

The Administrative Tribunal,

Considering the second complaint filed by Mr A.G. S. against the United Nations Industrial Development Organization (UNIDO) on 10 May 2006, UNIDO's reply of 30 August, the complainant's rejoinder of 27 October 2006 and the Organization's surrejoinder of 1 February 2007;

Considering Articles II, paragraph 5, and VII 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. The complainant, a Canadian national born in 1947, joined UNIDO in 1981. At the material time he held a grade P-4 post as an Industrial Development Officer in the Small and Medium Enterprises Branch of the Programme Development and Technical Cooperation Division (PTC/SME).

In April 1997 the complainant was elected President of the Staff Council. The Staff Council is the executive organ of the UNIDO Staff Union. According to paragraph 10 of Administrative Circular AC.80 of 28 March 1991 – entitled “Facilities to be provided to staff representatives” – the President of the Staff Council may, if he wishes, be released on a half-time basis from assigned duties during his term of office. On taking up his functions as President, the complainant requested and was granted release from his duties on a 75 per cent basis. Two years later, in May 1999, he asked to be released from his duties on a full-time basis. This request was likewise granted.

By a memorandum of 5 June 2003 the Managing Director of the Division of Administration (hereinafter “the Managing Director”) informed the complainant that the Director-General had reviewed the system of release from duties provided for in Circular AC.80 and had decided that the Staff Council President should in future be released only on a 50 per cent basis. This arrangement was to take effect “with the term of the President that will emerge after the next election in 2003”. An exchange of correspondence ensued between the Staff Council and the Managing Director, in which the Council argued that it was up to the President to decide whether he wished to reduce his release from duties to 50 per cent and that the Council ought to be consulted on such matters, whilst the Managing Director indicated that the Organization was merely following the established United Nations rule that presidents of staff councils in organisations with less than 1,000 staff members should be released on a half-time basis.

For reasons unconnected with the present complaint, the Staff Council elections were postponed. On 29 August 2003 the Managing Director wrote to inform the complainant that, since it was not clear when these elections would be held, the new arrangement regarding his release from duties would take effect, not after the forthcoming elections, as indicated in his earlier memorandum of 5 June, but on 1 October 2003. Further to that decision, the complainant received a memorandum from the Director of the Human Resource Management Branch dated 18 September 2003, asking him to report to PTC/SME on 1 October to resume his functions as Industrial Development Officer.

By a letter of 26 September 2003 the complainant asked the Director-General to reconsider the decision of 29 August and to reverse that of 18 September so as to allow him to continue serving as President of the Staff Council on a full-time basis. Replying on behalf of the Director-General, the Managing Director informed the complainant by a memorandum of 21 November that, in view of the current staff levels and the fact that “the critical conditions that prevailed in the Organization in the past no longer appli[ed]”, there was no justification for continuing to release him from his duties on a full-time basis. He pointed out that the President was supported by other elected staff representatives, and that it was in the interest of any Staff Council President not to miss out on experience and development in their field of work during their term of office. The Managing Director also drew the complainant's attention to the fact that, pursuant to paragraph 14 of Circular AC.80, any disagreements concerning the implementation of the provisions of that Circular are to be discussed and resolved in accordance with the

procedures set out in Chapter V of the Staff Rules.

On 23 January 2004 the complainant lodged an appeal with the Joint Appeals Board in which he contended that the decision to reduce his release from duties to 50 per cent was “not supported by any concrete facts” and that it was a form of intimidation and retaliation for his Staff Council activities. In its report dated 18 January 2006 the Board held that, in the light of the provisions of Circular AC.80 and Staff Rule 112.01, it was not competent to examine the appeal. It considered that the issue of the President’s release from duties was one which should be dealt with through the means of redress provided for in the Circular, and that appeals filed by staff members concerning allegations of intimidation, harassment and prejudice fell outside its jurisdiction. Consequently, it recommended “that the case be declared non-receivable” and urged the Director-General to take urgent measures to establish a mechanism for dealing with cases of intimidation, harassment and prejudice.

The Board’s report was forwarded to the Director-General on 19 January 2006. On 16 February the Director-General sent the case back to the Joint Appeals Board “for further review on all aspects of the appeal and further reporting and recommendation”. In particular, he asked the Board to determine whether or not the complainant’s allegations of intimidation, harassment and prejudice were warranted. On the following day the Human Resource Management Branch gave instructions to the Secretary of the Board as to the procedure to be followed: the Director-General’s decision of 16 February was to be notified to the complainant, without providing him with a copy of the Board’s report; once the Board had completed its review of the case and issued a new report and recommendation, the Director-General would take a final decision, which was to be communicated to the complainant together with the Board’s final report. However, the Board refused to reconsider the appeal. At the complainant’s request, the Secretary of the Board provided him with a copy of the Board’s report under cover of a letter of 2 March, in which she indicated that the report had been sent to the Director-General on 19 January.

On 8 May 2006 the Director-General sent the complainant a copy of his memorandum of 16 February and informed him that the Board had refused to reconsider the appeal as requested. He stated that an alternative solution now needed to be found “so that [he could] make an informed and final decision on [the complainant’s] appeal”. He proposed to set up an ad hoc panel to examine his allegations of intimidation, harassment and prejudice. The complainant did not receive this communication until 11 May, by which time he had filed the present complaint challenging the implied rejection of his appeal.

B. The complainant contends that the Joint Appeals Board violated its own rules of procedure by concluding that the statement submitted on behalf of the Director-General in response to his appeal was receivable. He asserts that this statement was submitted beyond the expiry of the two-month period provided for in Appendix K to the Staff Rules. Furthermore, by wrongly considering that it lacked jurisdiction to examine allegations of intimidation, harassment and prejudice, the Board denied him a fair hearing of his appeal. In the complainant’s view, the Board breached Article 6, paragraph 1, of the European Convention on Human Rights by declaring his appeal irreceivable more than two years after it was initiated. He also takes issue with the composition of the Board, arguing that it did not comply with the requirements of Appendix K.

The complainant further contends that the decision to reduce his release from duties to 50 per cent restricted his freedom of association, in breach of Article 3 of Protocol No. 1 to the above-mentioned Convention and constituted an abuse of authority. He maintains that Circular AC.80 does not allow the Director-General to reduce the President’s release from duties, but leaves that choice to the President. He asserts that UNIDO’s practice since 1991 has been to release Staff Council Presidents from their duties on a full-time basis. Consequently, he says, the assertion that the Organization has been following the United Nations practice of allowing only a 50 per cent release in organisations with a staff of less than 1,000 is incorrect.

The complainant gives examples of actions and statements which, in his view, support his allegation that the decision to reduce his release from duties was a form of intimidation and retaliation. For reasons indicated under D, below, this allegation need not be developed further.

Lastly, the complainant submits that the unreasonable delay in the internal appeal proceedings, which lasted almost 30 months, warrants an award of moral damages in his favour. He asks the Tribunal to set aside the decision to reduce his release from duties to 50 per cent and to award him 100,000 euros in moral damages. He also claims costs.

C. In its reply UNIDO contends that the complaint is irreceivable on several counts. Firstly, the complainant

relies on Article VII(3) of the Statute of the Tribunal, but contrary to the indication on his complaint form, no claim was notified to the Organization on 2 March 2006. Secondly, it is irreceivable under Article VII(1) of the Statute, because the complainant is not challenging a final decision. Indeed, the Director-General did not make a final decision, but instead asked the Joint Appeals Board to reconsider the appeal. Thirdly, the complainant has not exhausted the internal means of redress, since the ad hoc panel has not completed its examination of his allegations of intimidation, harassment and prejudice. Lastly, insofar as the complainant challenges the Director-General's authority to alter the terms of his release from duties, the complaint is irreceivable under Circular AC.80. Moreover, in light of the case law, and particularly Judgment 496, the impugned decision does not fall within the Tribunal's jurisdiction.

UNIDO rejects the view that the Joint Appeals Board violated its rules of procedure. It submits that the Board correctly determined that the statement on behalf of the Director-General was receivable, since it had been filed within two months of receipt – by the designated representative of the Director-General – of the complainant's appeal. It considers that his reliance on the European Convention on Human Rights is misguided, not only as a matter of law but also in view of the facts of the case. Indeed, the complaint must be examined solely in the light of the internal law of the Organization and the principles of international civil service law as established by the case law. The alleged irregularity in the composition of the Joint Appeals Board was merely apparent, and stemmed from a clerical error. Furthermore, the Director-General cannot be accused of having failed to take a decision on the appeal, since he did in fact decide to send the appeal back to the Joint Appeals Board. In addition, he proposed to set up an ad hoc panel to deal with the allegations of intimidation, harassment and prejudice, thereby ensuring that the complainant would be given a fair hearing. UNIDO maintains that, since the decision to release the complainant from his duties was taken on the basis of Circular AC.80, the provisions of that Circular should also govern any disputes concerning the implementation of the decision. Accordingly, the complainant should have referred the matter to the Joint Advisory Committee.

As regards the alleged violation of the complainant's freedom of association, the Organization submits that his further reference to the European Convention on Human Rights is irrelevant. It states that it is clear from the wording of the complainant's earlier requests for release from his duties, in 1997 and 1999, that he fully understood that he had no right to be released on a full-time basis. It also indicates that, contrary to the view put forward by the complainant, it has consistently applied the United Nations rule based on a threshold of 1,000 staff members when deciding on the President's release from assigned duties.

UNIDO argues that the complainant's claim for damages in respect of the delay in the internal appeal proceedings should be rejected, since he caused part of the delay by submitting a supplemental statement to the Board 17 months after the Organization had responded to his appeal. It considers that his claim for moral damages should be rejected as unfounded and unjustified.

D. In his rejoinder the complainant states that he has accepted the Director-General's proposal that his allegations of intimidation, retaliation and harassment be referred to an ad hoc panel and that, as a result, his claims under this head are not currently receivable before the Tribunal. He reiterates all his other pleas and claims.

E. In its surrejoinder the Organization maintains that the complaint as a whole is irreceivable and presses its pleas on the merits.

CONSIDERATIONS

1. The complainant was elected President of the UNIDO Staff Council in 1997. He was re-elected at subsequent elections and continues to hold that position. At all relevant times, Administrative Circular AC.80, which deals with the facilities to be provided to staff representatives, has specified in paragraph 10 that:

“The [President] of the Staff Council may, if he or she wishes, be released on a half-time basis from assigned duties during his or her term of office.”

Paragraph 14 of the Circular provides:

“Disagreements concerning the implementation of the above provisions shall be discussed and resolved in accordance with the procedures set out in chapter V of the Staff Rules.”

Chapter V of the Staff Rules provides for the establishment of a Joint Advisory Committee pursuant to Staff Regulation 5.3, which requires the establishment of a “joint staff/management machinery to advise [the Director-General] regarding personnel policies and general questions of staff welfare”.

2. The Presidents of the Staff Council were released on a full-time basis until 1995, when the complainant’s immediate predecessors sought and were granted half-time release. When the complainant was first elected President in 1997, he sought and was granted a release from his duties on a 75 per cent basis. In May 1999 he requested and was granted full-time release. That situation continued until 2003. By a memorandum of 5 June 2003 the Managing Director of the Division of Administration informed the complainant, in his capacity as President of the Staff Council, that, commencing after the next election later in 2003, release would only be granted on a half-time basis. No reason was then given for the course proposed. The complainant replied on behalf of the Staff Council that there must have been a misinterpretation of Circular AC.80. By a further memorandum the Managing Director clarified UNIDO’s policy on 4 July 2003 by referring in particular to “an established [United Nations] rule [...] that presidents of staff councils in organizations with less than 1,000 staff members should be released on a half-time basis”. He pointed out that, when full-time release had been granted to the then president in 1994, it was said that if the total number of staff fell below 1,000 the release would be converted to half-time. In 2003 the number of staff was below that number, as it had been since at least 1999.

3. On 25 August 2003 the Managing Director wrote to the Staff Council asking it to postpone a referendum that was scheduled for 27 and 28 August. Apparently, it was proposed, among other things, to vary the Rules of the Staff Council to provide for elections every two years instead of every year. On 29 August he wrote again to the Staff Council on the issue of the referendum – which was conducted as planned – and on the issue of the release of the President of the Staff Council. He stated that, as it was not clear when the next election would be held, “the post of the President [...] should be filled on a half-time basis” from 1 October of that year. On 18 September the complainant was instructed by the Director of the Human Resource Management Branch to report for assigned duties on 1 October. It was understood that he was to perform those duties on a half-time basis.

4. On 26 September the complainant in his capacity as President of the Staff Council wrote to the Director-General on Staff Union letterhead asking him to reconsider the decision of 18 September and, also, the suggestion that the post of President should be filled on a half-time basis. By a letter of 20 October signed by the complainant as President, the comments of the Staff Council on the Managing Director’s memorandum of 4 July were sent to the latter. It was said in that letter that the procedures required by Staff Regulations 5.1, 5.2 and 5.3 had not been followed. The Managing Director replied on 21 November 2003 stating that the Director-General had found no justification for continuing full-time release of the President and, also, drawing attention to paragraph 14 of Circular AC.80 which requires that disagreements as to the facilities to be provided to the Staff Council be discussed and resolved in accordance with chapter V of the Staff Rules. It was stated in a subsequent e-mail from the Director of the Human Resource Management Branch to the complainant that it was clear that, in that letter, the Managing Director had invited the complainant to take the matter “into the consultative process”.

5. There being no response to his request of 26 September 2003 for reconsideration of the decision that he should report for duty on 1 October, the complainant filed an appeal with the Joint Appeals Board on 23 January 2004. In his appeal he claimed, among other things, that he had been the victim of intimidation and retaliation. His appeal was not forwarded to the Administration until 2 March. The Administration’s statement in reply was filed with the Board on 26 March. On 2 September 2004 the complainant enquired when his appeal would be dealt with. He made a similar enquiry on 14 July 2005, whereupon he was advised that it was not possible to say when his case would be reviewed because of the then backlog. He filed a supplemental statement on 22 August 2005. The Joint Appeals Board issued its report on 18 January 2006. It was of the view that the appeal was not receivable and expressed concern that there was no mechanism for dealing with complaints of intimidation, harassment and prejudice.

6. The Director-General did not inform the complainant of his decision with respect to the appeal within the one-month period specified in Appendix K to the Staff Rules. Instead, he asked the Board to reconsider the matter and determine whether the allegations of intimidation, harassment and prejudice were warranted. The Board declined to do so. The complainant ascertained that the Board’s report had been issued and requested a copy on 27 February 2006 which was hand-delivered to him on 2 March. He lodged this complaint with the Tribunal on 10 May. In the meantime, the complainant was informed by a memorandum dated 8 May 2006 of the Director-General’s request to the Joint Appeals Board and of its refusal. He was also informed that it was proposed to set up an ad hoc Panel to investigate his allegations of intimidation, harassment and prejudice. There were subsequent

discussions with respect to the proposal, and agreement was eventually reached that those claims should be investigated accordingly. Consequently, the complainant has indicated in his rejoinder that the “claims under this head are not receivable by the Tribunal at this time”.

7. The defendant raises several objections to the receivability of the complaint. It points out, firstly, that a complaint is receivable under Article VII of the Tribunal’s Statute only on the basis that there has been a final decision and that the complainant has exhausted internal remedies. However, it contends, the complainant satisfies neither requirement. It argues that the complainant cannot contend that the failure to take a decision on his appeal within one month of the receipt of the Joint Appeals Board’s report, as provided for by Appendix K to the Staff Rules, constitutes an implied final decision to reject his appeal, because a decision was in fact taken to refer the matter back to the Board and thus no final decision can be implied.

This argument must be rejected. For whatever reason, the complainant was not informed of the course proposed by the Director-General and rejected by the Board until 8 May 2006. In the absence of any communication to the contrary, the complainant was entitled to treat the failure to inform him of the outcome of his appeal within the period specified by Appendix K as an implied final decision rejecting his appeal. His complaint was filed within ninety days of the expiry of that period. Further, even if there were substance in the defendant’s argument that no final decision can be implied by reason of its failure to notify a final decision within the time limit provided for in Appendix K, a final decision rejecting his appeal would properly be implied by reason of its failure to communicate with the complainant within a reasonable time of the receipt of the Board’s recommendation. If a final decision were not to be implied as a result of unreasonable delay, proceedings would be unduly protracted. A period of almost four months is clearly unreasonable.

8. UNIDO also contends that the complaint is not receivable because of the agreement to refer the complainant’s allegations of intimidation, retaliation, harassment and prejudice to an ad hoc Panel. The consequence of that agreement, it is said, is that there is no final decision and, in addition, the complainant has not exhausted internal remedies. This argument is correct so far as concerns the complainant’s claims with respect to intimidation, retaliation, harassment and prejudice. That is because the effect of the agreement was that the parties would treat those issues as not being the subject of an implied final decision. It is not correct with respect to the other issues that are separate and distinct and are, thus, severable. Even where there are severable issues, the Tribunal may, in appropriate cases, defer consideration of those issues pending the final determination of other outstanding claims. Indeed, and as a general rule, it is not appropriate that cases be severed. However, in the present case, given the extraordinary delay that has already been experienced by the complainant, it would not now be in the interests of justice to defer consideration of those severable issues.

9. A further argument is put that the complaint is not receivable by reason of paragraph 14 of Circular AC.80 and Chapter V of the Staff Rules. In this regard, it is said that the complainant’s recourse lay with the Joint Advisory Committee and not with the Joint Appeals Board. That was the view taken by the Joint Appeals Board which added:

“A decision as to the level of release from assigned duties of the Staff Council President does not qualify as a non-observance of the terms of a staff member’s appointment, since the position of staff representatives and facilities afforded to them are not contractual obligations (in the strict sense) concluded between individual staff members and the Organization.”

The argument based on paragraph 14 of the Circular overlooks the fact that the complainant sought review of the decision that he should report for assigned duties on 1 October 2003. The terms of his appointment were varied when he was elected President of the Staff Council in 1997, first to grant him a release from assigned duties for 75 per cent of the time and, later, full-time. The decision that he should report for duty half-time on 1 October was a decision that related to the terms of his appointment and could, thus, be the subject of proceedings before the Joint Appeals Board. Moreover, it is well established that provisions such as Staff Regulation 5.2, which provides for the establishment of a representative body to make proposals and representations to the Director-General with respect to various work-related matters, import freedom of association into the terms of appointment of every staff member; thus, a claim that that freedom has been infringed, as is here the case, may properly be the subject of an internal appeal and, if need be, a complaint to this Tribunal (see Judgments 911 and 1542).

10. It follows that the complaint is receivable and it is now necessary to consider those issues that presently fall for determination. The various arguments put forward by the complainant are directed to the decision aimed at the

release of the President of the Staff Council from full-time to half-time. If that decision is tainted with error, it follows that the decision that the complainant resume assigned duties is tainted with the same error as it is based solely on that earlier decision.

11. It is convenient first to consider the complainant's argument that paragraph 10 of Circular AC.80 entitles the President of the Staff Council to full-time release from his or her assigned duties unless he or she elects to be released half-time. As a matter of ordinary language, that provision entitles the President to a half-time release, if he or she so chooses, but leaves it to the Director-General to determine whether he or she should be released to some greater extent. The complainant's argument to the contrary must be dismissed.

12. The complainant contends that there was a violation of Article 6 of the European Convention on Human Rights, which relevantly provides that "[i]n the determination of his civil rights and obligations [...] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". Reliance on the Convention is misplaced as it is not applicable to international organisations. The complainant's rights are those derived from the Staff Regulations and Staff Rules and from the general principles of law applicable to such organisations. However, the complainant was certainly entitled to a determination of his appeal within a reasonable time in accordance with the Staff Regulations and Staff Rules and applicable legal principles. The corresponding obligation of UNIDO was to ensure that its internal appeal procedures were such as to enable a determination of the complainant's appeal within a reasonable time. This was not done. A period of almost two years for the deliberations of the Joint Appeals Board is not reasonable. And contrary to the submissions of the Organization, no part of the delay was attributable to the complainant. He filed his supplemental statement only after he was told, approximately 17 months after the Organization filed its statement in reply, that it was not possible to indicate when his appeal would be examined.

13. Moreover, there were procedural irregularities associated with the composition of the Joint Appeals Board. The complainant argues that the composition of the Board was changed without prior notice and that this amounted to a flaw in the proceedings. As for UNIDO, it claims that there was no change in the composition of the Board but merely a clerical error in the notification of its composition to the complainant. There is nothing in the materials to substantiate anything more sinister than a clerical error. However, as the complainant points out, the error interfered with his right to challenge the composition of the Board.

14. The complainant also submits that the Joint Appeals Board wrongly considered that the Organization's statement in reply, submitted more than two months after he filed his notice of appeal, was receivable. The Board correctly ruled that that statement was receivable because it was filed within two months of the receipt by the Administration of the notice of appeal. However, the delay in transmitting the notice of appeal to the Administration is unexplained. The complainant's argument that he was deprived of a fair hearing because the Joint Appeals Board held that his appeal was not receivable must also be rejected. An internal body, such as the Joint Appeals Board, necessarily has power to determine whether an appeal is receivable. If it is wrong in its determination, the matter can be set right by this Tribunal. However, the fact that an internal appeal body might determine that issue erroneously highlights the need for international organisations to ensure that those bodies are properly resourced and that their proceedings are not beset by unreasonable delay. By reason of the delay in the present case and the irregularity which interfered with the complainant's right to challenge the composition of the Joint Appeals Board, there will be an award of moral damages in the sum of 5,000 euros.

15. Furthermore, the complainant pleads breach of his right to free elections in that the decision that he should report for assigned duties on 1 October 2003 and the underlying decision with respect to the half-time release of the President of the Staff Council interfered with his freedom of association and with the business of the Staff Council. It is convenient to consider these matters together. Although it was for the Director-General to determine whether the President of the Staff Council should no longer be released from assigned duties on a full-time basis, that is a decision which, like all discretionary decisions, will be set aside if it involves an error of law or is made without regard to material facts. One material fact that had to be taken into account was whether a reduction in the release time for the President would impair the freedom of association, which is the right of all staff members, by interfering with the working of the Staff Council. In this regard, it was not sufficient to refer to the United Nations rule mentioned under 2 above which, in any event, was not directly applicable to UNIDO. Rather, it was necessary to determine whether circumstances had so changed since the earlier decision to release the President on a full-time basis that the work of the Staff Council could be conducted efficiently on the basis of his half-time release.

16. There is nothing to suggest that, when the initial decision was taken to review the system of time and to

release the President only half-time, any consideration was given to the question whether the business of the Staff Council could be conducted efficiently on that basis. Subsequently to the memorandum of 5 June 2003 informing the complainant of that decision, a further memorandum dated 4 July 2003 clarified that the Director-General “consider[ed] that the new arrangement help[ed] achieve the objective of ensuring adequate representation [...], while at the same time maintaining the professional competence of the affected staff members”. Later, on 21 November 2003, well after the complainant had been instructed to resume his assigned duties and allowed only half-time release, it was said that:

“the critical conditions that prevailed in the Organization in the past no longer apply. Bearing in mind that the President of the Staff Council is supported by other elected staff representatives who are also granted official time to perform their representational duties, the Director-General does not consider that this decision will adversely affect the work of the staff representative body.”

These statements subsequent to the initial decision contained in the memorandum of 5 June 2003 and to the challenged decision requiring the complainant to resume assigned duties on a half-time basis fall far short of a proper consideration of the question whether the business of the Staff Council could be conducted efficiently on the basis of half-time release. That was a question that could be answered only after consulting with the Staff Council and taking its views into consideration. That did not happen.

17. The situation in the present case is similar to that considered in Judgment 911, where the Tribunal said of provisions similar to those found in Chapter V of the UNIDO Staff Rules which give effect to Staff Regulations 5.1, 5.2 and 5.3:

“Although [...] facilities are not a matter for negotiation or agreement and although no obligation attaches to the actual outcome of consultations, one of an executive head’s duties is to consult the staff association in keeping with the general principles [...] reflected in Chapter VIII.”

The Tribunal held in that case that:

“Since the Organization acted unlawfully in taking a decision which seriously disrupted the Staff Association’s work and in failing to let the Association state its views, the impugned decision must be set aside.”

18. The material before the Tribunal in this case does not indicate whether there has been serious disruption of the Staff Council’s work, but it does indicate that the complainant surrendered his home leave in 2003 so as to attend to Staff Council business. Moreover, there was no consultation with the Staff Council before the initial decision of 5 June 2003, the subsequent decision of 29 August or the challenged decision of 18 September of that year. That being so, the decision to reduce the release of the President of the Staff Council from full-time to half-time was unlawful. Thus, the implied final decision dismissing the complainant’s appeal must be set aside, as must the decision of 18 September 2003. And as the complainant has been required to attend to assigned duties on a half-time basis for a period in excess of three years pursuant to an unlawful decision, he should be awarded moral damages in the sum of 10,000 euros as well as costs of the proceedings before the Joint Appeals Board and the Tribunal.

19. As the decision of 18 September 2003 must be set aside, it is unnecessary to consider the separate argument that that decision involved an abuse of authority. However, it should be noted that there is no material independent of the complainant’s allegations with respect to intimidation, retaliation, harassment and prejudice that would permit a finding to that effect.

DECISION

For the above reasons,

1. The Director-General’s implied decision to reject the complainant’s appeal is set aside, as is the decision of 18 September 2003 that the complainant should report for assigned duties on a half-time basis.
2. UNIDO shall pay the complainant moral damages in the sum of 15,000 euros in accordance with considerations 14 and 18 hereof within 21 days of the publication of this judgment.

3. It shall also pay him 5,000 euros by way of costs of the proceedings before the Joint Appeals Board and the Tribunal.

4. Without prejudice to the right of the complainant to pursue his claims with respect to intimidation, retaliation, harassment and prejudice, the complaint is otherwise dismissed.

In witness of this judgment, adopted on 10 May 2007, Mr Michel Gentot, President of the Tribunal, Ms Mary G. Gaudron, Judge, and Mr Giuseppe Barbagallo, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 11 July 2007.

Michel Gentot

Mary G. Gaudron

Giuseppe Barbagallo

Catherine Comtet