F.

v.

WTO

135th Session **Judgment No. 4602**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms L. F. against the World Trade Organization (WTO) on 5 March 2020, the WTO's reply of 11 June 2020, the complainant's rejoinder of 14 September 2020 and the WTO's surrejoinder of 3 December 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 challenges the decision not to award her material and moral damages as a victim of harassment and abuse of authority by her direct supervisor.

The complainant worked under the supervision of Mr B.S. in the Graphic Design, Printing and Documents Distribution (GDPDD) Section between 2001 – when she joined the WTO – and the beginning of 2014.

On 13 January 2014 the complainant submitted a request for investigation against Mr B.S., alleging, inter alia, that his conduct and behaviour constituted moral harassment. Similar requests were submitted at that time by several other officials working in the same Section. She requested that an assessment be made on the consequences of such conduct and behaviour on her health and working conditions. A

preliminary investigation was undertaken by the Legal Counsel upon instruction of the Director-General. The complainant met with the Legal Counsel on 28 January 2014. The following day, the latter prepared a draft report on the preliminary investigation suggesting that the staff members concerned, including the complainant, "be offered to skip the investigation in exchange for an immediate restructuring of the [GDPDD] Section on a mutually agreed basis". On 11 February the complainant was offered the post of assistant to the Legal Counsel, which she accepted. The transfer became effective as from 19 February 2014.

On 3 August 2018 the complainant submitted to the Office of Internal Oversight (OIO) a new request for investigation with respect to harassment and abuse of authority by Mr B.S. towards several staff members of the GDPDD Section, including herself in the past. Furthermore, on 6 August the OIO received an internal memorandum from the Organization's medical doctor reporting a situation of harassment in the Section with a serious impact on the health of several staff members. After a preliminary assessment of the case, the OIO decided to open a formal investigation on 11 September 2018. Several persons who were working or had worked in the GDPDD Section under the supervision of Mr B.S. between 2001 and 2018 were interviewed.

In its investigation report of 13 December 2018, the OIO concluded that Mr B.S.'s behaviour was improper and that it had a serious negative impact over many years on the complainant and other staff members who worked or used to work in the GDPDD Section in terms of their physical, psychological and professional integrity, as well as on the absenteeism rate in the Section. It recommended that Mr B.S. be summarily dismissed. However, due to the fact that the latter had handed in his resignation on 20 September 2018, with effect from 31 December 2018, the OIO invited the Director-General to consider a financial sanction prior to Mr B.S.'s retirement date. The OIO added that, in its view, the Organization had failed in its duty of care towards several people who reported Mr B.S.'s behaviour since 2001 and that there was a solid case for the WTO to send a strong signal *("[faire] un geste fort")* to acknowledge the suffering they had endured over the years.

By a decision of 12 February 2019, notified to the complainant on 15 February, the Director-General imposed the disciplinary sanction of summary dismissal on Mr B.S., following the recommendation of the OIO. In this decision, the Director-General expressly endorsed the factual findings of the OIO.

On 2 April 2019 the Director-General met with the complainant and other staff members identified in the OIO investigation report to express, among other things, his empathy for the hardship they had endured. On 9 April 2019 the complainant submitted a "request for imperative clarification" regarding the 12 February decision, inviting the Director-General to "give consideration to a redress commensurate to the prejudice [suffered]" by 12 April 2019, failing which her letter was to be considered as a request for review.

The complainant's request for review was rejected on 15 May 2019 on the grounds that there was no provision in the WTO Regulations, Rules and policies directly providing for an award of compensation or damages in relation to harassment complaints. Nonetheless, the Director-General noted that certain mechanisms were already in place and actions had been taken in the past to alleviate the impact of Mr B.S.'s misconduct, such as the restructuring of the GDPDD Section and her transfer to the Office of the Legal Counsel. He further noted that the Organization's medical plan covered the treatments to be followed where the impact of harassment required medical intervention and that sick leave could be taken when absence from office was necessary.

On 11 June 2019 the complainant lodged an appeal with the Joint Appeals Board (JAB) against the 15 May 2019 decision of the Director-General, requesting, inter alia, compensation for the damages suffered by her and her colleagues as victims of Mr B.S.'s conduct. On 26 June she made a parallel request under Annex 3 of the Staff Rules to determine the existence of a service-incurred illness and receive compensation. That request was accepted, and she eventually received compensation and reimbursement of her medical expenses.

On 8 November 2019 the JAB issued its report. It recommended awarding her compensation for the damages she suffered as one of the victims of the harassment and abuse of authority committed by Mr B.S.

In relation to material damages, it noted that the complainant had not submitted evidence substantiating them and recommended that she be invited to provide further information to permit an assessment of such damages. In relation to moral damages, the JAB concluded that the WTO egregiously breached its duty of care by failing to take appropriate action over more than 15 years and recommended that this factor be taken into account in determining the adequate amount of moral damages.

On 25 November 2019, as instructed by the Director-General, the Administration invited the complainant to provide specific evidence of any material damage that had not yet been compensated and to specify the amount of compensation for moral damages sought. The following day the complainant answered that there was enough information in her submissions before the JAB for the WTO to make a fair determination.

On 16 December 2019, she quantified her injury as follows: 248,028 Swiss francs in material damages for Mr B.S.'s harassment and abuse of power and 280,000 Swiss francs in moral damages for Mr B.S.'s conduct, as well as for the Administration's breach of its duty of care. As for the moral damages, she asked that an amount of 140,000 Swiss francs be equally divided and awarded to seven other staff members.

On 18 December 2019 the Director-General issued his final decision in relation to the complainant's internal appeal of 11 June. He rejected her request for additional compensation entirely. This is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to make a certain number of declarations, namely that: (1) WTO staff members who are victims of harassment and abuse of authority have a legal right to compensation and that the sanction of the "author of the injury" is not a reparation for them; (2) the WTO breached its duty of care by failing to act on the many complaints against Mr B.S. made by her colleagues and her; (3) the restructuring of the GDPDD Section in 2014 and her consequent transfer in lieu of investigating did not adequately discharge the WTO's duty of care; and (4) the Administration's conduct towards her during the internal appeal process constitutes further harassment. She also requests an award of material and moral

damages, an assessment of whether this case would justify an award of exemplary damages, as well as such other relief as the Tribunal deems necessary, just and fair.

The WTO asks the Tribunal to dismiss the complaint as irreceivable under Article VII of the Tribunal's Statute and, alternatively, as unfounded. It notably argues that any declaratory ruling in relation to other staff members must be dismissed in view of the complainant's lack of legal standing.

Following the filing of the complaint, the complainant's new supervisor, who had already recused himself during the internal appeal proceedings, was replaced and, effective from 7 July 2020, the complainant was transferred because of a conflict of interest as a result of her position in the Office of the Legal Counsel and her pending complaint. A "background note" explaining that transfer and that conflict of interest was placed in her personnel file.

In her rejoinder, the complainant, who denies any conflict of interest, asks the Tribunal to rule on the existence of an error of law in the "background note" placed in her file.

In its surrejoinder, the WTO requests that the said note be maintained as it is necessary to record the reasons and the process by which the complainant was transferred in 2020.

CONSIDERATIONS

1. In her complaint, the complainant seeks an impressive list of claims for relief that it is desirable to cite at length for a proper understanding of the issues that the Tribunal must address:

> "*a*. Set aside the Director-General's [f]inal [d]ecision of 18 December 2019.
>
> *b*. Find that WTO staff who are victims of harassment and abuse of authority have a legal right to compensation for their injury and that the sanction of the author of the injury is not a reparation for the victims that satisfies and extinguishes their separate rights to compensation.
>
> *c*. Find that [she] was a victim of Mr [B.S.]'s harassment and abuse of authority over many years, and that [she has] suffered injury that gives rise to a right to compensation from the Organization.

d. Find that the Organization was in breach of its duty of care to[wards] [her] by failing to act on the many complaints about Mr [B.S.] made by [her] colleagues and [her] since 2002, as a result of which [she] continued to work in a hostile and unstable work environment until [she] was transferred out of the GDPDD Section in 2014.

e. Find that the 'restructuring' of the GDPDD Section in 2014 and [her] consequent transfer to the Office of the Legal Counsel to the Administration, in lieu of investigating the official complaints of harassment against Mr [B.S.] that were filed by [her] (as well as by [four of her former colleagues]), did not adequately discharge the Organization's duty of care to[wards] [her] or to[wards] [her] colleagues.

f. Award material damages of [...] 8,475.55 [Swiss francs] plus the result of the calculation in paragraph 9.13. of this [complaint].

g. Award moral damages of [...] 200,000 [Swiss francs] [including, as explained in her submissions, 140,000 Swiss francs claimed on behalf of former colleagues] in respect of the injury […] sustained between 2002 and 2013 owing to Mr [B.S.]'s harassment and abuse of authority [...] and the Organization's breach of its duty of care [...]

h. Award moral damages of [...] 80,000 [Swiss francs] in respect of the injury that [she] sustained in the 2014-2018 period arising from the Organization's breach of its duty of care to[wards] [her].

i. Find that the Administration's conduct towards [her] since [her] initiation of the internal appeal to the JAB, as evidenced by the Administration's legal arguments to the JAB, its refusal to send [her] an electronic copy of the JAB report, its proposed 'settlement offer' under which it denied all responsibility and the substance, tone and tenor of the Director-General's [f]inal [d]ecision constitutes, in the particular situation of this case, further harassment of [her] that has caused additional injury and is compensable through an award of moral damages.

j. Award moral damages of [...] 30,000 [Swiss francs] in respect of the injury that [she] sustained out of the Administration's treatment of [her] since the conclusion of the OIO investigation; including the legal arguments presented by the Administration in the JAB proceeding, the proposed settlement offer and the Director-General's [f]inal [d]ecision.

k. Find that the Organization was in breach of its duty of care to[wards] [her] former colleagues in the GDPDD Section of [the Languages, Documentation and Information Management] [(]LDIMD[)] by failing to act on the many complaints about Mr [B.S.] made by [her] colleagues and by [her] since 2002, as a result of which [her] colleagues worked in a hostile and unstable work environment.

> *l.* Find that the Organization's continuing duty of care to[wards] [her] former colleagues in the GDPDD Section of LDIMD, all of whom were identified in the OIO report as being victims of harassment and abuse of authority by Mr [B.S.], and all of whom were identified as having suffered compensable injury, which findings were also endorsed by the JAB, requires (i) that the Organization inform these colleagues of these events and (ii) that the Organization place these staff members in a position that they are able to exercise their rights to obtain compensation.
>
> *m.* Grant such other relief as the Tribunal deems necessary, just and fair.
>
> [She] also respectfully ask[s] the Tribunal to assess whether this case would justify an award of exemplary damages."

In addition, in her rejoinder, the complainant further asks the Tribunal to rule on the existence of a legal error in the "background note" placed in her personnel file.

2. In the impugned decision the Director-General rejected the complainant's request for additional compensation on the basis that it was irreceivable and that, in any event, the necessary evidence to support her claim for material damages had not been provided while her claim for moral damages was not justified. The chronology of events that led to the impugned decision is relevant for the assessment of the respective positions of the parties.

3. The impugned decision follows the recommendations of the JAB of 8 November 2019 by which the latter recommended that the Director-General reconsider his reply of 15 May 2019 that the complainant had appealed on 11 June 2019. This reply of 15 May 2019 answered the complainant's "request for imperative clarification" dated 9 April, pursuant to which she was asking for clarification on the decision of the Director-General imposing a disciplinary sanction upon Mr B.S. of 12 February 2019 and on the implicit decision contained therein not to address the damage done to her and seven other colleagues by the Administration's failure to abide by its duty of care until the opening of the investigation that started in September 2018.

The decision of the Director-General of 12 February 2019 was communicated to the complainant on 15 February 2019 because she was the person whose complaint led to the investigation report of the

OIO of 13 December 2018. The request for an investigation that led to the OIO report was submitted by the complainant on 3 August 2018.

The Tribunal observes that four years earlier, on 13 January 2014, the complainant had submitted another complaint requesting the opening of an investigation with respect to the harassment and abuse of authority of Mr B.S.. This complaint did not result in a formal investigation because of an agreement reached between her and the WTO following which the complainant was transferred to another position with effect as from 19 February 2014. The complainant indeed ceased working under the supervision of Mr B.S. in February 2014 and did not work closely with him or under his authority ever since after that transfer.

4. The Organization raises the irreceivability of the complaint on numerous grounds as a threshold issue. First, the WTO argues that many of the complainant's claims for relief, reproduced in consideration 1 above, are irreceivable because she seeks mere declarations (claims for relief *b*, *c*, *d*, *e* and *i*); second, the WTO maintains that the complainant has no legal standing to formulate claims on behalf of others (claims for relief *k*, *l* and part of relief *g*); and, third, the WTO considers that the complainant has not exhausted other means of redress available to her under the applicable staff regulations (claim for relief *j* and the claim raised in her rejoinder).

5. With respect to the claims for relief sought under *b*, *c*, *d*, *e* and *i*, the complainant justifies them in her rejoinder as follows:

> "1.2. [Her] appeal to the Tribunal concerns the existence of the right of a WTO staff member who is found in an investigation by the [OIO] to be a victim of harassment and abuse of authority, to compensation in respect of (i) the injury thereby occasioned, and (ii) breach of the organization's duty of care in failing to address the harassment and abuse of authority in a timely manner.
>
> 1.3. Given the particular circumstances of the case, [her] appeal also raises the question of how the [O]rganization should discharge its duty of care to staff who were also found, in the same investigation, to be victims of harassment and abuse of authority, and of the [O]rganization's breach of its duty of care to[wards] them, but who are not aware of those findings or of their legal entitlements because they were not authorized to be informed of the outcome of the harassment investigation in which they participated as witnesses."

The complainant misunderstands and misconceives the role of the Tribunal in this regard. According to the established case law, it is not for the Tribunal to make declarations of law of the nature sought (see, for example, Judgments 4246, consideration 11, 4245, consideration 9, 4244, consideration 8, 4243, consideration 27, 3876, consideration 2, and 3764, consideration 3).

As a result, the claims for relief *b*, *c*, *d*, *e* and *i* are irreceivable and should be rejected.

6. Turning to the claims for relief sought by the complainant under *k* and *l* and part of *g* (namely, for 140,000 Swiss francs out of the 200,000 Swiss francs claimed), it is clear from the submissions before the Tribunal that she is seeking declarations of law on behalf of other colleagues and moral damages on their behalf.

Besides the fact that, as stated above, it is not for the Tribunal to make declarations of law, the complainant does not provide evidence that she is acting on delegation of authority from the colleagues concerned, and she does not therefore have legal standing to make these kinds of requests on their behalf (see Judgments 4550, consideration 19, 4104, consideration 3, 2676, consideration 6, and 1979, consideration 4).

These claims for relief *k* and *l* and for part of relief *g*, namely, for 140,000 Swiss francs out of the 200,000 francs of moral damages sought, are also irreceivable and should be rejected.

7. With respect to her claim put forward in her rejoinder pertaining to the "background note" placed in her personnel file, the record indicates that its purpose was to summarize the circumstances of her transfer, in July 2020, from the Office of the Legal Counsel to another position of her choice because of the conflict of interest arising from her being part of that Office and at the same time pursuing this complaint before the Tribunal while that Office is defending the interests of the Organization. A cursory reading of this note indicates its objective; in a neutral tone, it explains why a temporary transfer of the complainant was made and its final version further incorporated almost all the suggestions of modifications made by the complainant's

own representative before it was finalized. The complainant did not submit any internal request for review in relation to that note and, consequently, this note has not been the subject of any final administrative decision such that the complainant has not exhausted the internal means of redress.

Any claim in this regard is therefore irreceivable.

8. The Tribunal adds that the claim for relief sought by the complainant under *m*, reproduced in consideration 1 above, is also irreceivable as formulated because of its general and unsubstantiated character. It should be rejected too.

9. Considering all the abovementioned claims for relief sought by the complainant in her complaint that are irreceivable for the reasons given, her remaining claims before the Tribunal are limited to (a) the setting aside of the impugned decision, (b) an award of material damages in an amount of 8,475.55 Swiss francs, plus the result of the calculation she proposes in paragraph 9.13 of her complaint, (c) an award of moral damages of 60,000 Swiss francs for the prejudice she said she sustained between 2002 and 2013, of 80,000 Swiss francs for the prejudice she said she suffered between 2014 and 2018 and of 30,000 Swiss francs for the prejudice she said she suffered in 2019 and 2020, and lastly, (d) an award of exemplary damages.

In this regard, the WTO argues that these remaining claims are irreceivable because, for the material damages, the complainant elected not to provide supporting evidence during the internal appeal process and opted to provide such evidence only before the Tribunal, demonstrating thereby that she had failed again to exhaust the internal means of redress to that extent. For the moral damages, the WTO considers that her failure to challenge the administrative decision by which she was transferred in February 2014 constitutes a bar to her claim for damages that could result from the consequences of any behaviour or improper conduct of Mr B.S. prior to that date. It maintains that when a complainant's grievance is time-barred when it is submitted, it is established that the complainant has then not exhausted all the internal means of redress.

For the WTO, the Tribunal has consistently stated that strict adherence to time limits is essential to have finality and certainty in relation to the legal effect of administrative decisions. Referring to Judgment 4103, consideration 1, it submits that when the applicable time limit to challenge a decision has passed, an organization is entitled to proceed on the basis that the decision is fully and legally effective.

10. The WTO maintains that the remaining claims for relief made by the complainant are also irreceivable because she did not challenge in due time the administrative decision pursuant to which she was transferred from her position effective as from 19 February 2014. For the WTO, the complainant indeed accepted this transfer and never, at any time, insisted upon pursuing the investigation on the conduct of Mr B.S. that she had requested and, as a result, any assessment of the consequences of the complaint she then filed. Having not done so, by claiming damages regarding the consequences she had already referred to in her first request for investigation in January 2014, the WTO argues that she is in reality challenging the wrong administrative decision in the situation where she had chosen, back in February 2014, not to contest the decision to transfer her. The WTO adds that the mechanism by which, under the rules, she had the standing to appeal the 12 February 2019 decision rendered by the Administration following the investigation of the OIO into the harassment of Mr B.S., does not entitle her to consider the administrative decision taken in this regard as an alleged implied refusal of the Administration to address her request for additional compensation. According to the WTO, its Staff Rules and Regulations do not provide for any such entitlement to the complainant.

11. The Tribunal observes that the assertions raised by the Organization in this regard are closely related to the arguments it raises on the lack of merits of both the material and moral damages claimed by the complainant. In this respect, the Tribunal finds that what the WTO qualifies as irreceivability arguments are more of the nature of a contestation on the merits of the remaining claims.

12. On the one hand, while it is indeed true that the complainant did not challenge the administrative decision by which she was transferred in 2014, and did not complain about what she considered to be the consequences of the actions of Mr B.S. towards her up to that point, the fact remains that a formal investigation was not pursued then and that no administrative decision had been taken at that time with regard to either the existence of this harassment, or the damages these actions could have caused her. Moreover, in the process that followed the complainant's "request for imperative clarification" of 9 April 2019, the Administration constantly made references to a process further to which it rendered what it qualified itself as a decision. Under such circumstances, the Tribunal does not accept that the decision that the complainant should have challenged was in reality that of her transfer back in February 2014.

13. With respect to the Organization's assertion that the Staff Rules and Regulations do not provide any entitlement to the complainant to appeal and claim compensation for her own injury as a result of the harassment or abuse of authority of another staff member, the Tribunal acknowledges that the Notice to the Staff OFFICE(14)/17 dated 16 October 2014, entitled "Provisional Procedure for Administrative Investigations and Disciplinary Actions", appears indeed to be of limited application inasmuch as it relates to the right to receive compensation for the staff member filing the complaint. At paragraph 20 of the introduction to this Provisional Procedure, the definition of "staff member(s) concerned" makes it clear that this refers to the staff member(s) with respect to whom a complaint has been filed or allegations of misconduct have been made. The procedure for administrative investigations that follows indicates that the focus is on the "staff member concerned", not the complainant. It is only because of paragraphs 3.2 and 3.6 of the Provisional Procedure that, in view of her status as complainant, the latter can appeal the final decision taken by the Director-General towards the "staff member concerned" pursuant to Staff Rule 114, as the complainant did in this case.

This does not justify however that, through this appeal process, the complainant could end up turning around the essence of the OIO investigation report and of the final decision taken in this respect into a claim for compensation focussed this time not on the harassment and abuse of authority actions of the perpetrator, but rather on the conduct of the Organization in this regard and its alleged failure to abide by its duty of care. The terms of this Provisional Procedure do not indicate that it was either the purpose, the object or the intent of this procedure.

14. Notwithstanding this, the Tribunal considers that the WTO's assertion, to the effect that no provision in the internal regulations, rules or policies directly provides for the possibility of a compensation to the individuals who filed a harassment complaint, is in tension with and indeed ignores its rather clear case law which recognises the right to such compensation when properly supported. In Judgment 4207, consideration 15, adopted by all seven judges, the Tribunal wrote the following on this issue:

> "It is observed that there are no specific provisions in the IAEA's Staff Regulations and Staff Rules that articulate a comprehensive procedure to deal with a claim of harassment of the type first discussed in the preceding consideration. In the absence of a lawful comprehensive procedure within the IAEA's Staff Regulations and Staff Rules to deal with a claim of harassment, the IAEA had to respond to the complainant's claim of harassment in accordance with the Tribunal's relevant case law. It is well settled in the case law that an international organization has a duty to provide a safe and adequate working environment for its staff members (see Judgment 2706, consideration 5, citing Judgment 2524). As well, 'given the serious nature of a claim of harassment, an international organization has an obligation to initiate the investigation itself [...]' (see Judgment 3347, consideration 14). Moreover, the investigation must be initiated promptly, conducted thoroughly and the facts must be determined objectively and in their overall context. Upon the conclusion of the investigation, the complainant is entitled to a response from the Administration regarding the claim of harassment. Additionally, as the Tribunal held in Judgment 2706, consideration 5, 'an international organisation is liable for all the injuries caused to a staff member by their supervisor acting in the course of his or her duties, when the victim is subjected to treatment that is an affront to his or her personal and professional dignity' (see also Judgments 1609, consideration 16, 1875, consideration 32, and 3170, consideration 33).

> Thus, an international organization must take proper actions to protect a victim of harassment."

These principles have been recognized by the Tribunal's case law in a number of situations before that Judgment 4207 (see, for example, Judgments 3995, consideration 9, and 3965, considerations 9 and 10) as well as after that Judgment 4207 (see, for example, Judgments 4547, consideration 3, and 4541, consideration 4).

The Tribunal does not therefore agree that the complainant's remaining claims for relief can be rejected as irreceivable.

15. On the merits of the complainant's claims for damages, some preliminary remarks are warranted. The basis for the compensation claims is the wording used by the OIO in the recommendations contained in its report, pursuant to which the Director-General's final decision on the disciplinary sanction imposed upon Mr B.S. was taken. More precisely, the OIO noted the following in the last three paragraphs of its report:

> «516. Dès lors, [l'OIO] déplore le fait que la situation dans la Section GDPDD ait perduré – et que [M. B. S.] ait joui d'une certaine impunité – pendant plus de 15 ans. [L'OIO] considère que l'Organisation a failli à son devoir de protection *("duty of care")* envers les nombreuses personnes qui, depuis 2001, ont dénoncé les agissements [de M. B. S.].
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> 517. Afin d'aider ces personnes à se reconstruire et à tourner la page du passé, [l'OIO] estime qu'il serait souhaitable que l'Organisation fasse **un geste fort** reconnaissant les souffrances qu'elles ont encourues tout au long de ces années.
>
> 518. Finalement, [l'OIO] souhaiterait mettre en avant le courage de la [p]laignante [...], qui a osé dénoncer les agissements [de M. B. S.] afin de protéger les fonctionnaires travaillant sous l'autorité de ce dernier.» (Emphasis added.)

The words *"un geste fort"* (a strong signal) form the basis upon which both the complainant and the JAB relied to justify the necessity for the Administration to grant financial compensation to the complainant. While the OIO in its report did not refer to a *"geste fort"* as being necessarily financial compensation, the JAB in its own report (that the impugned decision elected not to follow) recommended that the Director-General consider awarding compensation for material and moral damages

to the complainant as one of the victims of the harassment and abuse of authority committed by Mr B.S. and of the prolonged breach of the Organization's duty of care in this regard. The JAB did not however quantify these damages. As regards material damages, it indicated that further information would likely be required to permit an assessment of any injury suffered. As regards moral damages, it considered that what it found on the evidence offered as amounting to the Organization's failure to take appropriate action "over more than [fifteen] years despite multiple and repeated complaints from affected staff" constituted a particularly egregious breach of the duty of care and that such failure had "a particularly far reaching impact on the rights and the working conditions" of the complainant. For his part, in the impugned decision, the Director-General considered that, on the merits, the claim for material damages was not substantiated with proper evidence, while for moral damages, the evidence offered did not support the compensation sought.

16. The Tribunal observes that the WTO's position is not that victims of harassment are not entitled to compensation. It rather argues that relief must be confined to compensation for the injury caused and that a finding of an unlawful act does not in itself establish a sufficient ground for compensation. The Tribunal in fact understands from the assertions contained in the WTO's pleadings that the Organization recognizes the complainant's strong emotions in relation to her request for additional compensation and does not wish, by its contestation, to belittle her feelings in this regard in any way. The WTO emphasizes, however, that any requests for additional compensation sought by the complainant must still meet the applicable legal requirements. On this matter, the Tribunal's case law indicates that any complainant seeking compensation for material or moral damages must provide clear evidence of the injury suffered, of the alleged unlawful act, and of the causal link between the injury and the unlawful act (see, for instance, Judgments 4158, consideration 4, 3778, consideration 4, 2471, consideration 5, 1942, consideration 6, and 732, consideration 3), and that it is the complainant who bears the burden of proof in this respect (see Judgments 4158, consideration 4, 4157, consideration 7, and 4156, consideration 5).

17. On the material damages, the complainant, having withdrawn her claim relating to medical expenses, refers to two quantifying elements: language training courses expenses which she had to pay as Mr B.S. denied her those courses, and special post allowance (SPA) for performing what she refers to as G7 duties.

With respect to the language training courses and the SPA claims, the Tribunal considers that they should be rejected. The complainant did not provide any evidence to the effect that she submitted to the Organization at the relevant time any formal request for the language training courses expenses that she identified for the period between September 2006 and December 2006. Similarly, for the SPA, which the complainant appears to base on a calculation of the difference between the G7 grade that she should have been granted and the classification that she was in fact kept at, the record does not indicate any formal request presented by the complainant to the WTO in this regard at any point in time during the period she identified as ranging from 2004 to 2013.

The claim for material damages must consequently be rejected in its entirety.

18. Turning to the moral damages, the complainant identifies three specific periods with respect to which she claims them: (1) 200,000 Swiss francs for the period 2001-2013 but, in reality, only 60,000 Swiss francs inasmuch as she is concerned as previously explained; (2) 80,000 Swiss francs for the period 2014-2018; and (3) 30,000 Swiss francs for the period 2019-2020.

With respect to the claim for the last of these three periods, she refers to the WTO's conduct towards her following the lodging of her internal appeal in 2019, including regarding the legal arguments of the Organization before the JAB, the settlement discussion process that followed and the tone of the exchanges that lead to the impugned decision. Given the findings of the Tribunal, this claim must be rejected in the absence of any demonstration of an unlawful act of the Organization in this regard during that specific period.

With respect to the second period of 2014-2018, the Tribunal determined, in Judgment 4601, also delivered in public this day, pertaining to the decision of the Director-General of 12 February 2019 imposing a disciplinary sanction upon Mr B.S., that this decision should be set aside considering notably that the investigation report of the OIO of 13 December 2018 did not identify any evidence supporting the existence of harassment and abuse of authority by Mr B.S. during that period. In particular, with respect to the complainant herself, the Tribunal observed that she stopped working under the supervision of Mr B.S. following her transfer of February 2014. Given this, the claim for moral damages for that period cannot be sustained.

As far as the first period is concerned however the Tribunal cannot ignore that, in his decision of 12 February 2019, the Director-General expressly endorsed the factual findings of the OIO, which included, amongst others, the paragraphs on the impact on the physical and psychological integrity of the complainant, the paragraph on the abuse of authority of Mr B.S., and the one on the failure of the Organization with regard to its duty of care. Given this, the Tribunal does not accept the assertion of the WTO that moral injury has not been established by the complainant for that period nor that the causal link necessary to support her claim in this regard is inexistant. To the contrary, the conclusion of the Director-General found in the impugned decision, to the effect that the JAB erred in recommending that the complainant receive compensation for moral injury in any regard, should be set aside as being tainted by a gross error to that extent.

While the Tribunal should normally, under such circumstances, remit the matter for reconsideration by the Director-General for that period, in view of the time elapsed and the fact that it is able to assess the value of these moral damages, it would be inappropriate to do so.

19. The Tribunal observes that, in acknowledging, as the complainant did, that her transfer in February 2014 caused "fireworks in her brain" and made her very happy to see this opportunity open – statements that she made at a time very close to the submission of her first request for investigation –, and given that she did not then pursue

any steps following this transfer as a result of the consequences she said she suffered from the situation of the prior years, the evidence does not support the existence of a moral injury of the magnitude claimed by the complainant for that period, namely 60,000 Swiss francs. Conversely, having regard to the abovementioned admissions of the Director-General and the findings of the OIO in its report, the Tribunal does not accept the assertion of the Organization that there is simply no evidence of moral injury suffered by the complainant. In the specific circumstances of the case, the Tribunal assesses the moral injury for the period 2001-2013 in the amount of 10,000 Swiss francs.

20. Lastly, the complainant's claim for exemplary damages is unfounded. She provided no evidence or analysis to demonstrate that there was any basis for such an award (see, for example, Judgment 4286, consideration 19).

21. As the complainant succeeds in part, the WTO will be ordered to pay her 500 Swiss francs in costs.

DECISION

For the above reasons,

1. The impugned decision of the Director-General of 18 December 2019 is set aside to the extent stated in considerations 18 and 19 above.
2. The WTO shall pay the complainant 10,000 Swiss francs in moral damages.
3. The WTO shall also pay the complainant costs in the amount of 500 Swiss francs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 9 November 2022, Mr Patrick Frydman, Vice-President of the Tribunal, Mr Jacques Jaumotte, Judge, and Mr Clément Gascon, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

PATRICK FRYDMAN

JACQUES JAUMOTTE

CLÉMENT GASCON

DRAŽEN PETROVIĆ