P.

v.

PAHO

136th Session **Judgment No. 4674**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms F. P. against the Pan American Health Organization (PAHO) (World Health Organization) on 12 November 2019, PAHO's reply of 31 July 2020, the complainant's rejoinder of 19 January 2021 and PAHO's surrejoinder of 26 April 2021;

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

Having examined the written submissions;

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

The complainant challenges the decision to dismiss her for misconduct.

The complainant joined PAHO as Director of the Department of Procurement and Supply Management (PRO) in January 2008. She held a fixed-term appointment which was extended several times.

By a letter of 14 September 2016 addressed to the Director of PAHO, the Staff Association requested an investigation into alleged harassment by the complainant, indicating that there had been "numerous complaints" from PRO staff concerning her behaviour. The Staff Association's letter was forwarded to the Ethics Office, which was asked to investigate the matter without delay. On 13 October 2016, a meeting took place between the Ethics Program Manager and two PRO

staff members, accompanied by two Staff Association members who had helped to arrange the meeting. In light of the information gleaned from that meeting and from the Staff Association's letter, PAHO decided that a full investigation should be conducted. A formal notice of investigation was sent to the complainant on 9 November 2016.

The investigation was conducted by an external investigator under the oversight of the Ethics Office. The investigator interviewed all the staff of PRO, including the complainant, as well as several former staff members. As from 30 January 2017, the complainant was placed on administrative leave with full pay pending the completion of the investigation.

The Ethics Office submitted the investigator's report to the Director of Human Resources Management (HRM) in May 2017. By a letter of 8 June 2017, the Director of HRM notified the complainant that, based on the findings of the investigation, she was charged with misconduct on three counts, namely bullying, creating a hostile work environment and breach of confidentiality. The charge of bullying included publicly humiliating subordinates, threatening staff with job loss without just cause, discriminating against agency personnel, isolating staff, and discouraging staff from exercising their right to nursing leave. The charge of creating a hostile work environment covered the complainant's general behaviour, communication style and treatment of staff, yelling and using profanity, making staff feel obliged to come to work when the office was officially closed, and her allegedly inappropriate work attire. The charge of breach of confidentiality arose from her having allegedly approached a PRO staff member to obtain information about the investigation after having been specifically instructed not to discuss the investigation with anyone.

After having considered the complainant's response to these charges, the Director of HRM informed her by letter of 20 October 2017 that there was "sufficient evidence to substantiate the preliminary findings set forth in the [letter of charges]" and that the Organization had therefore decided to dismiss her for misconduct. The complainant was granted one month's pay in lieu of notice.

On 2 November 2017, HRM sent a letter to the complainant detailing her entitlements upon separation and the exit formalities to be completed. This letter mentioned, among other things, that she was entitled to a lump sum payment in respect of unused accrued annual leave not exceeding a total of 480 hours, in accordance with Staff Rule 630.8.

On 6 November 2017, the complainant lodged an internal appeal challenging the decision to dismiss her for misconduct. On 25 January 2018, she filed another appeal, challenging the decision to limit the lump sum payment for unused accrued annual leave to 480 hours. In a report dated 17 June 2019, the Board of Appeal recommended that both appeals be denied in their entirety. Although it considered that some of the allegations mentioned in the letter of charges were petty, frivolous, or simply did not amount to harassing conduct, the Board found that the bulk of the evidence pointed to serious violations of the Harassment Policy and that the penalty of dismissal was reasonable. It considered that the appeal concerning the lump sum payment for accrued annual leave was time-barred, having been filed outside the 60-day time limit provided for in Staff Rule 1230.4.

By a letter of 16 August 2019, the PAHO Director notified the complainant of her decision to accept the recommendation of the Board of Appeal. That is the impugned decision.

The complainant asks the Tribunal to quash the impugned decision and to order her retroactive reinstatement with all legal consequences, including with respect to salary and pension entitlements. She also asks the Tribunal to find that the decision to place her on administrative leave was unlawful and to order the removal from her personal file of any documents relating to that decision. She claims damages of at least 100,000 Swiss francs in respect of the administrative leave decision, at least 500,000 Swiss francs for wrongly accusing her of harassment and dismissing her for misconduct, taking into account the harm done to her personal and professional reputation, and a further 100,000 Swiss francs for PAHO's failure to investigate "promptly and seriously" the harassment complaint that she lodged against various members of the Administration in September 2017. She seeks an order for an investigation

by an independent external investigator into her allegations of harassment. In addition, the complainant seeks compensation for 160 hours of annual leave accrued in 2017, payment of her son's special education grant, which she had to reimburse upon separation, costs, and interest at the rate of 5 per cent per annum on all sums awarded to her.

PAHO asks the Tribunal to dismiss the complaint as being without merit.

CONSIDERATIONS

1. The complainant was a member of staff of PAHO until her dismissal in October 2017 for misconduct. An overview of the circumstances which led to her dismissal is sufficiently set out earlier in this judgment. In November 2017, the complainant lodged an internal appeal challenging her dismissal and, in January 2018, she lodged a further internal appeal about the emoluments she was paid upon termination. In a report of 17 June 2019, the Board of Appeal recommended that both appeals be "denied in [their] entirety", the second on the specific basis that it was time-barred. On 16 August 2019, the Director accepted the Board's recommendations and dismissed the appeals. This is the decision impugned in these proceedings.

2. In her brief, the complainant advances her arguments under several headings. The first general heading is that "the facts retained were time-barred". The second general heading is that the preliminary investigation was unlawful. Under this general heading there are two subheadings. The first is that unlawfulness attended the grounds leading to the initiation of such preliminary procedure. The second is that unlawfulness attended the decision taken to initiate the official investigation. The third general heading is that the Organization violated the complainant's due process rights. Under this general heading are several subheadings. The first concerns the denial of the investigation report and other documents, the second concerns the lack of experience and independence on the part of the investigator and the third is that the investigation process was flawed. This last-mentioned subheading

contains, in turn, several subheadings. The first is that there had been no recording of witness interviews, the second is the lack of signature of the records of interview, the third is that the complainant was not able to "counter examine" the witnesses and the fourth is that the investigator had arbitrarily decided not to interview the Ombudsman, the PAHO Director, the Director of Human Resources Management (HRM) and the Director of Administration.

3. The fourth general heading is that the decision to place the complainant on administrative leave was unlawful. The fifth general heading is that the complainant has not committed misconduct. Under this general heading are several subheadings. The first concerns preliminary remarks. The second concerns the alleged acts of harassment committed by the complainant, namely, yelling and profanity towards three named employees, demeaning and belittling subordinates, intimidation and threatening subordinates with loss of current or future employment, threatening staff with loss of rights such as nursing leave, excluding staff from meetings, verbally abusing staff and causing them to cry, ignoring or isolating staff and, lastly, breach of confidentiality. The third subheading is that the complainant has not created a hostile work environment. The fourth is that certain allegations of harassment were abandoned by PAHO and the fifth sets out the conclusion that the Organization failed to prove misconduct beyond reasonable doubt.

4. The sixth general heading is that the decision to dismiss the complainant was unlawful. Under this general heading are two subheadings. The first is that the decision was unlawful. The second is that the decision to dismiss the complainant was disproportionate to the alleged offences. The seventh general heading is that the decision not to grant the complainant compensation for untaken annual leave was unlawful. The eighth general heading is that the Organization violated the principle of equal treatment. Following this general heading is a section of the brief headed "CONCLUSIONS". Without abandoning any of the earlier arguments, the complainant identifies seven reasons why the impugned decision should be set aside. The first reason is that

the complainant's due process rights, especially her right to be heard, had been grossly breached. The second reason is that the complainant had not been given the benefit of the doubt and the Organization had not proved the facts beyond reasonable doubt. The third reason is that the investigation was severely flawed by the inexperience and the lack of independence of the investigator, and the irregularities that she committed during the investigation. The fourth reason is that the complainant's acts, taken separately or globally, did not amount to misconduct. The fifth reason is that the complainant was unlawfully placed on administrative leave on 27 January 2017. The sixth reason is that, based on the preceding arguments, the complainant's contract was unlawfully terminated. The seventh reason is that the Organization had violated the principle of equal treatment.

5. Before considering any of these various issues, it is desirable to refer to the role of reports or opinions of internal appeal bodies in the Tribunal's consideration of issues raised in a complaint. It has been put in a variety of ways, and comparatively recently in Judgment 4644, consideration 5:

> "[If the internal appeal body's opinion] is balanced and considered, [...] its findings and conclusions must be given considerable deference (see, for example, Judgments 4488, consideration 7, 4407, consideration 3, and 3858, consideration 8)."

Indeed, also comparatively recently, the Tribunal said, in relation to both the opinion of an internal appeals body and an investigative body established by the rules of the organization concerned, in Judgment 4237, consideration 12:

> "According to the Tribunal's case law (see, for example, Judgments 3757, under 6, 4024, under 6, 4026, under 5, and 4091, under 17), 'where an internal appeal body has heard evidence and made findings of fact, the Tribunal will only interfere if there is manifest error (see Judgment 3439, consideration 7)'. Moreover, where there is an investigation by an investigative body in disciplinary proceedings, 'it is not the Tribunal's role to reweigh the evidence collected by an investigative body the members of which, having directly met and heard the persons concerned or implicated, were able immediately to assess the reliability of their testimony. For that reason, reserve must be exercised before calling into question the findings of such a body and reviewing its assessment of the evidence. The Tribunal

> will interfere only in the case of manifest error (see Judgments 3682, under 8, and 3593, under 12)' (see Judgment 3757, under 6)."

It is true that the Board of Appeal did not hear the witnesses in the present case. It did, however, review a large amount of documentary material, including the records of interviews, and made findings of fact based on this material. The opinion of the Board of Appeal is, on some relevant matters, balanced and considered and has to be given the deference spoken of in the Tribunal's case law.

6. From the various arguments outlined above in considerations 2, 3 and 4, at least one material flaw founding the decision to dismiss the complainant emerges which taints the decision and warrants it being set aside. It is unnecessary to consider the myriad of specific arguments just outlined. It is also unnecessary to consider the pleas of the complainant disputing, and the pleas of PAHO asserting, that the complainant engaged in all or most of the conduct on which the charges against her were based and this was established beyond reasonable doubt.

7. In the present case, the Board summarised, in its written opinion, the conduct of the complainant which it was satisfied was proved. It made, in this respect, findings of fact to which deference should be shown. The conduct was listed under eight numbered clauses. The first was yelling at subordinates, including using profanity, the second was demeaning and belittling subordinates, the third was intimidating subordinates and threatening them with loss of current or future employment, the fourth was threatening staff with loss of rights such as nursing leave, the fifth was excluding or removing staff from meetings or PAHO events in a way that was humiliating, the sixth was engaging in verbal abuse that caused some staff to cry and that was psychologically harmful, the seventh was ignoring or isolating staff with whom she was dissatisfied and the eighth was discussing the investigation with another staff member even after she was told the investigation should remain confidential.

8. A page later the Board dealt with an argument of the complainant that the alleged misconduct goes so far back in time that management had ample opportunity to bring complaints to her attention so that she could correct her behaviour. The Board then said:

> "[The complainant] notes, for example, some allegations were brought to the attention of the Director of Administration and that she could have either been given a lower level of discipline or had the issue raised in a performance evaluation. She implies that she has been subjected to termination without warning."

However, the Board went on to say:

> "[The complainant's] argument in this respect might have had some merit were it not for the fact that **some** [emphasis added] of her conduct was so clearly out of bounds that she could not help but know that it was improper. [The complainant] herself admits that she had reduced [an identified staff member] to tears on one occasion. Other staff also stated that they observed [the complainant] make staff members cry. [The complainant] did not need prior warning that, when her actions provoked such reaction, she had exceeded the norms of appropriate management. She did not need to be warned that yelling at and hectoring of subordinates to the point of tears is potentially harassing conduct. [The complainant] was also explicitly warned by the Director of Administration that her threats to [another named staff member] (i.e., that he might risk losing future employment opportunities with PAHO if he followed his wife to a new job in the Caribbean) and would have known from this warning that her management style by subtle intimidation was crossing a line. The fact that [the complainant] was not given [a] lesser punishment for earlier individual offenses does not mean that the Organization forfeited its right to discipline [the complainant] for creating a hostile work environment over an extended period of time."

The Board then noted that the complainant was a supervisor charged with enforcing the rules under the Harassment Policy and was expected to understand that policy in order to protect her subordinates.

9. A difficulty with this approach of the Board is that while it may be true, based on its findings, that the complainant should have known, and possibly inferentially did know, "some" of her conduct was harassment, the Board made no finding that this was true of all the conduct charged against her as misconduct and proven to its satisfaction. This is not a case where each alleged act of misconduct was identified, separately, as warranting the sanction of dismissal. It

was the aggregation of conduct "creating a hostile work environment over an extended period of time" which underlay the decision to dismiss. Additionally, one instance where the complainant had caused staff to cry occurred within two years of the complaint against her being lodged by the Staff Association in September 2016. Her complaint about lack of warning was directed to events over the entire preceding nine years comprehended by the charges, which events occurred, in the main, before 2014.

10. In the impugned decision, the Director effectively repeated this flawed analysis of the Board though, significantly, omitted the word "some" (referred to earlier) in saying that "the Board found that your conduct was 'so clearly out of bounds that [you] could not help but know that it was improper'". As just discussed, no such compendious finding was made by the Board in relation to all the conduct relied upon by the Director in confirming the dismissal of the complainant by rejecting her appeal. This material flaw in the analysis by the Director was compounded by her saying that the complainant's assertion that the Director of Administration and the HRM Director "tolerated" her conduct did not provide the complainant with a defence when her actions were so obviously a violation of the Harassment Policy. This comment is not motivated save to the extent that it involved a purported adoption of what the Board had concluded. No such general conclusion had been reached by the Board, as just discussed.

11. One matter of detail relevant to this discussion should be mentioned. The investigator did not interview the Director of Administration and the HRM Director and two other senior officials including the PAHO Director. This failure was addressed by the Board. In relation to the Director of Administration and the HRM Director the Board said, addressing an argument of PAHO that they would have had only second-hand knowledge of the complainant's conduct:

> "That argument is without merit. [...]
>
> The Board also agrees with [the complainant] that it would have been appropriate for the investigator to interview the Administration Director, since he was [the complainant's] supervisor, and the HRM Director, who

> had previously interacted with [the complainant] and her staff. **There is evidence in the record suggesting that these two individuals may have been aware of [the complainant's] alleged harassing conduct.**" (Emphasis added.)

The Tribunal agrees.

12. Importantly the Board then said shortly after:

> "The investigator should have determined whether these two senior officials looked the other way or condoned [the complainant's] behavior. If so, then they too would have been potentially guilty of violating PAHO's Harassment Policy."

The first part of this statement is correct. The second part is substantially beside the point. What was important was whether these two senior officials looked the other way or condoned the complainant's behaviour and, notwithstanding, took no steps to raise with her by way of warning, counselling or otherwise, the way she was managing her Department. The Board went on to say:

> "Having made this observation, however, the Board cannot go so far as to say that the investigator's failure to interview the Directors of HRM and Administration deprived [the complainant] of due process. The Board has considered whether it should call these two individuals as witnesses in this appeal proceeding. It has decided not to do so because, as explained more fully below, [the complainant] has not shown that she was prejudiced by the investigator's inaction with respect to the two Directors."

The concluding observations concerning prejudice related to the Board's view discussed earlier that the complainant must have known her impugned conduct was in contravention of the Harassment Policy. That is to say, there was no need to establish that her behaviour was condoned because she knew, herself, her conduct was harassment. But as already explained, this only concerned some, and by no means all, of the complainant's conduct and, in any event, her knowledge did not absolve her superiors from raising with the complainant, her conduct.

13. The failure of the investigator to interview, and the Board to call as witnesses, the Director of Administration and the HRM Director had the result that direct evidence concerning the state of knowledge of the two officials who might have raised with the complainant her

conduct, is limited. However, an inference can comfortably be drawn that the complainant's superiors generally knew of the manner in which she managed her Department, which was later the subject of the charges. Firstly, it is inherently unlikely they would not have come to know of how she managed her Department over a period of nine years; secondly, there is the finding of the Board set out in consideration 11 above; and thirdly, PAHO has not defended these proceedings on the basis that the superiors did not know but rather on the basis that, in the circumstances, there was no need for them to warn the complainant about her conduct. There is sufficient material in the record to establish that enough was known about the complainant's conduct to have justified one or both of them raising with the complainant her managerial style in terms that would have permitted her to change her behaviour.

14. In her pleas, the complainant points to the fact that during the period in which the events occurred, spanning nine years, her conduct as a senior and supervising official managing the Department of Procurement and Supply Management as its Director was never called into question in performance evaluations nor was it suggested there were deficiencies in her communication skills or personal competencies. In her brief, she also puts it in terms of never having received a warning so as to allow her to improve, to avoid further similar acts or to re-establish, if it was necessary, a respectful work environment. These statements are not challenged by PAHO.

15. It is instructive, at this point, to consider a recent decision of the Tribunal, also concerning PAHO, in Judgment 4540. In that matter the complainant, at relevant times an administrative assistant, was charged with misconduct including creating a hostile work environment, personal harassment and bullying. The initial decision to dismiss her was based on this proven misconduct. In the internal appeal she then brought, the Board of Appeal concluded that the complainant had, among other things, violated PAHO's Harassment Policy and this constituted misconduct. However, the Board concluded the disciplinary measure of dismissal was disproportionate. The Director disagreed with

this conclusion but decided to dismiss the complainant for unsuitability for international service rather than for misconduct. The complainant successfully challenged this decision in the Tribunal because she had been given no written warning as required by Staff Rule 1070 (governing termination for unsuitability for international service). In consideration 10 the Tribunal said:

> "The findings of the [Board] referred to at the conclusion of the preceding consideration are, on the material before the Tribunal, correct."

Part of what was said in the concluding part of that preceding consideration was that the Board had observed:

> "the due process requirement of fair warning is applicable to both charges of misconduct and unsatisfactory performance. [The complainant] was entitled to warning that having an angry face or speaking angrily in a loud voice was a potential ground for dismissal".

16. Certainly in the case of unsatisfactory performance, the Tribunal's case law casts a duty on the organisation to inform a staff member of their unsatisfactory performance and effectively give them a warning that their performance needs to improve otherwise there is a risk of dismissal. In Judgment 3911 the Tribunal said:

> "12. The Tribunal's statement in Judgment 1546, consideration 18, upon which the Organization relies, is no authority for the Organization's proposition that, in the absence of [...] an express provision which confers a right to a prior written warning, a staff member's right under the general principles of law is merely a right to be heard before dismissal for unsatisfactory performance.
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> 13. In the second place, while the right to a prior written warning may be conferred by an organization's internal rules, the Tribunal has also stated that it may arise from a general principle of law based on the organization's duty of good faith and duty of care to its staff members. The complainant also pleads this in ground 7.
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> 14. It is noteworthy that the decision in Judgment 2529, consideration 15, was made in reliance on the following statement of principle in Judgment 2414, consideration 23:
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> '15. The Tribunal's case law is voluminous and consistent to the effect that an organisation owes it to its employees, especially probationers, to guide them in the performance of their duties and to warn them in specific terms if they are not giving satisfaction and are in risk of

dismissal. (See Judgment 1212.) More recently, in Judgment 2414 the Tribunal held that:

"'23. [...] A staff member whose service is not considered satisfactory is entitled to be informed in a timely manner as to the unsatisfactory aspects of his or her service so that steps can be taken to remedy the situation. Moreover, he or she is entitled to have objectives set in advance so that he or she will know the yardstick by which future performance will be assessed. These are fundamental aspects of the duty of an international organisation to act in good faith towards its staff members and to respect their dignity. That is why it was said in Judgment 2170 that an organisation must 'conduct its affairs in a way that allows its employees to rely on the fact that [its rules] will be followed"'.'

15. The Organization suggests that the complainant was adequately warned through his supervisor in several discussions about deficiencies in his performance. The Mediator noted in his report that the Organization's evidence concerning this refers to the last four months in 2014 and to single incidents rather than to the complainant's assessment as a whole. He concluded that while there were signs that the complainant's supervisor may have been dissatisfied with his performance, there was nothing which constituted a warning to him that he risked termination for professional inadequacy if his service did not improve. According to the Mediator, the first document which warned the complainant in this way was an email of 8 July 2015. The Tribunal has seen no evidence in the file which would lead to a different conclusion. It is noted that the complainant received a further written warning by email dated 27 July 2015. He was again invited to a meeting on 29 July 2015 with the Human Resources Department and his line management to give his views on the Director-General's intention stated in the emails. It is also noted that less than a month after the email, on 3 August 2015, he was informed of the decision to terminate his contract. There is no evidence that he was given an opportunity to improve his performance after he received the written warning.

16. In the foregoing premises, the complaint is well founded on ground 6 as the complainant did not receive timely or adequate warning that he risked termination of his appointment if his performance did not improve. By extension, it is also well founded on ground 7, particularly as it is apparent that the complainant was subjected to actions and circumstances which did not show the respect for his dignity which an international organization is required to accord its staff members."

17. There is no bright line distinguishing or separating conduct which constitutes unsatisfactory performance and some conduct which can be characterised as misconduct. The same conduct may be both. Judgment 4540 illustrates this point. Plainly, there will be situations where conduct constituting misconduct which could not be simply characterised as unsatisfactory performance, can lead to dismissal without any warning. Obvious examples would be theft, fraud or a serious assault on a fellow staff member occasioning actual bodily harm. That is one extreme. However, in circumstances such as the present, where generally the essential complaint was about the management style of a staff member (albeit, in this case, a forceful management style characterised as harassment by the Organization), it could be expected that the person concerned would be warned or counselled that her or his management style needed to alter, perhaps even radically and quickly, and if it did not, dismissal might follow. That is particularly so if the conduct is remediable and specific aspects of the conduct are not, in isolation, egregious even if, cumulatively, they might be. As noted earlier in relation to these proceedings, this is not a case where each alleged act of misconduct was identified, separately, as warranting the sanction of dismissal. It was the aggregation of conduct "creating a hostile work environment over an extended period of time" which underlay the decision to dismiss the complainant.

18. Her plea that she received no warning or counselling and should have, is well founded. The decision to dismiss the complainant should be set aside.

19. In these proceedings the complainant also challenges a decision made in January 2017 to place her on administrative leave with pay. She was formally advised of this decision by letter dated 27 January 2017. No issue is raised about the receivability of this claim. As with a decision to suspend (see, for example, Judgment 4452, consideration 7), the decision to place the complainant on administrative leave with pay was a discretionary decision which is subject only to limited review. Such a review is limited to questions of whether the decision was taken without authority, was in breach of a rule of form or

procedure, was based on an error of fact or law, involved an essential fact being overlooked or constituted an abuse of authority. The complainant has not established that an error of this character attended the decision to place her on administrative leave with pay.

20. One further issue needs to be considered before addressing the question of relief for the unlawful dismissal. The complainant raises a discrete issue in her complaint about the amount she was paid on her termination referable to her annual leave entitlements. Her appeal on this question was viewed by the Board of Appeal as out of time and, on that basis, was not receivable. That conclusion was based on the premise that the complainant was notified of the amount of unused annual leave days she would be paid on 2 November 2017 and she did not lodge her notice of intention to appeal until 25 January 2018, outside the 60 days stipulated by Staff Rule 1230.4.3. In her brief, the complainant asserts she was notified of the decision on 11 January 2018, referring to an email of that date from the Director of HRM. PAHO's contention that the notification took place on 2 November 2017 is evidenced by a letter of that date. Accordingly, the Board of Appeal was correct in treating her appeal in this respect as irreceivable with the result that her complaint challenging the annual leave payment is not receivable before the Tribunal having regard to Article VII of the Tribunal's Statute.

21. The relief sought by the complainant which remains for consideration, apart from setting aside the decision to dismiss her, is whether an order should be made for reinstatement and whether moral and material damages should be awarded (and additionally exemplary damages) and if so in what amount. The complainant also seeks the reimbursement of a special education grant (in the sum of 45,000 United States dollars) which she received for the benefit of her son and which she was required to repay PAHO when she was dismissed.

22. Nothing is said in the pleas about why, in this case, an award of exemplary damages is justified and appropriate. Accordingly, this claim is rejected. Next to nothing is said in the pleas about the special education grant beyond noting it was deducted from monies paid for accrued annual leave upon the termination of the complainant's employment. In the absence of any explanation concerning the basis on which it was paid and the ostensible legal basis on which it was recovered, it is not possible to conclude an order should be made requiring its reimbursement. Notwithstanding, it is a matter to be taken into account when assessing what are the appropriate material damages, given that the decision to dismiss the complainant was unlawful and will be set aside.

23. It would not be appropriate to order reinstatement. Almost self-evidently, the necessary trust and confidence between the complainant and PAHO could not be recreated or created to sustain future employment of the complainant with the Organization (see, for example, Judgments 4456, consideration 18, 4310, consideration 13, and 3364, consideration 27). Moreover, the complainant was on a fixed-term contract (which appears to have expired in the meantime), and it is only in exceptional cases that reinstatement might be ordered in that context (see, for example, Judgment 4063, consideration 11). This case is not exceptional.

24. The complainant is entitled to moral damages. There is medical evidence about her emotional state at the time of her dismissal. She was suffering from stress, anxiety and depression. There is little room to doubt that termination in the circumstances evidenced in this case would have been stressful and even traumatic. The complainant is entitled to 40,000 Swiss francs as moral damages.

25. Because of her dismissal, the complainant lost the opportunity of continuing in employment at a senior level with PAHO. She is entitled to material damages assessed in the sum of 120,000 Swiss francs.

26. The complainant is entitled to an order for costs which are assessed in the sum of 10,000 Swiss francs.

27. One of the complainant's grievances raised in these proceedings was that she was never provided with a copy of the investigator's report even though she requested it on several occasions. This founds one of her pleas concerning lack of due process. It is appropriate to record that the Tribunal sought a copy of the report from PAHO, which provided it. However, it has been unnecessary for the Tribunal to have recourse to the contents of the report to determine this complaint. Accordingly, it has been unnecessary to address the question of whether the complainant, or at least her counsel, might be given access to the report in these proceedings in light of the fact it had been provided to the Tribunal.

DECISION

For the above reasons,

1. The impugned decision of 16 August 2019 and the decision of 20 October 2017 to dismiss the complainant are set aside.
2. PAHO shall pay the complainant 40,000 Swiss francs in moral damages.
3. PAHO shall pay the complainant 120,000 Swiss francs in material damages.
4. PAHO shall pay the complainant 10,000 Swiss francs for costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 22 May 2023, Mr Michael F. Moore, President of the Tribunal, Sir Hugh A. Rawlins, Judge, and Ms Rosanna De Nictolis, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 7 July 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

HUGH A. RAWLINS

ROSANNA DE NICTOLIS

DRAŽEN PETROVIĆ