted compensation of 18 months' salary, less the amount received under the above-mentioned agreement, on the basis that the complainants would have stayed in the service of the organization for another year if their cases had been treated correctly and that six months' salary should be paid to them as moral and material damages.

The Executive Director's decision on the appeal was set out in a note of 14 October 2015, which constitutes the impugned decision. He observed that the Appeal Board had not reached a clear conclusion on whether the complainants had signed the separation agreements under duress, but he asserted that there was no evidence to suggest that this had been the case. He therefore concluded that the agreements were valid and that hence the appeal was irreceivable since, under the terms of the agreements themselves, the complainants had waived any right of appeal. Noting that the Tribunal, in Judgment 3423, had considered that the mere fact that in 2012 the Global Fund had rendered it impossible for the complainants' appeal to be dealt with in accordance with the applicable rules, owing to the abolition of the post of the authority competent to hear it, was sufficient to vitiate the decisions taken on this appeal, the Executive Director considered that the organization had to take responsibility for its failure to provide the complainants with an effective means of pursuing their internal appeal and had thus created complications which could have been avoided. He awarded compensation under that head in the amount of 5,000 Swiss francs to each complainant.

The complainants seek the setting aside of the impugned decision – except with respect to the award of compensation of 5,000 Swiss francs – and of the separation agreements which they signed, full redress for the injury which they claim to have suffered, punitive or exemplary damages and 10,000 euros each in costs for the internal

appeal proceedings and the proceedings before the Tribunal. In the rejoinder, the complainants ask that an amount corresponding to the fees and taxes which they have undertaken to pay to their counsel be deducted from any monetary awards made to them and that such amount be paid to him.

The Global Fund requests the Tribunal to declare the complaints irreceivable, since the complainants waived any right of appeal by signing the separation agreement, or, failing that, unfounded.

CONSIDERATIONS

1. As the complaints seek the same redress and rest on submissions which are, for the most part, identical, they shall be joined to form the subject of a single judgment.

2. As stated above, these complaints are the sequel to Judgment 3423, in which the Tribunal remitted the complainants' cases to the Global Fund so that the internal appeal proceedings could be resumed, the complainants being invited to file an appeal with the Appeal Board with a view to the adoption of a recommendation to the Executive Director. In this respect, the Tribunal emphasized that "one of the main justifications for the mandatory nature of such a procedure is to enable the Tribunal, in the event that a complaint is ultimately lodged, to have before it the findings of fact, items of information or assessment resulting from the deliberations of appeal bodies, especially those whose membership includes representatives of both staff and management, as is often the case [...]". The Tribunal observed that "the Appeal Board plays a fundamental role in the resolution of disputes, owing to the guarantees of objectivity derived from its composition, its extensive knowledge of the functioning of the organisation and the broad investigative powers granted to it. By conducting hearings and investigative measures, it gathers the evidence and testimonies that are necessary to establish the facts, as well as the data needed for an informed assessment thereof. In the present case, it appears to the Tribunal all the more essential to have this background knowledge, since the

parties essentially rely on statements giving profoundly different accounts of what actually happened during the individual meetings that were held in camera." (See Judgment 3423, consideration 12(b).)

3. With regard to the issues raised by the Tribunal in Judgment 3423, the Appeal Board responded as follows:

> *"1. Were the Appellants 'threatened', during [the individual] meetings, with being subjected to a performance improvement plan [PIP] setting unattainable objectives, and with then being dismissed without compensation for unsatisfactory performance?*
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> [T]he Panel found that there was no ground for PIP and its introduction in the discussion was inconsistent with HR [human resources] procedures. The Panel also found that in introducing the PIP in this manner, the Respondent had misrepresented it intentionally to mislead the Appellants. In addition, the Panel noted that the Respondent could not presume and should not have referred to [a] future negative outcome of the PIP if the Appellants had decided to opt for it. Similarly, the Respondent could not presume the Appellants' subsequent separation from the Organization without compensation. The Panel concluded that the Respondent's above negative assumptions could be interpreted as threats in obtaining the Appellants' signature on the MAS [Mutually Agreed Separation agreement].
>
> *2. Was the Appellants' consent to the disputed agreement obtained by misrepresenting the content of their last performance evaluation, which according to the Appellants involved an unlawful weighting?*
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> [...]
>
> [T]he Panel established that the Appellants' final performance evaluations were disclosed to them more than a year after the calibration exercise had taken place. The Panel also noted that the GMD [Grant Management Division] review had taken into account past performance evaluations, *'but these were not a conclusive factor'*. Employees were assessed against their skills, experience and competencies to determine whether, going forward, they would suit the Organization's future needs. However, the Panel remained skeptical on the outcome of this review as: 1) Skills and competencies reviewed were never clearly identified in any documents, 2) The alleged higher skills profile requirements in the new structure were not reflected in the TORs [terms of reference] for the new positions, and 3) New objectives were not discussed with the Appellant[s].
>
> The Panel concluded that, at the time of the meeting, the Appellants had not received the appropriate feedback on their past performance

evaluations, on the outcome of the GMD review and on the new requirements needed in the Division. The Panel further concluded that such information was essential for the Appellants to reach an informed decision.

3. *What were the factual circumstances in which the meetings in question took place, especially with regard to the possibility of being assisted by a third party or having sufficient time for reflection?*

The preparation of meetings: The Panel noted that the meetings had been prepared hastily with notable pressure from Head, HR [...]. [...]

The Panel noted that the Appellants were called into the meeting between 21 & 23 March 2012, without prior notice and agenda. They were obviously not prepared for it.

The possibility of being assisted by a third party: The Panel relied on the Appellants' statement which was corroborated by the former Staff Council Chairman input, namely, the Appellants' requests for being accompanied by a third party were firmly denied. Head, GMD and the HRBP [Human Resources Business Partner] pressured them to sign the MAS on the spot. The Panel concluded that the Appellants had clearly been denied the possibility of being accompanied by a colleague. The Panel found no justification for having denied them such right.

The time granted for reflection: During the hearing, the Panel received confirmation that the Appellants had to sign on the spot. Only one of them was granted a couple of hours[,] which was insufficient time to seek advice or to allow reflection. The Panel found no justification for denying the Appellants sufficient time [for] reflection."

The Appeal Board concluded as follows:

"[D]espite all of the circumstances surrounding their situations, the Appellants had the option not to sign the MAS. As noted above, the Panel has found evidence that the Appellants were pressured into signing the MAS as the best and only option for them [...]. However, the Panel would like to note that the Appellants did have the option not to sign[,] as others had done in similar circumstances.

[...]

[T]he Panel concluded that the Appellants had not been treated fairly by the Organization. Owing to a lack of communication and a lack of transparency, they had not received appropriate information on their situation. As a result, they could not reach an informed decision. The introduction of the PIP element in the discussion was inconsistent with HR procedures and its use can be interpreted as intentional misleading and threatening to them. The Panel found no justification for haste on the part of the Organization to get them to sign the MAS, denying them sufficient time [for] reflection or

> assistance by a third party during the meetings. As a result, the Panel concluded that the Appellants had suffered material and moral prejudice."

Consequently, the Appeal Board recommended that compensation be awarded to the complainants.

4. By the decision of 14 October 2015, the Executive Director refused to follow the Appeal Board's opinion. He decided to award each complainant the sum of 5,000 Swiss francs as compensation for the unlawful situation that the Tribunal had noted in consideration 11 of Judgment 3423, namely the fact that, during the internal appeal procedure in 2012, the Global Fund had rendered it impossible for the complainants' appeal to be dealt with in accordance with the applicable rules, owing to the abolition of the post of the authority competent to hear it. He rejected all the other requests. This constitutes the impugned decision.

5. The defendant raises an objection to the receivability of the complaints, namely that the complainants, by signing the separation agreements, waived their right to challenge either the validity or the content thereof. However, since the complainants contend that they signed these agreements as a result of misrepresentation and pressure which vitiated their consent, this question of receivability is inseparable from the merits of the case (see Judgment 3423, consideration 13). As is also conceded by the defendant, the decision on the objection to receivability depends on the legal validity of the separation agreements, and this makes it necessary to consider the complainants' pleas on the merits (see, in this regard, Judgments 3610, consideration 6, and 3750, consideration 5).

6. The organization contends that, further to the restructuring of its services, duties would be more demanding and that a review was therefore necessary to ascertain whether incumbent staff had the necessary skills and competencies to perform their new roles immediately or whether support measures would be needed. The review took into account past evaluations but these were not a conclusive factor. It was a question of determining suitability for newly designed and more demanding roles. The organization states that the review was conducted

by the Head of the Grant Management Division with the support of HRD, after consultation of the various department heads and regional managers, and each case was examined individually. Certain shortcomings in the complainants' competency levels emerged. For this reason they were each called to a meeting either to sign a mutual separation agreement or to accept the transfer to the new post, with the strong likelihood of having to participate in a performance improvement plan.

7. The submissions show that the complainants' performance evaluations for 2011 were satisfactory, the reports indicating that they had achieved the set objectives and that some of them had even exceeded expectations. According to the complainants, during the meetings in March 2012, they were informed that their evaluation had been downgraded following a calibration (weighting) process. However, at the time of these meetings, the complainants did not possess the calibrated version of their evaluation. Nor did this version appear in their files, which were accessible on the organization's Intranet. On 9 April 2013, the Head of HRD announced that employees could "opt to request deletion of their 2011 performance evaluation if they ha[d] concerns about the pre-calibration results and/or post-calibration results". Having been informed of this decision, the complainants once again asked for their new evaluation to be sent to them. All of them obtained copies of their performance evaluation report for 2011, which was unchanged.

8. The submissions to the Tribunal do not include any document relating to the complainants' performance evaluation which identifies them as showing certain shortcomings as regards the new requirements of their jobs resulting from the restructuring of the organization, but merely a note dated 23 March 2012 drawn up by the Head of the Grant Management Division and the Senior HR Business Partner, following the review conducted by that division, containing a negative evaluation of the complainants.

Specifically regarding Mr I., the submissions also contain an extract from the public report of the Office of the Inspector General,

published on 1 June 2011, expressing certain criticisms, especially regarding the management of Global Fund programmes in Mali.

9. The complainants submit that their consent to the separation agreement which they signed was vitiated, especially owing to a lack of both transparency and information, and also on account of pressure from the "threat" of being subjected to a performance improvement plan should they decline the proposed separation agreement.

10. As regards the lack of both transparency and information, the Tribunal recalls that, according to its case law, the principle of good faith and the concomitant duty of care demand that international organizations treat their staff with due consideration in order to avoid causing them undue injury; an employer must consequently inform officials in advance of any action that may imperil their rights or harm their rightful interests (see Judgments 2116, consideration 5, 2768, consideration 4, 3024, consideration 12, and 3861, consideration 9).

In the present case, the organization disregarded the principle of good faith and its duty of care. Indeed, as regards their past performance, the complainants were unaware, at the time of the meetings in question, of the outcome of the calibration of their evaluations referred to by those conducting the meeting. Nor were the complainants informed of the competencies that had supposedly been evaluated in anticipation of the restructuring of the organization or of the new specific requirements of their posts, which, according to the Appeal Board, were not reflected in the job descriptions, or of the new objectives, which, again according to the Board, had not been discussed with them. Unaware of the reasons why the organization considered that they did not meet the requirements in question, the complainants were not in a position to make a fully informed choice between the two proposed alternatives. It follows that their consent was vitiated.

11. As regards the alleged pressure on the complainants to choose between keeping their posts, subject to participation in a performance improvement plan, and leaving the organization after signing a separation agreement, the defendant corrects its earlier submissions made in the context of the complaints which gave rise to Judgment 3423 by adding an important "nuance which emerged in the [Appeal] Board procedures"*, now stating that the performance improvement plan was not presented to the complainants as a firm decision but as a mere possibility.

This "nuance" rests on the testimony of the Head of the Grant Management Division to the Appeal Board that non-signature of the separation agreements might have resulted in the complainants having to undergo a performance improvement plan. However, in other passages, he refers to "a need to participate" in such a plan or to such a need being "likely". Other documents in the file show that maintaining the complainants' roles depended on the adoption of a performance improvement plan. Accordingly, the Appeal Board noted that "Head, GMD [...] had called the said employees to a meeting, during which they were asked to opt for a MAS or to be put on PIP". As for the impugned decision of the Executive Director, it includes the following statement: "It is admitted by both parties that the Appellants were offered the possibility of remaining in their respective role within grant management, although this would have required them to participate in a plan designed to improve or develop certain skills and competencies."

The context of the case clearly shows that the organization considered that the complainants did not meet the new requirements of their positions after restructuring and that a performance improvement plan was the appropriate tool to remedy these shortcomings if they wished to retain their employment. The prospect of being subjected to such a plan, if they refused to sign the proposed separation agreement, was not presented to the complainants as a mere possibility but as a strong probability.

* Registry's translation.

12. In its written submissions, the defendant contends that the note of 23 March 2012 and, as far as Mr I. is concerned, the report of the Office of the Inspector General establish that the complainants were underperforming in the positions they held at the time, which could have led to the adoption of a performance improvement plan even without the increased requirements resulting from the restructuring.

13. However, at the time of the meetings with the complainants, there could have been no question of a performance improvement plan on account of underperformance in the jobs that they held at the time as recorded in the above-mentioned note.

Paragraph 2.1.4 of the Managing Underperformance Procedure provides that a performance improvement plan can only be put in place in two situations: either where "year-end overall performance evaluation concludes that the performance of an employee does not meet the expectations" or where "performance improvement discussions[,] which can be initiated any time throughout the year, do not lead to consistent performance improvements". In the present case, neither of these situations was applicable.

Firstly, there was no indication in the year-end overall performance evaluations conducted under the rules applicable at the Global Fund that the complainants failed to meet expectations. Under the Performance Management Procedure, the supervisor's performance rating is subjected to calibration (weighting) by unit directors and then by cluster directors (paragraphs 3.2 and 8.1). In the present case, the supervisors' ratings were positive or even very positive. In Mr M.'s case, the overall rating was even "exceeds expectations". Moreover, contrary to what the organization had indicated to the complainants, these evaluations were not downgraded during the calibration process. The note of 23 March 2012, which, it may be observed, was drawn up after the meetings with the complainants and therefore after the mention of a performance improvement plan, is completely unrelated to the evaluation procedure required by the rules in force and could not have interfered in this procedure or taken the place of an evaluation duly completed in accordance with those rules. Indeed, under the Tribunal's case law,

performance appraisals are the only criterion of performance where international civil servants are concerned (see Judgment 2544, consideration 8) and no account may be taken of an ad hoc assessment conducted in parallel to the statutory performance evaluation (see Judgment 3436, consideration 9).

Furthermore, although the Managing Underperformance Procedure provides that a "performance improvement discussion" can be held any time throughout the year between an employee and her or his supervisor (paragraph 4.1.2) and result in the imposition of a performance improvement plan (paragraph 2.1.4.2), the pleadings and evidence submitted to the Tribunal do not show that such a discussion took place.

In addition, under the Global Fund's applicable rules, it is the supervisor's responsibility to identify any performance issues and initiate a performance improvement plan where needed (see paragraphs 2.1.2, 3.3.4 and 3.3.5 of the Managing Underperformance Procedure and paragraphs 6.1.8, 6.2.2 and 6.4.1 of HR Regulation 11 on Performance Management). Before initiating a performance improvement plan, every effort should be made to resolve performance issues through "open communication" between the supervisor and the employee (paragraph 2.1.2 of the Managing Underperformance Procedure) and, in the event of underperformance, the supervisor must set up a meeting with the employee and indicate in the meeting request the purpose of the meeting and the proposed performance improvement plan (paragraph 5.2.2 of the Managing Underperformance Procedure). Neither the evidence in the file nor the parties' briefs refer to any action by the supervisors concerned, and for good reason: there were no grounds for any action by the supervisors since, according to them, the complainants gave full satisfaction.

Specifically regarding Mr I., the public report of 1 June 2011 of the Office of the Inspector General does refer to a number of shortcomings on the part of the staff of the Secretariat supervising the grants relating to malaria and tuberculosis in Mali and notes that "the staff appeared to have lacked resources and capacity for detecting risks of fraud or embezzlement and that they were not prepared or particularly

encouraged to respond appropriately if such risks were detected"*. However, with the exception of the above-mentioned note of 23 March 2012, the submissions to the Tribunal do not contain any document establishing that the Global Fund staff management authorities took account of the findings of this report in the statutory evaluation procedures relating to Mr I.

In conclusion, neither the note of 23 March 2012 nor, as far as Mr I. is concerned, the public report of the Office of the Inspector General of 1 June 2011 could have had the effect of initiating a performance improvement plan on account of past services rendered by the complainants.

14. At all events, in the context of the internal appeal, the organization stressed the fact that any subjection of the complainants to a performance improvement plan was intended to "maximize their chances of succeeding under heightened expectations in the new structure, and not to remedy past performance issues". In its reply, the defendant also underlines the fact that the complainants' past performance evaluations were not the reason for the proposal to sign a separation agreement and that the "2011 performance evaluation was not [even] [...] a subject of discussion between the parties during the meetings of 21 and 22 March 2012"*.

15. As regards future performance, the organization considered that "the purpose of a PIP was sufficiently broad to allow management to use this tool for the development of skills and competencies in a context where expectations related to a role were being significantly changed". The performance improvement plans in question were intended to enable the complainants to develop their competencies to meet the new requirements of their posts.

16. The Tribunal recognizes that international organizations have the discretion to manage their performance management objectives but highlights that they must do so using the tools they have in the manner

* Registry's translation.

in which they are designed (see Judgments 3610, consideration 9, and 3750, consideration 8).

Under the Managing Underperformance Procedure (see in particular paragraphs 1.3.2, 4.1.6 and 5.1) and HR Regulation 11 on Performance Management (see in particular paragraph 6.1.8), a performance improvement plan can only be envisaged on the basis of past performance and not in anticipation of possible underperformance in the future.

In the present case, the Global Fund sought to use a tool (the performance improvement plan) which is explicitly designed to correct identified underperformance, in order to address an issue of potential future underperformance. The Tribunal finds that this inappropriate use of the PIP constitutes a misuse of authority which rendered the process non-transparent and arbitrary (see Judgments 3610, consideration 9, and 3750, consideration 8).

17. Since, under the applicable rules, the participation of the complainants in such a plan, either on account of supposed underperformance in the past or shortcomings in their future role, was not a valid option, it should not have been presented as a possible alternative to the signing of a separation agreement. In proposing this alternative, the Global Fund placed them under undue pressure (see Judgment 3610, consideration 7).

18. In this regard, there are no grounds for accepting the defendant's argument that, even on the assumption that the complainants had been told that they were obliged to undergo a performance improvement plan, such a prospect in itself could not be considered unfavourable, since the purpose of such a plan is to support performance and enable the employee to develop her or his competencies to be more successful. The Tribunal notes that such a plan rests on a negative performance appraisal and can result in the termination of the employee's employment. Paragraph 6.4.4 of HR Regulation 11 states as follows: "The Global Fund may terminate an employee's contract on the basis of unsatisfactory performance or if he/she proves unable to meet the expected level of performance or unsuitable for a position,

despite the provision of appropriate support [...]". It cannot therefore be considered that the imposition of a performance improvement plan is not a measure that entails potentially serious consequences for those subjected to it (see Judgment 3610, consideration 8).

19. Nor will the Tribunal accept the defendant's objection that, since the complainants were entitled to challenge the decision to subject them to a performance improvement plan, it cannot be considered that they signed the separation agreement under duress. As the Tribunal recalled in Judgment 3610, consideration 8, such an objection is not convincing. Every unlawful action vitiating consent, by its very nature, can be challenged, but even if it is not challenged, this does not exclude the possibility that the consent may be vitiated. The conditions for proposing a performance improvement plan were not fulfilled, but this proposal was a fundamental element of the process which led to the signing of the separation agreements. The complainants' consent was vitiated by the fact that the organization led them to believe that if they did not sign the agreements in question, they would have to undergo a performance improvement plan. Therefore, the Tribunal considers that the Global Fund placed the complainants under undue pressure which persuaded them to accept the separation agreements.

20. In light of the foregoing and on account of the lack of both transparency and information (see consideration 10, above) and the undue pressure exerted on the complainants (considerations 11 to 19, above), the plea that the consent to the separation agreements was vitiated is well founded. The impugned decision must therefore be set aside on this ground alone.

21. Furthermore, the Tribunal is bound to note the manifest unlawfulness of the conditions in which the signature of the separation agreements was obtained. The findings of the Appeal Board, reproduced above, show that the complainants were called to the individual meetings of 21, 22 and 23 March 2012 without any prior notice or agenda, that they had no – or very little – time for reflection and that they were denied the possibility of being accompanied by another staff

member during these meetings. The organization's attempts to deny these facts do not convince the Tribunal. Moreover, these facts are also such as to vitiate the complainants' consent to signing the agreements in question.

22. In view of the fact that the complainants do not ask to be reinstated and that the Tribunal considers that there are no grounds for requiring that the parties renegotiate the complainants' terms of their separation, the complainants shall keep the sums paid to them under the separation agreements, and they are entitled to moral and material damages and to costs. The complainants, who held permanent contracts, could reasonably have expected to pursue a career since they had constantly received positive performance evaluations during their years of service at the Global Fund and their posts had been mapped into the new structure. Taking into account the sums that they received under their separation agreements, the Tribunal will award each of them material damages, for the loss of income and career prospects, in an amount equivalent to three months' gross salary at the rate of their last salary. For the Global Fund's violation of its duty of care and the undue pressure exerted on the complainants culminating in the termination of their appointment, the Tribunal will award each of them moral damages in the amount of 50,000 Swiss francs, without there being any need to award punitive or exemplary damages. Since the complainants have largely succeeded, they are each entitled to the sum of 5,000 Swiss francs in costs.

23. In the rejoinder, the complainants' counsel asks the Tribunal to deduct amounts for his benefit from the monetary awards made to the complainants. However, it is not for the Tribunal to concern itself with private arrangements made between complainants and their counsel. This request must therefore be rejected.

DECISION

For the above reasons,

1. The impugned decision of 14 October 2015 and the separation agreements signed by the complainants are set aside.
2. The Global Fund shall pay each complainant the equivalent of three months' gross salary in material damages.
3. It shall pay each complainant 50,000 Swiss francs in moral damages.
4. It shall also pay each complainant 5,000 Swiss francs in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 13 November 2018, Mr Patrick Frydman, Vice-President of the Tribunal, Ms Fatoumata Diakité, Judge, and Mr Yves Kreins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 6 February 2019.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ