

G.
v.
FAO

125th Session

Judgment No. 3932

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms A. A. A. M. G. against the Food and Agriculture Organization of the United Nations (FAO) on 10 April 2015 and corrected on 1 July, the FAO's reply of 26 October 2015, the complainant's rejoinder of 9 February 2016, corrected on 18 March, and the FAO's surrejoinder of 18 July 2016;

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 may be summed up as follows:

The complainant impugns the decision not to renew her fixed-term appointment due to unsatisfactory performance.

The complainant was appointed on 19 November 2009 to the post of Administrative Officer, at grade P-3, at the FAO Sub-Regional Office for the Pacific Islands (SAP) in Samoa, under a three-year fixed-term contract. In February and March 2012 the Office of the Inspector General (OIG) carried out an audit of the SAP for the period from January 2010 to December 2011. The audit report issued in July 2012 identified serious deficiencies relating to the SAP's financial and administrative management. By a memorandum of 9 July 2012, the complainant's supervisor (the Sub-Regional Coordinator, SAP) and the

Director of the Office of Support to Decentralisation (OSD) informed the complainant of concerns about her performance that were based on her supervisor's observations, her interaction with other colleagues and, in particular, the outcome of the SAP audit.

The complainant responded by a memorandum of 27 September 2012. She disagreed that the deficiencies identified in the audit report were attributable to her performance, and pointed out that her performance evaluation for 2011 had been fully satisfactory. She characterised the memorandum of 9 July as "part of a continuing pattern of managerial action aimed at retaliating against [her]". Soon after, the complainant sent to her supervisor and the Director, OSD, a detailed response in which she asserted that the audit and work plan constituted the culmination of a continuing pattern of retaliation and harassment against her.

On 10 October 2012 the complainant filed a formal complaint of harassment against her supervisor. This complaint was referred to the Investigation Panel pursuant to the FAO Policy on the Prevention of Harassment. On 17 October 2012 the Director, OSD, forwarded the complainant's memorandum of 27 September to OIG, requesting it to conduct a preliminary review of the complainant's allegations of retaliation in accordance with the FAO Whistleblower Protection Policy. However, as there was a potential conflict of interest – OIG had conducted the audit and the complainant's allegations also concerned the findings of that audit – the matter was referred for investigation to the Ethics Office of the International Fund for Agricultural Development (IFAD).

Prior to that, on 16 October 2012, the complainant's supervisor informed her that he was recommending to the Director, Office of Human Resources (OHR), that her Within Grade Step Increment be withheld because her performance had not been satisfactory. On 17 October 2012 the complainant received the evaluation of her performance for the period from 19 November 2011 to 18 November 2012 in a Performance Appraisal and Achievement Record (PAAR), in which her performance was rated "unsatisfactory" and reference was made to the audit findings. On 23 October 2012 the complainant provided her comments on her PAAR referring to her memorandum

of 27 September. By a memorandum of 25 October 2012, she was informed that her contract, which was due to expire on 18 November 2012, would be extended for a period of three months. In the event, her appointment was extended in February, March and April 2013 for a period of one month each time.

In the meantime, the complainant had been on sick leave from 18 to 30 October 2012 and from 19 November 2012 to 11 March 2013. She returned to her duty station on 18 March 2013 and in early April she informed her supervisor that she planned to travel to New Zealand on 7 April for medical purposes. The Chief Medical Officer authorised the complainant to leave the duty station but at her own expense. On 23 April 2013 he asked her to provide medical certificates.

By a memorandum dated 17 May 2013, the Director, OHR, informed the complainant that her appointment would not be extended beyond its expiry date on 18 May 2013 and that she would receive one month's salary in lieu of notice. The Director also informed the complainant that the Investigation Panel had submitted its report on 16 May 2013, concluding that the information gathered provided no evidence of harassment or wrongdoing and recommending that the case be closed. The Director, OHR, had also received from OIG the report of the Ethics Officer of IFAD, concluding that the proposal to implement a work plan for the complainant to address the deficiencies identified in the audit did not constitute or support a *prima facie* case of retaliation. By the same memorandum, the Director, OHR, reminded the complainant that she had not provided medical certificates to justify her sick leave as from 8 April 2013 nor had she requested annual leave as from that date. Accordingly, her absence without justification as from 8 April 2013 would be deducted from her annual leave or, in the absence of sufficient annual leave, charged as special leave without pay.

The complainant separated from service on 18 May 2013. On 31 July 2013 she lodged an appeal with the Director-General against the decision not to extend her fixed-term contract, arguing that she had suffered harassment and that she had been denied due process. On 30 September 2013 she was informed that her appeal to the Director-General had been dismissed. On 29 November 2013 she filed

an appeal with the Appeals Committee which recommended in its report of 24 November 2014 that the complainant be awarded moral damages, but that her other claims be rejected. The Committee also made several general recommendations concerning workplace conflicts and the rules and procedures governing performance evaluation. By a letter of 2 February 2015, the Director-General informed the complainant of his decision to dismiss her appeal in its entirety. That is the impugned decision.

The complainant asks the Tribunal to set aside the decision of 17 May 2013 not to extend her fixed-term contract, to order her reinstatement under a fixed-term contract in a post similar to her former post at grade P-3, step 4, in a different duty station, and to award her compensation equivalent to her net base salary for each month from 19 May 2013 until the date of her reinstatement, as well as moral damages in the amount of 175,000 euros. She asks that the FAO be ordered to remove from her personnel file the following documents: (i) her performance evaluation of October 2012; (ii) the memorandum of 9 July 2012 from her supervisor and the Director, OSD, entitled “Your performance”; (iii) her memorandum of 27 September 2012 to her supervisor and the Director, OSD; (iv) all e-mails related to the non-renewal of her fixed-term contract; (v) the memorandum of 17 May 2013 from the Director, OHR, regarding her non-renewal and separation from service; (vi) her memorandum of 15 August 2013 to the Director, OHR. She seeks an order that the FAO recalculate her sick leave and annual leave as well as her separation entitlements. She also seeks an order that the FAO make payments for her to the United Nations Joint Staff Pension Fund (UNJSPF) until the date of her separation from the Organization and that it reimburse her for the expenses that she incurred during her “medical evacuations”. Lastly, she asks the Tribunal to direct the FAO to adopt rules and procedures for the rebuttal of performance evaluations.

The FAO asks the Tribunal to dismiss the complaint as partly irreceivable and unfounded in its entirety.

CONSIDERATIONS

1. The complainant joined the FAO on 19 November 2009 as an Administrative Officer at the FAO's SAP in Samoa, on a three-year fixed-term appointment. Her appointment was extended a number of times beyond 18 November 2012, the date on which it was to expire. She separated from service on 18 May 2013 following the non-renewal of her appointment due to unsatisfactory performance.

In her complaint, the complainant challenges the Director-General's 2 February 2015 dismissal of her internal appeal against the decision not to renew her appointment for unsatisfactory service. The FAO acknowledges that the complaint, insofar as it contests this decision, is receivable. However, the FAO submits that a number of the other claims advanced by the complainant are irreceivable. It is convenient to deal with these additional claims after the consideration of the contested decision.

2. In her pleadings, the complainant merges submissions in relation to a number of issues with her submissions regarding the non-renewal of her appointment. As the determinative issue in this case is whether the evaluation of the complainant's performance is tainted by reviewable error, the focus of the following chronology is on this issue.

3. The complainant's appointment was confirmed at the end of her one-year probationary period. The Probationary Performance Appraisal Report (PPAR) signed by the Sub-Regional Coordinator, SAP, the complainant's supervisor, on 15 November 2010 states that the complainant's performance is satisfactory. In terms of the assessment of the complainant's conduct and work behaviour, the report states "[s]atisfactory and see the areas for improvements below. Will further improve with time and with more understanding of the cultural aspects (pacific context) of operation in the small island in the pacific". There are no observations under the heading in the PPAR "Probationer's strengths". Under the heading "Probationer's limitations/areas for improvement", it states: "[h]ow to get the best out of staff and on her relationship with colleagues in the office, as a team. More understanding

of the cultural aspects of the sub-region as to maximise her effectiveness. These issues are to be further discussed in the upcoming staff training retreat.”

4. On 2 December 2011, the complainant wrote an e-mail to the Program Officer for the FAO Regional Office for Asia and the Pacific (RAP) in which she expressed some frustration with the circumstances in the office, the lack of assistance and appreciation for her work and her role that had resulted in another Pacific Island Territory joining the FAO for which she was not given any credit. The complainant met with the Deputy Regional Representative (DRR) of RAP on 7 December 2011. On 12 December 2011, the Assistant Director-General and Regional Representative of RAP (ADG RAP) wrote to the complainant about her earlier correspondence, her meeting with the DRR and her conversations with colleagues at the regional training program from 7 to 9 December. In his letter, the ADG RAP noted that during these conversations the complainant had expressed, by reference to the FAO rules and procedures, multiple concerns about the office operations, including the financial controls, the segregation of duties, and the travel and use of office resources. The complainant had also discussed the role and level of responsibility and accountability of her supervisor as a Sub-Regional Representative for Samoa and other Pacific islands with the expected role of colleagues, including herself, in discharging his duties in an effective manner. The ADG RAP also observed that most of the matters discussed were based on a misunderstanding and the lack of clarity in the application of the FAO rules and practices, and noted his understanding that the complainant did not wish to pursue those issues any further.

5. In the same letter, the ADG RAP strongly encouraged the complainant, in the interests of a smooth running of the office and of maintaining harmonious working relationships with colleagues, to have regular discussions with her supervisor to clarify matters at the local level before widely circulating the matters in writing to colleagues in the RAP and headquarters. As well, she could also consult with the DRR or the Program Officer for the RAP before engaging in any dispute with

her supervisor. The ADG RAP also recognized that the problems had lasted since the complainant's arrival in Samoa and that personal relationships once broken could not be easily repaired, and could require an alternative solution, such as a transfer to another duty station.

6. In the complainant's Performance Evaluation and Management System Report (PEMS) for the period from 1 January 2011 to 31 December 2011, for the five identified objectives under "Workplan" the complainant's supervisor gave four ratings of "3-Fully Achieved" and one rating of "2-Mostly Achieved"; for the two objectives under "Developmental" the complainant received one rating of "1-Did Not Achieve" due to the fact that there had been no opportunity to take the identified training, and a rating of "2-Mostly Achieved" for the objective "Accurate financial report and budget monitoring" with the supervisor's observation that improvement was needed. Under "Competencies" the complainant received evaluations of "3-Fully Proficient", with the exception of the core competency of "Working Together in Teams and Partnerships" for which she received a rating of "2-Developing Proficiency". The supervisor gave the complainant an overall rating on "Competencies" as "3-Fully Proficient" with the observation that "[t]here is ongoing improvements on the team and partnership core function".

7. In February and March 2012 OIG carried out an audit of the SAP for the period from January 2010 to December 2011. The audit report issued in July 2012 identified serious deficiencies regarding the SAP's financial and administrative management.

8. In a 9 July 2012 memorandum under the heading "Your Performance", the complainant's supervisor and the Director, OSD, informed the complainant about continuing concerns regarding her performance based on "[her supervisor's] own observations, interaction with other colleagues at headquarters and in the Regional Office, and, in particular, the outcome of the [audit] mission to SAP in March 2012". The memorandum then enumerates eleven deficiencies identified in the area of administration in the audit report and details the deficiencies

stated to fall within the complainant's responsibilities. The memorandum stated:

"The above is an indication that you have not demonstrated to possess the required skills to discharge your responsibilities effectively and efficiently. There is therefore a serious concern that you do not meet accepted standards for professional performance in your current post. Key administrative and financial tasks are not undertaken properly, resulting in weak stewardship of FAO resources. We propose to develop a work plan in consultation with you to address all the above issues over a period of maximum six months. Your performance in adhering to the work plan will be closely monitored, and a status review will be conducted after some three months. Please be aware that your performance between now and the expiry date of your current assignment will determine whether or not your contract with the Organization will be extended."

9. In a 27 September 2012 memorandum to her supervisor and the Director, OSD, the complainant noted that regarding the concerns raised in the 9 July memorandum, she intended to respond separately to the points raised arising from the audit. She noted the lack of opportunity to address the points and that clarification was required. The complainant disputed the implication that any of the weaknesses identified in the audit were attributable to her performance, as she had been bringing many of the same matters to their attention for a long time. She asked that any conclusions they wished to draw be postponed to give her an opportunity to respond to the audit findings. She also expressed the concern that the memorandum of 9 July and the allegations in it were "part of a continuing pattern of managerial action aimed at retaliating against [her] for having raised concerns over some practices in [the] office and [were] designed merely to deflect attention away from serious managerial accountability and credibility." The complainant pointed out that, although the 9 July memorandum referred to other indicators of performance, the only concrete example provided was the recent audit report, and that their recent conclusion therein concerning her performance was at odds with her most recent performance evaluation.

10. Soon after, the complainant sent her detailed response to her supervisor and the Director, OSD, concerning the points raised in connection with the audit in their 9 July memorandum. Before responding

to each matter raised, the complainant raised an issue of due process. She observed that there were a number of references to findings in the draft audit report that reflected on her role as Administrative Officer. She noted that had she been given the opportunity to address the matters she would have “pointed out that while some of the criticism and suggestions for change may [have been] well founded, they [were] for the most part institutional weaknesses that [she herself had] brought to the auditor’s attention after unsuccessfully asking that they be addressed”. She stated that the audit and the proposal of a work plan constituted “the culmination of a continuing pattern of retaliation and harassment [against her]”.

11. On 10 October 2012 she filed a formal complaint of harassment against her supervisor. This complaint was referred to the Investigation Panel pursuant to the FAO Policy on the Prevention of Harassment. Around the same time, the complainant’s allegations of retaliation were referred to OIG for a preliminary review in accordance with the FAO Whistleblower Protection Policy. To avoid a potential conflict of interest due to OIG’s involvement in the SAP’s audit, the Ethics Office of IFAD was mandated to investigate the matter.

12. On 16 October 2012 the complainant’s supervisor informed the complainant of his recommendation to withhold her Within Grade Step Increment, for which she would be eligible in December 2012, on the basis that her performance had not been satisfactory and had demonstrated that she lacked the required skills to discharge her responsibilities as an International Administrative Officer effectively and efficiently.

13. On 17 October 2012 the complainant received an evaluation of her performance for the period from 19 November 2011 to 18 November 2012 on a PAAR form. In Part II, under “Duties and responsibilities”, the box “current job description applies” is checked followed by the following observation from the complainant: “[t]he performance appraisal and rated achievements were not done on the current job description as it was on the basis of audit observations and [Sub-Regional Coordinator’s]

own observation in which I provided a response dated 27 July 2012 and still never/not received feedback”. Under “Assessment of staff member’s performance and achievement”, it states that “[t]he performance of the staff member has not been positive as indicated in the joint memo from the [Sub-Regional Coordinator] SAP and the Director OSD attached herewith. Since then, there has been no opportunity to monitor the performance of the staff member who went on extended leave then on sick leave.” In the subsequent section, “Description in light of the above”, it is observed that the “[s]taff member has not demonstrated to possess the required skills to discharge her responsibilities effectively and efficiently. Serious concern that [the staff member] does not meet accepted standards for professional performance. Details can be found in the attached memo from [the Sub-Regional Coordinator] SAP and Director OSD.” Part III of the form asks the staff member’s immediate supervisor to briefly describe the frequency and nature of the contacts with the staff member. The complainant’s supervisor stated: “1. I confirm that none of the above has been conducted. There is a PEMS established by the organization, work plan has been signed and approved by [the Sub-Regional Coordinator SAP] in early 2012 (exist in the system). 2. I confirm that there is no any mid-term review conducted + [illegible] not only to myself but to the whole staff under [the Sub-Regional Coordinator SAP] supervision and my own staff report to me directly.”

14. On 23 October the complainant responded to the evaluation stating that the “entire process is procedurally flawed and unjustified”. She observed that performance evaluations involve setting measurable goals based on a classification of duties, an assessment of whether those goals were achieved together with periodic discussions to address shortcomings, none of which were present in the assessment. She also attached a copy of her comments on the audit report. Lastly, she added that the appraisal was consistent with the pattern of harassment and abuse of authority she had already documented and reported.

15. In a 25 October 2012 memorandum, the Acting Director, OHR, informed the complainant that her appointment would be extended for a period of three months to allow the OIG and the Investigation Panel

to complete their investigations of her allegations of harassment and retaliation. In addition, the extension would ensure the discussion of a work plan with the complainant and the monitoring and review of her performance and conduct, as contemplated in the 9 July 2012 memorandum. The complainant's appointment was subsequently extended in February, March and April 2013. Between November 2012 and her separation from service in May 2013, the complainant was for prolonged periods on certified sick leave and absent from the office for medical reasons. It is observed that the disputes surrounding the complainant's sick leave and annual leave entitlements and related issues were resolved prior to the filing of the within complaint.

16. In his letter of 17 May 2013, the Director, OHR, informed the complainant that her appointment would not be extended beyond its expiry date on 18 May 2013. The letter notes the concerns raised in the 9 July memorandum and that “[c]oncerns [had] also been raised with respect to [the complainant’s] behaviour in the workplace. These concerns include[d] instances of inappropriate communications to staff at large concerning [her] political beliefs, a disrespectful attitude towards colleagues and untrue statements.”

17. On 31 July 2013 the complainant filed an appeal with the Director-General against the decision not to extend her appointment alleging that she had suffered harassment and was denied due process. On 29 November 2013 she filed an appeal with the Appeals Committee against the Director-General’s dismissal of her appeal. She asked the Appeals Committee to find that she had been harassed and subjected to retaliation. She claimed that the decision not to renew her appointment was flawed because it was based, in part, on a procedurally irregular performance review, as the correct procedure pursuant to the PEMS was not followed in the evaluation of her performance. As well, she maintained that the decision was a “denial of due process because it was made in violation of [the Tribunal’s] Judgments 2414 and 2916.” She requested, among other things, reinstatement under a fixed-term contract to a post similar to her former post but in a different duty station, recalculation of her sick leave and annual leave records and

correction of remaining errors, payment by the FAO of pension contributions for the duration of her sick leave and up to her separation from the FAO, and reimbursement of the expenses she had incurred during her medical evacuation. The Appeals Committee issued its report on 24 November 2014. In summary, the Committee concluded that the decision not to renew the complainant's contract on the basis of an irregular performance review constituted an abuse of authority, and that the complainant's harassment complaint was not reviewed in accordance with the FAO Policy on the Prevention of Harassment and the Investigation Panel report should thus be set aside. It recommended that the complainant be awarded moral damages in an amount to be determined by the FAO. It also recommended that the FAO consider taking necessary measures to prevent workplace conflicts from escalating, that it take action to ensure that rules regarding performance evaluation be clear and properly enforced, and that it adopt rules and procedures on performance rebuttal.

18. On 2 February 2015 the Director-General informed the complainant of his decision to dismiss her appeal. The Director-General noted that the complainant's performance was appraised during her three-year appointment. He observed that in the 9 July 2012 memorandum the complainant was informed about the continuing concerns about her performance and he noted her 27 September response, in particular, the allegation of the continuing pattern of retaliation and harassment. The Director-General rejected the findings of the Appeals Committee in relation to the use of the audit report in assessing the complainant's performance, noting that the complainant had received several indications that her performance required improvement prior to the audit report, for example the need for her to improve her relations with colleagues and her team work skills. He stated that the audit report was not the only basis on which the complainant's performance was assessed and there was no reason for not taking it into account, given that the audit was directed at ascertaining "whether administrative management practices [were] sound". Moreover, the audit report showed deficiencies in areas of work falling within the complainant's areas of responsibility. The Director-General rejected the complainant's assertion regarding

the violation of her due process rights. As well, he rejected the Appeals Committee's findings that the contested decision was an abuse of authority; that the Administration had placed the responsibility for the deficiencies identified in the audit on the complainant; that the harassment and retaliation reports should be set aside. Lastly, he accepted the Appeals Committee's conclusion that the requests in relation to the complainant's sick leave and her participation in the UNJSPF were settled.

19. In summary, the FAO submits that the decision not to renew the complainant's appointment was properly taken. The FAO points out that unsatisfactory aspects of her performance, in particular her relations with and attitude towards colleagues, were highlighted to her early on and recommendations were consistently made. As well, the evidence shows that the complainant was given several indications that her performance required improvement and that she was given the necessary time and opportunity to do so. Additionally, the complainant was always given the opportunity to respond to the evaluations of her performance.

20. As to the audit of the SAP, the FAO notes that this was a standard, planned corporate activity designed to improve the SAP as a whole and did not form part of a formal evaluation process. The FAO disputes the complainant's assertion that her performance was only evaluated on the basis of the audit report. The FAO acknowledges that the outcome of the audit was taken into account in the context of the evaluation of the complainant's performance and takes the position that there was no reason for not doing so. The FAO contends that there is ample evidence indicating that the complainant's performance was not consistent with her role as an officer in charge of financial and administrative matters at the SAP. In fact, the existence of the weaknesses in the SAP's financial and administrative areas two years after the complainant's entry on duty supports the conclusion that she was not able to properly discharge the functions of her post.

21. The determinative issue in this case is whether the evaluation of the complainant's performance was procedurally flawed. It is well settled in the Tribunal's case law that "an organisation has a wide discretion in deciding whether to renew a fixed-term appointment and its right to refuse to renew can be based on unsatisfactory performance". As well, "such a discretionary decision can be successfully impugned if it is fatally flawed by, for example, procedural defects, a failure to take account of some essential fact, abuse or misuse of authority, or if it was based on an error of fact or of law" (see Judgment 3743, consideration 2, and the cases cited therein). The Tribunal has also consistently held that "an organisation cannot base an adverse decision on a staff member's unsatisfactory performance if it has not complied with the rules established to evaluate that performance" (see Judgment 3252, consideration 8, and the case cited therein).

22. Before turning to the evaluations of the complainant's performance, some observations regarding the performance appraisal system applicable at the material time are necessary. The evaluation of the complainant's performance for the probationary period based on the PPAR is not challenged. As noted above, the performance evaluation for the 2011 year was based on the PEMS. In its pleadings, the FAO states that this evaluation was done "during the PEMS pilot cycle". Beyond this statement, the FAO does not make any submissions concerning the applicable appraisal system. The only material in the record in this regard is the FAO, PEMS Workshop Participants Guide (Guide) for the 2009-2010 PEMS training, which the complainant filed with the complaint. According to the Guide, the Human Resources Management Division launched a pilot in 2008 as a means of introducing the PEMS to three Headquarters divisions, the Europe Regional and Sub-Regional offices and the Senior Management Team. In 2009 some 450 staff were involved in a voluntary practice year and, in 2010, the PEMS became the mandatory process for the evaluation of the performance of all staff members on fixed-term and continuing contracts. According to the Guide, the performance assessment cycle is annual and based on a calendar year. The performance planning stage begins in January, followed by a mid-year progress review in June/July,

concluding with the year-end appraisal starting in November and finalized by mid-January.

23. It is observed that the 2011 evaluation of the complainant's performance is on a form entitled "PEMS Employee" and indicates that it is an "Employee Final Review" for the period 1 January 2011 to 31 December 2011 and the "FAO PEMS Status" is "Agreed". Given the absence of any submissions by the FAO regarding the applicable appraisal process, that the FAO did not dispute the information in the Guide and did not adduce any evidence to the contrary, and having regard to the information in the Guide and on the performance evaluation form, the only conclusion that can be drawn is that the PEMS was the mandatory appraisal system for all FAO fixed-term staff members starting in 2010 and throughout the material time.

24. At the outset, it is observed that with the exception of the preparation of a "work plan" sometime in early 2012 for that calendar year, none of the required steps in the PEMS process to evaluate the complainant's performance were taken during that year or at any time prior to her separation from service in May 2013. As a copy of the "work plan" was not included in the record, it is not possible to make any finding as to whether the requirements of the PEMS "performance planning stage" were met. The evaluation revealed in the 17 October 2012 PAAR was not undertaken in accordance with the applicable appraisal process in place at that time, namely the PEMS process.

25. It is evident from a review of the record that there were ongoing tensions between the complainant and her supervisor. From the FAO's perspective, as noted above, there were two aspects of the complainant's performance that gave rise to concerns. They were the complainant's inter-personal relations with staff and attitude toward staff and, broadly speaking, her weaknesses in carrying out her responsibilities in the financial and administrative areas. With respect to the latter, in the 2011 year-end PEMS, the only concerns specifically identified were the need to closely monitor the budget of the offices to ensure its timely and efficient use and to avoid overspending that would

require RAP's approval for extra resources after the fact; and the need to provide clearer monthly reporting to the technical staff. In terms of the complainant's inter-personal skills in her dealings with staff members and her ability to work as a team member, the only comments she received in the formal evaluations of her performance are detailed in consideration 6 above. The complainant also received the 12 December 2011 communication from the ADG RAP chastising her for her behaviour at the staff retreat but noting that the issues had been resolved.

26. It was only in the memorandum of 9 July 2012 that the complainant was informed of the extensive deficiencies in her performance both in terms of her duties and conduct. This letter cannot be viewed as a proper or fair evaluation for a number of reasons. First, it was not in compliance with the mandatory PEMS. Second, other than the deficiencies identified in the audit attributed to the complainant, the letter does not give any detail with respect to when and what the observations were and which interactions with other colleagues at headquarters and in the SAP gave rise to concerns. The absence of this type of detail undermines the possibility of adequately responding to the alleged concerns. Third, the unilateral determination that the eleven deficiencies identified in the audit were solely attributable to the complainant and that the renewal of her fixed-term contract was, therefore, in jeopardy, without providing the complainant with an opportunity to respond, was a clear breach of the complainant's due process rights. This was further exacerbated by her supervisor's and the Director, OSD's failure to reply to or take into account the complainant's extensive response to the alleged deficiencies attributed to her in the audit report. It is also observed that in the 17 May 2013 memorandum from the Director, OHR, two concerns regarding the complainant's behaviour were included that had not been clearly raised previously, namely, her political beliefs and untrue statements. In addition to the absence of any information about these concerns and how they had arisen, the latter is a serious allegation that impugns the complainant's trustworthiness. As with the concerns in the 9 July memorandum, the complainant did not have an opportunity to respond to the assertions.

27. Having regard to the complainant's overall positive assessment in the 2011 PEMS; the fact that between the date of that PEMS and the memorandum of 9 July 2012, with the exception of the audit report, there were no intervening reported incidents giving rise to concerns regarding the complainant's performance of her core duties; that, other than the work plan, none of the steps in the PEMS process were taken in 2012; and the use of the outdated PAAR in October 2012 to allegedly assess the complainant's performance, the only inference that can be drawn is that the deficiencies reported in the audit report were improperly used as a means of establishing unsatisfactory performance on the part of the complainant that in turn grounded the decision not to renew her contract, as reflected in the 17 May 2013 memorandum. In addition to being a breach of its duty to treat the complainant with dignity and respect, this conduct constitutes an abuse of authority. This coupled with the failure to evaluate the complainant's performance in accordance with the applicable appraisal process requires that the impugned decision be set aside.

28. In the circumstances, reinstatement of the complainant is not appropriate, however, the complainant is entitled to an award of material damages in the amount of 40,000 euros for the lost opportunity to have her appointment renewed. She is also entitled to an award of moral damages in the amount of 30,000 euros and costs in the amount of 1,000 euros. The FAO will also be ordered to remove from the complainant's personnel file all adverse materials dated from 1 January 2012 to the date of the closure of the file. The claims in relation to sick leave, annual leave, pension contributions and medical expenses have either been settled or are beyond the scope of the present complaint. The complainant's request to direct the FAO to adopt rules and procedures for "performance rebuttals" is beyond the scope of the Tribunal's competence.

DECISION

For the above reasons,

1. The Director-General's 2 February 2015 decision is set aside as is the earlier decision of 17 May 2013.
2. The FAO shall pay the complainant material damages in the amount of 40,000 euros.
3. The FAO shall pay the complainant moral damages in the amount of 30,000 euros.
4. The FAO shall remove from the complainant's personnel file all adverse materials dated from 1 January 2012 to the date of the closure of the file.
5. The FAO shall pay the complainant costs in the amount of 1,000 euros.
6. All other claims are dismissed.

In witness of this judgment, adopted on 3 November 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Mr Michael F. Moore, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

MICHAEL F. MOORE

DRAŽEN PETROVIĆ