

115th Session

Judgment No. 3242

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mrs R. S. against the World Health Organization (WHO) on 7 April 2011 and corrected on 28 June, WHO's reply of 30 September, the complainant's rejoinder dated 5 December 2011 and the Organization's surrejoinder of 12 March 2012;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal and Article 11 of its Rules;

Having examined the written submissions;

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

A. The complainant, a national of the United States of America born in 1963, joined WHO in September 1988 as a Technical Officer. She left the Organization in 1993 to pursue other activities, but returned to it in September 1998. In May 2002 she was appointed to a grade P-5 post as a Scientist. At the material time she was serving as Coordinator of the Equity Analysis and Research Unit in the Department of Ethics, Equity, Trade and Human Rights (ETH) within the Information, Evidence and Research (IER) Cluster.

In early 2009 the complainant's first-level supervisor, the Director of ETH, retired and on 1 October 2009 Dr K. was appointed Director of ETH; he thus became the complainant's new first-level supervisor. On 16 February 2010 the complainant sent an e-mail to Dr K. in which she stated that, following the "difficult and tense" team meeting they had had on 5 February, she intended to set some "ground rules for constructive and respectful discussion", which would include "not using accusatory tones or inappropriate remarks and that no one raises voices". She added: "[u]ntil I can have assurances from you that this won't happen again, I feel uncomfortable meeting with you alone or only with my team and hope that I won't have to involve anyone external". The meeting of 5 February had been attended by Dr K., the complainant and one member of her team. In an e-mail of 24 February Dr K. gave his account of the meeting, after which the complainant replied that she had a "radically different" recollection of the events and that "any further discussion together w[ould] take place with the WHO ombudsperson". Dr K. wrote an e-mail to the complainant on 5 March giving her instructions on how to process her work.

As suggested by Dr K., the complainant brought the matter to the attention of the Ombudsperson, as well as the Assistant Director-General of the IER Cluster. In an e-mail of 14 March addressed to the latter and copied to the Ombudsperson and the Director of the Human Resources Management Department (HRD), she explained that her working relationship with Dr K. had been difficult ever since he had arrived in October 2009 and that the problem was now escalating. She pointed out that she had been prescribed sick leave "due to [her] conditions of work", and she asked to be removed immediately from Dr K.'s supervision "as an interim measure" to facilitate her return to work.

On 26 March 2010 the Assistant Director-General notified the complainant, who was still on sick leave, that following consultation with the Director-General's Office, HRD and the Ombudsperson, he had identified an immediate "workable solution". He explained that, in the context of the restructuring of the Department of ETH, a new Unit on Social Determinants of Health had been created and was

headed by Dr V.; he had decided to assign her with immediate effect to the newly created unit, which meant that Dr V. would be her new first-level supervisor. He added that, within the next ten days, she should put in writing her allegations against Dr K. so that the matter could be properly and promptly investigated. The complainant replied on 3 April that she had felt humiliated and depressed upon receiving his decision, because she thought that a solution would be found whereby she would no longer be in the reporting line to Dr K. This was not the case, however, as the new unit belonged to the Department headed by Dr K., which meant that all decisions would still have to go through him.

The complainant returned to work in mid-April but was prescribed further sick leave in May. On 31 May 2010 she lodged a complaint of harassment with the Headquarters Grievance Panel which she corrected on 3 June. She accused Dr K. inter alia of provocation, of repeatedly obstructing her work and of using rude, humiliating and intimidating language in front of her team. She also accused him of retaliation, threats and deliberate attempts to undermine her work. She asked the Panel to recommend that Dr K. be reprimanded, relieved of his managerial duties and compelled to undertake training before he could again act as a supervisor. She also sought compensation, a transfer to a position where she would no longer report to Dr K. either directly or indirectly, and reimbursement of her legal costs. In early June the complainant was informed of the proposed Panel's composition and she objected to the appointment of the proposed Chair on the ground that he had been a member of the Headquarters Grievance Panel that issued a report considered by the Tribunal in Judgment 2642 also involving WHO. According to the Tribunal, the Organization had failed to investigate the internal complaint promptly, thoroughly and objectively. Following further communications between the complainant and the Panel, the Chair was replaced. In August the complainant was informed that Ms D., a former staff member, would provide administrative support to the Panel. The complainant initially objected to her participation, explaining that she had worked and discussed her situation with

Ms D., but finally agreed to her participation having been told that she would not take part in the decision-making process.

In the autumn of 2010 the complainant was put on loan for six months to the Department of Health System Financing (HSF), out of the reporting line to Dr K. The loan was extended several times up to January 2012.

After having heard the complainant, Dr K. and several witnesses, the Headquarters Grievance Panel issued its report on 10 December 2010. It noted with regret that the mediation process initiated in March had been stopped prematurely by the complainant. It found that there had been a lack of diligence on the part of Dr K. in providing information or clarification to the complainant concerning certain working issues, but that although this showed poor judgement on his part, it did not constitute harassment. For the most part, the Panel considered that the complainant's allegations were unsubstantiated. It therefore recommended that the Director-General dismiss all her requests for redress but that both parties be reminded of the WHO Global Competency Model and that they be required to take courses on communication skills. These measures would be monitored by their respective first-level supervisors. It also recommended that the Ombudsperson provide mediation to bring the case to closure.

By a letter of 4 January 2011, which the complainant received on 11 January, the Director-General informed her that, having examined with great care all the information available to her, she had decided to endorse the Panel's conclusion that, overall, the allegation of harassment had not been substantiated. Consequently, she had decided to dismiss all requests for redress and to draw her attention, as well as that of Dr K., to the WHO Global Competency Model, which contains a list of effective and ineffective behaviours. She added that, at the next opportunity, they should enrol in courses concerning communication skills and that their first-level supervisors would be asked to monitor these measures in the context of their performance appraisals. Lastly, she stated that Dr K. had been provided with a copy of the letter. The complainant impugns that decision before the Tribunal.

B. The complainant alleges that the Headquarters Grievance Panel's report is flawed in several respects and that, consequently, the impugned decision, which is based upon it, suffers from the same flaws. She submits that the report contains errors of fact, in particular because the Panel did not properly consider or weigh evidence showing that she was harassed. For instance, it failed to take into account medical certificates showing that her poor state of health was linked to her working conditions despite the fact that, according to paragraph 5 of the Policy on Harassment contained in Cluster Note 2001/9 of 2001, the definition of harassment concerns not only intent but also effect. She also questions the Panel's review of the evidence, given that it took only one month to finalise its report after having heard the last witnesses.

According to the complainant, the Panel's report was also tainted with procedural flaws. She alleges *inter alia* that the Panel's method of questioning witnesses was biased towards Dr K. She adds that she submitted her corrected internal complaint in early June 2010 but was not interviewed before mid-September, and the witnesses were not heard until October or November. In her view, this delay could have prejudiced the investigation by reason of imperfect recall and staff turnover. The complainant also questions the independence of some witnesses, stressing that nine of them worked under the supervision of Dr K., and that a person from the Director-General's Office was present during some hearings without any explanation being given as to that person's presence. She adds that no transcript of the testimonies was made available to her or to witnesses and that the tapes of the interviews were destroyed once the Panel had finalised its report. She further alleges that some witnesses were intimidated. For these reasons the complainant considers that the Panel did not investigate her allegations of harassment thoroughly and promptly, as required by the Tribunal's case law.

The complainant maintains that she was harassed by Dr K. and identifies three phases in the harassment process. The first occurred between 6 October 2009 and 4 February 2010 and was characterised by "repetitive subtle hostility and intimidation" directed towards her.

As examples of such conduct she refers inter alia to certain inappropriate demeaning comments made in public meetings, the withholding of important information necessary to carrying out her work, her exclusion from meetings important to her area of work, Dr K.'s excessive control of the timing on her duty travel and his refusal to meet with her in a timely manner. During the second phase, which took place between 5 February and early March, Dr K.'s conduct towards her was characterised by open hostility and derision, including the use of rude, humiliating and "obstructive" language, for instance during the meeting of 5 February or in an e-mail of 5 March. The third phase took place between March and June 2010. The complainant alleges that, during that period, Dr K. made written threats, repeatedly failed to respond to written requests for clarification or information and made unfounded allegations which were copied to others. She alleges negligence on the part of the Organization for its inability to deal with the escalating phases of harassment and for leaving her in a "toxic environment" for several months. In her view, the harassment also resulted in her career being "obstructed" or "put on hold".

The complainant asks the Tribunal to order that Dr K. be subjected to disciplinary action, that he be "given a break from management" and that he be compelled to undertake training before acting again as a supervisor. She claims 50,000 Swiss francs in compensation and asks to be permanently transferred to a position where Dr K. is not her direct or indirect supervisor. She also claims costs.

C. In its reply WHO contends that the complaint is irreceivable for failure to exhaust internal means of redress insofar as the complainant makes new allegations of harassment based on events that occurred after the impugned decision was taken and concerning her future work assignments.

The Organization denies any errors of fact or procedure in the proceedings before the Headquarters Grievance Panel and asserts that the Director-General lawfully concluded that the complainant's

allegations of harassment were not substantiated. In its view, the Panel's report resulted from a thorough and procedurally sound investigation. Regarding the alleged delay in dealing with the allegations of harassment, WHO observes that the Panel was constituted nine days after the complaint was submitted to it, but that it then took the Panel almost four months to deal with the complainant's objections to its composition and additional queries as to the manner in which evidence would be recorded. The Panel could not hear witnesses before these issues were settled. WHO asserts that, contrary to the complainant's submission, the Panel had sufficient time during the course of its investigation to consider carefully all relevant evidence, and it denies any bias on the part of the Panel or lack of independence on the part of witnesses. It points out in this connection that the Panel made adverse findings against Dr K. and even recommended that he undertake remedial actions such as participating in a course aimed at improving his communication skills. WHO further denies that a third party from the Director-General's Office was present during the hearings.

WHO considers that the views of the witnesses heard by the Panel did not support the contention that Dr K.'s conduct was offensive or directed specifically towards the complainant with the purpose of humiliating her or preventing her from doing her work. Referring to the definition of harassment set forth in its Policy on Harassment, it submits that an action may constitute harassment even though there was no intent to offend, but not all actions that are perceived by an individual as harassment will automatically constitute harassment; indeed, that individual's perception must be reasonable. According to the Organization, Dr K.'s actions could not reasonably constitute harassment. The incidents that were reported by the complainant largely occurred in the normal course of the discharge of managerial and supervisory duties, and there is no evidence that Dr K.'s actions were based upon anything other than what he regarded to be the best interests of the Department of ETH. WHO adds that the medical certificates on which the complainant relies were based on her

own account of events to her practitioner, whereas the Panel's report was based on documentation submitted by the complainant, Dr K. and 17 witnesses. It would therefore have been improper for the Panel to rely on medical reports in determining whether or not the alleged incidents occurred. The Organization asserts that the Panel was diligent in carrying out its work and based its findings and recommendations solely on the evidence before it.

D. In her rejoinder the complainant reiterates her allegations of errors of fact and procedure stressing that, during the Panel's investigation, Dr K. read out to a witness parts of the confidential statement she had submitted to the Panel, thereby committing a breach of confidentiality and an abuse of power.

With respect to her allegations of harassment, she points out that the Panel concluded that Dr K.'s behaviour and actions between October 2009 and June 2010 had been "abrupt, condescending, unnecessary", showing "poor judgment" and "lack of diligence" and that he used an "elevated voice", was "harsh", and that he "kept shouting" in a "directed" way at her. In her view, such actions do not occur in the normal course of the discharge of managerial and supervisory duties. She submits that the situation improved only in the autumn of 2010, when she was put on loan to another department outside of Dr K.'s reporting line, and she criticises the Organization for not having taken that step earlier. She also criticises WHO for leaving her in an uncertain situation with respect to her career prospects, because the loan, which was initially for a short period of time, was extended several times, again for short periods and the Organization was going through restructuring and downsizing at the time.

E. In its surrejoinder the Organization asserts that the problems in the working relationship between the complainant and Dr K. were taken seriously and were duly addressed by the management. It considers that the allegations of breach of confidentiality and abuse of authority are not substantiated.

CONSIDERATIONS

1. The complainant was appointed in May 2002 to the position of Scientist at the P-5 level. After several subsequent assignments, she became Coordinator of the Equity Analysis and Research Unit in the Department of Ethics, Equity, Trade and Human Rights (ETH) in the Information, Evidence and Research (IER) Cluster, also at the P-5 level, in October 2006.

Following the retirement of her first-level supervisor, the complainant applied for his post of Director of ETH. She was shortlisted and interviewed, but not selected. Dr K. was selected and recruited to the Organization. He assumed his functions as the new Director of ETH and the complainant's first-level supervisor on 1 October 2009. The complainant submits that he harassed her and she identifies three phases: phase one consisting of hostility and intimidation; phase two consisting of repeated open hostility and derision; and phase three consisting of her being "effectively demoted".

2. The complainant impugns the letter of 4 January 2011 by which the Director-General informed her that she had decided to endorse the conclusion of the Headquarters Grievance Panel that her allegations of harassment were not substantiated. The Director-General found that the Panel had "carried out a careful and thorough analysis of [her] allegations" and that its report provided a sound basis upon which to reach a final decision. The complainant asserts that as the Director-General's decision was based on the information and conclusions found in the Panel's report, which she considers flawed, the decision is also flawed.

3. The Organization submits that the complaint is receivable only "insofar as the complainant disputes th[e] decision [of 4 January 2011] and the manner in which it was reached – in particular, the adequacy of the investigation by the [Headquarters Grievance] Panel which formed the underlying basis for the decision". The Organization points out that the complainant introduces new allegations that were

not subject to the investigation conducted by the Headquarters Grievance Panel, such as claims relating to events that happened after the Director-General took the impugned decision or to events that may occur in the future. These claims should be considered irreceivable for failure to exhaust the internal means of redress in accordance with Article VII, paragraph 1, of the Statute of the Tribunal. WHO also contends that the complaint is unfounded and should therefore be dismissed in its entirety.

4. Considering that it is sufficiently informed by the parties' pleadings and their annexes, the Tribunal disallows the complainant's application for hearings (see Judgment 3184, under 4).

5. The Tribunal will limit itself to considering the matters included in the internal appeal, barring as irreceivable any claims brought for the first time in the complaint before this Tribunal. It is also worth noting that some of the complainant's requests lie outside the Tribunal's jurisdiction, specifically: "[t]hat Dr [K.] be reprimanded, subject[ed] to disciplinary action and given a break from management; [t]hat Dr [K.] be obliged to undergo counselling or training before being permitted to act as supervisor for any staff member again" and "[t]hat [the complainant] be permanently transferred to a position in WHO where Dr [K.] is not in [her] direct or indirect line of supervision". Indeed, the Tribunal has no jurisdiction to issue injunctions against an international organisation (see Judgment 2190, under 6) and will not substitute its own decision for that of WHO concerning discretionary organisational measures.

6. The WHO Policy on Harassment contained in Cluster Note 2001/9 of 2001 states in relevant part:

"4. Harassment means any behaviour by a staff member that is directed at and is offensive to others, [...] and which interferes with work or creates an intimidating, hostile or offensive work environment. Harassment may include conduct, comment or display related to race, religion, colour, creed, ethnic origin, physical attributes, age, gender, or sexual orientation. It may involve a group or team and may occur among and between all

levels of employees. It can take many different forms, including sexual harassment. The most common origin of harassment is unresolved conflict in the workplace; it is often prolonged and malicious.

5. The definition of harassment concerns not only intent but effect. Therefore, if a specific action by a person or group is reasonably perceived as offensive by another person(s), that action might constitute harassment, whether intended or not. Offensive comments or behaviours could amount to harassment if repeated or pervasive.

6. Reasonable actions by supervisors intended to encourage satisfactory levels of performance should not be considered as acts of harassment. Actions are considered reasonable if in line with the provisions of the Standards of Conduct in the International Civil Service, the Staff Rules and Regulations, or generally accepted principles of managerial and supervisory duties and responsibilities.”

7. The Tribunal accepts the Director-General’s evaluation of the report of the Headquarters Grievance Panel and considers that her conclusions were generally unexceptionable, though some particular matters should be addressed. The first concerns the statement: “I accept the Panel’s finding that there was lack of diligence on the part of [Dr K.] in providing [the complainant] with information or clarification regarding the subject, work relevance and outcome of the meeting held during the January 2010 Executive Board meeting. While I consider this to have been poor judgment on his part, I agree with the Panel that this was not harassment.” The Tribunal notes that the information requested by the complainant (regarding the aforementioned meeting) was not directly relevant to her work, that there is evidence that Dr K. notified her on several occasions that he himself had not received the updates as expected from the person in charge of the meeting, and that Dr K. was under no managerial obligation to provide that information, particularly as he wanted her to focus on tasks that were assigned to her specifically. The Panel’s finding that there was not sufficient evidence to support the allegation of “withholding information to carry out work, not responding to repeated requests for clarification; creating an atmosphere of distrust” was open to it, as was the further finding that this lack of diligence was not evidence of harassment.

8. Another matter which should be addressed is the Panel's finding that Dr K.'s language, in an e-mail of 5 March 2010 that he addressed to the complainant was abrupt and condescending. The Panel noted that it was addressed only to the complainant but indicated that the Panel could not overlook the mitigating factors (i.e. previous e-mail skirmishes which seemed to trigger defensive responses from both parties; significant incidents such as the meeting of 5 February 2010 where both parties had significantly different recollections of events and the alleged violent throwing of a stuffed toy during a group exercise at the retreat of 1 March 2010) that contributed to a serious breakdown in communication.

In the e-mail Dr K. stated inter alia:

"I suggest that you follow the sequenced process below for this and all future initiatives which is common practice in most international organisations, including WHO:

- 1) You carry out the ground work which you
- 2) Present to me and
- 3) Seek my approval to start.
- 4) You seek the views of other teams in ETH and
- 5) Refine the document.
- 6) You involve partners outside ETH in HQ as appropriate.
- 7) You involve the Regions and seek their inputs before
- 8) You involve outside partners.
- 9) You refine the project
- 10) Seek appropriate approval from your supervisor and
- 11) apply a rigorous project management approach.
- 12) You coordinate the implementation and ensure the
- 13) Process monitoring.

As you have not followed such a process, you are now faced with a considerable time lag which is very unfortunate.

With regard to your request, therefore please start with 1) [...].

Then, please schedule a meeting with me in which you present the options for WHO/ETH.

Best wishes".

It is worth pointing out that Dr K. had already encouraged the complainant to work with priority on specific issues.

Following a misunderstanding of requests for work prioritisation, Dr K. felt it necessary to be as clear as possible regarding the order in which he wanted the complainant to work on the specific projects assigned to her. The Tribunal considers that Dr K.'s language in the e-mail of 5 March 2010 could not objectively be reasonably regarded as harassing behaviour.

9. The complainant alleges that the Organization acted in breach of the WHO Policy on Harassment. She submits that her allegation of harassment is substantiated because she felt harassed by the general attitude and specific actions of Dr K., and because her illness was a consequence of the harassment. However, proof of harassment insofar as it is based on the perceptions of a complainant, requires the staff member to demonstrate that the contested conduct could objectively be reasonably regarded as harassment. It is the Tribunal's view that the Headquarters Grievance Panel was correct in not treating the medical records as proof of harassment. The medical records prove the illness exists but do not prove the cause. The illness by itself does not prove harassment. The complainant's allegation is therefore unfounded.

10. Moreover, she contends that the Panel's report contains errors of fact, specifically in that it ignored what she asserts were contradictory descriptions by Dr K. and the other witness present at the meeting of 5 February 2010; that it failed to consider Dr K.'s intimidation of witnesses; that the Panel noted, but did not consider, items filed by her after the submission of the formal complaint; and that the Panel geared the interview questions towards obtaining the answers that the Panel wished to hear (which were biased in Dr K.'s favour).

11. The only contradiction between Dr K.'s descriptions of the meeting of 5 February 2010 and the witness account of the meeting

was in relation to whether or not the complainant had slammed the door as she left his office. In an e-mail of 24 February 2010 Dr K. stated that he did not recall having had a meeting with her in which accusatory tones or inappropriate remarks were made, nor where voices were raised in an inappropriate manner. But he stated that she forcefully closed the door behind her when she left his office. In his testimony before the Panel, Dr K. indicated that the complainant “went out and she slammed the door”. The complainant stated that during the discussion Dr K. “did not act in a courteous and respectful manner, rather he became angry and shouted at [her] and [she] sensed increasing violence in his tone and physical stance”. She added that “[t]his experience was intensely threatening, scary and undermined [her] in front of [her] subordinate, and caused [her] great psychological stress”. Regarding the meeting of 5 February 2010 the Headquarters Grievance Panel, in its report, stated that the other person present during the meeting had testified before the Panel that there had been no “slamming of doors”. In its fact-finding, the Panel had the benefit of hearing witnesses and was well placed to evaluate the evidence. It is not sufficient for the complainant to point to alternative findings that might have been made as a matter of logical analysis of the written record. No error on the part of the Panel has, in this respect, been demonstrated.

12. The complainant considers the four-month period between when she submitted her corrected internal complaint, i.e. on 3 June 2010, and when the Headquarters Grievance Panel began interviewing witnesses, on 8 October 2010, as an unacceptable delay which “had the potential to exacerbate the situation [...] as well as to prejudice the investigation by reason of imperfect recall and staff turnover”. The Tribunal notes that the complainant was notified of the proposed Panel’s composition by letter dated 4 June 2010, to which she responded by e-mail on 8 June, objecting to the appointment of the proposed Chair of the Panel on the ground that he was a member of the Headquarters Grievance Panel which issued a report which was at stake in Judgment 2642. In that judgment the Tribunal considered that WHO had failed to constitute a Panel that could investigate the

internal complaint promptly, thoroughly and objectively. In a letter of 11 June the complainant was informed that the Panel composition would stand as the Tribunal's comments in Judgment 2642 did not render the proposed Chair ineligible to continue as a member of the Panel and because it was not possible to appoint another Chair among available co-Chairs because of the likelihood of conflict of interest. The complainant further objected to the Chair's appointment, by a letter of 16 June, repeating her objection to his participation due to "his record on WHO's grievance panel as evaluated by the [Tribunal]" and raising a further objection on the basis that he and Dr K. were of the same nationality. In a letter dated 5 July 2010 the co-Chair of the Panel informed the complainant that neither the fact that the proposed Chair was a member of a previously convened Panel nor his nationality could be considered as showing "a serious conflict of interest". But she also informed her that in order to move forward without further delay the members of the Panel had asked the Director-General to nominate one of them to act as co-Chair of the Panel. The complainant replied in an e-mail of 6 July that she "reluctantly" accepted the new Panel's composition although she had some reservations about one of the members. Later on, in an e-mail of 3 August, the complainant was informed that, due to her "reservations" regarding the recently revised Panel's membership, it had been decided that the member about whom the complainant had "reservations" would be replaced with a member nominated by the Director-General. The complainant indicated, in an e-mail of 6 August, that she accepted that change.

By an e-mail dated 9 August 2010 the complainant was informed that due to the heavy workload, Ms D., a former WHO staff member, would "provide administrative support to the Panel in its work". The complainant objected on 16 August, requesting that Ms D. not be involved in her case. The co-Chair of the Panel responded in a letter of 17 August, reiterating that Ms D. would "only provide administrative support to the Panel" (e.g. by taking notes during interviews and meetings, and by transcribing the report) and would not be part of the decision-making process. The complainant, in an e-mail of 20 August, accepted Ms D.'s participation, adding that her main concern was that the selection process be conducted without bias and that

confidentiality be maintained. The co-Chair replied on 26 August that Ms D.'s role would be limited to the provision of administrative support to the Panel, which was essential to enable the Panel to fulfil its duties in a timely manner.

In the circumstances, the Tribunal finds that the complainant's claim that the Panel did not act promptly in considering her case is unfounded. While recognising the complainant's right to object to the Panel's composition, it notes that the delay in initiating the process was due to her various objections to the Panel's composition, notwithstanding the fact that her objections were without foundation. In any case, the time taken to establish the Panel's composition was not unreasonable. Furthermore, the complainant's claims that the Panel's report was "put together in a piecemeal fashion and [...] rushed", and that it was likely that Ms D., the administrative assistant, wrote the draft report, are not borne out by the facts. Indeed, the report reflects a clear and detailed documentation of the investigation, a weighing of the evidence, a thorough analysis of each of the individual allegations, which were viewed in their entirety, and well-reasoned conclusions. There is no evidence to suggest that the report was not written by the members of the Panel.

13. With regard to the Panel's alleged failure to consider the evidence submitted by the complainant after the filing of her internal complaint, the Tribunal notes that, in its report, the Panel stated that the complainant had submitted additional documentation after it had begun its consideration of the merits of the internal complaint alleging further acts of harassment by Dr K. The Chair of the Panel reminded the complainant that the role of the Panel was to investigate and report to the Director-General on the allegations of harassment she made in her formal internal complaint. Thus, the documents filed after the submission of the formal complaint were noted but not taken into account by the Panel in making its recommendation. The Panel added, in its report, that according to the complainant there might be "intimidation of witnesses" and that it decided to call the witnesses she had identified as being present on a number of occasions wherein she alleged misconduct. Further, the Panel indicated that those that

were requested to attend the interview did so freely. Considering this, it is clear that the Panel did indeed take into account the possibility of witness intimidation, and properly decided not to consider the complainant's additional submissions which did not regard the time period concerned in the original internal complaint as filed in her formal complaint. As such, the allegation is unfounded.

14. The complainant contests the Panel's evaluation of witness testimonies and events, and the Director-General's decision to endorse that evaluation. For example, she asserts that Dr K. stated that he did not like her assistant; that he blocked her request for duty travel; that he threw a stuffed toy at her with full force during a work retreat; that he shouted at her and other co-workers, humiliating them; that he intimidated the witnesses; and that the department strategy development targeted her specifically.

The Tribunal notes that the earlier observation at the end of consideration 11, above, is equally applicable to these assertions.

15. Lastly, the Tribunal finds that the complainant's allegation of bias on the part of the Panel is unfounded on the ground that she has not produced any convincing evidence to support her allegation. Indeed, the report, written by a lawyer specialising in the area of psychological harassment and analysing the report of the Headquarters Grievance Panel, is irrelevant. As the Tribunal stated in Judgment 1870, under 9, the steps the complainant took were not necessary since, when expert opinion is required, it is for the Tribunal to order it on its own motion or on the application of either party in accordance with Article 11(1) of its Rules. It concluded that the complainant should therefore have confined herself to submitting the question to the Tribunal, which would have judged the pertinence of the matter. In light of the above considerations, the complaint must be dismissed in its entirety.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 10 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