

115th Session

Judgment No. 3240

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mr H.G. R. against the Food and Agriculture Organization of the United Nations (FAO) on 26 February 2011 and corrected on 16 March, the Organization's reply of 11 July, the complainant's rejoinder of 21 October, corrected on 7 November 2011, and the FAO's surrejoinder of 14 February 2012;

Considering Article II, paragraph 5, of the Statute of the Tribunal;
Having examined the written submissions;

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 2820, delivered on 8 July 2009. Suffice it to recall that in October 2000 the complainant began working for the World Food Programme (WFP), an autonomous joint subsidiary programme of the United Nations and the FAO, as a consultant. In July 2005 he was appointed as Programme Officer/Head of the El Fasher Field Office (North Darfur, Sudan), under a one-year fixed-term contract, which constituted a probationary period. In November of that year he was assigned to the Programme Unit of the El Fasher Area Office and his probation was subsequently extended to 18 months. By a memorandum of 10 January 2007 the Director of the Human Resources Division informed him that, due to

his performance, his appointment would not be renewed beyond its expiry on 22 January 2007.

On 23 March 2007 the complainant filed his first complaint with the Tribunal in which he challenged the decision of 10 January 2007. The Tribunal held that he had failed to exhaust internal remedies and, accordingly, dismissed his complaint as irreceivable. However, it noted the FAO's continued willingness to consider the complainant's appeal within the applicable internal appeal process, despite the fact that he had missed the time limit to appeal provided for in the Staff Rules.

Following the delivery of Judgment 2820, on 29 August 2009 the complainant lodged an appeal with the Appeals Committee challenging the non-renewal of his appointment. He alleged procedural flaws in what he considered to be his transfer from the El Fasher Field Office to the Programme Unit of the El Fasher Area Office, and procedural flaws related to his performance appraisals. In addition, he asserted that he had been subjected to prejudice and discrimination, and he accused his supervisors of abuse of power.

In its report of 21 May 2010 the Appeals Committee recommended, by a majority, that the complainant's appeal and related claims be rejected. In a dissenting report one member of the Committee criticised the other members for failing to investigate the case further and she expressed grave concerns regarding the actions of certain staff members in the field and regarding what she viewed as an attempt by the WFP to raise a smokescreen around the case. By a letter of 2 December 2010 the complainant was informed that the Director-General of the FAO considered that the recommendation of the majority of the Appeals Committee was well founded and that he had therefore accepted it. That is the impugned decision.

B. The complainant asserts that, even before he had obtained a fixed-term contract, the Emergency Coordinator for Darfur, Mr V., falsely labelled him as a "weak performer". Then, with the aim of terminating his employment with the WFP, Mr V. subsequently informed the complainant's supervisors in North Darfur of his

concerns and requested that his work be rigorously scrutinised. Mr V. therefore abused his power by negatively influencing and predetermining the outcome of his performance evaluations during his probationary period.

He contends that, contrary to the WFP's assertions, he was, in fact, transferred to the Programme Unit of the El Fasher Area Office. This was done at the request of Ms N., the Head of the Programme Unit of the Area Office, who required additional staff in her Unit, and not as a result of concerns about his management skills. However, in breach of the established practice, he did not receive a new job description or details of the new reporting structure, and he accuses the WFP of deliberately breaching the relevant procedural requirements in order to manipulate the scope of his duties and the applicable evaluation procedures. He argues that he was purposely overburdened with responsibilities in order to compromise his performance and to provide a justification for the decision to terminate his employment.

The complainant alleges that there were several procedural flaws in the performance evaluation process. In particular, he points to the Administration's combined use of a Performance And Competencies Enhancement Form (PACE) and a Probationary Performance Appraisal Report (PPAR) to assess his work. He asserts that, in comparison to similarly situated colleagues, only he was evaluated using both forms and he was subjected to a higher level of supervision in order to find fault with his performance. In his view, the PACE form should not be used to evaluate a staff member with a fixed-term contract. Nevertheless, Ms M., the Head of the El Fasher Area Office, completed the first evaluation of his performance in January 2006 using a PACE form and despite the fact that she had only acted as his first-level supervisor from July to October of 2005. On 15 July 2006 a second PACE form was completed by Ms N., the Head of the Programme Unit of the El Fasher Area Office. Then, on 17 July 2006, Ms M. completed the complainant's PPAR, again signing it as his first-level supervisor even though, in the complainant's view, this was not an accurate reflection of the *de facto* reporting structure. He

accuses Ms M. of abuse of authority in this respect. Furthermore, he asserts that his final appraisal report, which listed Ms N. as his first-level supervisor and which was signed by Mr V. in December 2006, was prepared in retaliation after he had drawn attention to procedural flaws in the management of his probationary period.

Referring to an e-mail from the Administration dated 20 November 2006, which notified him that his appointment would not be renewed beyond its expiry on 31 December 2006, the complainant contends that the decision to terminate his employment was procedurally flawed and an abuse of power. The WFP breached the Staff Rules by failing to review his performance during the extended probationary period. Moreover, Mr V. erroneously relied on the flawed evaluation report completed by Ms M. in July 2006 when unilaterally taking the termination decision, without consulting the complainant's first and second-level supervisors or the complainant. Also, the decision was taken prematurely, i.e. more than two months before the expiry of his probation.

Lastly, the complainant challenges the findings of the Appeals Committee on several grounds. In particular, he asserts that it did not conduct a thorough investigation or understand the core issues of his case. In addition, he contends that he has been unfairly treated by the FAO, because it has taken four years to reach a decision in his case and, as a result, he has suffered hardship.

He asks the Tribunal to quash the impugned decision. He seeks reinstatement, material and moral damages, and costs.

C. In its reply the FAO refers to the Tribunal's case law and argues that a decision not to confirm the appointment of a probationer is discretionary and subject to only limited review. It submits that the WFP adhered to the Staff Regulations and Staff Rules and the relevant human resources policy governing probationary periods. The decision not to confirm the complainant's appointment was "legally correct" and, contrary to his assertions, his appointment was not terminated, but expired according to its terms. His performance was properly

assessed and, as he was not able to fulfil his duties and responsibilities to a satisfactory level, his appointment was not confirmed.

The Organization disputes the complainant's allegations that his probationary period was subject to numerous procedural flaws. First, he was not transferred to the Programme Unit of the El Fasher Area Office. The decision to move him from the Field Office was based on his performance during the first months of his employment and was taken in order to address the issue of his weaknesses by providing him with additional assistance and supervision. Second, his responsibilities were always clearly outlined to him and there is no evidence that he raised any concerns in this respect during his performance evaluation discussions with his supervisors. Any new functions were assigned to him in order to provide him with the opportunity to improve his work performance. Third, the correct forms were used to evaluate his performance, which was appraised four times during his 18 months as a staff member. The defendant points out that, although the PPAR and PACE forms differ in some aspects, both forms are designed to set out a work plan and to provide an assessment of a staff member's performance against that plan. The relevant reporting requirements were fully met and the complainant never contested his appraisals. Fourth, the individuals who signed the appraisals were "effectively" the complainant's first and second-level supervisors. Although there was a change in his work plan following his move to the Programme Unit, the pre-existing reporting structure did not change.

The FAO asserts that the complainant failed to report any incidents of abuse of power, prejudice or discrimination on the part of his supervisors. Referring to the case law, it argues that, as he has provided no evidence in support of his allegations in this respect, he has not discharged the burden of proof.

Lastly, the Organization denies that there was an inordinate delay in dealing with the complainant's case or that he was treated unfairly. It emphasises that he was allowed to pursue his internal appeal despite having exceeded the statutory time limits for doing so.

D. In his rejoinder the complainant develops his pleas. He asks the Tribunal to compel witnesses to provide evidence regarding the circumstances leading to his move to the Programme Unit and to order the FAO to disclose specific documents.

E. In its surrejoinder the FAO maintains its position in full. In addition, it contends that the documents the complainant seeks are not relevant to his case.

CONSIDERATIONS

1. This is the complainant's second complaint against the FAO regarding the non-confirmation of his fixed-term appointment. In Judgment 2820 the first complaint was dismissed as irreceivable for failure to exhaust the internal means of redress as required by Article VII, paragraph 1, of the Statute of the Tribunal. Subsequently, with the agreement of the FAO, the complainant submitted his appeal to the FAO's Appeals Committee. The complainant now impugns the Director-General's decision of 2 December 2010 dismissing his appeal.

2. On 23 July 2005 the complainant was appointed under a one-year fixed-term contract with a mandatory one-year probationary period as Programme Officer/Head of the El Fasher Field Office in North Darfur, Sudan, at grade P-2. In November 2005 he assumed new duties in the Programme Unit of the El Fasher Area Office.

3. In early August 2006 the complainant's probationary period was extended for six months. At this point, to assist in understanding the positions of the parties, it is helpful to describe briefly the assessments of the complainant's performance up to the time of the extension of his probationary period. According to a Performance And Competencies Enhancement Form (PACE) for the period from July to December 2005, Ms M., Head of the El Fasher Area Office, completed the section for Phase 1 of the appraisal cycle on 2 October 2005 and the complainant completed it on 3 October 2005. The same form shows that Ms M. and the complainant completed Phase 2, the

“Mid-Year Performance Review”, on 17 January 2006. The section of the form for Phase 3, the “End of Year” assessment, contains the supervisor’s and the complainant’s comments; it indicates that it was signed by the complainant on 18 February 2006. The supervisor’s comments are undated and the subsections for the “Technical Division Review” and “Second-Level Review” are blank. Another PACE form was initiated for the period from January to December 2006. Phase 1 of the appraisal cycle was completed by the supervisor, Ms N., the Head of the Programme Unit of the El Fasher Area Office, and the complainant on 11 May 2006. Phase 2 was completed by the same supervisor, Ms N., on 15 July 2006 and by the complainant on 20 July 2006. Phase 3 is blank.

4. On 17 July 2006 Ms M. completed a Probationary Performance Appraisal Report (PPAR) for the complainant covering the second review period, that is, the ten months after his entry on duty. In the PPAR, the complainant’s performance is summarised as “[m]arginal – fails to meet some major job requirements” and Ms M. recommended an extension of his probationary period. This report was signed by Mr V., as second-level supervisor, on 18 July 2006.

5. In a memorandum of 3 August 2006 the Director of the WFP’s Human Resources Division informed the complainant that, for the reasons stated in his 18 July 2006 PPAR and on the recommendation of his first and second-level supervisors, Ms M. and Mr V., his probationary period was being extended for an additional six months to 22 January 2007, in accordance with Manual paragraph 305.5.243. By an e-mail of 20 November 2006 Human Resources Services informed the complainant that his contract would not be extended beyond its expiry date of 31 December 2006. He was encouraged to begin applying for other positions and told that the “notification represent[ed] the statutory notice period outlined in [Manual paragraph] 302.9.33”. On 22 November 2006 a Human Resources Officer wrote to the complainant advising him of the various formalities that had to be completed in connection with his separation from service. That same day, the complainant wrote to

Mr J. and to the WFP Representative in Sudan requesting his reinstatement. In his response of 6 December 2006 Mr V. noted that the complainant's extended period of probation would end on 22 January 2007. He explained that the complainant's appointment was not being confirmed because he had not shown improvement in the areas that had originally led to the extension of his probationary period. Mr V. also added: "The message from HR was to give you advance notice to allow you to look for other job opportunities, even with other WFP Offices, rather than waiting until the date of your last performance appraisal, leaving you very little time to look for other job opportunities."

6. By an e-mail of 7 December 2006 the complainant asked the Director of the Human Resources Division to reinstate him in his post. On 12 December 2006 Ms N. completed the complainant's PPAR for the period from 1 November 2005 to 22 January 2007. She reiterated past concerns about the complainant's ability to work independently and properly write reports without supervision. She acknowledged that the complainant "did genuinely try to improve" but she found that it would be in no one's interest to "entrust him with increasing levels of responsibility in a front line emergency". As a result, she rated his performance as "marginal" and recommended against confirming his appointment. In her response of 20 December 2006 to the complainant's request for reinstatement, the Director of the Human Resources Division noted that, although his contract was initially to expire on 31 December 2006, "it [had] been extended to 22 January 2007 to coincide with [his] extended probationary period". She reviewed in detail the complainant's two main areas of concern, namely, the procedure followed during his probationary period and the merits of the evaluation of his performance. She explained that he had ten days to submit his views and comments on the contents of his PPAR and the comments of his first and second-level supervisors that prompted the proposed non-confirmation of his probationary period. Following the receipt of his comments, she would make a final determination regarding the confirmation of his appointment. The complainant provided a detailed response on 25 December 2006.

On 10 January 2007 the Director advised the complainant that she concurred with the recommendations of his supervisors not to confirm his appointment.

7. As stated above, the complainant lodged an internal appeal challenging the non-renewal of his appointment. The Director-General endorsed the findings and recommendation of the Appeals Committee majority opinion and dismissed the appeal.

8. In summary, the complainant contends that his performance evaluations were procedurally flawed as they were not completed by his actual supervisors, incorrect forms were used, and he was never warned that his appointment was in jeopardy. He claims that his contract was prematurely terminated. He also challenges the appraisal of his performance on its merits and alleges abuse of authority and discrimination.

9. At this juncture, a summary of the relevant provisions in the FAO Manual is useful. The FAO has two distinct procedures to assess the performance of staff members. In general, assessments, with the exception of those on probation, are done according to the criteria set out in the Performance And Competency Enhancement Programme. For those staff members serving a probationary period, Manual paragraph 305.5.241 establishes a three-step procedure to assess their performance. It relevantly provides that within three weeks of the entry on duty, the immediate supervisor provides the probationer with a plan of work that includes the duties or the objectives and tasks to be completed within six months. After six months, the immediate supervisor must complete a PPAR form, discuss the contents with the probationer and give the probationer an opportunity to comment. After the division director has been given an opportunity to add comments, the PPAR is sent to the Director of the Human Resources Division (for WFP staff). At this stage, the immediate supervisor establishes a further plan of work for the next four months. After nine months, the immediate supervisor completes a PPAR for the second review period and includes a recommendation

regarding the confirmation of appointment, extension of the probationary period or separation. As with the six-month review, the probationer is given an opportunity to comment and the PPAR is sent to the division director “in good time for an appropriate recommendation to be made before the probationary period expires”.

10. If the division director recommends an extension of the probationary period, Manual paragraph 305.5.243 provides that the division director must send a memorandum to the Director of Human Resources Services (for WFP staff) setting out the reasons for the recommendation together with a copy of the PPAR and the probationer’s comments “no later than six weeks prior to the date the probationary period would have been completed”. The probationer must also be given a copy of the memorandum together with all the attachments. The Director decides what action should be taken and informs the probationer and the division director of his decision. If the probationary period is extended, the immediate supervisor establishes a further plan of work for the period of the extension. At the end of the extension, the immediate supervisor and division director make their final recommendation to the Director of Human Resources Services.

11. As noted above, the complainant claims that the assessments of his performance were not conducted by his actual supervisors. The parties agree that Ms M. was the complainant’s first-level supervisor from the date of his appointment to 1 November 2005. The FAO, however, maintains that the change in the complainant’s work plan in November did not alter the reporting structure even though he was working on a daily basis with Ms N. It points out that the early evaluations reflect the consultation between Ms M. and Ms N. and, as the Appeals Committee found, the proper supervisors were “effectively involved” in the complainant’s performance appraisal.

12. The Appeals Committee’s finding in relation to the proper supervisor is grounded on its finding that the complainant was not transferred. The latter finding involves reviewable error. The Appeals Committee, based on its reading of the WFP Human Resources Policy

Document on Administrative Procedures for International Professional Staff dated 1 October 2003 (hereinafter “the HR Policy Document”), defined transfer “as a formal reassignment to a post which occurs after established procedures are followed and completed” and noted that “reassignment occurs only in the case of a staff member with an indefinite status, [or] a staff member with a fixed-term appointment whose probationary period has been confirmed”. In the Appeals Committee’s view, a staff member on probation, such as the complainant, did not meet the criteria for reassignment. As the complainant did not meet the criteria for reassignment found in paragraph 2.1 of the HR Policy Document, the Appeals Committee concluded that the complainant was given new duties while holding the same post at the same duty station. Accordingly, there was “no actual transfer, but a change in work-plan agreed upon with the [complainant]”.

13. The Appeals Committee’s reliance on paragraph 2.1 of the HR Policy Document is misplaced. Manual paragraph 311.4.1 defines a transfer as “the movement of a staff member from one post to another”. Paragraph 2.1 of the HR Policy Document does not assist in determining whether a staff member has, in fact, been moved from one post to another. Rather, it deals with the three ways posts may be filled. Paragraph 2.1(i) reads in part, that posts may be filled through “[r]eassignment of serving staff with Indefinite Appointment status or transfer of a suitably qualified international professional staff member serving on a Fixed-Term Appointment who has completed the requisite probationary period [...]”. As to the requirement that if a post is to be filled by a staff person holding a fixed-term appointment, it must be a staff member whose appointment has been confirmed, it is at odds with Manual paragraph 305.5.23 that specifically contemplates a staff member being transferred while still on probation. It reads: “[s]taff members [...] transferred to a different post while still on probation continue to serve on probation after [...] transfer provided, however, that the total probationary period does not exceed 18 months”.

14. The question remains whether the complainant was, in fact, transferred from one post to another. There is no evidence of the complainant performing any of the duties of the post of Head of the El Fasher Field Office beyond 1 November 2005. Indeed, the evidence is to the contrary. In the PACE form for the period from July to December 2005 under the section for the appraisal of Phase 3 of the appraisal cycle, Ms M. described the complainant as being the Head of the El Fasher Field Office from March to November 2005. She goes on to state that he was “moved from the area office [given the context it appears that field office was intended] to take on the responsibility of being M&E officer in the Area Office” and she describes this new responsibility as the complainant’s “new position”. The PPAR completed in July 2006, under Part II, sets out the plan of work to November 2005 and describes the complainant as Head of the El Fasher Field Office. In the plan of work from November 2005 to the date of the PPAR the complainant is described as “programme officer for M&E in the Area Office”. A similar distinction between the two posts is found in the PPAR completed in December 2006. In her letter of 10 January 2007 the Director of the Human Resources Division referred to the complainant’s “transfer to the Programme Unit of the Area Office with M&E/Reports functions [...]”. Given other inaccuracies in relation to known facts found on the screen printout overview of the complainant’s personnel action history provided by the FAO, nothing can be taken from the fact that there is no entry in the system for the complainant being transferred.

15. Regardless of the motivation for moving the complainant, the only conclusion that can be drawn from the evidence is that the complainant was, in fact, transferred from the post of Head of the El Fasher Field Office to Programme Officer in the Area Office on 1 November 2005 and subsequent to that date only performed the duties of Programme Officer in the Area Office.

16. As noted above, the FAO Manual stipulates that a probationer’s performance appraisal must be completed by the probationer’s immediate supervisor. Having regard to an e-mail of

12 December 2006 from Ms N., in which she states that from November 2005 the complainant reported “directly” to her and the Director of the Human Resources Division’s acknowledgement of this in her letter of 10 January 2007 to the complainant, it is clear that Ms N. was the complainant’s immediate supervisor from 1 November 2005 to the date his appointment expired. Therefore, the PPAR completed in December 2006 was the only appraisal prepared by the complainant’s immediate supervisor. At this point, it is convenient to deal with a related matter. The complainant disputes the assertion that Ms N. prepared the PPAR completed in December 2006 since she was on leave at the time. Although, as pointed out by the complainant, it is not signed by Ms N., given that it was sent by her as an attachment to her e-mail of 12 December 2006, in the absence of any evidence to the contrary, it is reasonable to infer that Ms N. prepared the complainant’s final PPAR.

17. As to the use of the PACE forms and the required periodic reviews, the FAO maintains that the reporting requirements were met. It points out that the complainant’s performance was appraised four times over the course of 18 months. The FAO acknowledges that PACE forms are not used to evaluate officially the performance of probationers but points out that the comments and ratings in the PACE forms are reflected in the PPARs completed in July and December 2006. It notes that this view is supported by the Appeals Committee’s finding.

18. The Appeals Committee found that as the essential elements are present in both the PACE and PPAR forms, the use of the PACE form did not constitute a material procedural flaw as the required appraisals for the period of time were “effectively completed”. In making this finding and the finding in relation to whether the proper supervisor carried out the complainant’s appraisals, the Appeals Committee failed to have regard to the relevant provisions in the Manual that expressly require reporting on two specific review periods, that the assessment of a probationer’s performance will be

done on the basis of the PPAR and that the immediate supervisor will conduct the performance appraisals.

19. Close adherence to the required process is not a matter of form over substance. The Appeals Committee's view that the procedural flaws in this case are not sufficient to set aside the decision fails to have regard to the rationale for having a specific process governing the probationary period. The probationary period is to give the FAO an opportunity to assess the individual's suitability. It recognises that the assessment of suitability has to be made within a particular time frame; reviews at particular intervals are necessary to assess in a timely manner whether goals are being met and to warn the probationer if they are not being met; and that the supervisor working most closely with the probationer will be in the best position to evaluate the probationer's suitability.

20. Although the complainant did not take issue with the use of the wrong form for his performance appraisal or with the fact that his immediate supervisor did not conduct the evaluation, this does not absolve the FAO of its obligation to act in compliance with its own Staff Regulations, Staff Rules and Manual provisions implementing those rules (see Judgment 3177, under 18).

21. As to the question of warning, the FAO takes the position that, just as the Appeals Committee found, the issues raised in the performance appraisals constituted a sufficient warning that the complainant's appointment would not be confirmed and the extension of probation itself was an additional indicator of non-confirmation. This argument is rejected. It is a well-established principle governing probation that in addition to "[identifying] in a timely fashion the unsatisfactory aspects of the performance so that remedial steps may be taken", an organisation must also "give a specific warning that the continued employment is in jeopardy" (see Judgment 2788, under 1).

22. Quite apart from the procedural flaws dealt with above, it is clear from the record that during the first year of the complainant's

probation, the FAO completely disregarded its own statutorily mandated procedure for probationary periods. Matters did not improve after the period of probation was extended.

23. Despite having been told that his probationary period was extended to 22 January 2007, by an e-mail of 20 November 2006 he was informed that his contract would expire on 31 December 2006. It is also observed that Manual paragraph 302.9.33 referenced in the e-mail deals with termination and not the expiry of a contract for which according to paragraph 302.9.7 notice is not required. In light of this e-mail and the follow-up letter of 22 November 2006 explaining the separation procedures, it is not surprising that the complainant believed he was being prematurely terminated.

The FAO stresses that the complainant's appointment was not terminated. Rather, his appointment was not confirmed and it automatically expired on 22 January 2007. As the Appeals Committee found, in keeping with human resources practices, he received a pre-notification that his contract would not be extended beyond its expiry date of 31 December 2006. The FAO argues that this was subsequently clarified in Mr V.'s e-mail of 6 December 2006.

24. In her e-mail of 20 December 2006 the Director of the Human Resources Division explained that, although his contract was initially to expire on 31 December 2006, it had been extended to 22 January 2007 to coincide with his extended probationary period. In its submissions, the FAO attempts to explain the reference to the incorrect expiry date in the e-mail of 20 November 2006 in the following terms. Upon the expiry of his contract on 22 July 2006, the complainant's appointment was extended to 31 December 2006. Moreover, in July 2006, the complainant's probationary period was extended until 22 January 2007, and at the same time his contract was further extended in keeping with that date. Quite apart from the fact that this explanation is at odds with the Director's account of 20 December 2006, there is no evidence of an extension of the fixed-term contract to 31 December 2006, nor is there any evidence that the complainant was notified of such an extension. Given the

importance of this type of administrative action in any organisation, the relevant documentation would be expected. It is simply untenable in effect to maintain that a probationary period could be extended to a particular date without at the same time extending the underlying appointment to the end of the probationary period. The only reasonable inference that can be drawn is that the letter of 20 December 2006 and the FAO's explanation are poor attempts to justify after-the-fact lax administrative practice and rationalise the subsequent steps taken in relation to the non-confirmation of the appointment. An immediate apology would have been the appropriate action.

25. As to the PPAR completed on 12 December 2006, the FAO stresses that in accordance with the required procedure, it was completed and communicated to the complainant 30 days before his appointment was due to expire and he was given an opportunity to comment before a final decision was taken. Although in her e-mail of 20 December 2006 the Director of the Human Resources Division stated that a final decision would be made after reviewing the complainant's comments, it is difficult to accept that this was a meaningful opportunity to comment in light of Mr V.'s e-mail of 6 December 2006. In the e-mail he explained that the complainant's appointment would not be confirmed because he had not shown any improvement in previously identified areas and that he was being given advance notice rather than waiting until the date of his last performance appraisal. It appears from this letter that the non-confirmation of the complainant's appointment was already decided.

26. The complainant also advances allegations of abuse of authority and discrimination. While the FAO's conduct reflects disregard for its own rules and lack of respect for the complainant's dignity, the conclusions the complainant wishes the Tribunal to draw are based on conjecture and are not reasonable inferences.

27. Lastly, although the complainant was compensated for some delay in Judgment 2820, it did not include compensation for delay

in the present proceeding. The Tribunal notes that there was an unexplained unreasonable delay of six and a half months between the Appeals Committee's report and the Director-General's decision.

28. It is not possible to say whether the complainant would have successfully completed his probation if he had been warned in a timely manner during the first period of his probation, however, he was not given the opportunity to do so. Given the passage of time, reinstatement is no longer a viable form of relief. The complainant will be awarded material and moral damages in a total amount of 20,000 United States dollars and costs in the amount of 1,000 dollars. In the circumstances, the complainant's request for oral hearings and the production of documents will not be ordered.

DECISION

For the above reasons,

1. The Director-General's decision of 2 December 2010 is set aside.
2. The FAO shall pay the complainant material and moral damages in a total amount of 20,000 United States dollars.
3. It shall also pay him costs in the amount of 1,000 dollars.
4. All other claims are dismissed.

In witness of this judgment, adopted on 2 May 2013, Mr Giuseppe Barbagallo, Presiding Judge of the Tribunal for this case, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 4 July 2013.

Giuseppe Barbagallo
Dolores M. Hansen
Michael F. Moore
Catherine Comtet