111th Session **Judgment No. 3027**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Mr R.S. K. against the International Criminal Court (ICC) on 18 May 2009 and corrected on 24 August, the ICC's reply of 7 December 2009, the complainant's rejoinder of 15 March 2010 and the Court's surrejoinder of 24 May 2010;

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

Having examined the written submissions and decided not to order hearings, for which neither party has applied;

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

A. The complainant is a Dutch national born in 1976. He joined the ICC on 22 September 2008 under a General Temporary Assistance (GTA) contract as a Security Support Assistant within the Security and Safety Section. His contract was due to expire on 31 December 2008.

Soon after he joined the Court, the complainant was required to complete a security induction programme. He passed ten components

of the programme – not all at the first attempt – but failed three times in the theoretical Fire and Safety test. His instructors then prepared an alternative Fire and Safety test, consisting of a theoretical component and two practical tests. He passed the theoretical component but was not successful in the practical tests. On 13 November 2008 the complainant's supervisor completed his Work Performance Report, noting that he had been "unsuccessful in several attempts [...] to pass [i]nduction training", that he had at times shown "a clear lack of effort and motivation" and that as a result of his failure to complete successfully induction training "it ha[d] not been possible to appraise him in his expected role […] outside of the training environment". He recommended against an extension of the complainant's contract.

On 3 December 2008 the complainant was handed a memorandum informing him of the decision of the Registrar of the Court to terminate his contract with 15 days' notice on the grounds that he had not successfully completed the required induction training. By a memorandum of 5 December, which he sent to the Registrar by e-mail on 8 December, the complainant requested a review of that decision, and on 12 December he wrote to the Secretary of the Appeals Board asking that it be suspended pending the outcome of his appeal. On 15 December he received an e-mail from the Legal Advisory Services Section stating that he would "find attached the Registrar's decision on [his] request for review". The attached document was a memorandum of the same date, entitled "Review decision", in which the Registrar drew his attention to Staff Rule 111.1(b) and to Rule 2(a) of the Rules of Procedure of the Appeals Board, according to which a request for review of an administrative decision shall be submitted to the Secretary of the Appeals Board within 30 days of notification of such decision. The Registrar observed that, by choosing to direct his request to her and not to the Secretary of the Board, the complainant had "flouted the rules" and that, "[i]n light of the […] serious procedural irregularities", she considered herself "not seized by [his] case and […] thus not in a position to review it". The complainant forwarded the Registrar's reply to the Secretary of the Appeals Board that same

day, explaining that he was not aware that he could not send his request directly to the Registrar and that he had simply followed the advice given to him by the Staff Union Council. In a report dated 17 December 2008 the Appeals Board recommended against the suspension of the decision to terminate the complainant's contract. By a memorandum of 18 December the Registrar forwarded that report to the complainant and informed him that she had decided to follow the Board's recommendation.

On 31 December 2008 the complainant filed an appeal with the Secretary of the Appeals Board against the decision to terminate his contract. The Registrar submitted her response on 20 January 2009, inviting the Board to "send a clear message that it [would] not tolerate flouting of procedures by dismissing the appeal as irreceivable". In its report of 17 February 2009 the Appeals Board found that it was "improperly seized of an appeal" and that, "absent a decision of the Registrar on the review of the decision, there [could] be no appeal". It also found that the Registrar had "carefully reiterated […] the proper procedure to be followed" but that, "[d]espite this clarification, the [complainant] had failed to submit the required request for review". It unanimously recommended that the appeal be considered irreceivable. By a letter of 20 February 2009 the Registrar transmitted to the complainant a copy of the Board's report and informed him that she had decided to endorse its recommendation. That is the impugned decision.

B. The complainant accuses the Registrar of the Court, the Secretary of the Appeals Board and the members of the Board of failing to act in good faith and with due care towards him and to afford him due process. He argues that, although they had an obligation, and indeed numerous opportunities, to advise him in clear language on how to request a review of the decision to terminate his contract, so as to prevent any loss of rights on his part, they all remained silent. He explains that he was not familiar with the applicable rules, since he had only worked at the Court for a short period, and that in addressing his request for review directly to the Registrar he acted on the advice

of a member of the Staff Union Council, without any assistance from a lawyer. He considers the penalty imposed on him disproportionate; in effect he was deprived of the right to an effective legal remedy by reason of a minor procedural irregularity. Although he violated no material rule in submitting his request for review directly to the Registrar – who was after all the competent authority to review the decision on the termination of his contract – the latter took no action to rectify that procedural irregularity, as fairness and common sense would dictate, for example by accepting the request for review, or forwarding it to the Secretary of the Appeals Board with the request that it be sent back to her, or even by requesting that the complainant submit it anew.

The complainant contends that, as the impugned decision is based on the erroneous findings of the Appeals Board, it is tainted with mistakes of law and of fact. Indeed, the Board erred in finding that it was improperly seized of the appeal due to the absence of a review decision, since Rule 4(b)(ii) of its Rules of Procedure permits the filing of an appeal even in the absence of a review decision. It also mistakenly concluded that there was no review decision, even though the subject of the Registrar's memorandum of 15 December was "Review decision" and the accompanying e-mail purported to convey to him "the Registrar's decision on [his] request for [r]eview". Similarly, the Board was wrong to find that the said memorandum provided clarification as to the procedure he should have followed, given that it was phrased as a reprimand, stating that he had "flouted the rules", and allowed him no possibility to rectify the procedural flaw.

On the merits, the complainant asserts that he successfully completed the security induction programme and that the decision to terminate his contract on the basis that he had not, therefore involved a mistake of fact. Indeed, he passed all 11 components, including the theoretical Fire and Safety test, and only failed in the additional practical Fire and Safety tests, which were not part of the standard course and which no other trainee was required to pass. In fact, by allowing all other trainees to assume formal duties after passing the

11 mandatory tests, while imposing on him additional requirements, the defendant subjected him to unequal treatment. He further points out that there was no mention in his letter of appointment of the requirement that he complete the induction programme and that, consequently, completion of that programme cannot constitute a condition of employment. The complainant draws an analogy between his situation and that of staff on probation and alleges, by reference to the Tribunal's case law, that the Administration did not establish clear objectives against which his performance could be assessed and that it did not give him a specific warning or adequate time to improve. He also alleges that he was not provided with a protocol, nor a booklet or other information concerning the induction programme and that, due to the absence of clear guidelines, the process was arbitrary. In effect, he was not granted an objective evaluation and thus the decision to terminate his contract is tainted with prejudice and procedural flaws. He considers the 15 days' notice of termination unreasonably short, particularly in view of the assurances he had been given that his position would carry a one-year contract, and he contends that the termination of his contract severely damaged his reputation and his employment prospects in international organisations.

The complainant asks the Tribunal to quash the impugned decision, to order his reinstatement and to award him material damages in an amount equal to his salary and related emoluments from the date of his wrongful termination until reinstatement, together with interest at 8 per cent per annum. He claims moral damages in the amount of 19,000 euros, or an amount to be determined in all fairness by the Tribunal, and 15,000 euros in costs. In the event that the Tribunal does not order his reinstatement, he claims material damages in an amount equal to 18 months' salary and related emoluments, together with interest at 8 per cent per annum. Alternatively, he asks the Tribunal to refer the case, with clear guidelines, back to the defendant for a new decision on his request for review or a new report by the Appeals Board, including an examination of the merits of his appeal, and to order the ICC to pay him material damages in an amount equal to his salary and related emoluments from the date of

his wrongful termination until a new decision or report is issued, together with interest at 8 per cent per annum, as well as moral damages in the amount of 19,000 euros, or an amount to be determined in all fairness by the Tribunal, and 15,000 euros in costs.

C. In its reply the ICC argues that the complainant's internal appeal was irreceivable and that, consequently, under Article VII of the Tribunal's Statute the complaint is irreceivable for failure to exhaust internal remedies. It points out that the complainant did not comply with the mandatory procedural requirements of Staff Rule 111.1(b) and Rule 2(a) of the Rules of Procedure of the Appeals Board, even after he was informed in clear and explicit terms of the irregularity attaching to his request for review. According to the defendant, the complainant may not plead ignorance of the relevant provisions. Indeed, he was provided with copies of the Staff Regulations and the Staff Rules and he acknowledged, upon accepting his offer of appointment, that he was acquainted with the conditions contained therein. Furthermore, he was duly advised through the Registrar's memorandum of 15 December 2008 of the procedure to be followed. The defendant considers that it fully discharged its duty towards the complainant and that, accordingly, he was solely responsible for failing to submit his request for review pursuant to the rules. It contends that, as a result of this failure, the Registrar was never properly seized of the matter and there was hence no decision which could be subject to an appeal. As to the complainant's reliance on Rule 4(b)(ii) of the Rules of Procedure of the Appeals Board, it notes that this rule only applies to situations where the Registrar fails to render a decision within the prescribed time limits.

On the merits, the ICC submits that the complainant's contract was terminated on the grounds that he did not successfully complete the security induction programme, and thus failed to meet the requirements for employment as a Security Support Assistant. It points out that the vacancy announcement for his post specified under "Qualifications And Experience" that the incumbent was required to complete the said programme successfully and explains that

this requirement, of which the complainant was fully aware, constituted one of the terms and conditions of his employment. It further submits that, in view of the fact that the complainant's performance was lacking, his contract was properly terminated under Staff Rule 109.1(b)(i) and Staff Regulation 9.1(b)(ii), which allow for the termination of the appointment of a staff member prior to the expiration date of his or her contract "[i]f the services of the individual concerned prove unsatisfactory". As for the level of the complainant's performance, the defendant refers the Tribunal to his Work Performance Report of 13 November 2008 and the reports submitted by his trainers.

The ICC rejects the allegation of unequal treatment, emphasising that the complainant's circumstances warranted an alternative testing procedure. Whereas the other trainees quickly demonstrated a satisfactory level of understanding of emergency procedures, the complainant had some difficulty understanding the theory of Fire and Safety without practical experience, which led his instructors to offer him practical tests. The defendant denies that the complainant was not given specific warning or the opportunity to improve. It points out that he was allowed seven weeks to complete a three to four week induction programme and that he was properly guided and assisted in his efforts to do so. In addition, he was warned on several occasions that his performance was not up to the expected standard and was thus aware of the possibility that his contract might be terminated.

Lastly, the defendant denies that the termination of the complainant's contract impaired his employment opportunities elsewhere and notes that the 15 days' notice of termination that he was given corresponded to the notice period stipulated in his contract and was, as such, fully in line with Staff Rule 109.2(e).

D. In his rejoinder the complainant presses his pleas both with regard to the receivability and the merits of the complaint. He asserts that Rule 4(b)(ii) of the Rules of Procedure of the Appeals Board is directly relevant to his case because, read together with Rule 2(b), it ensures that a staff member's right of appeal is not obstructed by the actions of the Registrar. He denies that the vacancy announcement referred to by

the ICC in its reply was the one to which he responded and points out that, according to Staff Rules 104.1 and 104.2, the requirement of successful completion of the security induction programme should have been specified both in his offer and his letter of appointment. He submits a revised request for relief, in which he raises the amount he claims in costs to 25,000 euros.

E. In its surrejoinder the ICC submits that the vacancy announcement referred to in its reply does in fact correspond to the position for which the complainant was interviewed, though not to the position for which he had applied, since he had submitted an unsolicited application. It maintains that the requirement of successful completion of the security induction programme was one of the terms and conditions of the complainant's employment, noting that, according to the case law of the former United Nations Administrative Tribunal,[*] such terms and conditions may be expressed, implied or gathered from correspondence and documentary facts and circumstances, and need not be specified in the offer or the letter of appointment.

CONSIDERATIONS

1. The complainant joined the ICC on 22 September 2008 as a Security Support Assistant under a General Temporary Assistance contract with an expiry date of 31 December 2008. He was required to complete an ICC security induction programme. That programme usually takes three to four weeks. The complainant successfully completed ten components of the induction programme, albeit in some cases after more than one attempt. However, he failed the written Fire and Safety (theory) test on three occasions. He was then given an alternative test comprised of a theory component and two practical tests. Although he passed the theory component, he was not successful in the practical tests. His supervisor submitted a Work Performance Report on 13 November 2008 in which it was said:

[*] The United Nations Administrative Tribunal ceased to exist under that name with effect from 31 December 2009.

> "[The complainant] was unsuccessful in several attempts he was provided to pass [i]nduction training. It was also recorded that for certain periods within this [i]nduction training he showed a clear lack of effort and motivation in his attempts to reach minimum standards expected of [a Security Support Assistant]. As a result of [his] failure to successfully complete [i]nduction training it has not been possible to appraise him in his expected role of [Security Support Assistant] outside of the training environment. It must be noted that no officer will be allowed to undertake normal shift duties without having shown the minimum expected knowledge and application of Security and Safety measures including emergency procedures."

On 3 December 2008 the complainant was given 15 days' notice of the termination of his appointment. The reason given for the decision was his failure to pass the induction training programme despite several attempts.

2. On 5 December 2008 the complainant wrote to the Registrar of the Court requesting review of the decision to terminate his appointment. On 15 December 2008 the complainant received an e-mail attaching the Registrar's reply. The e-mail was in the following terms:

> "Please find attached the Registrar's decision on your request for Review."

The Registrar's memorandum of reply expressed its subject to be a "Review decision". In her reply the Registrar informed the complainant of the terms of Staff Rule 111.1(b) and Rule 2(a) of the Rules of Procedure of the Appeals Board, both of which relevantly require that, before an appeal is lodged, a request for review of the relevant administrative decision by the Registrar be submitted to the Secretary of the Appeals Board. In that reply the Registrar concluded with the statement that the complainant had "flouted the rules" which "must be strictly adhered to by all staff members" and that "[i]n light of the [...] serious procedural irregularities" she considered herself "not seized by [his] case and [...] thus not in a position to review it". At the foot of the reply there was a section for acknowledging receipt in the following terms:

> "ACKNOWLEDGEMENT OF RECEIPT OF NOTIFICATION OF REVIEW DECISION

> I, the undersigned, hereby acknowledge receipt of notification of the review decision of the Registrar resulting from the administrative decision, pursuant to my request for review in accordance with Staff Rule 111.1(a,b)."

3. Before receiving the Registrar's reply to his request for review, the complainant submitted to the Secretary of the Appeals Board a request for suspension of the decision to terminate his contract in which he stated, amongst other things, that "[i]n accordance with Rule 111.1 [he had written] a letter to the Registrar dated 5 December 2008 requesting her reconsider[ation] of the administrative decision to terminate [his] contract", but that she had not as then responded. On 15 December he forwarded an e-mail to the Secretary of the Appeals Board attaching the Registrar's reply, which he characterised as "document of the decision of termination of contract". He indicated in that e-mail:

> "The Registrar stated in her memorandum dat (sic) I flouted the rules and regulations. I was not aware that I could not send my request directly to the Registrar. I just follow the advise (sic) from the Staff Council to send a memorandum to the Registrar to request review of her decision."

4. On 17 December 2008 the Appeals Board recommended against suspension of the decision to terminate the complainant's contract. In its report of that date, it was said:

> "On 5 December 2008, the [complainant] filed the Request in which he requested the Registrar to reconsider her decision to terminate his contract."

The Board's report was forwarded to the complainant under cover of a letter from the Registrar in which she stated that she had decided to accept the Board's recommendation. No reference was made in that letter to the failure of the complainant to lodge his request for review with the Secretary of the Appeals Board.

5. In a letter of 31 December 2008 the complainant purported to lodge an appeal with the Secretary of the Appeals Board "within the foreseen timeframe of thirty days". In her response to the appeal, the Registrar argued, amongst other things, that the appeal was irreceivable on the ground that a request for review was not first

forwarded to the Secretary of the Appeals Board. She claimed that, in her letter of 15 December, she had "clearly highlighted the procedural irregularity which the [complainant] should have rectified". She submitted that the complainant "ha[d] flouted every procedural requirement [...] and the Board should send a clear message that it [would] not tolerate flouting of procedures by dismissing the appeal as irreceivable". In its report of 17 February 2009 the Board unanimously found that the appeal was irreceivable. On 20 February the Registrar informed the complainant that she had decided to accept that recommendation. That is the decision impugned by the present complaint which the ICC argues is irreceivable on the ground that the complainant, not having followed the prescribed rules, has not exhausted internal remedies.

6. The complainant contends that, having been employed with the ICC for only a short time, he was not familiar with the relevant rules. It is not denied that he was acting on the advice of a member of the Staff Union Council and that he knew no one else within the ICC who could advise or assist him. He argues that there was a duty of good faith and a duty of care on the part of the Registrar, the Secretary, and the members of the Appeals Board to take steps to ensure that he did not forfeit his right of appeal. He points out that the Secretary of the Appeals Board is, in effect, a postbox for the receipt of requests for review and draws attention to the occasions on which one or more of the Registrar, the Secretary, or members of the Appeals Board could have drawn his error to his attention. The ICC, on the other hand, argues that it fully discharged its duty to the complainant when the Registrar drew his attention to the "procedural irregularit[ies]" of his review request. It relies on Rule 2(a) of the Rules of Procedure of the Appeals Board which relevantly provides that an appeal "may be initiated […] only after the administrative decision has been reviewed by the Registrar". Further, it refers to

various decisions of the Tribunal emphasising the need for observance of the rules with respect to internal appeals, including the statement in Judgment 1653, under 6, that "where the staff regulations lay down a procedure for internal appeal it must be duly followed: there must be compliance not only with the set time limits but also with any rules of procedure in the regulations or implementing rules".

7. It was said in Judgment 1734, under 3, that:

> "The observance of time limits is not an empty formality but essential to sound management. Only in exceptional cases may they be waived, namely when to demand strict compliance would cause a flagrant miscarriage of justice and good faith must instead prevail. Of course the rules of good faith apply to organisation and employee alike. It would be in bad faith for the organisation to make a staff member bear the consequences of any obscurity in the rules or in its dealings with him. Thus the Tribunal has often ruled that time limits and other procedural requirements should not set traps [...]. Likewise, good faith requires the staff member to pay due heed to the organisation's rules on such matters as dispute procedures. […]"

See also the cases cited in that passage, namely Judgments 522, 607, 873, 1247, 1317, 1376 and 1502. And in Judgment 1832, under 6, it was held that a staff member did not lose his right to appeal simply because the appeal was sent to the wrong internal body. It was said in that case:

> "If the staff member appeals in time but makes the wrong choice between Council and President, there is nothing in the rules to prevent correction of the mistake. After all, both Council and President are authorities within one and the same Organisation."

The Tribunal added:

> "When there are two authorities that may be competent it is easy enough for one to forward a misdirected appeal to the other. If the staff member filed it in time, even with the wrong authority, then it will be receivable, and that authority will simply forward it without ado to the other one."

8. The circumstances of the present case are analogous to those considered in Judgment 1832. Thus, the only question is whether the drawing of the complainant's attention to his procedural error is to be treated as sufficient to render his appeal irreceivable. In this regard it should be noted that, although the Registrar referred to the relevant

rules, she neither returned the request for review to the complainant nor informed him that he should forward another copy of it to the Secretary of the Appeals Board. Moreover, the covering e-mail to which her reply was attached, the subject of the reply and the acknowledgement of receipt at the end of it all suggested that the reply was a "Review decision". It may be that persons familiar with the relevant appeal procedures would have understood from the Registrar's statement that she considered herself "not seized" of the complainant's case and, thus, "not in a position to review it", that she had not reviewed the decision in question and would not do so unless the complainant forwarded a request to the Secretary of the Appeals Board. However, it is clear that the complainant did not understand her reply in that way.

9. Given that it would have been a simple matter for the Registrar to forward the complainant's request for review to the Secretary of the Appeals Board in line with Judgment 1832, the fact that the covering e-mail and the reply, itself, expressed that reply to be a "Review decision" and that, as the request had been sent within time to the person responsible for reviewing the decision, there could be no prejudice occasioned by reason of it having been sent to the wrong person, it was unfair to treat the appeal as not receivable. More particularly, the circumstances and correspondence were such that, as a matter of good faith, the ICC was obliged to proceed on the basis that there had been a review of the decision to terminate the complainant's employment. Accordingly, the complainant's appeal was receivable, as his complaint.

10. The complainant contends that the decision to terminate his employment should be set aside on the ground of mistake of fact. In this regard he claims that he, in fact, successfully completed the security induction programme as the additional practical tests in Fire and Safety were not part of the standard course. He also claims that no other trainees were required to pass the additional practical tests and, thus, he was subjected to unequal treatment. These arguments must be rejected. It is not disputed that the complainant failed his first

three attempts at the theoretical Fire and Safety test. Because of his difficulty with written tests, his instructors devised an alternative test involving both theoretical and practical components that they thought would better suit him as he had stated that he was "more of a practical person". Thus, the testing procedure adopted for the alternative test is properly to be seen as a procedure appropriately adapted to the complainant's particular circumstances. Accordingly, it did not involve unequal treatment. And as the complainant failed that test, his argument that he successfully completed the security induction programme must be rejected, as must his argument that the decision to terminate his employment was based on an error of fact.

11. It is also argued that the decision to terminate the complainant's contract was unlawful because it was not stipulated in his letter of appointment that it was necessary for him to complete the induction programme successfully. Although the vacancy announcement for the post of Security Support Assistant stipulated that the necessary qualifications included the ability "to successfully complete an ICC security induction programme", it is not clear that the complainant applied for the position in response to that or any similar vacancy announcement. However, the complainant does not deny that he knew that he was required to complete the programme successfully and that he could not undertake normal duties until he had done so. The terms and conditions of an employment contract are not to be gathered solely from the letter of appointment or, indeed, other documents such as staff rules that may be incorporated by reference in it. Rather, and unless the letter of appointment provides otherwise, the terms and conditions are to be ascertained by reference to all the correspondence and dealings between the parties and, if the correspondence and dealings do not make the matter clear, regard may also be had to the conduct of the parties. In the present case, there was an induction programme, the complainant participated in it and, as previously mentioned, he does not deny that he knew that he had to successfully complete it before he could undertake normal duties. That

being so, and given the nature of the work to be performed, it is to be inferred that it was a condition of his appointment that he successfully complete the programme within a reasonable time.

12. The complainant also argues that because Staff Rule 104 requires that an offer of appointment and a letter of appointment must specify "[a]ny special conditions which may be applicable", there was neither an express nor an implied term that he successfully complete the induction programme. That argument must be rejected. Even if the complainant was not aware of the terms of the vacancy announcement, the fact that a term to that effect was included in the announcement indicates that the term in question is a standard condition and not a special condition. Moreover, the nature of the work of a Security Support Assistant is such that a term to that or like effect is a necessary term or condition for employment in that position.

13. By analogy with persons on probationary contracts, the complainant also argues that, as stated in Judgment 2788, the ICC was under an obligation to "establish clear objectives against which performance will be assessed, provide the necessary guidance for the performance of the duties, identify in a timely fashion the unsatisfactory aspects of the performance so that remedial steps may be taken, and give a specific warning that the continued employment is in jeopardy". The analogy is useful but not exact. It may be accepted that, as a matter of good faith, the ICC was under an obligation to provide adequate training and tuition and guidance in relation to the tests to be undertaken, as well as an obligation to alert the complainant to any inadequacies that needed to be remedied and to provide a warning that, if they were not remedied, his continued employment was at risk. Moreover, the ICC was obliged to allow the complainant a reasonable time within which to complete the programme successfully. The evidence is that the complainant was provided with tuition and training, as well as guidance as to the matters that needed to be remedied. He was also given several chances

to pass the Fire and Safety test. Further, it is clear from his request for review of the decision to terminate his employment that he was told on several occasions that his continued employment was at risk if he did not successfully complete the induction programme. And contrary to his argument, there was no necessity that he be given a specific warning to that effect. As pointed out in Judgment 1817, under 11(a), all that is required in the case of termination on grounds of performance "is that the staff member be aware of the risk of dismissal and of the need for improvement". And as he was made aware of these matters, his argument that he was denied due process must also be dismissed.

14. The complainant points out that there was no protocol for the induction programme, nor any booklet or other information as to the rules to be applied. He claims that in the absence of some protocol or other similar information, the testing procedures were arbitrary. That is an assertion and there is no evidence to suggest that the testing procedures were arbitrary or, as further claimed by the complainant, that they involved prejudice or unequal treatment. The complainant also claims that there was no requirement that the induction programme be completed within any particular time. As already indicated, the complainant was to be given a reasonable time within which to complete the programme successfully. The complainant had not successfully completed the programme after seven weeks. As the programme is normally completed within three to four weeks, seven weeks must be taken to be a reasonable time.

15. It is also put that the complainant should have been given more than 15 days' notice of the termination of his appointment, especially as he was expecting to be employed on a one-year contract. Moreover, it is said that the proximity to Christmas should have been taken into account and, at the very least, he should have been placed on leave with pay until his contract expired. These arguments must be rejected. His letter of appointment expressly provided for termination on 15 days' written notice.

16. The complainant also claims that he is entitled to damages on the basis that there is close contact between the security services of the international organisations based in the Netherlands and this has resulted in his inability to obtain employment with any other international organisation. There is no evidence of any communication or other act on the part of the ICC that could have had that result. Accordingly, this claim must be dismissed.

17. Although receivable, the complaint must be dismissed. As the complainant did not observe the requirement for lodging his request for review with the Secretary of the Appeals Board, this is not an appropriate case for awarding costs with respect to that aspect of the complaint concerned with receivability.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 20 May 2011, Ms Mary G. Gaudron, President of the Tribunal, Mr Giuseppe Barbagallo, Judge, and Ms Dolores M. Hansen, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 6 July 2011.

Mary G. Gaudron
Giuseppe Barbagallo
Dolores M. Hansen
Catherine Comtet