

119th Session

Judgment No. 3422

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr M. F. A. A. against the Global Fund to Fight AIDS, Tuberculosis and Malaria on 30 March 2012 and corrected on 24 April, the Global Fund's reply of 13 August, corrected on 28 August, the complainant's rejoinder of 27 November 2012 and the Global Fund's surrejoinder of 5 March 2013;

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

Having examined the written submissions and decided not to hold oral proceedings, 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 joined the Global Fund in September 2008 as Unit Director, Africa, within the Country Programs Cluster, initially under a contract with the World Health Organization (WHO). With effect from 1 January 2009 he received a contract of continuing duration directly with the Global Fund.

In September 2010 the complainant was verbally informed by the Executive Director about the planned restructuring of the Country Programs Cluster. The following month he was notified that his post would cease to exist in the new structure, that the new Unit Director positions arising from the reorganisation would be advertised in a competition open to internal and external candidates, and that he might wish to participate in that competition.

The Global Fund subsequently published a vacancy notice for the post of Unit Director for Africa and the Middle East. The complainant applied for the vacancy and was shortlisted. Following his interview, on 18 March 2011 he was verbally notified that he had not been recommended for the position. Ultimately, the interview panel made no recommendations for appointment to the post.

On 21 March the complainant requested that he be given the opportunity to have a second interview with the Executive Director. The following day he was informed that the Executive Director would not grant his request. On 23 March he attended a meeting with other staff members of the Country Programs Cluster at which the acting Director of the Cluster, Mr B. (the complainant's line manager), announced the results of the recruitment process, including that the complainant would not be appointed to the new position. Mr B. further explained that he himself would serve as acting Unit Director, Africa and the Middle East as from 1 April 2011.

On 25 March 2011 the complainant wrote to the Administration requesting clarification as to his employment status and noting that he had not been informed of the outcome of the recruitment process in writing. On 28 March he was verbally informed that his post would be abolished with effect from 31 March 2011. This was confirmed in writing by way of a memorandum dated 30 March 2011. On 31 March he was notified that during the redundancy procedure (which involved a three-month reassignment period followed by a three-month notice period), he would be transferred to the Knowledge Management Unit and would have the new title of Senior Advisor, Prevention of Mother to Child Transmission of HIV. Furthermore, he would report to a peer at the same level, his performance would not be assessed during this period and he would have not objectives set for the role.

On 15 June the complainant wrote to the Administration indicating that the reassignment process had not been initiated. He requested an extension of the reassignment period and, consequently, an extension of his notice period. Following this request, the Global Fund extended his reassignment period into his notice period. The complainant

subsequently expressed his interest in being reassigned to several positions, but he was not successful in securing a post in this manner.

On 20 July he submitted an appeal to the Appeal Board in which he challenged the abolition of his post and his redundancy. On 30 September 2011 the complainant's reassignment period and notice period came to an end and he was paid termination indemnities. He was subsequently appointed Chief Executive Officer of the South African National AIDS Council in February 2012.

In its report of 20 December 2011 the Appeal Board found that there were no significant differences between the tasks actually performed by the complainant prior to the restructuring of the Country Programs Cluster and the written terms of reference for the Unit Director position in the new structure. It recommended inter alia that he be awarded six months' salary as lump sum compensation for any adverse impacts he had suffered as a result of the decision and related process of the abolishment of his position. By a memorandum signed by the Executive Director on 23 December 2011, the complainant was informed that the Executive Director agreed with the Appeal Panel's recommendations. That is the impugned decision.

B. The complainant submits that the decision to abolish his post and to establish what he characterises as an equivalent position was an abuse of authority and was based on an error of law insofar as it breached the Global Fund's Human Resources Regulations and procedures.

First, he contends that the Global Fund violated the version of Human Resources Regulation 730.4.1 in force at the material time. Referring to the Tribunal's case law, he asserts that a decision to abolish a post must be justified by real needs and cannot be immediately followed by the creation of an equivalent post. In his view, his former position and the position of Unit Director for Africa and the Middle East were equivalent. Furthermore, the restructuring did not result in a reduction of posts but rather a redistribution of functions among existing posts.

Second, the Global Fund violated the version of Human Resources Regulation 730.4.2 then in force. He points to a Global Fund document entitled "Redundancy and Reassignment Procedure" and submits that the

Global Fund failed to offer him alternative employment or to make good faith efforts to reassign him to a suitable position despite his willingness to be transferred to several vacant posts, including a post at a lower grade. He accuses the Administration of pre-judging the outcome of the reassignment process.

Third, the complainant contends that his transfer to the Knowledge Management Unit during the redundancy procedure was, in effect, an unlawful demotion.

Fourth, he submits that the recruitment process for the position of Unit Director for Africa and the Middle East was unlawful and conducted in breach of Human Resources Regulation 17 regarding recruitment and selection. In particular, he should not have been required to re-apply for what was essentially his former post; he suffered prejudice as a result of the composition of the Recruitment Panel; he was subjected to a stressful work environment in the period leading to the interview stage; and he should have been granted a formal second interview with the Executive Director.

Fifth, the complainant accuses the Global Fund of failing in its duty of care toward him. He asserts that he was subjected to humiliating, disrespectful and stressful treatment, and that he suffered damage to his dignity and reputation.

Lastly, he contends that the Global Fund has not paid him the full amount of separation benefits owed to him.

The complainant asks the Tribunal to find that the restructuring exercise was a pretext to abolish his post and that the Executive Director should have appointed him to the position of Unit Director for Africa and the Middle East. He seeks a ruling that the Appeal Board erred in not recommending his appointment to that post. He claims reinstatement in the position of Unit Director in the Country Programs Cluster. If reinstatement is not possible, he seeks compensation in an amount equivalent to two years' salary and pension entitlements, with interest. He claims material and moral damages, and costs. He also seeks payment of 15,824.20 Swiss francs, representing the amount owed to him by the Global Fund in respect of his separation benefits.

C. In its reply the Global Fund denies that it violated Human Resources Regulation 730.4.1. It asserts that both conditions precedent set out in that Regulation were met; there were insufficient budgetary resources for more than three Unit Director posts. Furthermore, the restructuring decisions were policy decisions lying at the discretion of the Executive Director and the Tribunal is not competent to review them. There is no evidence that they were motivated by bias or ill will towards the complainant. Moreover, the complainant's former post and the position of Unit Director for Africa and the Middle East were not identical. Also, there was a reduction of posts as a consequence of the restructuring. In the former structure three Unit Director posts focused upon geographical areas whereas only two posts had such a focus in the new structure. The third Unit Director post had a different scope. The Global Fund submits that the complainant was informed of the reasons for the restructuring and the revision of the terms of reference for his position. He had an opportunity to discuss those reasons in detail with the Executive Director in order to obtain all the information he required.

The Global Fund challenges the complainant's assertion that it violated Human Resources Regulation 730.4.2. Indeed, it made exceptional efforts to assist him to find a position, including hiring external consultants to help him. It points out that he had no absolute right to be reassigned under the relevant provisions and that there were simply no available posts at a suitable level. It denies that it acted in bad faith by pre-judging the outcome of the reassignment process before it began. Furthermore, it considers his characterisation of his assignment to the post in the Knowledge Management Unit as an effective demotion is a gross distortion of the facts. The new position created for him was intended to benefit him by providing him with an opportunity to focus his efforts on finding a new position.

Regarding the complainant's allegations with respect to the violation of Human Resources Regulation 17, the Global Fund submits in particular that there are no grounds for his challenge to the composition of the Recruitment Panel and it points out that the Executive Director did not have an obligation to grant the complainant a second interview.

The Global Fund states that it did not breach its duty of care towards the complainant and that the complainant's arguments in this respect are not supported by any evidence.

As to the complainant's claim for the payment of outstanding separation benefits, the Global Fund submits that it is unclear how he calculated the amount owing to him and, in any event, he should not receive any compensation because he has suffered no loss. Furthermore, it argues that the Appeals Board was unaware, at the time it issued its report, that the complainant had secured a new external position. The Executive Director was likewise unaware of this fact when he approved the Board's recommendation to award the complainant damages. Referring to the "law of mistake", the Global Fund seeks to recover, by way of a counterclaim, the sum of 107,588.00 Swiss francs (that is, the sum it would not have paid to the complainant had he disclosed the fact that he had found new employment). It also asks the Tribunal to make an award of legal costs against the complainant on the basis that his complaint is a manifest abuse of process.

D. In his rejoinder the complainant presses and develops his pleas.

E. In its surrejoinder the Global Fund maintains its position in full. It submits that the complainant failed to make a claim for the alleged underpayment of his separation benefits before the Appeal Board and that this claim is thus irreceivable. It requests the Tribunal to order legal costs against the complainant in the amount of 60,000 Swiss francs.

CONSIDERATIONS

1. The complainant commenced employment as Unit Director, Africa with the Global Fund in September 2008 under a contract with WHO. From 1 January 2009 the complainant performed this same role as a direct employee of the Global Fund, under a contract of continuing duration.

During late 2010 and early 2011, the Global Fund took steps to create and fill a position of Unit Director for Africa and the Middle East. It advertised the position and the complainant applied but was unsuccessful. In the result, his position of Unit Director, Africa was abolished on 31 March 2011. The complainant then underwent a redundancy process that concluded on 30 September 2011. In the meantime, on 20 July 2011, the complainant appealed to the Global Fund Appeal Board. It reported on 20 December 2011 to the Executive Director recommending that the complainant be paid six months' salary as lump sum compensation arising from the abolition of his position and that the Human Resources Department provide the complainant with a letter confirming "the end of the reassignment process and the outcome of [his] application to any positions made during [that] period". The Appeal Board recommended that his other claims be dismissed. On 23 December 2011 the Executive Director accepted the Board's recommendations. That is the impugned decision. Other matters of detail will be referred to when discussing the issues raised in the complaint.

2. The complainant's first contention is that the abolition of his post of Unit Director, Africa and the creation of the post of Unit Director, Africa and the Middle East, with the consequence that his contract was terminated, was unlawful. This argument has several elements. The first is that this involved a violation of Human Resources Regulation 730.4.1. That provision authorised the Executive Director to terminate a contract based on insufficient budgetary resources or if the position is no longer required. The second is that it involved the contravention of principles established by this Tribunal. The complainant accepts that the Tribunal's jurisprudence establishes that a decision to abolish a post involves the exercise of a discretionary power and there are only limited grounds upon which to challenge the exercise of that power (see, for example, Judgment 269, consideration 2). However the complainant also points to judgments which establish that there must be objective grounds for the decision to abolish a post and that such decisions cannot serve as a pretext for removing staff regarded as unwanted as this would constitute an abuse of authority (see Judgment

2830, consideration 6(b)). Moreover, the case law also establishes that job abolitions may arise from a restructuring but that they must be justified by real needs and not be immediately followed by the creation of equivalent posts (see Judgment 2156, consideration 8). More specifically, an organisation cannot abolish a post and immediately thereafter employ someone to do substantially the same work and all the more so if the duties in the new position had been performed by the person whose position was abolished or that person had the skills to do such additional duties as might be required in the new position (see Judgments 2634, considerations 5 and 6, and 3042, consideration 14).

3. The complainant then argues that the positions of Unit Director, Africa and Unit Director, Africa and Middle East were, having regard to the job descriptions of each, equivalent and that the restructuring exercise was a sham. Additionally, the complainant relies, in part, on the conclusions of the Appeal Board. At this point, it is appropriate to note the observations of the Tribunal in Judgment 2295, consideration 10, that it is not the role of the Tribunal to reweigh the evidence before an internal appeals board and the conclusions of the board are entitled to considerable deference. While the case leading to Judgment 2295 involved the evaluation of evidence from witnesses about allegations of unsatisfactory behaviour in the workplace, the evaluation by any internal appeal body of matters with which they are likely to be familiar, must be given significant weight as long as the Tribunal is satisfied the appeal body has undertaken a comprehensive and thoughtful consideration of the evidence and the applicable principles and its conclusions are rational and balanced.

4. In the present case the Appeal Board said:

“The Appeal Panel notes that on paper the two jobs did look significantly different and thus provided Senior Management the justification for its decision on organizational restructuring. However, after having carefully examined the details of the appeal documentation and considered comments heard through questioning during the hearing, the Appeal Panel did not find sufficient convincing evidence of significant differences in the actual tasks performed by the [complainant] prior to restructuring the Country Programs Cluster and the written terms of reference for the Unit Director position in

the new structure. Taken together, the disconnect between the on-paper justification and actual job content which initiated the abolishment process and led to the different steps which followed may have placed the [complainant] at a disadvantage with respect to opportunities and timing for pursuing options to compete for the new job and/or reassignments within and outside of the Global Fund.”

Thus the Appeal Board concluded there were not significant differences between the position held by the complainant, by reference to the work actually performed, and the new position created through the restructuring.

5. A third element to the complainant’s argument that the abolition of his post was unlawful concerns the number of posts established by the restructuring. Before the restructuring there were three regionally based units within the Country Programs Cluster, each with a Unit Director. One was the complainant’s position of Unit Director, Africa. It was decided to create only two regionally based units (each with a Unit Director) within the Country Programs Cluster with a third unit (with a Unit Director) to address quality assurance and support specific functional areas as needed. The complainant points to the fact that after the restructuring there remained three Unit Director positions. In this context, he refers to Judgment 2092, consideration 7, in which the Tribunal said that one of the tests it has developed to determine whether a post has truly been abolished is to ask whether or not the abolition has resulted in a reduction in the number of staff. If it has not, the presumption is that all that has taken place is a redistribution of functions among existing posts and not the abolition of one or more posts.

6. The Global Fund resists the suggestion that the abolition of the complainant’s post involved an abuse of authority or was otherwise illegal. It says that the reorganisation reflected a desire on the part of the Executive Director and senior management to reorganise management responsibilities to ensure that grant management functions were coordinated in the most efficient and effective way. To this end a position of Unit Director, Quality Assurance was to be created. Because of budgetary constraints, there could only continue to be three Unit Director positions which, to accommodate the creation of the Unit

Director, Quality Assurance position, required the merger of the three regional Unit Director positions into two, each with greater territorial scope and managerial responsibilities without the detailed grant management responsibilities. The Global Fund refers, significantly, to comments made by the complainant in his application for the position of Unit Director, Africa and the Middle East that: “The new terms of reference [...] remove overlapping responsibilities for the three layers of management within Country Programmes. I welcome these changes as they allow the Unit Director to focus on the strategic level to improve grant management [...]” The complainant then spoke of “having spent perhaps too much time on grant signings and disbursements” in the position of Unit Director, Africa.

In relation to the alleged violation of Human Resources Regulation 730.4.1, the Global Fund submits that both conditions precedent were met. Moreover it submits that there is not the slightest shred of evidence that the restructuring had anything to do with bias or ill will towards the complainant. The Global Fund rejects the suggestion that following the restructuring a post identical to the complainant’s former post was created. Moreover it points out that not only did the new post require additional high-level management skills and experience, because of the wider geographical reach of the new position of Unit Director, Africa and the Middle East, it was a requirement that the incumbent have an excellent knowledge of English and French, the latter to accommodate the inclusion of North Africa in the geographical areas of responsibility. The complainant’s previous post did not cover North Africa and the relevant language requirement for that post was to have “an excellent knowledge of English and preferably a good working knowledge of French [or other specified languages]”.

7. The complainant submits in his rejoinder that he did not support the restructuring and having to reapply for his own post. In relation to the requirement that the occupant of the new position would need French language skills, the complainant points to the fact that there had been 19 French-speaking countries under his management, the operating language of the Global Fund is English and no assessment of his French proficiency was ever made. He maintains his challenge to

the need for the restructuring and submits that it merely involved a reshuffling of existing functions and responsibilities.

8. Ultimately the Tribunal must approach these submissions on the basis that a decision to restructure with the consequential abolition of positions involves the exercise of a discretionary power and that the decision would be unlawful only if one or a number of limited grounds are made out as discussed in Judgment 269, consideration 3, and many subsequent judgments of the Tribunal. In the present case, the Tribunal accepts that the restructuring which took place reflects a genuine attempt on the part of the Global Fund to alter the focus of the work of the Unit Directors and to create one post of Unit Director responsible for quality assurance while merging the three geographically based Unit Director positions into two geographically based positions. The complainant has not demonstrated that the exercise of the discretionary power to abolish his post was tainted by illegality. In particular, while there may be room to debate whether there was a significant and material change in the range of duties between the position held by the complainant and those of the new position (the issue addressed by the Appeal Board in the passage quoted above), the complainant has not demonstrated that the requirement that the occupant of the new post have an excellent knowledge of English and French was unnecessary or contrived. Thus, even only on this basis, the restructure resulted in a position different to that of the complainant's old position though, it must be added, the focus of the new position appears to have been different to that of the old one.

9. The second contention of the complainant is that there was a violation of the reassignment regulations and procedures. He refers to the version of Human Resources Regulation 730.4.2 then in force which provided:

“When an employee with a contract of continuing duration or who has been employed by the Global Fund on contract(s) of defined duration for a continuous period of at least four years is declared redundant, efforts to reassign the employee will be made over a three month period.”

The complainant submits that the Global Fund did not offer him alternative employment and did not make good-faith efforts to reassign him to a suitable alternative position. He refers to Judgment 1745, consideration 7. While the complainant did subsequently occupy another post (this will be discussed later) it was not in issue that he was not offered alternative employment at a level equivalent to the position he had held. The gravamen of his complaint is that there was an absence of good faith, there were procedural breaches of the reassignment process and the Global Fund did not appoint him to another position (Southern Africa Team Leader) in which he had expressed interest and for which he believed he possessed the necessary qualifications. The Global Fund resists the suggestion that generally it failed to comply with its obligations though it does not challenge a finding of the Appeal Board that a post verification meeting did not, as required, take place five days after the complainant was notified of his redundancy but rather took place two and a half months after that notification. The Global Fund does challenge, however, the Appeal Board's conclusion that "the [complainant] throughout should have benefited from much better support [from the Global Fund]". Regrettably the Appeal Board provided no details of why it reached this conclusion if it was suggesting that the Global Fund did not make genuine attempts to reassign the complainant.

10. It is plain from the evidence provided by the Global Fund that steps were taken to ascertain whether the complainant could be reassigned and that a number of positions were identified. Ultimately it is a value judgment whether this was sufficient. Without detailing what steps were taken, the Tribunal is not satisfied that the Global Fund breached its obligations to the complainant either under the Regulations (apart from its failure to conduct a timely post verification meeting) or by reference to principles established by the Tribunal. In relation to the specific position of Southern Africa Team Leader, the complainant could not speak Portuguese, which was a job requirement. The Global Fund was entitled to take the position that the complainant could not be reassigned to that position without applying for it as part of a competitive selection process, if this job requirement was not met. It is really no answer to say, as the complainant does, that both a previous and a

subsequent occupant of the position could not speak Portuguese. The Global Fund was entitled to insist upon this job requirement being met.

11. The next contention of the complainant is that he was effectively demoted. On 30 March 2011, the Administration wrote to the complainant noting that he had not been successful in his application for the position of Unit Director, Africa and the Middle East and informing him that the position would be temporarily filled by his line supervisor, Mr B. He was notified that his current position would be discontinued with effect from 31 March 2011 though he was also informed that if he wished to remain on the premises he would be “accommodate[d]” in the Knowledge Management Unit. This was a reference to a position of Senior Adviser, Prevention of Mother to Child Transmission of HIV. This position, so the complainant submits, was incompatible with his qualifications, experience and skills and required him to report to a peer. He was given no staff and no budget. This, the complainant submits, was an unlawful demotion and in complete disregard for his reputation and dignity. The Global Fund submits that this was a temporary position created for the complainant and intended to benefit him.

The essential point made by the complainant is that, as stated in his rejoinder, he “should have continued in his role during the reassignment and notice periods”. The difficulty with this submission is that the use of the expression “role” tends to obscure what had happened. The position he had occupied had been abolished. It is true that the recruitment process had not resulted in the appointment of a person to the new position of Unit Director, Africa and the Middle East. What the complainant is really saying is that he should have acted in the new position until it was filled permanently and the Global Fund should not have filled it temporarily with Mr B. However the decision actually taken was a discretionary decision open to the Global Fund and the mere fact that was taken does not sustain the claim that it was unlawful.

12. The complainant’s next contention is that the recruitment and selection process for the position of Unit Director, Africa and the Middle East was tainted. His first point is that it should never have occurred. This point has effectively been dealt with earlier in these

considerations. His second point is that the composition of the selection panel was flawed. One member of the panel was a person who had been two levels below him in the administrative hierarchy and the complainant had sided with this person's first level supervisor in not increasing her performance rating. She was thus, the complainant submits, "in a conflicted position". The complainant also points to the fact that the majority of the members of the selection panel were more junior than him and not able to effectively evaluate his qualifications, experience and performance. Also, changes were made to the recruitment panel which he had not been afforded the opportunity to challenge. Several other specific complaints were made by the complainant about the selection process. However what the complainant singularly fails to do is demonstrate that it is probable some or a number of members of the selection panel were biased against him or that the panel or selection process was otherwise flawed. In relation to his claim that a number of changes were made to the panel which he was not given an opportunity to challenge, the Global Fund sought particulars of this claim in its reply. None were provided in the complainant's rejoinder.

13. The complainant contends that, in various ways, the Global Fund breached its duty of care to treat him with dignity and respect leading up to and during the restructuring, the abolition of his position and the recruitment process to fill the position of Unit Director, Africa and the Middle East. It is not in dispute that the Global Fund erred in announcing that Mr B. would temporarily occupy the newly created position of Unit Director, Africa and the Middle East at a public meeting before informing the complainant personally. While the complainant received an apology both orally and in writing, it cannot be doubted that this breach of the duty of care had a negative effect on the complainant for which he is entitled to moral damages. The Tribunal assesses those moral damages in the sum of 5,000 Swiss francs.

14. Finally, the complainant contends he was not paid all amounts due to him on his separation. While the details of the alleged underpayment did not appear in his brief, they were provided in the rejoinder effectively meeting a request of the Global Fund in its reply.

The total amount was 15,824.20 Swiss francs. The details took the form of a table but were referable to a primary set of documents. One was a letter of 1 April 2011 from the Administration in which the complainant was provided with details of his separation entitlements and the applicable processes. Annexed to the letter was a table containing amounts attributable to various components of his separation entitlements. The other primary document was a set of payslips. Having regard to these primary documents, the table appears to be correct. However, in its surrejoinder, the Global Fund does not come to grips with these apparent anomalies. It simply says that the documents are not sufficient evidence to prove the alleged underpayment and that “payments promised and received typically vary depending on proofs and documentary evidence received, particularly relating to travel expenses”. However the method used to calculate the final payments made, as reflected in the payslips, is peculiarly within the knowledge of the employing organisation. No attempt is made by the Global Fund to explain how the amounts in the pay slips were calculated. This is so notwithstanding that in March 2012 the complainant raised at least some of these possible underpayments with a member of the Administration who indicated she would “revert to the [complainant] before the end of [the] week”. The complainant has provided sufficient evidence to demonstrate he was underpaid his separation entitlements and an order reflecting this conclusion will be made.

In its surrejoinder, the Global Fund raises a plea that his claim for underpayment should have been, but was not, raised in the internal appeal. However, this plea should have been raised by the Global Fund in its reply. It was not and is not a plea to which the complainant has had an opportunity to respond. Accordingly, it is disregarded.

15. The last issue raised by the parties is what is described as a counterclaim by the Global Fund. In its report, the Appeal Board recommended that the complainant be awarded six months’ salary as lump sum compensation. The rationale for this recommendation can be gleaned from the following passage from the Board’s report which appears under the heading “Abolishment of the [complainant’s] position Based on Changed Job Description”:

“Taken together, the disconnect between the on-paper justification and actual job content which initiated the abolishment process and led to the different steps which followed may have placed the [complainant] at a disadvantage with respect to opportunities and timing for pursuing options to compete for the new job and/or reassignments within and outside of the Global Fund.

Recommendation: Recognizing that it would be difficult to determine precisely a fair remedy under the circumstances, the Appeal Panel recommends that the [complainant] be awarded six months’ salary as a lump sum compensation for any adverse impacts on him of the decision and related process of abolishment of his position.”

This recommendation was accepted by the Executive Director and, in consequence, the complainant was paid 107,588 Swiss francs compensation in addition to termination benefits of 151,146 Swiss francs. In its reply the Global Fund develops an argument primarily by reference to English law and its derivatives concerning the payment of money on a mistake of fact. The alleged mistake was that shortly after his departure from the Global Fund, the complainant took up the position of Chief Executive Officer of the South African National AIDS Council. The mistake was a mistaken belief the complainant was not employed and, possibly, would remain unemployed.

16. It is unnecessary to consider the legal argument advanced by the Global Fund. It is sufficient to note that the foundation of the recommendation to pay compensation, accepted by the Executive Director, was much broader than the narrow issue of whether the complainant would shortly gain other employment after leaving the Global Fund. Accordingly even if there was some mistake of fact upon which the Global Fund acted and the recovery of monies paid on the mistaken fact was actionable in the Tribunal by way of counterclaim (matters about which the Tribunal expresses no view), it is not demonstrated that the money actually paid was based on that specific mistake. Accordingly the counterclaim should be dismissed.

The complainant has only succeeded on part of his complaint. He is entitled to some of his costs and the amount is determined by the Tribunal as 3,000 Swiss francs.

DECISION

For the above reasons,

1. The Global Fund shall pay the complainant 5,000 Swiss francs as moral damages.
2. The Global Fund shall pay the complainant 15,824.20 Swiss francs being the residual amount due to him on his separation, plus interest at the rate of 5 per cent per annum from the date of separation.
3. The Global Fund shall also pay the complainant 3,000 Swiss francs in costs.
4. All other claims are dismissed.

In witness of this judgment, adopted on 5 November 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ