

113th Session

Judgment No. 3149

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms E. D. against the Agency for International Trade Information and Cooperation (AITIC) on 25 March 2010, AITIC's reply of 19 July, the complainant's rejoinder of 26 October, the Agency's surrejoinder of 1 December 2010, the complainant's additional submissions of 27 May 2011, corrected on 7 June, and AITIC's letter of 24 June 2011 indicating that it did not wish to comment thereon;

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

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

A. The complainant, who holds dual Swiss and Mexican citizenship, was born in 1949. In 2004 she was appointed Executive Director of the newly created AITIC, an intergovernmental organisation established to assist resource-constrained developing countries to participate more effectively in the World Trade Organization negotiations and activities. Prior to that, she had served since 1997 as the Director of the Swiss Project on International Trade Cooperation, AITIC's predecessor.

The process leading to the complainant's appointment as Executive Director of AITIC was marked by a disagreement amongst the Agency's Members in the Preparatory Committee for AITIC. While Participating Members considered that the complainant should continue to be at the helm of AITIC and therefore supported her appointment to the post without prior competition, some Sponsoring Members felt that the post should be filled through an open competition. As no consensus was reached, a vacancy notice for the post of Executive Director of AITIC was published on 16 June 2003. The complainant applied and was selected for the post. On 17 December 2004 she signed a five-year fixed-term contract. A few months later, in May 2005, she wrote to the Chairman of the Executive Board of AITIC to express her disappointment about the fact that the negotiations regarding her terms of employment had resulted in a salary lower than that which she had earned as Director of the Swiss Project on International Trade Cooperation.

At the Executive Board's eighth meeting, held on 7 September 2009, its Chairman announced that the post of Executive Director for the period 2010-2014 would be filled through an open and transparent recruitment process. By a letter of the same date, he informed the complainant that her fixed-term contract would not be renewed following its expiry on 16 December 2009. He added that due to a fundamental change in the role of the Executive Director, which now required a set of competencies focusing on management, fund-raising and liaison activities rather than technical aspects of the Agency's work, the post of Executive Director would be advertised with an "updated profile". The complainant went on certified sick leave that same day. On 18 September she returned to her duties on a 50 per cent basis.

On 22 September 2009 she wrote to the Chairman of the Executive Board, contesting the decision not to renew her contract, which she considered to be null and void on substantive as well as procedural grounds. She raised allegations of harassment against certain members of the Board and requested an investigation into these allegations. She added that, as the Board was competent to hear

appeals against administrative decisions and the letter of 7 September made it clear that the Board's decision not to renew her contract was final, unless she was informed otherwise, she would challenge that decision directly before the Tribunal. The Chairman of the Executive Board replied on 7 October that she was entitled to submit her appeal to the Board in accordance with the AITIC Staff Regulations. He asked her to provide additional information regarding her allegations of harassment and he advised her that the Board did not consider the overseas travel which she had already undertaken or was planning to undertake in the coming weeks to be compatible with her being on sick leave on a 50 per cent basis.

The complainant wrote back on 9 October, stating that she had provided sufficient information regarding her allegations of harassment and reiterating her request for an investigation. She asked that her letter of 22 September be treated as a formal statement of appeal and indicated that her travel schedule was fully compatible with her sick leave. On 29 October she was informed that the Executive Board was not in a position to make a decision on her request for an investigation without additional information. She was also informed that the Board had noted with concern her refusal to cease her overseas travel, her failure to attend one of its meetings and her unilateral decision to terminate a lease for AITIC office space, which the Board had in the meantime revoked. She was asked to apprise the Board of her medical status and availability to participate in AITIC's day-to-day business and to provide her input on a specific matter.

In a letter of 7 November 2009 to the Chairman of the Executive Board, the complainant referred to specific facts which, in her view, constituted a sufficient basis for the Board to initiate an investigation into her allegations of harassment. She informed the Board of her medical status, work schedule and availability until the expiry of her contract and she indicated that she considered its enquiry into her activities as an approval of her continued service during accrued leave. She also defended her decision to terminate a lease for AITIC office space. The Chairman of the Executive Board replied on

25 November, rejecting the complainant's request for an investigation into her allegations of harassment. Regarding the issue of her salary, he noted that it was "rather dated", since she had accepted the fixed-term contract in which her salary amount was specified in December 2004. He asked her to notify the Board immediately of her remaining annual leave entitlement and he instructed her to take it as from the date of his letter until the expiry of her contract.

In a letter of 30 November the complainant restated her arguments concerning the non-renewal of her contract and reiterated her request for an investigation. She provided the Executive Board with a calculation of her accrued leave and overtime and sought payment of the respective amounts together with her final salary. In the event that the Board refused to authorise such payment, she asked that it consider the matter as part of her pending appeal. In a final calculation submitted to the Executive Board on 15 December 2009, the complainant's counsel indicated that the complainant's overtime work amounted to "9.8 months" and he asked that she be compensated. He objected to the fact that she was not allowed to maintain her AITIC e-mail account for an additional three months following her separation and sought payment of her salary balance for December 2009 as well as moral damages. Soon after, the complainant received her salary slip for December 2009; it listed no payment for overtime and in fact indicated that she had taken ten days' annual leave over and above her entitlement and that an equivalent amount had been deducted from her salary.

Meanwhile, on 14 December 2009, the Chairman of the AITIC Council of Representatives had written to the Chairman of the Executive Board protesting against the Board's failure to inform the Council of the decision not to renew the complainant's contract. He characterised the Board's treatment of the complainant as disrespectful and condemned its disregard of the Agency's rules and procedures. By a letter of 26 February 2010 the complainant's counsel was informed that on 19 January 2010 the Executive Board had decided to reject the complainant's appeal. That is the impugned decision.

B. The complainant argues that the Executive Board's decision not to renew her contract was wrongful, illegal, and an affront to her dignity. In addition, it was not taken in accordance with established rules and was therefore unlawful on procedural grounds.

In particular, by failing to consult the Members of AITIC prior to any decision concerning her contract, the Executive Board breached Article 8(2)(g) of the Agreement Establishing the AITIC, which requires that the appointment of the Executive Director shall be decided in consultation with the Agency's Members. Moreover, she was not given valid reasons for the decision, since the new set of competencies allegedly required for the position of Executive Director – focusing on management, fund-raising and liaison – were competencies that she herself possessed. Nor was she given reasonable notice because, as she was on certified sick leave at the material time, she was notified of the non-renewal of her contract only on 17 September 2009, that is less than three months before its expiry. This was not merely a violation by the Executive Board of the terms of her contract and the Staff Regulations, which explicitly require written notice of no less than three months, but also of the Tribunal's case law, which imposes a duty to inform staff members "long enough in advance". Also, the manner in which she was notified, namely without any consultation or consideration for her contribution to the Agency, aggravated the prejudice caused to her.

The complainant contends that the decision not to renew her contract was tainted with bias, ill will and malice and that it constituted an abuse of power. She alleges that there is a plethora of evidence pointing to the undue influence exercised by Sponsoring Members with a view to ousting her from her position. She refers in that respect to the imposition of a lower salary, the interference with her executive duties and the excessive monitoring of her work as illustrations of the harassment and bullying which she endured. Furthermore, she considers that due to the Executive Board's failure to inform her in due time of the decision not to renew her contract, she had a legitimate expectation of continued employment under the same or similar terms and that her fixed-term contract should hence be

considered renewed by implication for an additional five-year term as from 17 December 2009. In her opinion, the Executive Board's failure to investigate her allegations of harassment constitutes a further gross affront to her dignity which exacerbated her injury.

The complainant asks the Tribunal to set aside the decision not to renew her contract, to order her reinstatement as Executive Director of AITIC under a five-year fixed-term contract as from 17 December 2009 and to pay her the salary, benefits, indemnities and other emoluments to which she would have been entitled had she remained in that position from 17 December 2009 to the date of her reinstatement. Alternatively, she claims damages in an amount equivalent to the salary, benefits, indemnities and other emoluments to which she would have been entitled had her contract been renewed for an additional five-year term as from 17 December 2009. She also claims moral and exemplary damages in the amount of one million United States dollars, costs in the amount of 40,000 dollars, as well as interest on all amounts awarded at the rate of 8 per cent per annum. Lastly, she seeks an order for the production of documents by the Executive Board and applies for an oral hearing.

C. In its reply AITIC submits that the decision not to renew the complainant's contract was taken in accordance with her terms of employment and the provisions of the Staff Regulations. Accordingly, it did not involve an error of law or an abuse of authority. Moreover, being a discretionary decision, it is subject to only limited review.

The Agency argues that by allowing the complainant's contract to expire according to its terms, i.e. on 16 December 2009, it acted fully in line with the case law which provides that fixed-term contracts come to an end on their expiry date and carry no expectation of renewal. It rejects the complainant's contention that she was not given reasonable notice and asserts that, although neither the Staff Regulations nor her contract specify a notice period in the event of non-renewal, she was effectively given more than three months' notice. Indeed, she was first informed of the decision not to renew her contract on 7 September 2009, at the Executive Board's

eighth meeting which she attended, and then by an e-mail and by registered letters of the same date which were sent to her professional as well as her private address.

The defendant denies any breach by the Executive Board of Article 8(2)(g) of the Agreement Establishing the AITIC and considers that the complainant's argument in that respect is based on a misinterpretation of the said provision, which only requires the Board to consult with AITIC Members regarding the appointment of the Executive Director. It points out that, although it was not required to do so, the Board did consult with the Agency's Members on the decision not to renew the complainant's contract. As to the allegedly improper reasons given for the non-renewal, AITIC stands by its position that the complainant's profile was not suitable for the new requirements of the post and states that the reasons were sufficiently clear and detailed to enable her properly to defend her interests.

AITIC dismisses as unfounded the complainant's allegations of harassment and bullying. It argues that the complainant failed to raise them in good time so as to allow the Executive Board to conduct a proper investigation. Nonetheless, the Board did review them but concluded that the facts alleged did not constitute harassment or similar conduct. With regard to the complainant's request for the production of documents, the Agency defers to the competence of the President of the Tribunal under Article 9.6 of the Rules of the Tribunal.

D. In her rejoinder the complainant reiterates her arguments. She rejects as "fabricated" the reason given for the non-renewal of her contract, emphasising that there was never any discussion within the Agency of a decision to change the competencies of the post of Executive Director. Relying on the letter of 14 December 2009 from the Chairman of the Council of Representatives to the Chairman of the Executive Board, she refutes the assertion that AITIC Members were consulted with regard to her non-renewal. She accuses the Agency of discrimination and bad faith and considers that the decision to cancel her e-mail account and to ban her from the Agency's premises

immediately after her separation constituted unequal treatment, if not disguised disciplinary sanctions. She presses her claim for an oral hearing.

E. In its surrejoinder AITIC maintains its position. With regard to the complainant's allegations of harassment, it emphasises that the facts on which she relies occurred six to nine years ago. It reaffirms the validity of the reasons given for the non-renewal of her contract and points out that, due to the Agency's financial situation, which worsened considerably while the complainant was leading the Agency, the process of recruiting a new Executive Director was put on hold. It denies the accusation of unequal treatment, noting that the cancellation of the complainant's e-mail account was consistent with standard practice and that she had no right of access to AITIC's premises once she was no longer employed by the Agency.

F. In her additional submissions the complainant produces an article published in the Geneva local press on 10 February 2011 under the title "*Une agence d'aide liée à l'OMC ferme ses portes. L'ancienne directrice réclame une réparation de 2 millions de francs à la Suisse*"* as further evidence of the harassment which she suffered by a member of the Executive Board.

CONSIDERATIONS

1. The complainant is the former Executive Director of AITIC. She was appointed as such on a five-year fixed-term contract on 17 December 2004. She was previously employed as the Director of AITIC's predecessor, the Swiss Project on International Trade Cooperation, an association under Swiss law. AITIC came into existence as an intergovernmental organisation on 30 April 2004.

* "Aid agency linked to WTO closes its doors. Former Executive Director seeks 2 million francs in compensation from Switzerland". (Registry's translation from the French original.)

2. The AITIC Staff Regulations provide, in Regulation 4, for the appointment of an Executive Director by the Executive Board in consultation with the Members. That regulation further provides:

“The Executive Director shall be appointed for a period of five years, which may be renewed for one further period of five years. In carrying out his duties [...] the Executive Director shall be responsible to the Executive Board.”

Regulation 41(2) states:

“When applying *Staff Regulations* [...] to the Executive Director in particular, the Executive Board shall, *mutatis mutandis*, play the role assigned to the Executive Director by these *Regulations*.”

Staff Regulation 31(b) allows that separation from service may occur as a result of “expiration of a contract in accordance with its terms”.

Regulation 33(1) relevantly provides:

“In cases provided for under *Staff Regulation* 31(b), a staff member shall be given notice.”

Additionally, the complainant’s contract provided that it would expire on 16 December 2009 and specified that:

“It may be terminated by signatories to this contract before that date in accordance with Chapter VIII of AITIC staff regulations, subject to not less than three months of written notice to that effect with statement of reasons.”

Chapter VIII of the Staff Regulations is concerned with separation from service which, by Regulation 31, may occur as the result of resignation, expiration of contract, termination, retirement, summary dismissal, abandonment of post or death.

3. The complainant’s contract was not renewed. That occurred in circumstances that will be dealt with later. She claims that she was “wrongfully dismissed” and asks that she be reinstated under a contract for a further period of five years from 17 December 2009 or, alternatively, that she be awarded material damages on the basis that she was entitled to have her contract renewed for a further period of five years. She also claims for payment of overtime, as well as for ten days’ annual leave which was deducted from her final payment. Additionally, she claims compensation for the “grave moral injury

and heinous mental and physical distress” caused to her including for “defamation, irreparable harm to her professional reputation, procedural and substantive irregularities, psychological harassment, and prejudice, malice, and ill will”. She claims exemplary damages, costs, and interest at 8 per cent per annum on all amounts awarded. Further, she seeks a public apology and asks for an oral hearing and for the production of documents.

4. The application for an oral hearing is refused. To a large extent, the outcome of these proceedings depends on questions of law and undisputed facts. To the extent that there are disputed questions of fact, they are amply covered in the pleadings. The application for the production of documents is also refused. Insofar as the complainant seeks the production of specific documents, they have no bearing on the outcome of the case. Moreover, the Tribunal has consistently held that it will not order the production of documents on the speculative basis that they may reveal something to assist the complainant’s case. And it may also be noted, at this stage, that the Tribunal has no power to order a public apology and that request must also be refused.

5. As already noted, the complainant’s contract was due to expire on 16 December 2009. A meeting of the Executive Board took place on 7 September 2009. The complainant attended that meeting, the minutes of which record that:

“The Chairman of the Executive Board informed all present at the meeting that, following consultations, the Executive Board had reached a consensus that in view of the fact that the current Executive Director’s fixed term contract was due to expire on 16th December 2009 an open and transparent recruitment and selection process would be initiated to fill the vacancy when it arose in December 2009.”

As well, the minutes record that “[t]he Chairman indicated that the Executive Director would also be notified in writing after the meeting”.

6. Immediately following the meeting of the Executive Board on 7 September 2009, the complainant proceeded on sick leave. Later that afternoon, the Chairman of the Executive Board sent the

Executive Director an e-mail and forwarded registered letters to her home and professional addresses in which he stated that the decision not to renew her contract was “due to the fundamental revision over the past years of the role of the Executive Director which now requires a set of competencies which are less focused on the technical elements of AITIC’s work and more focused on management, fund raising and liaison”. He added that the decision was also “due to the Agency’s need to demonstrate its uniqueness and capacities through the achievement of tangible results and impacts which clearly relate to its mission in order to secure the long-term funding and viability of AITIC”. The complainant contends that, by reason of her absence on sick leave, she did not receive written notice of the non-renewal of her contract until she returned to her office on 17 September 2009. This is disputed by AITIC but, as will later appear, this issue need not be pursued.

7. The complainant makes various arguments based on the premise that she did not receive the letter stating the reasons for the non-renewal of her contract until 17 September 2009. She claims that she was entitled to three months’ notice and that, as the letter was not received until 17 September – two days short of three calendar months – she had a reasonable expectation that her contract would be renewed. Indeed, she claims that “without valid and timely notice of non-renewal, [her] fixed-term contract should be considered renewed by implication for an additional five-year term”. She also argues that the non-renewal was “wrongful and illegal” as it was given “without prior consultation [with] the Members as stipulated in the AITIC Agreement”. These arguments must be rejected.

8. The AITIC Agreement requires that the Executive Board consult with Members for the appointment of an Executive Director. It makes no provision with respect to consultation in the event of non-renewal of the Executive Director’s contract. Nor was any provision made in the complainant’s contract in that respect. The contract was concerned only with termination for which three months’ notice was required. The requirements for non-renewal are to be found solely in

the Staff Regulations and, as already noted, Regulation 33(1) requires only that there be notice. Of course, Regulation 33(1) must be construed as requiring reasonable notice. In a context in which three months' notice is stipulated for termination, it must be concluded that a shorter period constitutes reasonable notice in the case of non-renewal. Even if one takes the view that the complainant did not receive notice of the non-renewal of her contract until she received the letter setting out the reasons for that course on 17 September 2009, she had more than 90 days' notice of the decision. In the circumstances, that constitutes reasonable notice. In fact, the complainant received notice of the non-renewal of her contract at the meeting of 7 September 2009, more than three calendar months before her contract expired. Accordingly, her arguments that, as she had not received three months' notice, she had a reasonable expectation that her contract would be renewed and that it should be treated as having been renewed implicitly must be rejected for lack of factual foundation.

9. The complainant also contends that there was no valid reason for the decision not to renew her contract. In this regard, she argues that the reason given, namely, the "fundamental revision" of the role of Executive Director which required "a new set of competencies [...] less focused on [...] technical elements [...] and more focused on management, fund raising and liaison" was illusory. In support of this argument, she invites a comparison of the criteria specified in an advertisement for the post for a new Executive Director published in January 2010 and her own job description. It is necessary to mention only two of the duties specified in the advertisement, namely, "[m]anage[ment] of the Agency's human resources" and "[p]repar[ation] and manage[ment] of the Agency's budget". In its reply AITIC makes various criticisms of the complainant's management skills. These are not matters upon which it can rely to justify the non-renewal of the complainant's contract. However and in answer to these criticisms, the complainant asserts in her rejoinder that she "was not the person responsible for the management of human resources and accounting – it was the human

resources and office manager”. As the 2010 advertisement for the post clearly specified duties that the complainant asserts were not her responsibility, the argument that the reasons given for the non-renewal of her contract were illusory must be rejected.

10. It is also argued that the decision not to renew the complainant’s contract was the result of bias, ill will and malice and, thus, amounts to an abuse of power. To the extent that the argument is based on the premise that the reason given for the decision was illusory, the argument must be rejected. However, the complainant also contends that she was the victim of harassment and mobbing and that the Executive Board failed to investigate her allegations in this regard. It is necessary to consider these claims not only for the purpose of determining whether they are substantiated, but also to ascertain whether they provide evidence of bias, ill will or malice.

11. The complainant alleges that she was harassed and mobbed “at the hands of the AITIC Executive Board”. She claims that the harassment began “even before she assumed her position as Executive Director [...] [and] continued unabated during [her] five year term, culminating in the illegal and irregular non-renewal of her contract”. Before considering her specific allegations, it is convenient to note that AITIC acquired a separate legal personality when it came into existence as an intergovernmental organisation on 30 April 2004. It cannot be held liable for events that occurred prior to that date. Similarly, as the complainant was not employed by AITIC until 17 December 2004, it owed no obligation to her until then. The complainant points to events surrounding the negotiation of her salary package, including the fact that the Chairman of the Selection Panel which appointed her as Executive Director of AITIC unilaterally “reduced her agreed-upon salary level”. The Selection Panel was a Panel of the Preparatory Committee for AITIC and the events in question occurred prior to the complainant’s taking up her appointment on 17 December 2004. In these circumstances, AITIC cannot be held liable with respect to any of these events. Moreover, it is not possible to categorise events involved in the negotiation of a

salary package as harassment: the actions in question obviously had a legitimate managerial purpose, even if distressing to the complainant. And although the events may indicate that there was some tension between those members of the Selection Panel who later became members of the Executive Board of AITIC and the complainant, they do not provide any basis for a finding of bias, ill will or malice in relation to the decision, taken almost five years later, not to renew her contract.

12. It is also necessary to say something of the composition of the AITIC Executive Board. Rule 1 of the Rules of Procedure for the Executive Board of AITIC stipulates that it “shall consist of three representatives from the Sponsoring [State] Members and three representatives from the Participating [State] Members, and the Executive Director in an *ex officio* capacity”. Thus and leaving aside the Executive Director, the members of the Executive Board had dual capacities, even though obliged by Rule 4 of the Rules of Procedure to “avoid placing themselves in a position where their private or national interests would [...] conflict with the interests of AITIC”. Thus, it is necessary to consider whether actions by individual members of the Executive Board were their own individual acts or those of the Board.

13. In support of her claim of harassment, the complainant refers to certain actions on the part of the Netherlands. In this regard, she states that “[e]ven before it became a Sponsoring Member, [it] commissioned an evaluation of [AITIC] by [an external consultancy firm]”. The same firm was hired for a second time in 2007. According to the complainant, “the Sponsoring Member (the representative of the Netherlands), who had commissioned the [second] [e]valuation” withheld it when it was first prepared. When later issued, according to the complainant, the evaluation had been edited without consulting her “to give it an extremely negative, unfounded twist on [her] role [...] and contained an executive summary that was highly critical of ‘management’”. The complainant expressed her views with respect to the evaluation at an Executive Board meeting on 25 October 2007 and was later given the opportunity of working with the consultancy firm

with the result, according to her, that they reached “an agreement on an acceptable ‘final’ version of the document, dated 14 February 2008”. Some months later, the complainant learned that the earlier version was in wide circulation. AITIC claims, and there is no evidence to the contrary, that the Executive Board neither commissioned the evaluation nor was responsible for the circulation of the earlier version of it. Indeed, the complainant suggests in her complaint that the then representative of the Netherlands was responsible for its circulation. Thus, there is no basis on which the Executive Board can be held responsible for these events. And even if one were to infer ill will on the part of the representative of the Netherlands, the Netherlands was not represented at the meeting of the Executive Board on 7 September 2009. Accordingly, the events relating to the evaluation by the external consultancy firm provide no basis for a finding of ill will or other improper motive in relation to the decision not to renew the complainant’s contract.

14. As part of her claim of harassment, the complainant refers to a meeting with the Secretary of the Swiss State Secretariat for Economic Affairs on 1 December 2008. It is unnecessary to refer to what occurred at that meeting, as it is clear that the Secretary was acting on behalf of the Swiss Government, not the Executive Board. Nothing that occurred at that meeting can provide a basis for a finding of ill will or other improper motive in relation to the decision of the Executive Board not to renew the complainant’s contract. Nor can ill will or other improper motive be attributed to the Executive Board on the basis of the actions of the Swiss State Secretariat for Economic Affairs that were taken subsequent to the decision not to renew the complainant’s contract.

15. The complainant raises two other matters as part of her claim of harassment. They concern the involvement of the Executive Board in decisions which, according to the argument, were within her exclusive competence. The first was the recruitment and selection process for the post of Deputy Executive Director. That process took place over a period stretching from March 2004 to December 2006.

To the extent that the process involved events prior to the appointment of the complainant as Executive Director, they were not matters within her competence. To the extent that the process involved events after her appointment, they were not within her exclusive competence. Regulation 4 of the Staff Regulations provides that “[i]n carrying out his duties as outlined in Article 9 of the [Agreement Establishing the AITIC], the Executive Director shall be responsible to the Executive Board”. The duties set out in Article 9 of the Agreement include the management of AITIC’s day-to-day operations and the recruitment of staff. However, Article 8 of the Agreement imposes on the Executive Board the responsibility to take “decisions necessary to ensure the efficient and effective operation of AITIC”. In light of Article 8, it cannot be said that the involvement of the Executive Board in the selection of the Deputy Executive Director in the early life of AITIC as an intergovernmental organisation involved any interference in functions or duties vested exclusively in the Executive Director or that it constituted harassment. Similarly, it provides no basis for a finding of ill will or other improper motive in relation to the decision in September 2009 not to renew the complainant’s contract.

16. The second decision in respect of which the complainant contends the Executive Board interfered in matters within her competence relates to the premises in which AITIC had its offices. In October 2009, shortly before her contract was due to expire, the complainant took steps to cancel the lease over part of the premises. Her decision to do so was countermanded by the Executive Board. In the circumstances, that was a matter which, in terms of Article 8 of the AITIC Agreement, the Board might reasonably consider “necessary to ensure the efficient and effective operation of AITIC”. It neither constitutes harassment nor indicates ill will or other improper motive in relation to the decision not to renew the complainant’s contract.

17. As none of the matters on which the complainant relies for her claim of harassment provides a basis for finding ill will or other improper motive in relation to the decision not to renew her

contract, that decision must stand. And as none of those matters constitutes harassment, her claim in that regard must be dismissed. However and in addition to her claim of harassment, the complainant seeks moral damages on the basis that the Executive Board failed to investigate her allegations in that regard. It should be noted that she first made a claim of harassment on 22 September 2009, apparently in consequence of the decision not to renew her contract. By a letter of 25 November 2009 the Chairman of the Executive Board provided answers to each of her allegations and declined to establish an independent panel to investigate them. Given the nature of the allegations and the answers then given, the Executive Board was not required to do more. Accordingly, the claim for moral damages for failure to investigate the claim of harassment is rejected.

18. The complainant's claims for payment of overtime and for ten days' annual leave deducted from her final payment are, to some extent, related and may be dealt with together. The claim for payment of overtime was made in connection with her internal appeal against the decision not to renew her contract. Neither the Staff Regulations nor the complainant's contract provides for the payment of overtime. There is no evidence that she was ever paid overtime and, in the Financial Statement of Accounts for 2008, the complainant stated that "overtime in AITIC is voluntary and not compensated". Accordingly, the complainant has not established that she was entitled to payment for overtime and her claim in that regard must be dismissed. It would appear that the complainant took ten extra days annual leave in 2008 as compensation for overtime. Staff Regulation 28 provides that "[s]taff members [are] entitled to annual leave" but does not specify the period of that leave. No provision is made in the Staff Regulations or in the complainant's contract for the granting or taking of annual leave as compensation for overtime. And as earlier indicated, the complainant stated in the financial Statement of Accounts for 2008 that overtime was not compensated. In these circumstances, it would appear that the complainant erred in taking the extra annual leave in 2008 and the same should have been set off against her annual leave

entitlement for 2009. Effectively, that is what was done in the calculation of the complainant's final payment. Accordingly, her claim in that regard must also be dismissed.

19. The complainant also claims moral damages for failure to treat her with dignity in relation to the non-renewal of her contract and with respect to the arrangements made for her departure from office on 16 December 2009 and the collection of her personal property in February 2010. The Tribunal sees no merit in these claims.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 9 May 2012, Ms Mary G. Gaudron, Vice-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 4 July 2012.

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