Organisation internationale du Travail
Tribunal administratif

International Labour Organization
Administrative Tribunal

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

C.-W.

v.

WIPO

129th Session **Judgment No. 4243**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms M. C.-W. against the World Intellectual Property Organization (WIPO) on 8 April 2016 and corrected on 23 July, WIPO's reply of 1 November 2016, the complainant's rejoinder of 6 February 2017 and WIPO's surrejoinder of 16 May 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 neither party has applied;

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

The complainant challenges the dismissal of her complaint of discrimination and harassment.

The complainant, who held a permanent appointment, suffered an injury at work (lumbago) on 18 March 2013. She was placed on 100 per cent sick leave until 19 May, and then on 50 per cent sick leave. On 11 November she had a third meeting with the medical officer of the Medical Services Section of the United Nations Office at Geneva (hereinafter the MSS), who was also the WIPO Medical Adviser. The latter stated that she was not in a position to approve the complainant's sick leave relating to the above-mentioned injury beyond 15 November. As from 14 November 2013, the complainant's treating physician issued

her with certificates placing her on 100 per cent sick leave for a depressive/anxiety disorder.

By a letter of 9 January 2014, the complainant was informed that, in view of the information in its possession, the MSS had not validated the latest medical certificates she had submitted and that consequently her absence up to 7 January 2014 had been recorded as annual leave. On 18 January 2014 the complainant, who had been issued with a new certificate of sick leave until 9 February 2014 by her treating physician, expressed her disagreement and requested that an independent "second medical opinion"* be obtained from a rheumatologist and a psychiatrist. This request was accepted and her medical certificates covering the period from 14 November 2013 to 7 February 2014 – the date on which the multidisciplinary expert assessment was due to take place – were validated.

By a letter of 16 April 2014, the Human Resources Management Department (HRMD) informed the complainant that, according to the information received from the MSS, the expert assessment had confirmed that her absence beyond 14 November 2013 could not be ascribed to her injury at work and that the corresponding days would therefore be deducted from her sick leave entitlement. Given that her last period of sick leave – until 18 May 2014 – was at odds with the conclusions of the expert assessment, according to which she would have been fit to resume work on a half-time basis on 17 March and on a full-time basis on 7 May, the 50 per cent absences from 17 March onwards would be deducted from her annual leave entitlement. Moreover, the complainant's attention was drawn to Staff Regulation 9.3 regarding abandonment of post, and she was instructed to "resume work without delay"* and no later than 23 April. Since the complainant had not resumed work by the prescribed date, HRMD sent her a written reminder on 1 May emphasizing that her absence was unauthorized and that any absence beyond 9 May could be regarded as abandonment of post, which might result in the termination of her appointment. On 8 May HRMD reminded her that she ran the risk of being dismissed for

* Registry's translation.

abandonment of post and instructed her to resume work no later than 12 May. The same day, the complainant stated that she was unfit to resume work and requested that a medical board be established pursuant to Staff Rule 6.2.2(g). This request was granted. Having exhausted her annual leave entitlement as of 1 October, the complainant was considered as being on special leave without pay as from 2 October 2014.

The medical board issued its conclusions on 4 June 2015. It considered that the conclusions of the expert assessment in February 2014 were well founded, even though the prognosis concerning the resumption of full-time work was "probably over-optimistic"[*]. Asserting that the complainant's state of health had worsened since 17 March 2014 and that she was "currently"[*] unfit for work because of her psychological illness – and had been since 17 March –, the board recommended that she be retired on invalidity grounds. By a letter of 30 June 2015, the complainant was informed that her appointment would be terminated for reasons of health as from 30 September 2015.

In the meantime, on 26 February 2014, the Director of the Internal Audit and Oversight Division (IAOD) had informed the complainant that she was the subject of an investigation. According to the information in IAOD's possession, she appeared to have infringed Staff Regulation 1.6 as she was suspected of having worked outside the International Bureau of WIPO as a ski instructor and as the manager of a commercial company without obtaining prior authorization from the Director General. Moreover, the medical grounds or family-related emergency cited in support of certain absences in 2013 were alleged to have been fictitious. Further to the ensuing disciplinary proceedings, the complainant was relegated to a lower salary step, two steps below that which she had reached, as from 1 December 2014.

Furthermore, on 11 July 2014 the complainant filed a complaint of discrimination and harassment, claiming that the letter of 16 April was the "latest manifestation of a series of events and exchanges of letters between WIPO, [the MSS] and [her]self demonstrating administrative

[*] Registry's translation.

and psychological harassment which is out of control"*. She alleged that the MSS medical officer had shown bias towards her and that her rights had been violated when she had undergone the expert assessment in February 2014. She also accused WIPO of having failed in its duty of diligence by asking her to resume work, of having ignored her treating physician's diagnosis and of threatening to terminate her appointment for abandonment of post even though her condition had worsened and she was in possession of a medical certificate. Lastly, she denounced the pressure to which she had been subjected, particularly through the opening of the investigation by IAOD. The Director of HRMD rejected that complaint by a decision of 3 November 2014, against which the complainant lodged an appeal on 2 February 2015. The Appeal Board issued its conclusions on 20 November 2015. Considering, in particular, that her complaint should not have been reviewed by HRMD since part of it was concerned with measures taken by that department, the Appeal Board recommended that the decision of 3 November 2014 be set aside on account of a conflict of interest. Moreover, in the event that the complainant wished to pursue the matter, it recommended that the Director General refer the complaint "for review by a competent authority"*. Lastly, it recommended that the costs incurred by the complainant be reimbursed on presentation of supporting documentation and that she be awarded damages. By a letter of 19 January 2016, which constitutes the impugned decision, the Director General informed the complainant that he had decided to accept the Appeal Board's recommendations, though he did not fully agree with its analysis. He awarded the complainant 2,000 Swiss francs in damages, asked her to submit the invoices drawn up by her counsel and informed her that, in the event that she wished to pursue the matter, he would deal with the complaint personally. On 23 January the complainant stated that she wished to pursue the matter but that she had "major reservations"* regarding the Director General's impartiality. Under these circumstances, the Director General asked the Assistant Director General to take decision on the merits of the complainant's complaint. On 15 April 2016 the Assistant Director General decided to dismiss the complaint.

* Registry's translation.

Although he concluded that no harassment had occurred, he decided to award the complainant 1,000 Swiss francs "in relation to the possibility that [her] absences might be regarded as abandonment of post"*.

The complainant requests the Tribunal to make a number of declarations of law, to set aside the impugned decision and the decision of 15 April 2016, to award her "substantial"* damages for "serious professional, moral and psychological injury"* and to order the reimbursement of all her costs of legal representation, except those already reimbursed to her as a result of the decision of 19 January 2016.

WIPO submits that the complaint is irreceivable because the complainant did not appeal against the final decision of 15 April 2016, and it enters a counterclaim requesting that the complainant be ordered to pay damages or, at least, costs on these grounds. WIPO contends that the complaint is otherwise unfounded.

CONSIDERATIONS

1. By her first complaint, the complainant impugns the Director General's decision of 19 January 2016 setting aside the decision of 3 November 2014 of the Director of HRMD. She also impugns the Assistant Director General's decision of 15 April 2016 rejecting her complaint of harassment.

2. WIPO challenges the receivability of the complaint on the grounds that it is directed against the Director General's decision of 19 January 2016 and not against the Assistant Director General's decision of 15 April 2016, which was the final decision. It is correct that in the complaint form the complainant only mentioned the Director General's decision of 19 January 2016, but in her written submissions she also seeks the setting aside of the Assistant Director General's decision of 15 April 2016.

The challenge to the receivability of the complaint therefore fails.

* Registry's translation.

3. The complainant contends that the Assistant Director General's decision of 15 April 2016 was unlawful because it was taken too late. She considers that the final decision was really that of 19 January 2016, which, according to her, closed the matter, and that the decision of 15 April 2016 was thus taken outside any legal framework.

4. In his letter of 19 January 2016, the Director General set aside the decision of the Director of HRMD, thereby following the first recommendation of the Appeal Board. Although in this letter he referred to certain passages of the Appeal Board's conclusions, he did not take any decision on whether or not harassment had occurred. On the contrary, he explicitly drew the complainant's attention "to the fact that the present decision in no way prejudge[d] any future decision that might be taken regarding the merits of the allegations contained in [her] complaint"*.

In accordance with the Appeal Board's second recommendation that he should refer the examination of the complaint to a competent authority, he informed the complainant that he would deal with the complaint himself, but that he was willing to consider an amicable settlement of the dispute. He therefore asked the complainant to indicate her intentions.

In her reply of 23 January 2016, the complainant "officially inform[ed] the Director General that [she was] pursuing this matter and thank[ed] [him] for dealing with it"* and, at the end of this letter, she again asked the Director General "to take note that [she] wish[ed] to pursue this matter" while expressing "major reservations regarding [his] impartiality"*.

In view of these criticisms and in order to avoid any controversy over the impartiality of the decision-making process, the Director General considered it preferable to delegate his authority and to designate the Assistant Director General as the competent authority for reviewing the complaint and taking a decision on the merits.

This is the object of the decision of 15 April 2016.

* Registry's translation.

5. The complainant interprets the letter of 19 January 2016 as meaning that the Director General was asking her to refrain from filing a complaint with the Tribunal, otherwise he would "deal with the complaint again"*. She asks the Tribunal to condemn this behaviour as a violation of her right to bring the dispute before it and an attempt to exert undue pressure. However, at no point in the letter is there any question of a complaint to the Tribunal. Nor is it apparent, in the event that a complaint was filed with the Tribunal, how the Director General could have "dealt with" the internal complaint.

The complainant's interpretation of the Director General's letter cannot be accepted. In this case, the Director General followed the Appeal Board's recommendations. After setting aside the decision of the Director of HRMD, he decided to resume the procedure from the stage where an irregularity arose, in other words at the stage of the review of the complaint of harassment. Although the letter of 19 January 2016 is cluttered with irrelevant considerations, it says nothing else in substance. It informs the complainant of the procedure which will be followed, unless an amicable settlement has been reached previously.

6. The Tribunal also observes that the complainant's legal counsel, on receipt of the letter of 15 April 2016, sent two e-mails to WIPO on 15 and 19 April 2016, in which she maintained that the final decision was that of 19 January 2016. WIPO replied unambiguously in two e-mails of 15 and 20 April 2016 that it did not share this view and that the letter of 19 January 2016 was not a final decision but was intended to inform the complainant of the next stages in the procedure.

7. The final decision is therefore indeed that of 15 April 2016. It formed part of the decision-making process provided for in the Staff Regulations and Rules and was therefore not devoid of any legal basis, as claimed by the complainant.

* Registry's translation.

The Director General's decision of 19 January 2016 was therefore a preparatory decision which did not adversely affect the complainant. The complaint is therefore irreceivable insofar as it is directed against this decision.

8. The complainant contends that when the Appeal Board recommended that the Director General refer her complaint for review by a competent authority, it necessarily had in mind an external authority, so neither the Director General nor a fortiori the Assistant Director General could have been competent to review it.

Office Instruction No. 7/2014, which deals with "workplace-related conflicts and grievances", and with harassment in particular, provides explicitly that the competent authority for dealing with a complaint shall be either the Director of HRMD, or the Director General or the latter's delegate (paragraphs 13 to 16). Having determined that the review of the complaint should not have been entrusted to the Director of HRMD because she had a conflict of interest, the Appeal Board therefore considered that the competent authority could only be the Director General or his delegate.

The complainant's argument cannot therefore be accepted.

9. Furthermore, the complainant contends that the Assistant Director General cannot be considered impartial on account of being under the authority of the Director General, in respect of whom, in her letter of 23 January 2016, she had expressed "major reservations regarding [his] impartiality"*, particularly because of the "unconditional support that [he] give[s] to [his] [human resources] department"*.

Apart from the fact that the complainant's insinuations with regard to the Director General are not substantiated, the mere fact that the Assistant Director General is ordinarily under the authority of the Director General is insufficient to call his impartiality into question,

* Registry's translation.

since there is no evidence that he had received any instructions from the Director General.

The plea does not stand.

10. The complainant taxes the Assistant Director General with not conducting a prompt and thorough investigation.

Office Instruction No. 7/2014 provides that a complaint shall first be reviewed by the competent authority and that the latter shall only refer it for independent investigation if it considers that the alleged acts or conduct, if established, would constitute harassment and if there is credible information and/or *prima facie* evidence supporting the allegations.

Contrary to the complainant's assertion, the Assistant Director General conducted a thorough review of her complaint and reached the conclusion that the administrative measures and decisions criticized by the complainant "on no account constitute[d] harassment"*.

As regards the length of the procedure in general, reference is made to the discussion in consideration 24, below.

11. In her complaint, the complainant submits, on the contrary, that she was the subject of harassment. She recalls that, according to the Tribunal's case law, institutional harassment can be the result of "a long series of examples of mismanagement or omissions".

According to her, the harassment resulted in particular from: the irregularities committed during the consultations of 24 June, 14 October and 11 November 2013 in the MSS and during the independent expert assessment of 7 February 2014; the systematic refusal to recognize her periods of sick leave as justified; the threat to consider her medically justified absences as abandonment of post; the length of time taken to establish the medical board; the IAOD investigation opened against her unduly; the imposition of a disproportionate disciplinary measure; and

* Registry's translation.

the excessive duration of the procedure relating to the complaint of harassment.

The Tribunal will examine each of these pleas below.

12. The complainant criticizes first of all the consultations which took place in the MSS on 24 June, 14 October and 11 November 2013. According to her, the Medical Adviser showed bias against her for the reasons set out below.

Firstly, the complainant taxes the Medical Adviser with not giving her advice that would facilitate her return to work. But the written submissions show that the Medical Adviser twice proposed to come and inspect her workplace with a view to ensuring that she would resume work in the best possible conditions. It is the complainant who indicated that she was not available on the proposed dates.

The complainant also objects to the fact that no auscultation was performed during these consultations. But WIPO rightly invokes the guidelines applicable within the United Nations system and the fact that the certification of sick leave does not systematically involve an auscultation.

Secondly, the complainant considers that the Medical Adviser was wrong to refuse to continue approving her medical certificates during the consultation of 11 November 2013. However, with regard to determining the condition resulting from the injury at work (lumbago), which was the only condition to be considered at this consultation, the Medical Adviser merely followed the certificates issued by the treating physician. Moreover, the latter no longer referred to this condition in his certificates issued on 14 November 2013 and 18 June 2014. Lastly, the Medical Adviser's diagnosis, on this point, was confirmed by the independent expert medical assessment of 7 February 2014.

Thirdly, the complainant criticises the Medical Adviser for generally showing a negative and hostile attitude towards her and for making derogatory remarks regarding her treating physician. But the complainant has failed to produce any evidence of this.

In conclusion, this plea is unfounded.

13. The complainant questions the impartiality of the expert medical assessment performed on 7 February 2014 on the grounds that the medical practitioners were unilaterally appointed by the MSS. However, under the terms of Staff Rule 6.2.2(f)(3), the staff member does not have to be consulted prior to the designation of the medical practitioner responsible for the expert assessment. The body called upon, CEMed, is a medical assessment centre used regularly by the MSS and by the medical advisers of other international organizations for the performance of assessments. There is nothing to indicate any grounds for not making use of this centre in the instant case.

The plea cannot be accepted.

14. The complainant contends that the transmission to HRMD, on 9 April 2014, of the results of the independent expert medical assessment of 7 February 2014 was irregular. She argues that the results should have been communicated to her first, before being sent to that department. She states that the time taken to inform her of the results was unusually long and that it could have been shortened by sending the results either to her legal counsel, whose address she had designated as the address for service, or directly to her treating physician.

The case file shows that the Medical Adviser tried to contact the complainant by telephone, e-mail or letter on nine occasions but all these attempts failed. Lastly, after consulting her supervisor, she sent the results on 9 April 2014 to the complainant and to HRMD. No internal rule or regulation at WIPO imposes any obligation to send the results of an expert medical assessment to the staff member before sending them to the Organization, though WIPO recognizes that this is the usual practice. In the present case, an exception to that practice was made to avoid any further loss of time. This way of proceeding did not have an adverse effect on the complainant. WIPO also asserts that the use of an address for service is only valid in the context of litigation and that, in accordance with internal instructions and on account of medical confidentiality, medical practitioners at the MSS do not communicate directly with staff members' legal counsels. Lastly, nothing obliges an organization to communicate the results of an expert medical

assessment to the treating physician rather than to the staff member concerned.

The plea fails.

15. The complainant taxes WIPO with not taking account of the medical certificates that she submitted and with asking her to resume work, thus showing its intention to act in a constantly disruptive manner "against all medical and human logic"*.

The Medical Adviser endorsed the results of the independent expert medical assessment and considered that the complainant could resume work on a 100 per cent basis from 7 May 2014. It is true that after this date the complainant submitted new medical certificates indicating that her illness continued. However, in view of the fact that the complainant systematically refused to respond to the various invitations to attend appointments with the MSS, which is responsible for certifying sick leave, WIPO was entitled not to take account of these certificates – which, moreover, were not consistent with the results of the expert assessment – and to ask her to resume work, which, incidentally, WIPO ceased to do from the time that the complainant requested a meeting of the medical board.

The plea is unfounded.

16. The complainant objects to the fact that WIPO stopped paying her salary from 2 October 2014, thereby placing her in a very difficult financial situation and thus putting additional pressure on her.

Staff Rule 6.2.2(f)(1) provides that "[all] sick leave must be approved on behalf of the Director General". Staff Rule 5.1.1(f) provides that "[a]ny absence from duty not specifically covered by other provisions shall be deducted from the accrued annual leave of the staff members concerned; if they have no accrued annual leave, their absence shall be regarded as unauthorized leave, and they shall not be entitled to either salary or allowances during the period of such absence".

* Registry's translation.

For the reasons set out in the previous consideration, the Director General was entitled not to take account of the medical certificates submitted by the complainant. He could therefore legitimately apply Rule 5.1.1(f) and decide to deduct the complainant's days of absence from her accrued annual leave and, from the time when the latter was exhausted (namely 1 October 2014), to stop paying her salary and allowances.

Once the medical board recognized that the complainant was unfit to work as from 17 March 2014, the sick leave was approved and the related calculation was rectified.

The plea is unfounded.

17. The complainant also criticizes the length of time taken to establish the medical board which she requested on 8 May 2014, asking to be informed as soon as possible how to proceed. It was only on 21 July 2014 that WIPO asked the complainant to provide the name of the medical practitioner whom she designated to form part of the medical board, as well as a note indicating the medical aspects that she contested. However, the Tribunal observes that the complainant took over two months to supply all this information, so she also bears some responsibility for the delay in setting up the medical board. The remainder of the procedure – comprising the designation of a medical practitioner by the Director General and that of the medical practitioner selected by mutual agreement, the meeting of the medical board on two occasions, and the drawing up of the board's conclusions – took place over periods of time which cannot be described as abnormally long (see, for comparison, the time periods imposed by Judgment 2458, consideration 11).

The plea cannot be accepted.

18. However, the complainant rightly states that on three occasions WIPO showed excessive severity towards her by taking unlawful measures, even though these were subsequently rectified.

Firstly, in a letter of 9 January 2014, the Deputy Director of HRMD informed the complainant that the period from 16 November 2013 to 7 January 2014 had been recorded as annual leave. She considered that

the medical certificates issued by the treating physician in relation to this period had not been validated by the MSS. However, there is no evidence in the file before the Tribunal to show that on or before 9 January 2014 the complainant had been examined by the Medical Adviser, or that the latter had issued any opinion on the new condition referred to in the above-mentioned medical certificates. It was only after the complainant asked, on 18 January 2014, for an independent expert medical assessment that WIPO changed its stance by validating the medical certificates issued by the treating physician and by reinstating the annual leave days for the period from 14 November 2013 to 7 February 2014.

Secondly, HRMD asked on two occasions (16 April 2014 and 1 May 2014) for reimbursement of half the cost of the independent expert medical assessment, arguing that this assessment had confirmed the opinion of the MSS. However, the assessment covered two aspects: the rheumatological aspect (lumbago caused by an injury at work) and the psychological aspect (depressive/anxiety disorder), which had been mentioned for the first time on 14 November 2013. As regards the first aspect, the assessment confirms the diagnosis of the Medical Adviser but, as regards the second aspect, it indicates that the complainant indeed suffered from a psychological illness, thereby proving her right. At the time of the request for the expert assessment, WIPO had not validated the medical certificates issued by the treating physician in relation to the psychological illness. WIPO was therefore wrong to charge half the cost of the expert assessment to the complainant, even though this irregularity was subsequently rectified.

Thirdly, observing that the medical certificate from her treating physician which was valid until 18 May 2014 was at odds with the conclusions of the expert assessment, HRMD instructed the complainant to resume work, threatening to consider her absence as abandonment of post. Such a threat, made on three occasions (16 April, 1 May and 8 May 2014), is not acceptable. According to the Tribunal's established case law, there can be no question of abandonment of post unless the staff member shows an intention not to return (see Judgments 3853, consideration 21, 1834, consideration 7, and 392, consideration 4). The fact that the complainant presented medical certificates relating to

specific periods in no way implies that she had shown such an intention. Moreover, by a letter of 19 June 2014, HRMD changed its position, stating that the procedure relating to abandonment of post was suspended. Lastly, in the decision of 15 April 2016, the Assistant Director General awarded compensation of 1,000 Swiss francs "in relation to the possibility that [her] absences might be regarded as abandonment of post"*.

In conclusion, even though the three irregularities referred to above were rectified subsequently, they constitute a breach of the duty of care that every international organization owes to its staff members.

19. The complainant considers that the opening of an administrative investigation against her is also evidence of the harassment of which she complains.

This investigation was concerned with possible irregularities arising, firstly, from citing an illness or family-related emergency as grounds for leave taken in February and December 2013 and, secondly, from the possible performance of activities outside WIPO without prior authorization from the Director General, namely management of a commercial company and employment as a ski instructor. In its final report, IAOD upheld only the second charge as well as the use of the WIPO e-mail system for commercial purposes.

20. It is not disputed that it was "a person"* from HRMD who reported the complainant's possible misconduct to IAOD and that the medical procedure and the administrative investigation took place concurrently. The reporting to IAOD took place on 13 January 2014, at a time when WIPO was refusing to accept the complainant's latest medical certificates. On 25 February 2014 the Deputy Director of HRMD urged the complainant, who had presented a new medical certificate a few days late, to comply with the applicable procedure, and the following day the Director of IAOD notified the complainant of the opening of an investigation against her. By a letter of 17 March 2014, the Medical Adviser instructed the complainant to make an appointment, and the

* Registry's translation.

following day the Director of IAOD requested her to cooperate fully with the investigation. On 16 April, 1 May and 8 May 2014, the Deputy Director of HRMD threatened the complainant that she would consider her absence as abandonment of post and, by a letter of 2 June 2014 from IAOD, the complainant was informed of a new charge against her, namely that of abandonment of post.

21. The complainant filed two internal appeals, one against the decision dismissing her complaint of harassment, the other against the disciplinary decision issued against her, which gave rise, respectively, to the conclusions of the Appeal Board of 20 November 2015 (WAB/2015/13) and 11 December 2015 (WAB/2015/15).

In its conclusions relating to the appeal against the dismissal of the complaint of harassment (WAB/2015/13), the Appeal Board stated that it was "concerned"* at the fact that:

"(a) The complainant was the subject of an investigation when she was on sick leave, even though for the Administration this sick leave [was] not in conformity with the normal procedure, since it should have been approved by the MSS [...];

(b) The IAOD investigation was launched at the request of HRMD;

(c) The investigation was launched at a time when the complainant was already having difficulties getting her sick leave approved by HRMD [...];

(d) The preliminary investigation report contained an additional accusation of 'abandonment of post', an issue which had been raised in communications between HRMD and the complainant;

[...]."*

In both cases, the Appeal Board considered that, given the circumstances, the issues referred to IAOD should have been the subject of a more reasonable and less formal procedure. It would have sufficed to inform the complainant and give her an opportunity to respond before reporting the facts, if necessary, to IAOD.

* Registry's translation.

22. In these very unusual circumstances, rightly highlighted by the Appeal Board, the reporting by HRMD of possible irregularities to IAOD constitutes a breach of the duty of care.

23. Next, the complainant sees the disciplinary procedure launched against her and the disproportionate nature of the disciplinary sanction imposed on her as further evidence of harassment against her.

With regard to the disciplinary procedure, the complainant objects to the fact that the Director of HRMD, in her letter setting out the charges, maintained the accusation that she had taken a day of sick leave for a fictitious family-related emergency, even though IAOD had cleared the complainant of this charge after investigation.

While HRMD and IAOD may differ in their analysis of certain elements, the HRMD Director's decision to disregard, in her letter of charges, an IAOD investigation finding which was in favour of the complainant illustrates the intransigence demonstrated by the Director of HRMD throughout the procedure, even though, in the decision imposing the sanction, this charge was eventually dropped.

With regard to the sanction imposed on the complainant, namely relegation by two steps, this forms the subject of Judgment 4244, also delivered in public this day, relating to the complainant's second complaint. In that judgment, the Tribunal held that this sanction was disproportionate.

24. Lastly, the complainant expresses criticism of the length of time taken to complete the procedure relating to the complaint of harassment.

The Tribunal recalls that harassment cases should be treated as quickly and efficiently as possible, in order to protect staff members from unnecessary suffering (see Judgments 3447, consideration 7, and 2642, consideration 8). In the present case, the procedure took over 21 months (complaint filed on 11 July 2014 – final decision of the Assistant Director General issued on 15 April 2016). The Tribunal considers that in the instant case this period is excessively long and constitutes a breach of the duty of care.

25. According to the Tribunal's case law, a long series of examples of mismanagement or omissions which have compromised the dignity and career of an employee may constitute institutional harassment (see Judgments 3315, consideration 22, and 3250, consideration 9).

In the instant case, although a number of pleas made by the complainant have been rejected, the Tribunal has noted in the foregoing many examples of mismanagement, namely: the recording of the period from 16 November 2013 to 7 January 2014 as annual leave and not sick leave; the insistent demand for reimbursement of half the cost of the independent expert medical assessment; the threat made on several occasions to consider the complainant's absence as abandonment of post; the reporting of certain facts by HRMD to IAOD, even though the complainant was on sick leave which was approved shortly afterwards by the MSS and even though a less formal approach could have been taken; the severity towards the complainant regarding one of the charges set out in the letter of charges; the disproportionate nature of the sanction imposed; and the excessive length of time taken to complete the procedure relating to the complaint of harassment.

However, according to the Tribunal's case law, a series of errors of management or omissions is not, in itself, sufficient to establish institutional harassment. Such errors and omissions must also have compromised the official's dignity and career prospects. None of the failures recorded above can be regarded as having injured the complainant's dignity. As regards the career prospects of the complainant, the latter contends that the irregularities committed by the Organization aggravated her state of health to such an extent that her appointment was terminated on health grounds. However, in Judgment 4246 delivered on this day in relation to the complainant's fourth complaint, the Tribunal has ruled that the complainant's illnesses could not be recognized as being work-related. It is therefore not proven that the errors committed damaged the complainant's career prospects.

It follows that institutional harassment is not established. Consequently, the decision of the Assistant Director General of 15 April 2016, which considered the complaint for harassment to be unfounded, does not need to be set aside.

26. The complainant claims for "substantial"* damages for the actions that caused her "serious professional, moral and psychological injury"*, which manifested, in particular, in the deterioration of her state of health and "harm to her professional reputation among colleagues after more than 31 years of service"*.

Even though institutional harassment has not been established, there is no doubt that the irregularities noted above constitute a breach of the duty of care which every international organization owes to its staff members. The actions in question caused moral injury to the complainant. The Tribunal considers that fair redress for all the moral injury suffered, including from the imposition of a disproportionate disciplinary sanction, will be made by awarding the complainant damages of 20,000 Swiss francs, less the compensation of 1,000 Swiss francs awarded to her by the Assistant Director General in the decision of 15 April 2016.

Redress for the professional damage arising from the aggravation of the complainant's state of health would necessarily imply recognizing that such damage can be ascribed to the breach of the duty of care referred to above. However, as indicated above in consideration 25, the Tribunal has determined, in Judgment 4246, that the complainant's illnesses could not be recognized as work-related. It follows that the claim for compensation for professional damage must, in any case, be dismissed.

27. The complainant asks the Tribunal to make a number of declarations of law. According to the Tribunal's established case law, such claims are irreceivable (see Judgments 3876, consideration 2, 3764, consideration 3, 3640, consideration 3, and 3618, consideration 9).

28. Since the complainant partially succeeds, she is entitled to costs, which the Tribunal sets at 5,000 Swiss francs.

29. All her other claims must be dismissed.

* Registry's translation.

30. WIPO has submitted a counterclaim requesting that the complainant be ordered to pay damages or, at the very least, costs, on the grounds that the complaint is not directed against the final decision of 15 April 2016. As explained above, the complainant did in fact seek the setting aside of that decision. For this reason alone, the counterclaim must be dismissed.

DECISION

For the above reasons,

1. The Organization shall pay the complainant 19,000 Swiss francs in moral damages.
2. It shall also pay her 5,000 Swiss francs in costs.
3. The complainant's other claims are dismissed, as is WIPO's counterclaim.

In witness of this judgment, adopted on 8 November 2019, Mr Patrick Frydman, 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 10 February 2020.

(Signed)

PATRICK FRYDMAN FATOUMATA DIAKITÉ YVES KREINS

DRAŽEN PETROVIĆ