

T. (No. 3)

v.

WHO

132nd Session

Judgment No. 4406

THE ADMINISTRATIVE TRIBUNAL,

Considering the third complaint filed by Mr Y. T. against the World Health Organization (WHO) on 18 March 2019 and corrected on 1 May, WHO's reply of 31 July, the complainant's rejoinder of 18 November 2019 and WHO's surrejoinder of 24 February 2020;

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 impugns the decision to impose upon him the disciplinary measure of reduction in grade.

Soon after the complainant took up his position as the WHO Country Representative to Thailand in June 2013, he and his wife engaged Ms E.B., an Ethiopian national, as a domestic worker. On 8 March 2015 Ms E.B. left the complainant's residence. Soon after, she alleged that she had suffered assault and mistreatment at the hands of the complainant and his wife and that her salaries had been withheld. On 18 March 2015 she lodged a complaint with the Thai Police accusing the complainant and his wife of human trafficking. The matter was extensively reported in the media. Having carried out an investigation into Ms E.B.'s allegations, the Thai Police informed the WHO Representation in Thailand on 29 May 2015 that a non-prosecution order would be issued for the complainant and his wife, as neither had

performed any acts in violation of human rights, or the laws of Thailand, and Ms E.B.'s allegations had been found to be unsubstantiated. The non-prosecution order was issued on 23 July 2015 and the Thai Police relevantly informed the WHO Representation in Thailand on 5 August 2015.

Meanwhile, on 9 April 2015, the Administration placed the complainant on special leave with pay. Between 11 and 22 April 2015, WHO's Internal Oversight Services (IOS) carried out a field mission to Thailand to establish the facts surrounding Ms E.B.'s employment in the complainant's household.

In its Investigation Report of 24 June 2015, IOS found that the complainant had: (i) exercised poor judgement by not having adequate documentation regarding the payment of salary to Ms E.B. and the terms and conditions of her employment; (ii) failed to ensure compliance with local laws related to the employment of domestic workers by not relevantly informing himself; (iii) failed to take sufficient action to protect WHO's reputation and exposed WHO to a reputational risk resulting in public discredit in the form of adverse media coverage by not informing WHO's Regional Office for South-East Asia (SEARO) or WHO's Office of the Legal Counsel about Ms E.B.'s allegations; (iv) exercised poor judgement when applying for a visa for a new domestic worker at a time when there were serious allegations regarding his employment of Ms E.B.; (v) abused his authority and violated WHO's policy on interns by arranging for the son of a friend to be at WHO premises, ostensibly as an intern, although he did not meet the minimum requirements; (vi) abused his authority and misused WHO resources by requesting a WHO driver to run personal errands for him and his family and by failing to reimburse WHO for the personal use of the official vehicle, fuel and the driver's overtime; (vii) abused his authority and violated SEARO's selection rules by including on a shortlist for a WHO position an individual not found qualified by the General Service Staff Selection Committee; (viii) abused his authority and misused WHO resources by requesting WHO staff to make personal flight and hotel reservations for him, his family and friends.

IOS concluded that through his actions the complainant had contravened the WHO Fraud Prevention Policy, several provisions of the Ethical Principles and Conduct of Staff, paragraph 42 of the Standards of Conduct for the International Civil Service, Staff Regulations 1.1

and 1.5, and Information Note 28/2011 “Authorization to drive an Official Vehicle”. IOS also concluded that while there was insufficient information to substantiate or refute Ms E.B.’s allegations of mistreatment, its findings with regard to the cancellation of her visa and the discussion about the termination of her employment were sufficient to warrant an examination by the Administration of the complainant’s ethical conduct. IOS recommended that the Regional Director of SEARO and the Director of the Human Resources Department review the Investigation Report with a view to taking appropriate administrative and/or disciplinary action in relation to the “substantiated findings”, that they consider any other action in relation to the “other findings”, and that they also take action to recover from the complainant the amount owed to WHO for his personal use of a WHO official vehicle.

By a memorandum of 13 July 2015, the complainant was notified of the charges levied against him, based on the findings of the investigation, and was informed that further allegations against him had emerged during the investigation, including abuse of authority and mismanagement of WHO resources. He was charged with: (i) misconduct for failure to report the allegations made by Ms E.B.; (ii) inadequate handling of the allegations against him; (iii) failure to comply with human resources policies; and (iv) improper use of WHO resources for personal benefit. He was provided with a redacted copy of the Investigation Report and was asked to provide his response, which he did on 11 August. By a letter of 8 October 2015, he was informed that the Director-General had found the charges to be substantiated and had decided to impose upon him the disciplinary measure of a reduction in grade (from P.6 to P.5). By that same letter, he was also informed that he would be reassigned to SEARO in New Delhi, India.

On 4 December 2015 the complainant filed an appeal with the RBA against the 8 October 2015 decision. Having joined this appeal with the complainant’s appeal against the non-disclosure of unredacted documents (appeal leading to Judgment 4379), the RBA submitted its report on 10 August 2017 recommending that the appeal against the 8 October 2015 decision be rejected. Further to the Regional Director’s decision to reject the appeal, the complainant seized the Global Board of Appeal (GBA) on 11 December 2017. In its report of 24 October 2018, the GBA recommended that the Director-General reject the appeal against the decision to impose a disciplinary measure.

The Director-General accepted the GBA's recommendation and relevantly informed the complainant of his decision by a letter dated 21 December 2018. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to order WHO to pay him the difference between the P.6/D.1 and the P.5 grade salary from 1 February 2016 to 14 January 2018. He also asks the Tribunal to order the removal from his personnel file of all documents relating to the disciplinary proceedings. He claims 100,000 Swiss francs in moral damages and 70,000 francs in costs.

WHO asks the Tribunal to dismiss the complaint as wholly devoid of merit.

CONSIDERATIONS

1. This is the third of the three complaints the complainant has filed with the Tribunal emanating from the IOS's April 2015 formal investigation of allegations of misconduct made against him. The present complaint arises from the 8 October 2015 decision to impose on the complainant the disciplinary measure of a reduction in grade from P.6 to P.5 following a disciplinary proceeding. In the decision, the complainant was also informed of his reassignment as a Planning Officer in SEARO in New Delhi, India. On 11 December 2017, the complainant filed an appeal with the GBA against the Regional Director's decision to uphold the disciplinary measure imposed on him. In its 24 October 2018 report, the GBA recommended the dismissal of the appeal in its entirety. In his 21 December 2018 decision, the Director-General, based on the GBA's considerations in its report, accepted the GBA's recommendation and dismissed the appeal. This is the decision the complainant impugns in the present complaint.

2. The following is a summary of the facts leading up to the imposition of the disciplinary measure on the complainant. In March 2015, allegations of misconduct emerged in relation to the complainant's conduct that led to an investigation by IOS. On 24 June 2015, IOS issued its Investigation Report regarding the allegations of misconduct made against the complainant.

3. In his 13 July 2015 memorandum to the complainant, the Director, Administration and Finance, notified the complainant of the charges made against him. In the memorandum, the Director stated that the objective of the IOS investigation was to establish the facts and present the evidence gathered in relation to the allegations of the violation of national law and the allegations made against the complainant that his conduct brought WHO's reputation into disrepute. The Director noted that during the investigation, IOS received further allegations of misconduct involving the complainant that included abuse of authority and mismanagement of WHO resources. The Director summarized IOS's findings in the Investigation Report in relation to the allegations made by Ms E.B., the complainant's domestic worker, and his failure to handle the matter adequately; the allegations of his failure to comply with human resources policies; and the allegations of his use of the Organization's resources for personal gain.

4. The Director informed the complainant that based on the IOS Investigation Report and the findings detailed in the memorandum, he was charged for:

- (1) His failure to report the allegations made by his domestic worker;
- (2) His inadequate handling of the case of his domestic worker which exposed WHO to significant reputational risks;
- (3) His failure to comply with human resources policies;
- (4) His use of the Organization's resources for personal gain.

The complainant was also informed that, if these charges were established, his actions could be found to have violated the standards of conduct required of WHO staff members and to constitute misconduct as defined in Staff Rule 110.8. The complainant was asked to provide comments in response to the charges within eight calendar days and he was provided with a copy of the IOS Investigation Report and the annexes to the report, which included three redacted documents.

5. On 28 July 2015, the complainant requested the Director to provide him with unredacted versions of all records of interviews and, in particular, the interviews with Ms I.W. and Dr M.S., to which the Director responded on 1 August 2015 that there was "no justification" to produce these materials. On 11 August, the complainant submitted his response to the charges under protest due to the fact he had only

received redacted copies of the requested materials. On 8 October 2015 the complainant was informed of the decision to impose on him the disciplinary measure of a reduction in grade from P.6 to P.5. The complainant was also informed of his reassignment to SEARO in New Delhi, India. On 19 October 2015, the Administration provided the complainant with unredacted versions of the requested documents. Subsequently, as stated in consideration 1 above, the complainant filed an appeal with the GBA against the Regional Director's decision to uphold the disciplinary measure imposed on him.

6. At this juncture, some preliminary observations are required in relation to the Administration's refusal to provide the complainant with unredacted copies of certain documents annexed to the Investigation Report. On 4 September 2015, the complainant lodged an internal appeal with the RBA against the Director's refusal to provide him with unredacted copies of three specific documents: the IOS investigator's 5 May 2015 Note to File of her 16 April 2015 meeting with Thai Police Colonel T.; and the investigator's records of her interviews with two staff members, Ms I.W. and Dr M.S., on 14 and 15 April 2015 respectively. On 11 December 2017, the complainant also filed an appeal with the GBA against the Regional Director's dismissal of his 4 September 2015 internal appeal.

7. At the request of the Administration, the GBA joined this appeal with the complainant's appeal against the imposition of the disciplinary measure. Although the two appeals were joined, in its 24 October 2018 report, the GBA considered the merits of the two appeals separately and made separate recommendations for each appeal. In addition to the decision impugned in the present complaint, on 21 December 2018, the Director-General also rendered a separate decision on the complainant's appeal regarding the refusal to provide him with unredacted copies of the requested documents. The complainant impugned this latter decision in his second complaint filed with the Tribunal that led to Judgment 4379, delivered in public on 18 February 2021.

8. In the present complaint, the complainant submits that the refusal to provide him with unredacted copies of the three witness statements, referred to in consideration 6 above, denied him access to unredacted exculpatory material in responding to the charges brought

against him, in violation of his right to be heard, and constituted a serious breach of his right to due process. As well, the complainant asserts that he was not given an opportunity to confront and to cross-examine his “accusers”, given that the witness statements in relation to the charges against him were redacted. The Tribunal notes that, as the complainant was provided with unredacted copies of the three requested documents before lodging his appeal with the GBA against the imposition of the disciplinary measure, he was able to rely on this material during the appeal proceedings. Accordingly, the Tribunal is satisfied that his right to be heard and his right to due process were not violated.

9. It is also important to point out that in several instances in his pleadings in the present complaint, the complainant treats the GBA’s separate considerations of the merits of the two appeals referred to in consideration 7 above, as a single matter. Additionally, in this complaint, the complainant advances arguments that duplicate the arguments advanced in his first and second complaints.

10. Returning to the present complaint, in its 24 October 2018 report, the GBA considered the merits of the complainant’s appeal against the imposition of the disciplinary measure. In his appeal, the complainant submitted that the charges of misconduct were unfounded; the IOS investigation was biased and procedurally flawed; and WHO violated its duty of care. Based on a review of the documentation submitted in the appeal, including the IOS Investigation Report and the complainant’s responses and exhibits, the GBA found that in relation to the charges in the 13 July 2015 memorandum the evidence substantiated beyond a reasonable doubt that the complainant had:

- “i. Failed to handle the matter with the domestic employee adequately and the matter had brought public discredit on the WHO. Reporting the matter to UNDSS [the United Nations Department of Safety and Security] demonstrated that the [complainant] had considered the matter serious enough to seek advice and that the [complainant] was aware of the investigation by the police and given his position, should have reported the matter to his supervisors recognizing the potential for the matter to bring public discredit on the WHO. The national authorities decision not to proceed with criminal charges in the matter did not absolve the [complainant] of his duty to comply with the Standards of Conduct;

- ii. Failed to comply with human resources policies: The Panel found that the [complainant] employed an intern, aware that the intern did not meet the qualifications to be an intern, and in spite of official directions to the contrary. The Panel found that the [complainant] added a candidate to a short-list for a post although the candidate did not meet the qualifications for the post and was not ultimately considered for the post.
- iii. Use of Organization's resources for personal gains: The Panel noted that the [complainant] used the resources of the organization for personal purposes."

11. As to the investigation procedure, the GBA found that it conformed to the regulatory framework and did not find any obvious bias or prejudice in the conduct of the investigation. The GBA observed that during the investigation of the domestic worker incident, unrelated allegations of violations of the regulatory framework came to light. The GBA found that IOS's mandate obliged it to make inquiries into these allegations of violations of the regulatory framework and the misuse of WHO resources.

12. The GBA then considered the complainant's allegations that the investigation and the disciplinary proceedings violated several fundamental due process rules and examined whether or not the investigation process and the disciplinary proceedings were conducted in compliance with the regulatory framework. Relevantly, the GBA noted that in the complainant's 31 March 2015 chronology, which the complainant submitted to the Director, Administration and Finance, at the latter's request, the complainant acknowledged that he had underestimated the consequences of the domestic worker incident and had failed to keep "the necessary persons informed". As well, in his interviews with IOS, the complainant admitted that he had sought and had not received exceptional approval to hire an intern who resided with him; that the hiring did not conform with the regulatory requirements; and he agreed that these actions did not set a good example. The complainant also confirmed that he had used official vehicles for personal purposes; had requested staff to make personal travel arrangements; and had placed an unqualified driver on a shortlist of candidates for selection in contravention of procedures. Additionally, he had not reimbursed WHO for his use of official vehicles although he had done so when he worked at another duty station.

13. The GBA concluded that:

- i. The IOS investigation was conducted pursuant to IOS's statutory mandate to investigate alleged misconduct in accordance with the Staff Regulations and Staff Rules, and the Investigation Process;
- ii. in keeping with paragraph 21 of the Investigation Process, the questions put to the complainant by the IOS investigator were clear and cogent; and the complainant was given the opportunity to answer questions and/or to clarify the inconsistencies between his testimony and the documentary evidence IOS collected; and
- iii. the complainant was given an opportunity to review the accuracy of the transcript of both of his IOS interviews and to provide additional information.

14. As to the disciplinary proceedings, the GBA reviewed the way the proceedings were conducted to ascertain if they were in accordance with the WHO regulatory framework, in particular, Staff Rule 1130, which provides that:

"A disciplinary measure listed in Staff Rule 1110.1 may be imposed only after the staff member has been notified of the charges made against him and has been given an opportunity to reply to those charges. The notification and the reply shall be in writing, and the staff member shall be given eight calendar days from receipt of the notification within which to submit his reply. This period may be shortened if the urgency of the situation requires it."

The GBA noted that in the 13 July 2015 memorandum the complainant was informed of the initiation of disciplinary proceedings against him for misconduct for the violation of the standards of conduct. The complainant responded to the charges on 11 August 2015 under protest for having received redacted witness statements. The complainant also adduced statements of good character and a list of witnesses he believed should be interviewed. Leaving aside its findings in the complainant's appeal against the refusal to provide him with unredacted copies of witness statements (which, as noted in consideration 7 above, was the subject of the complainant's second complaint to the Tribunal), the GBA concluded that the complainant was adequately informed of the charges and that, given the evidence and the complainant's admissions during the interview process and before the RBA, the charges were made out.

15. The GBA also considered whether the imposition of the disciplinary measure complied with the Staff Regulations and Staff Rules and whether it was proportionate to the misconduct committed. The GBA noted that Staff Regulation 1.1 relevantly requires that:

“By accepting appointment, [all staff members of the Organization] pledge themselves to discharge their functions and to regulate their conduct with the interests of the World Health Organization only in view.”

The GBA also noted that according to Staff Rule 110.8 “Misconduct” means:

- “110.8.1 any improper action by a staff member in his official capacity;
- 110.8.2 any conduct by a staff member, unconnected with his official duties, tending to bring the Organization into public discredit;
- 110.8.3 any improper use or attempt to make use of his position as an official for his personal advantage;
- 110.8.4 any conduct contrary to the terms of his oath or declaration.”

16. Based on its findings, the GBA found that there were clear violations of the Standards of Conduct, including abuse of authority, and considered that the misconduct was proven pursuant to Staff Rules 110.8.1, 110.8.2 and 110.8.3. The GBA also found that by failing to immediately inform WHO of the criminal complaint, the complainant had prevented WHO from intervening with the Thai authorities to manage any potential reputational harm to the Organization or the complainant. As well, with the exception of her visa, the complainant’s work relationship with the domestic worker was undocumented exposing the complainant as a representative of WHO to the risk of public discredit.

17. The GBA also found that the complainant abused his authority as WHO Representative in requesting that a certain driver be placed on a Selection Committee’s shortlist. As to the complainant’s use of WHO’s vehicles for personal purposes, the GBA noted that the complainant agreed to reimburse WHO. The placing of an intern on WHO premises in violation of the regulatory framework created an unnecessary risk for the Organization and was contrary to the direction received by the complainant.

18. The GBA found that the disciplinary measure of reduction in grade was not manifestly disproportionate given the degree of seriousness of the proven allegations, especially in light of the complainant’s senior

position in WHO. It observed that the incident with the complainant's domestic worker had received broad attention in the international media, damaging WHO's reputation. Additionally, the complainant's breaches demonstrated a disregard for WHO's regulatory framework. The GBA also found that there was no basis on which to reduce the Administration's response to a non-disciplinary reprimand provided for in Staff Rule 1115. It considered that the Administration's charges were appropriate and properly based on the evidence. The GBA concluded that the disciplinary measure of a reduction in grade was proportionate to the complainant's misconduct, which was proven beyond a reasonable doubt during the investigation.

19. The complainant takes issue with several of the GBA's findings and conclusions that will be considered in turn. First, the complainant takes the position that contrary to the GBA's conclusion he did not expose WHO to significant reputational risks. The complainant contends that in its report the GBA, without any supporting evidence, simply reproduced the allegations in the 13 July 2015 notification of the charges against him to the effect that he had committed misconduct by not immediately informing WHO about the allegations made by the domestic worker. The complainant adds that the GBA adopted "the inappropriate insinuation made in the Investigation Report [...] which concluded that [he] 'did not take sufficient action to protect WHO's reputation since he did not inform the [Regional Office] or the [Office of the Legal Counsel] about the allegations made by [Ms E.B.] and the related events'". The complainant contends that this statement is incorrect and/or unsubstantiated. This position is unfounded.

20. In making its findings of facts and arriving at its conclusions based on those facts, as stated at paragraph 55 of its report, the GBA reviewed the documentation submitted in the appeal, including the IOS Investigation Report and the complainant's responses and exhibits. As already cited in consideration 10 above, the GBA found that in relation to the charges in the 13 July 2015 memorandum the evidence substantiated beyond a reasonable doubt that the complainant had:

- "i. Failed to handle the matter with the domestic employee adequately and the matter had brought public discredit on the WHO. Reporting the matter to UNDSS demonstrated that the [complainant] had considered the matter serious enough to seek advice and that the [complainant] was aware of the investigation by the police and given his position,

should have reported the matter to his supervisors recognizing the potential for the matter to bring public discredit on the WHO. The national authorities decision not to proceed with criminal charges in the matter did not absolve the [complainant] of his duty to comply with the Standards of Conduct.”

Given the materials the GBA reviewed, it cannot be said that the GBA’s statement was made without any supporting evidence. As well, there is nothing in the GBA’s report that in any way supports the complainant’s characterization that the GBA simply adopted “the inappropriate insinuation made in the Investigation Report”.

21. Second, the complainant contends that in its report, at paragraphs 21 and 72, the GBA mischaracterized the statements he made during the investigation to the effect that it would have been better if he had reported the situation regarding the domestic worker at an earlier stage. The complainant stresses that these statements expressed his regret at having to face accusations for not having informed WHO in a timely manner and were not admissions of guilt. The complainant maintains that he complied with WHO’s recommendations regarding the handling of legal matters. He adds that he could have gone beyond the recommendations by providing more information than strictly required and that it does not follow that failing to go beyond the recommendations constitutes misconduct. This contention is unfounded as it does not accurately reflect the contents in the GBA report.

22. Paragraph 21 of the GBA report sets out that IOS investigated the allegations made against the complainant from 11 to 22 April 2015 and completed the Investigation Report on 24 June 2015. It also states that IOS interviewed the complainant on 13 and 22 April 2015. In his interviews with IOS, the complainant “acknowledged that he did not inform the organization in due time”. Relevantly, he also acknowledged that “he misjudged the impact that the incident would have on WHO and his work as Head of the Office in Thailand”. These are statements the complainant made in the course of his interviews with IOS included in the GBA’s presentation of the facts leading up to the decision to impose the disciplinary measure. As such, contrary to the complainant’s assertion, these statements are not the GBA’s interpretations as to what the complainant said during his interviews with IOS. As to the observation of the GBA in paragraph 72 of its report, the Tribunal finds that it is a correct characterization of the complainant’s statement made to the IOS investigator.

23. Third, in relation to the charge regarding the inadequate handling of the case of the domestic worker, the complainant notes that at paragraph 72 of its report, the GBA concluded that his working relationship with the domestic worker was undocumented, except for her visa, exposing him to the risk of public discredit as a representative of WHO. The complainant maintains that, as shown in his counsel's 6 August 2015 legal opinion, submitted to the Administration on 23 August, his treatment of his former domestic worker was fully compliant with national laws and regulations, and prevailing practices concerning domestic workers. As well, IOS did not provide any evidence to the contrary. Accordingly, the GBA erred in concluding that he exposed WHO to the risk of public discredit by not properly documenting his working relationship with his former domestic worker. The complainant also notes that his former domestic worker could not read or write so it was not possible to make a written agreement regarding her working conditions. Moreover, verbal agreements are the norm in these situations and the terms of the agreement were known to his spouse who could vouch for them.

24. The complainant's assertion that the GBA erred in its conclusion that he exposed WHO to the risk of public discredit is also unfounded. As the complainant had already acknowledged that his agreement with his former domestic worker was undocumented, the GBA's statement in paragraph 72 of its report was based on an undisputed fact. The Tribunal finds that it was open to the GBA to arrive at the conclusion that this situation was exposing WHO to the risk of public discredit.

25. Fourth, the complainant submits that the charges relating to the failure to comply with the human resources policies are unfounded. He takes the position that the GBA erred in its conclusion, at paragraph 73 of its report, that in requesting to have a driver placed on a shortlist constituted an abuse of his authority as a WHO Representative. He notes that after he suggested putting the driver on a shortlist, he did not in any way attempt to influence the process subsequently and the driver in question was not hired. The complainant states that if he intended to abuse his authority, then he would have used other methods such as chairing the selection committee and/or trying to influence the selection instead of designating one of the staff members to represent him as chair of the committee. He adds that it is important to note that the original decision does not list this selection issue as a charge.

26. The complainant's position is untenable. Contrary to his assertion that he "suggested" putting the driver on a shortlist, the IOS investigation established that the complainant had first requested and then instructed a member of the Selection Panel to include the driver as a candidate on the shortlist. As well, the complainant interfered in the selection process even though the driver he sought to have placed on the shortlist had been excluded because his qualifications did not warrant his inclusion. In addition to breaching the selection guidelines, the complainant's conduct constituted a clear abuse of his authority as the WHO Representative in Thailand. Moreover, contrary to the complainant's contention, this charge was specifically referred to in the 8 October 2015 decision.

27. In the same vein, the complainant takes issue with the GBA's statement at paragraph 73 of its report that his actions regarding the "volunteer student" constituted a violation of WHO's regulatory framework because the student in question was placed as an intern on WHO premises. The complainant points out that this statement contradicts IOS's finding in the Investigation Report that the "volunteer student" was not an intern. This is an erroneous assertion. At paragraph 313 of the Investigation Report, IOS found that "[a]t [the complainant]'s request, the son of his friend, [Mr H.], was engaged *de facto* as a WHO intern in spite of the request for approval from the [Regional Office] not being obtained". The complainant also disputes the GBA's statement, also in paragraph 73 of its report, that the presence of the student on WHO premises created an unnecessary risk for the Organization. The complainant notes that, as he explained in his response to the charges in the 13 July 2015 memorandum, this was not the case as the student had health and personal liability insurance that covered his stay in Thailand and, consequently, also his visits to the WHO premises. However, the fact that the student had health and personal liability insurance that covered his stay in Thailand does not remedy the fact that he did not have WHO insurance while present on WHO premises and, therefore, his continued presence created a risk for the Organization.

28. As stated in the conclusion at paragraph 318 of the Investigation Report, "[t]he result was that Mr [H.] was on WHO premises for six weeks without a Letter for Intern or any other contract and, accordingly, without any appropriate WHO insurance". The complainant maintains

that the Administration did not establish that he committed misconduct by inviting the student in question to visit the WHO office, even if it was for six weeks. As IOS concluded at paragraph 318 of the Investigation Report, “[Mr H.] was left under the day-to-day responsibility of a WHO staff member who had no need for his presence or services. In addition, Mr [H.] was less than 20 years of age and had not completed three years of full time studies. This was an abuse of authority and violation of WHO’s policy on interns.” At paragraph 55 of its report, the GBA found that the evidence substantiated beyond a reasonable doubt that the complainant failed to comply with human resources policies, in particular, as he employed an intern knowing that that intern did not meet the internship qualifications and in spite of official directions to the contrary.

29. Fifth, the complainant does not dispute that he used his official vehicle for private purposes on three occasions. The complainant contends that the original decision does not conclude that the charge of “use of the organization’s resources for personal gains” constituted misconduct. Accordingly, it cannot constitute a basis for a disciplinary measure. The complainant adds that the GBA correctly concluded that his reimbursement to WHO was adequate reparation for his personal use of the official vehicle and, therefore, no disciplinary action was warranted on this ground. These assertions are not supported by the evidence.

30. In its 8 October 2015 decision, the Administration informed the complainant of the conclusions reached in relation to his response to the charges in the 13 July 2015 memorandum. As to the charge of his use of the Organization’s resources for personal gain, the Administration informed the complainant of the conclusions that he had not been diligent in reimbursing the Organization and that he could have limited the number of personal requests to locally-recruited staff. It also indicated that as a senior member of WHO, the complainant should at all times seek to set an example within and outside the Organization. It advised the complainant that in relation to this charge the Organization would recover the amount due for the personal use of the WHO official vehicle. Relevantly, it stated that, based on the totality of the conclusions, it was determined that the complainant had not complied with the standards of conduct expected of a WHO staff member and that he had committed misconduct as defined in Staff Rule 110.8.

31. Lastly, the complainant observes that international organizations have a duty of care towards their staff members and must ensure that their dignity is respected. The complainant takes the position that the investigator's bias, the bias in the Investigation Report, the transmission of the report to the Regional Director in violation of the WHO Investigative Process, and WHO's refusal to provide unredacted versions of key witness statements violated his rights and dignity.

32. The complainant's claim that his rights and dignity were violated is rejected for the following reasons. In the present complaint, the complainant did not contest the GBA's finding that there was no obvious bias or prejudice in the conduct of the investigation. The Tribunal ruled on the complainant's allegation of bias on the part of the investigator in Judgment 4378 regarding his first complaint. Regarding the allegation that the transmission of the Investigation Report to the Regional Director violated the WHO Investigation Process, the Tribunal notes that such transmission is one of the steps provided in the Investigation Process.

33. The complainant also claims that WHO violated its duty of care by failing to take steps to protect his dignity and reputation when the defamatory media accounts were published. Further, WHO should have informed the media that the formal police report showed that the domestic worker's allegations were untruthful and likely motivated by an attempt to extort money and/or to obtain refugee status. These claims are beyond the scope of the present complaint and will not be considered.

34. In view of the above considerations, the complaint will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 24 May 2021, Mr Patrick Frydman, President of the Tribunal, Ms Dolores M. Hansen, Vice-President of the Tribunal, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2021 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

DOLORES M. HANSEN

GIUSEPPE BARBAGALLO

DRAŽEN PETROVIĆ