

The Administrative Tribunal,

Considering the second complaint filed by Mrs B. J. R. against the United Nations Industrial Development Organization (UNIDO) on 20 December 2000 and corrected on 9 April 2001, UNIDO's reply of 1 August 2001, the complainant's rejoinder of 11 January 2002 and the Organization's surrejoinder of 2 May 2002;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. Facts relevant to this case are to be found in Judgment 1482, delivered on 1 February 1996, in which the Tribunal ruled on the complainant's first complaint. In 1993 UNIDO undertook a staff retrenchment exercise. The complainant's service was terminated with effect from 30 November 1997, at age 55, under an agreed termination arrangement signed in December 1993. From 1 December 1993 to 30 September 1994 she was on special leave with full pay. Thereafter, she was to remain on special leave without pay until the date of termination. Health problems she was experiencing resulted in her hospitalisation on 4 October 1995, and on 29 January 1996 she submitted an application to the Staff Pension Committee for a disability benefit through the United Nations Joint Staff Pension Fund (UNJSPF).

Article 33 of the Regulations of the Fund relates to the payment of disability benefit and provides, in part, as follows:

"(a) A disability benefit shall, subject to article 41, be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration.

(b) The benefit shall commence on separation or, if earlier, on the expiration of the paid leave due to the participant and shall continue for as long as the participant remains incapacitated, provided that after age 55 incapacity shall be deemed to be permanent."

In a letter of 20 March 1996 the Chief of Personnel Administration and Social Security Section told the complainant that her request for disability benefit affected the termination agreement that had been signed. She drew her attention to Article 33(b), which said that payment of disability benefit would normally commence "on separation", or, if earlier, "on the expiration of the paid leave due to the participant". She went on to say that since the complainant was on leave without pay under the termination arrangement, benefit could only become payable on 1 December 1997 upon her separation, and UNIDO's Staff Pension Committee should make the necessary review nearer that time. The complainant wanted her application for benefit to be referred directly to the Committee. In a letter of 26 May 1996 to the Secretary of the Staff Pension Committee she protested about the delay. She suffered a stroke on 9 January 1997.

In a letter of 12 February 1997 the Director of Personnel Services told her that, because of the necessity of complying with Article 33(b), payment of disability benefit before separation would only be possible if a "new administrative regime" was implemented for her in replacement of the terms of the agreed termination. Under the regime, the period from 1 December 1993 to 5 October 1995 would be considered as leave without pay; she would then be reinstated into pay status for the purpose of exhausting all paid leave entitlements, as required by the article, and would subsequently be separated from service "for health reasons" with disability benefit commencing the day following separation. If she did not accept that solution, the position outlined to her on 20 March 1996

would stand. On 13 March 1997 the complainant replied that she saw no valid reason to change her status and asked that her request of 29 January 1996 be submitted to the UNIDO Staff Pension Committee without delay. The Committee discussed her case at a meeting held on 26 March 1997. It agreed that she was eligible for disability benefit and proposed a commencement date of 1 April 1997 following separation for health reasons on 31 March 1997.

In further correspondence the complainant expressed concern about the bringing forward of the separation date. UNIDO made further approaches to the United Nations Joint Staff Pension Fund. The latter indicated that disability benefit could exceptionally be paid to her before the date of her formal separation from service. The date of her termination was therefore to remain as 30 November 1997. The Director of Personnel Services notified the complainant of this in a letter of 30 September 1997. Her leave periods were rearranged to meet the requirements of Article 33(b).

In November 1997 the complainant started to receive retroactive indemnity payments through the Temporary Disability Insurance Plan (TDIP) operated by the health insurers Van Breda; those payments covered the period from 27 March 1996 to 31 March 1997. From January 1998 she received disability benefit from the UNJSPF, paid retroactively from 1 April 1997.

Meanwhile, on 18 November 1997, because she had not yet received the disability benefit, the complainant wrote to the Director-General objecting to the delay and claiming moral damages. Replying on his behalf on 15 December 1997 the Director of Personnel Services explained that compliance with her request for disability benefit before the separation date envisaged in the agreed termination had necessitated instituting the new administrative regime for her. He rejected her claim to damages. By a letter of 14 February 1998 to the new Director-General she requested a review of that decision; part of her comments related to the agreed termination signed in 1993. Confirming information imparted in previous correspondence, in a letter of 6 April the Director of Personnel Services explained the new regime that had been devised to facilitate payment of disability benefit for her. Taking the view that her claims had been dealt with in Judgment 1482, by a letter of even date the Director-General informed her that there were no grounds for reconsidering her case. On 6 June 1998 she filed an appeal with the Joint Appeals Board alleging that her disability claim had been mishandled.

In its report of 23 August 2000 the Board concluded that although due process had been respected the Organization "could have made her enter the disability benefit scheme six months earlier". It recommended paying the complainant "as a goodwill gesture" material damages in the amount of 33,005 Austrian schillings. The Director-General took a decision on her appeal on 20 September 2000 endorsing the Board's recommendation to pay her that sum. The complainant is challenging that decision.

B. The complainant considers that the amount she received constitutes inadequate compensation. She is of the view that she ought to have received disability payments well before November 1997 and the undue delay in paying them caused the deterioration in her health. The Organization showed a total disregard for her fate, acted in bad faith, and ignored her medical situation. She says that although her illness reached crisis point on 4 October 1995 it was initially diagnosed on 18 October 1993 and again in January 1994. The United Nations Joint Medical Service (UNJMS) submitted a report on her case to UNIDO in November 1995, recommending disability benefits, but it was another year and nine months before she obtained TDIP payments. The delay went far beyond the six months cited by the Joint Appeals Board in its report, and constituted a violation of her contractual rights.

UNIDO, she claims, mishandled her application for benefit, dealt with it in an arbitrary manner, denied her due process and did not treat her fairly. Despite its numerous letters to her UNIDO did not clearly set out the legal basis of the options proposed to her. She further objects to the way the payments were calculated. Reverting to the matter of her termination, at issue in her first complaint, she says that she suffered harassment and was coerced into accepting an 'agreed termination', and was on sick leave at the time.

She seeks the quashing of the impugned decision and claims moral, "physical" and material damages for herself and for her two children in a total amount of 1,650,000 United States dollars. She also claims costs.

C. In its reply the Organization avers that the complaint is not founded in law. It assumes that by the present complaint the complainant is rejecting the Board's recommendation, and the subsequent endorsement by the Director-General, to pay her material damages as a goodwill gesture. It rejects all her claims relating to the agreed termination, and says she was not coerced into accepting the termination agreement. It points out that in

Judgment 1482 the Tribunal did not accept the claim of duress invoked by her. That judgment now has the authority of *res judicata* and her claim has no legal basis.

In no way did it mishandle her request for benefits. The complainant's situation was highly complex administratively and it acted promptly to find a solution and maintained regular contact with her. It holds that all the relevant rules were lawfully applied; the present dispute only concerns when the disability benefit was to commence. The length of the process was due to the complexity of the issues involved. Immediate granting of the benefit was "incompatible" with the complainant's legal status in UNIDO. When she asked for disability benefit she held the status of a staff member on special leave without pay, and could not normally receive benefits before the date of her separation from service. That is why the Organization proposed putting her under the "new administrative regime". It did so in order that she might receive the benefit from 1 April 1997, but it needed her consent. The complainant was reluctant to concur. As a result she did not receive any form of disability indemnity until November 1997.

It holds that there are no legal grounds for the payment of the damages she is claiming. In his decision of 20 September 2000 the Director-General awarded her compensation on compassionate grounds. She benefited in several ways from the administrative regime that was devised for her. By virtue of the administrative actions UNIDO took, she became eligible for temporary disability coverage before November 1997 and her pension prospects were enhanced. Her claim regarding the way the benefit was calculated is irreceivable: the calculation was done by the UNJSPF and it is the United Nations Administrative Tribunal that would be competent to hear any dispute concerning the reckoning of benefit.

D. In her rejoinder the complainant contends that certain documents produced by the Organization with its reply consisted of directives on her case exchanged between UNIDO and the UNJSPF, but they were previously kept "hidden" from her and were not revealed to the Joint Appeals Board either. Moreover, she claims that she is entitled to redress for the delay in the Board taking up her appeal.

She enlarges on her pleas and broadens her claim to damages. In her opinion the date of the onset of her disability was fixed in an arbitrary manner. Her disability effectively commenced on 18 October 1993; that is when her sick leave began and she is due compensation from that point. UNIDO, she argues, cannot claim it was unaware of her illness at that time. When she sent in the medical diagnosis dated 21 January 1994, it was simply returned to her on the grounds that she was no longer a "real" staff member. The Organization thus exonerated itself from its obligation to adhere to the relevant staff rules in dealing with her case. She states that since it was UNIDO that established the commencement date of her disability it is the ILO Administrative Tribunal that has jurisdiction in this matter.

In further argument she claims that since UNIDO "directly contributed" to her illness, she must be entitled to compensation under Appendix D to UNIDO's Staff Rules, on the grounds that her illness was attributable to the performance of official duties.

E. In its surrejoinder the Organization argues that the complainant is wrong in her contentions regarding the documents appended to its reply; there are no grounds for saying that they were unknown to the complainant or the Joint Appeals Board, and the Organization has the right to submit such evidence to support its position. Nor is she justified in claiming that there was delay on the part of the Board. The latter had before it a highly complex matter, and held no less than ten meetings on the case. She herself submitted a series of documents to the Board over a time span that began in mid-1998 and ended in March 2000.

UNIDO states that it cannot agree with her claim that the commencement of her illness should have been set at 18 October 1993. It is not borne out by any of the medical evidence on file. It rejects her extended claim to compensation, adding that the grounds for damages have not been specifically identified. It also points out that it did not have knowledge of the complainant's medical condition until she herself brought it to the attention of the UNJMS. Even so, both the provisions of its own Staff Rules and the Regulations of the UNJSPF were fully complied with in dealing with her application for disability benefit.

From a procedural standpoint the complainant's claim for compensation under Appendix D is a new claim being raised for the first time in her rejoinder, and she has not shown that the provisions of that text are applicable to her case.

CONSIDERATIONS

1. The complainant, an American citizen and single-mother of two, began working for UNIDO on 15 November 1985 as an industrial information officer at grade P.3. Her initial appointment was for two years. She received three further contracts, the last of which was set to expire on 14 November 1994.

2. On 17 October 1993 the complainant began to experience back pain. She stayed home from work the following day. As it turned out, she would never return to work again. The complainant's claim also dates back this far. She alleges that UNIDO's attempts to contact her while she was on sick leave, and while undergoing therapy, was a violation of her rights. She contends that such action constitutes harassment and led to a deterioration of her medical condition. By early 1994, the complainant was diagnosed with major depression - an illness that, throughout the ensuing period, has manifested itself in various forms. In fact, there is little dispute that the complainant is struggling with a very serious medical condition and that she has suffered several setbacks over the years. A simple reading of her pleadings gives eloquent testimony to the fact that she is severely depressed and confused and suffers from delusions of persecution. Her many misfortunes, and they are real enough, are, in her view, all due to the deliberate actions of the Organization.

3. As mentioned in Judgment 1482 UNIDO contacted the complainant in October 1993 because her appointment was likely to be terminated as part of a staff reduction exercise that the Organization undertook in that year. As a result, on 3 December 1993, the complainant agreed in writing to be separated from the Organization. By the terms of the termination agreement, the complainant was placed on special leave with full pay from 1 December 1993 until 30 September 1994 (10 months) and on special leave without pay from 1 October 1994 until 30 November 1997 (38 months). The proportion of health insurance premiums that the Organization would pay was broken down into further sub-periods during her special leave without pay.

4. In the period following the execution of the termination agreement, the complainant's condition continued to deteriorate (in no small part, she says, due to UNIDO's actions). By 1995, things became increasingly desperate as the complainant began to realise that she could no longer provide for her two children. In September 1995, she underwent an examination at the United Nations Joint Medical Service (UNJMS), suffering from major depression. On 4 October 1995 she was hospitalised.

5. The complainant alleges that upon hospitalisation she had verbally requested that UNIDO begin processing her claim for disability benefits. On 12 October 1995 the complainant's doctor had written a first medical report. On 15 November 1995, in a report to the UNJMS, the doctor strongly recommended granting her a disability pension.

6. In late November 1995 the UNJMS requested that the complainant attend a medical examination and recommended disability benefits shortly thereafter.

7. Having not heard any more from UNIDO, on 29 January 1996, the complainant submitted a written application for the award of a disability pension in accordance with UNIDO's Staff Rules and the Regulations of the UNJSPF. On the one hand, the complainant argues that she should not have had to submit a formal application for such benefits. On the other hand, the Organization contends that its response was not triggered until the application had been submitted.

8. UNIDO's response came on 20 March 1996. It said:

"The termination agreement concluded between yourself and UNIDO envisaged that you are presently on Special Leave Without Pay until November 1997. Article 33(b) of the Regulations of the United Nations Joint Staff Pension Fund indicates: 'The benefit shall commence on separation or, if earlier, on the expiration of the paid leave due to the participant and shall continue for as long as the participant remains incapacitated, provided that after age 55 incapacity shall be deemed to be permanent'. Accordingly, if found incapacitated for further service by the UNIDO Staff Pension Committee, a benefit would become payable on 1 December 1997, the last day of the appointment being 30 November 1997, pursuant to the termination agreement. For this purpose, the Staff Pension Committee should make the necessary review nearer to the time of separation."

9. This proposal was unacceptable to the complainant - she claims that it showed arbitrary management, abuse of power, bad faith, lack of due process, discrimination, disregard for her rights and that it resulted in mental and

physical injury. In short, she felt that UNIDO was not following its own Staff Rules or was applying them in an unjustifiable discriminatory fashion. In a letter dated 26 May 1996 to the Staff Pension Committee she expressed concern at having to wait until 1 December 1997 before she could receive benefit. In support of her arguments, she too relied on Article 33 of the Regulations of the UNJSPF.

10. In the complainant's view, since she was no longer entitled to paid leave under the terms of her termination agreement, she should be entitled to disability benefits immediately and need not wait until separation. She therefore asked that her case be submitted to the Staff Pension Committee for its consideration as soon as humanly possible. The complainant now submits that compliance with her request was mandated by the Administrative Circular on special leave, UNIDO/DA/PS/AC.77 of 1 March 1991.

11. The complainant suffered a stroke on 9 January 1997.

12. UNIDO understood that the complainant was claiming her disability benefit prior to separation and, in a letter dated 13 January 1997, stated that her request was under consideration.

13. Throughout the proceedings, UNIDO has always held the view that the complainant could not receive disability benefits while on special leave without pay, and that, therefore, a new administrative regime had to be implemented in order for her to be entitled to benefits before the date of separation, set at 30 November 1997. The Director of Personnel Services finally suggested the following proposal to the complainant on 12 February 1997:

"2. Your request for consideration of your claim for a disability benefit before 30 November 1997 and the requirement to comply with the provisions of Art. 33(b) of the Regulations and Rules of the UNJSPF on the exhaustion of paid leave, [have] the following administrative consequences:

3. If, subject to your concurrence to proceed in the way described below, your case [was] presented to the UNIDO Staff Pension Committee and a unanimous recommendation for the award [was] made and the Pension Secretariat thereupon [certified] the payment of the disability benefit, a new administrative regime will be implemented. Accordingly, the period from 1 December 1993 until the onset of your illness on 5 October 1995 will be considered leave without pay to be followed by reinstatement into pay status for the purpose of exhausting all paid leave entitlements (as required under Art. 33(b) of the Regulations of the UNJSPF) and subsequent separation from service for health reasons, with the disability benefit commencing on the day following separation."

14. Since the new regime was meant to replace the termination agreement and included a new separation date, UNIDO sought the complainant's approval. The implementation of the new regime also resulted in the following benefits accruing to the complainant:

(i) By being reinstated into pay status, the complainant became entitled to within-grade salary increments, which increased her final average remuneration and thus resulted in a higher disability benefit and higher pension.

(ii) Reinstatement into pay status for the exhaustion of paid leave made her eligible for temporary disability insurance benefits (TDIP) in the amount of approximately 21,000 Austrian schillings per full month on half pay.

(iii) In accordance with the Staff Regulations, disability benefits received under the Regulations of the UNJSPF should have been deducted from the termination indemnity; however, no deduction was made in the complainant's case. Furthermore, as a result of her higher salary, the complainant's repatriation grant and termination indemnity would also increase.

15. On 14 February 1997, the complainant, the President of the Staff Council and three UNIDO officials attended a two-hour meeting to discuss the implications of the new regime. However, the complainant alleges that she was in no condition to understand the complicated issues being discussed and continues to challenge that the new regime is of any benefit to her.

16. And so the parties were unable to reach consensus. The complainant maintained her position that she was entitled to disability benefits right away and saw no need to change the date of separation. As a result, the Organization approached the UNJSPF about starting the applicant's disability benefits after the expiration of her paid leave but before her separation date. It also agreed to put the complainant on special leave with half pay (pursuant to the Administrative Circular on special leave) from the time her leave was exhausted until the time when her disability benefits could be approved by the Staff Pension Committee.

17. On 26 March 1997 the matter was finally put before the Staff Pension Committee, which recommended that the disability benefit be granted effective 1 April 1997.

18. Throughout the period after UNIDO's proposal of a new regime, the complainant's health continued to deteriorate and she complains that UNIDO continued to harass her and caused her further injury. The complainant rebuked UNIDO's proposal in letters dated 22 April 1997 and 4 and 11 May 1997 saying that she had never approved implementing the new regime. She also requested more detailed information, although in simple terms. In her mind, this was yet another attempt by UNIDO to deprive her of her entitlements. As a consequence, the Director of Personnel Services replied by a letter dated 13 June 1997 saying:

"In the light of your communications alleging that action was taken contrary to your instructions and in violation of procedures, of the law and of your human rights, all actions have been stopped."

19. On 12 July 1997 the complainant instructed UNIDO to resume processing her disability benefits (although she said she was still unsatisfied with the information that she had received from UNIDO). The complainant accepted the new regime on 4 October 1997 and signed the necessary papers.

20. The final proposal for the new regime, as was well explained to the complainant by the Director of Personnel Services in a letter dated 30 September 1997, can be summarised as follows:

- 1 December 1993-30 September 1995: 22-month period of special leave without pay.
- 1 October 1995: reinstated into pay status for the purpose of exhausting all paid leave.
- 1 October 1995-26 March 1996: on full-pay status for periods of sick leave on full pay, and sick leave with half pay combined with half days of annual leave.
- 27 March 1996-2 October 1996: on half-pay status for sick leave with half pay, interrupted by several days in full-pay status resulting from renewed sick-leave entitlement (with temporary disability insurance to supplement income).
- 3 October 1996-31 March 1997: following exhaustion of all paid leave entitlement, special leave with half pay (with temporary disability insurance to supplement income).
- 1 April 1997: disability benefit begins.
- 1 April 1997-30 November 1997: special leave without pay.
- 30 November 1997: date of separation.

21. As early as 18 November 1997, however, the complainant wrote to the Director-General requesting redress for the suffering that she alleges was caused by UNIDO. Her request was denied by letter dated 15 December 1997 from the Director of Personnel Services. The decision directly underlying the present complaint and the internal appeal, however, is contained in a letter from the Director-General dated 6 April 1998 wherein it is stated that the complainant's claims were considered in Judgment 1482. Her appeal to the Joint Appeals Board was lodged on 6 June 1998. The hearing consisted of ten meetings held between 18 February and 23 August 2000. The Board's recommendation was signed at the last of those meetings.

22. The Board accepted jurisdiction. It considered that UNIDO's new regime was favourable to the complainant, however, it criticised UNIDO for the delay between 29 January 1996, when the complainant first submitted her claim for benefit in writing, and 12 February 1997, when UNIDO proposed the new regime. In its view, disability benefit could have been extended to the complainant from 3 October 1996, immediately after the exhaustion of her paid leave entitlements and a full six months before UNIDO awarded it. Although the Board recognised that the complainant was not entitled to such an amount, since UNIDO was not bound by any deadlines prescribing when a matter has to be referred to the Staff Pension Committee, "as a goodwill gesture" it recommended that the Organization pay the difference between the amount of disability pension that she could have received between 1 October 1996 and 31 March 1997 and the amount that she actually received in TDIP benefits. This amounted to 33,005 schillings. The Director-General accepted the recommendation on 20 September 2000, but the appeal was

otherwise dismissed. That is the impugned decision.

23. As alluded to above, the complainant had previously contested the legality of her separation in her earlier complaint. She alleged that the termination agreement was unlawful because her consent was secured under duress and, furthermore, that the Organization was guilty of bad faith, misuse of authority and arbitrariness. However, in Judgment 1482, the Tribunal dismissed the complaint as irreceivable; the separation agreement is accordingly beyond question. Insofar as the complainant now seeks, even indirectly, to put that agreement in issue or to dispute its validity, the complaint is irreceivable.

24. The complainant sets out her complaint under five headings:

- (i) The period from 18 October 1993 (onset of major depression) until 4 October 1995 (initial hospitalisation).
- (ii) The period from 4 October 1995 until 12 February 1997 (when UNIDO proposed the new regime).
- (iii) The period from 14 February 1997 until 31 January 1998 (when the first disability payment was received).
- (iv) UNIDO's proposed new regime.
- (v) The unreasonable amount of time taken by the internal appeal process.

25. During the first period, the complainant alleges that UNIDO's repeated attempts to contact her constitute harassment. In her view, UNIDO was under a duty to refrain from contacting her about any office-related subject while on sick leave (especially given the nature of her illness). Quite apart from the fact that this argument is an attempt to question indirectly the validity of the termination agreement signed by the complainant, and is therefore irreceivable, there is no authority whatsoever to support it. Indeed, if an organisation failed to attempt to get in touch with an employee on a matter of critical interest to him or her simply because the employee was on sick leave that might be grounds for criticism; that it did so and that the result was an agreement signed by the complainant is beyond reproach.

26. With regard to the second period, the complainant alleges that UNIDO is guilty of further harassment, bad faith, and of failing to accord due process. Furthermore, it is suggested that UNIDO did not apply its Staff Rules or applied them discriminatorily by failing to process her request for disability benefits upon receipt of the report from the UNJMS, by saying that she was not eligible for disability benefits until separation, and by not referring her case to the Staff Pension Committee. She argues that her status as an employee of UNIDO did not change while on special leave without pay, that she was still governed by the Staff Rules, and by the Regulations of the UNJSPF. In support of her claim, the complainant also relies on Personnel Directive PD/3/80 dealing with termination of appointments for reasons of health.

27. On the complainant's own argument, the earliest date on which she could have asserted a claim for disability was when UNIDO received the report from the UNJMS in November 1995. In fact, she filed a claim for disability in January 1996 and UNIDO dealt with it with reasonable promptitude thereafter (given the complainant's own continuous suspicion and obstruction towards any and every proposal put forward by the employer). Furthermore, in both November 1995 and January 1996, the complainant was on special leave without pay and by definition was not entitled to any paid leave prior to her termination date scheduled for November 1997. Whatever her sick leave or other paid leave entitlements might have been prior to the termination agreement, it is clear (and not disputed by the complainant) that such agreement put an end to them. It was therefore not unreasonable for UNIDO to assume as it did that she could not receive any disability benefit under the terms of Article 33 of the Regulations of the UNJSPF until the termination of her contract. Disputes as to the proper interpretation of the pension fund rules fall within the exclusive competence of the United Nations Administrative Tribunal and any claim based thereon is irreceivable before the Tribunal. Since the complainant accepted the new regime and the benefits which it gave her, such claim is also without merit.

28. During the third period defined above came further alleged harassment and further delays. The complainant says that she was 'bombarded' with letters from UNIDO while in hospital. This was due in part at least to the fact that UNIDO was doing all it could to obtain her consent so as to regularise her status under the new regime. Lastly, the complainant says that she should not be held accountable for the delay incurred due to her resistance towards the new regime - if UNIDO had responded to her claim in a timely fashion, delaying her disability benefits would not have been necessary.

29. These allegations are not supported by the evidence. It was not harassment for UNIDO to attempt to contact the complainant on a matter which was essential to her interests. The delay encountered following the filing of her claim to disability was not excessive, especially when one takes into consideration the compensatory damages that were paid for the delay as recommended by the Joint Appeals Board and accepted in the impugned decision. While one cannot fault the complainant for hesitating long and hard before agreeing to the proposed change in regime, the fact that she did so cannot be held against the Organization. In the final analysis, reluctantly or not, she accepted the new arrangement and it was clearly to her benefit to do so.

30. Under the fourth heading, she argues that UNIDO did not use the correct dates for calculating her disability benefits. In her view, the "best-remunerated" 36 months from the last five years should have been calculated from October 1995 backwards and should not have included periods when she was on leave with reduced pay or no pay at all.

31. This argument was not pressed further in the complainant's rejoinder. In any event, she has herself provided a memorandum from the Director of the Human Resources Management Branch, dated 19 July 2001, confirming that she benefited from a higher disability benefit under the new regime - even higher than the one she would have obtained under the proposal put forward by her in section XI, paragraph 3, of her complaint.

32. Under her fifth heading, the complainant argues that the Joint Appeals Board took an unreasonable amount of time to process her appeal. The appeal was submitted on 6 June 1998. The Director-General made his submission on 5 August 1998. The same day the Board's Secretary sent the complainant a copy of the Director-General's submissions and asked her to state whether or not she intended to pursue the appeal. On 17 December 1999 the Board notified the complainant of the panel members who would be sitting on her appeal. The Board finally held its first meeting on 18 February 2000. The report was only signed on 23 August 2000. In her rejoinder the complainant also challenges the Board's Secretary's authority to impose a two-week deadline for notifying her of whether or not an appellant intends to pursue his or her appeal. The complainant asks that the Tribunal rule on the legality of this point but, since the deadline was met by the complainant, the question is manifestly moot as well as being irreceivable.

33. The complainant's claim for excessive delay in the Board's proceedings is far more substantial. Since compliance with internal appeal procedures is a condition precedent to access to the Tribunal, an organisation has a positive obligation to see to it that such procedures move forward with reasonable speed. Here, while the Board, once the meetings had started, came to its conclusion fairly quickly, there can be no valid excuse to justify the delay of over twenty months between the filing of the internal appeal and the start of the hearings. No doubt some of this was due to the complainant herself and the long convoluted and complicated nature of her pleadings, which frequently contradict themselves, but UNIDO cannot escape responsibility for the inordinate amount of time taken. In Judgment 2072, dealing with a very similar situation, the Tribunal found the Organization to have been negligent and awarded damages of 3,000 United States dollars and costs of 1,000 dollars. It will make the same award here but in euros.

34. In her rejoinder the complainant raises some further issues for the first time. First, given that she holds UNIDO directly responsible for aggravating her injuries, she claims that the Organization is accountable pursuant to Articles 11, 12, 16, and 17 of Appendix D to the Staff Rules entitled: Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the Organization. She also points to the fact that UNIDO has allegedly not disclosed certain documents to her except in its reply, and sees that as further evidence of its bad faith.

35. Perhaps most significantly, however, the complainant now claims that there is evidence of her inability to work dating from 18 October 1993 and challenges UNIDO's violation of its rules and procedures regarding sick leave and disability benefits as far back as then. The complainant submits that she was under the protection of the relevant sick leave and disability staff rules and that the benefits accruing to her under those rules could not be contracted away once her entitlement had crystallised. In other words, in 1993, when the complainant was on sick leave, UNIDO had an obligation to satisfy its Administrative Circular on special leave and Personnel Directive PD/3/80 and could not consider terminating her contract until her disability (or the possibility of a disability) had been resolved. In the complainant's view, the termination agreement that she signed in December 1993 is irrelevant to these rights.

36. The complainant argues that all of these factors contributed to the deterioration of her health, the desperation of her family, and her inability to find a new job. For all of these reasons, she is claiming moral damages, physical damages, and material damages (for her and her children) in the amount of 1.65 million dollars, plus costs.

37. All of these additional claims are clearly irreceivable. They are also without foundation for they not only seek to deny the validity of the termination agreement signed by the complainant but they also assert, for the first time, a state of affairs dating back almost ten years without a shred of evidence to support it.

38. Although it is a necessary consequence of the foregoing that the complaint must be dismissed, except for a relatively minor and subsidiary aspect, the Tribunal expresses the view that UNIDO has throughout the process treated the complainant with respect, sympathy, generosity and consideration. She has no doubt suffered much, and continues to do so, but her strictures upon her former employer are misplaced.

DECISION

For the above reasons,

1. The complaint is allowed in part only and the Organization is ordered to pay to the complainant the sum of 3,000 euros in damages and 1,000 euros in costs.

2. All other claims are dismissed.

In witness of this judgment, adopted on 7 November 2002, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Flerida Ruth P. Romero, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 3 February 2003.

Michel Gentot

James K. Hugessen

Flerida Ruth P. Romero

Catherine Comtet